

**ACER Public Consultation on the  
revised ENTSOG proposal for  
Incremental Capacity to amend the  
Network Code on Capacity Allocation  
Mechanisms**

**Evaluation of responses**

13 July 2015

## 1. Introduction

On 26 December 2014, the European Network of Transmission System Operators for Gas (“ENTSOG”) submitted to the Agency for Cooperation of Energy Regulators (“ACER”) the draft Amendment Proposal to Regulation (EU) No. 984/2013 (the Network Code on Capacity Allocation Mechanisms, “NC CAM”) on the matter of Incremental Capacity, as required by the invitation letter ENTSOG received from the European Commission on 19 December 2013. The draft amendment proposal provides a new regulatory framework to offer incremental capacity in a market-based manner and shall satisfy demand that goes beyond the existing capacity offers, to ensure the necessary level of investment efficiently and in a financially viable manner. The draft amendment proposal was prepared in the course of 2014 with stakeholder involvement and is based on ACER’s Guidance paper<sup>1</sup> issued on 2 December 2013.

On 4 February 2015, ACER launched a public consultation<sup>2</sup> on the revised draft amendment proposal for Incremental Capacity based on Article 7(2) of the Regulation (EC) No. 715/2009 and Article 10 of the Regulation (EC) No. 713/2009. The purpose of the consultation was to collect the views of the stakeholders on the modifications that ACER introduced to the ENTSOG draft amendment proposal, before submitting a reasoned proposal for amendment to the Commission in accordance with Article 7(2) of Regulation (EC) No. 715/2009.

## 2. The process of the consultation

In order to formulate its reasoned proposal for amendment on the NC CAM concerning incremental capacity, ACER openly invited stakeholders to give their opinion on the modifications ACER introduced. The draft amendments proposed by ENTSOG, as well as the changes ACER made to the ENTSOG draft, were presented article by article, so that stakeholders could easily identify the changes and evaluate them one by one.

The public consultation launched on the Agency’s website closed on 4 March 2015. ACER received responses from 16 stakeholders, which were published by ACER.<sup>3</sup> The articles most supported by the respondents refer to certain definitions, the allocation methodology, the annual yearly capacity auctions and the Ascending Clock auction algorithm. However, the new chapter IV on the offer of incremental capacity received a wide range of comments. All comments have been reviewed and considered by ACER.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:273:0005:0017:EN:PDF>

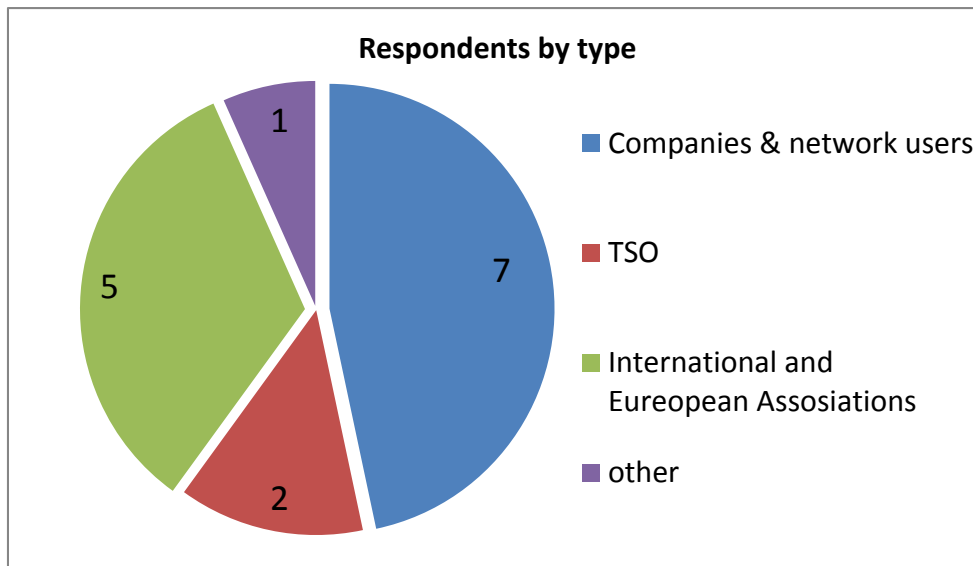
<sup>2</sup> [http://www.acer.europa.eu/Gas/Framework%20guidelines\\_and\\_network%20codes/Documents/ACER%20Guidance%20on%20NC%20CAM%20Amendments%20%28final%29.pdf](http://www.acer.europa.eu/Gas/Framework%20guidelines_and_network%20codes/Documents/ACER%20Guidance%20on%20NC%20CAM%20Amendments%20%28final%29.pdf)

<sup>3</sup> [http://www.acer.europa.eu/Official\\_documents/Public\\_consultations/Pages/PC\\_2015\\_G\\_02.aspx](http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2015_G_02.aspx)

A list of the stakeholders is annexed. The response form MERCURIA ENERGY TRADIDNG S.A. is not included in the evaluation, since it was out of scope.

### 3. Stakeholder answers

15 stakeholders gave relevant answers to ACER’s public consultation. Energy companies and shippers provided most of the answers. 7 network users, 2 transmission system operators, 5 International, European and National Associations provided valuable comments. The list of respondents can be found in Annex I.



At first, the stakeholders provided their position on each article and/or paragraph modified by ACER. These positions were then refined by an explanation from the part of stakeholders explaining why they chose to support, oppose or be neutral to the changes made by ACER. Furthermore, stakeholders could also provide an alternative wording for every article or paragraph modified by ACER.

### 4. Summary of responses and ACER views

The following table deals with those ACER proposals which were not uniformly supported by stakeholders in the consultation. The table first describes the respective issue and ACER’s change proposals. Under the general description of the issue there are two columns: a summary of the responses collected in the ACER consultation in the left column and ACER’s evaluation and conclusion on the issue in the right column.

Respondents' feedback	ACER views
<p><b>Article 3- Definitions:</b></p>	
<p><b>(20) “incremental capacity”:</b> A clarification was added to make sure that capacity created by non-market based or partially market based procedures (e.g. non-market based PCI, TYNDP, central planning,....) is to be treated as “available capacity” (existing capacity).</p> <p><b>(21) “offer level”:</b> The deleted text, which was referring to incremental capacity seemed redundant, because the second half of the definition referred to the yearly standard capacity products at the IP.</p>	
<p><b>“incremental capacity”:</b> Respondents evenly opposed to and agreed with this insertion (5 yes, 5 no). The opponents provided the following reasoning: <u>Potential</u> non-market based or partially market based procedures should be included in the demand assessment report and capacity created this way should be considered incremental capacity, although the criteria in the economic test might be set in a way that is not (or is limited to) prior commitments from network users required for the Final Investment Decision. Another stakeholder underlined how critical an open season (OS) procedure is in creating incremental capacity.</p> <p><b>“offer level”:</b> The opposing minority (5 yes, 3 no) explained that taking out the reference to incremental capacity makes the "offer levels" applicable to all auctions. However, an "offer level" does not make sense when only existing capacity is offered. Respondents proposed in both cases to keep ENTSOG’s proposal.</p>	<p><b>“incremental capacity”:</b> While ACER agrees to the statements provided on “potential” non-market based or partially market based procedures, the added clarification refers only to capacity for which the final investment decision <u>has already been taken</u> and is therefore existing capacity. → <b>ACER will keep its modification.</b></p> <p><b>“offer level”:</b> The reduced definition is considered to be sufficient as it refers to the “sum of available capacity <u>and</u> the <u>respective</u> level of incremental capacity”). ACER can also accept the draft definition proposed by ENTSOG. → <b>ENTSOG’s draft definition will be kept.</b></p>
<p><b>Chapter IV a- OFFER OF INCREMENTAL CAPACITY, Article 20a- General provisions:</b></p>	
<p><b>Paragraph 1:</b> ACER inserted a requirement for TSOs to cooperate in order to produce a common demand assessment report (DAR) per entry-exit system border. In addition, ENTSOG should coordinate the structure and publication of all DARs on its website.</p>	
<p><b>Paragraph 3:</b> “Open season procedures <i>shall</i> be conducted for incremental capacity”. ACER proposed that the obligation to conduct an OS, if one of the criteria is fulfilled, would be removed. The OS was considered as an option.</p>	
<p><b>Paragraph 6:</b> Concerning the NRAs’ agreement on the joint capacity allocations, ACER’s proposal clarified the reference to alternative capacity allocation mechanisms in an OS. In addition, ACER specified the timeframes in terms of reaching an agreement no later than within 3 months after the closure of the Ascending Clock yearly auction.</p>	
<p><b>Paragraph 1:</b> (10 yes, 2 no) The cooperation and coordination of TSOs as well as between TSOs and NRAs was welcomed. However, ENTSOG insisted that there should be more flexibility. It is not always efficient for TSOs to conduct market demand assessments jointly, since TSOs of one entry exit system may have competing projects. The harmonised template was received positively, except that ENTSOG insisted that ENTSOG may not be able to ensure that DARs were submitted on time since it was for the NRAs to ensure compliance with the Network Codes.</p> <p>Other stakeholders provided another option for co-operation as follows: “a) Adjacent TSOs shall in particular co-cooperate to produce a common demand assessment report for their joint interconnection points.”</p>	<p><b>Paragraph 1:</b> ACER agrees that NRAs should ensure that TSOs comply with the obligations (i.e. timely completion of the joint DARs), while ENTSOG should act as a facilitator and coordinator. However, the joint DAR per entry-exit system border should not be a choice or preference, but the rule to follow.</p> <p>ACER also takes up the proposal by one respondent to oblige the DARs to be published in English and supports another proposal that the demand assessment (and the DAR) is renamed into “<u>market</u> demand assessment (report)” in order to avoid potential confusion about the objective of DAR, namely the confusion with ‘technical’ gas demand assessments.</p>

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<p><b>Paragraph 3:</b> (2yes, 10 no) Most of the respondents do not agree with ACER's view. Although TSOs/NRAs should not be obliged to conduct an OS, using "can" instead of "shall" is not consistent with the outcomes of the incremental process discussions. Overall, an explicit decision should be taken about conducting an OS or not. Restraining the OSs by binding their application to a list of circumstances may reduce their value as a dedicated alternative to auctions. Respondents' proposal is to either keep the initial ENTSOG wording or to adopt the following: "Open season procedures <u>shall be considered</u> for incremental capacity if at least one of the following conditions is met for at least one of the involved transmission system operators."</p> <p><b>Paragraph 6:</b> (4 yes, 8 no) Apart from the fact that a number of stakeholders do not support the idea of having auctions as the standard rule to allocate capacity in OS (see later in this report), they are also of the view that alternative CAM rules should be known in advance and should be made public upfront to provide more clarity. Respondents also state that the allocation rule is part of the required parameters listed in Article 20c(3) and cross-referencing should be avoided in this article. Finally, they think that network users should be involved in the decision about OS or auction since the final decision could be influenced if their views are taken into account and thus proposed to keep the initial ENTSOG wording.</p>	<p>→ <b>ACER amends the text.</b></p> <p><b>Paragraph 3:</b> Following stakeholders' feedback, <b>ACER simplifies the overall incremental process:</b> all processes will be run as open seasons with a non-binding phase and the ascending clock auction allocation in the binding phase. <b><u>If certain conditions are met, an alternative CAM option is applied, subject to NRAs' approval.</u></b></p> <p><b>Paragraph 6: ACER revised the incremental process</b> and clarified the conditions under which the alternative CAM option could be used. The new ACER proposal makes clear which CAM is going to be applied in the binding phase. Depending on the requests for conditional bids, <b>network users influence the choice of the allocation mechanism.</b></p>
<p><b>Article 20b- Process of demand assessment for Incremental Capacity</b></p> <p><b>Paragraph 2(e):</b> Concerning the information non-binding demand indications should contain, ACER additionally required to include other potential, conditional demand indications (e.g. on duration, volumes). The deleted reference from paragraph 2(d), to mutual exclusiveness was captured by the "conditional demand indications".</p> <p><b>Paragraph 7(d):</b> ACER clarified that in case fees, charged for the submission of non-binding demand indications, are introduced (Art. 20b (4) of the initial ENTSOG draft), those should also be indicated in the demand assessment report. This change was also reflected in Article 20 b (9) (a). (See below)</p> <p><b>Paragraph 7(e):</b> Concerning the elements the TSO DAR should contain, one of which is the conclusions on whether conditions are met to initiate the OS, ACER added that <i>the binding part</i> of the OS can be initiated since non-binding commitments have been already collected and presented in the demand assessment report and it is redundant to restart the OS with a complete non-binding phase, which would delay the project.</p> <p><b>Paragraph 8:</b> This paragraph provides for joint demand assessment report by more than one TSOs of one entry exit system and was deleted by ACER since its content is reflected already under Article 20 a (1). (See above)</p> <p><b>Paragraph 9:</b> ACER put a cap on the TSO consultation, no longer than 2 months, in order to allow sufficient time for the design phase.</p> <p><b>Paragraph 9(a):</b> Concerning the conclusions taken in the demand assessment report in the TSO consultation, ACER inserted a specific reference to certain articles, one of which refers to Article 20b (7) (d). (See above)</p> <p><b>Paragraph 9(b):</b> Concerning the elements the TSO consultation should cover, ACER inserted the <i>binding part</i> of an OSP in order to be aligned with Art. 20 b (7)(e).</p> <p><b>Paragraph 9(d):</b> Concerning the elements the TSO consultation should cover, ACER changed the wording: general rules and conditions for network users <i>concerning contracts for the incremental capacity project</i> (and provided a linguistic review).</p> <p><b>Paragraph 9(f):</b> Concerning the elements the TSO consultation should cover, ACER inserted the conditional demand indications.</p> <p><b>Paragraph 9(g):</b> Concerning the elements the TSO consultation should cover, ACER inserted non-binding demand indications (beyond the demand assessment report).</p>	

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<p><b>Paragraph 2(e):</b> (7 yes, 1 no) ENTSOG stresses that ACER's approach results in a non-exhaustive list, whereas ENTSOG's approach is based on an exhaustive one.</p> <p><b>Paragraph 7(d):</b> (7 yes, 4 no) One stakeholder proposes the deletion of references to fees. ENTSOG notes that ACER allows fees to be charged for non-binding demand indications, as those can incur fees. Two stakeholders note that there would not be a demand assessment report for projects started due to 20b(3)b (demand for initiation of incremental is sufficient).</p> <p><b>Paragraph 7(e):</b> Respondents expressed their disagreement with this insertion (2 yes, 9 no), by demonstrating that there is not enough certainty that the timescales of the non-binding phase and demand assessment phase overlap. They do not agree that the DAR and non-binding phase are one and the same. It is suggested that requiring a shipper to take part in the non-binding phase could exclude those who might join the project later. Respondents also point out that moving straight to binding phase ignores project design phase and consultation, and may fail to satisfy market demand in the end. One stakeholder points out that ex-ante timings are needed to ensure participation. A possible improvement may be: "(e) a conclusion on whether the conditions as set out in Article 20a(3) are met and whether an open season procedure will be initiated".</p> <p><b>Paragraph 8:</b> ENTSOG pointed out that this could be read as suggesting that TSOs without IPs (for example in multi TSO area) might not need to create a DAR and suggest to include this exemption into article 20(a)1.</p> <p><b>Paragraph 9:</b> (2 yes, 8 no) Respondents propose a minimum consultation length, 1 month, to ensure stakeholders are able to take part, or 2 months, as standard. Some stakeholders think NRAs should have the right, or obligation, to also consult.</p> <p><b>Paragraph 9(a):</b> ENTSOG opposed fees charged under Article 20b(7)(d) and here.</p> <p><b>Paragraph 9(b):</b> (3 yes, 7 no) Respondents echo their statements on 20b(7)e disagreeing that the DAR and non-binding phase are one and the same. Stakeholders' view is to keep the original ENTSOG draft.</p> <p><b>Paragraph 9(d):</b> (5 yes, 4 no) Several respondents believe that the text proposed by ACER is not clear, and implies that incremental capacity might use different transportation contracts to existing ones and stakeholders proposed the following changes: "(d) general rules and conditions for network users to participate in the design phase for the potential incremental capacity project."</p> <p><b>Paragraph 9(f):</b> (8 yes, 2 no) Several respondents suggest that indications should be left for the design phase as some conditions, such as point specific requirements, will not be known at this stage. It is also unclear, how conditional demand indications or bids would work in auctions. This ties in with the comments about when the non-binding phase ends and the binding one begins. ENSTOG suggests that there should be a consultation section on <u>how</u></p>	<p><b>Paragraph 2(e):</b> ACER understands that ENTSOG prefers a finite list of what demand indications should contain. As the text is well supported, <b>ACER's proposal is kept.</b></p> <p><b>Paragraph 7(d):</b> ACER is of the view that fees, if charged at all, shall be included in the demand assessment report. <b>Fees will be part of advanced capacity payments.</b></p> <p><b>Paragraph 7(e):</b> ACER agrees that the demand assessment phase is only a part of the non-binding phase (which also includes the design phase). Following stakeholders' feedback, ACER simplifies the overall incremental process and proposes a default auction option or – if certain conditions are met - an alternative CAM option subject to NRAs' approvals. The issue at hand therefore is <b>resolved by the new ACER proposal.</b></p> <p><b>Paragraph 8: ENTSOG's suggestion is reflected in the new text proposal.</b></p> <p><b>Paragraph 9: The suggestions are taken on board in the new text proposal.</b> NRAs are not obliged to consult however.</p> <p><b>Paragraph 9(a):</b> as discussed under 7(d)</p> <p><b>Paragraph 9(b):</b> as discussed under 7(e)</p> <p><b>Paragraph 9(d): new proposal:</b> (d) general rules and conditions for network users concerning contracts for the incremental capacity</p> <p><b>Paragraph 9(f): ACER takes on board ENTSOG's proposal.</b> The consultation shall reveal how the conditional bids could be handled. The new proposal requires "the relevant TSOs' [...] to apply and design of an alternative allocation procedure based on the conditional demand indications of</p>

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<p>conditionality is handled by the allocation mechanism under subparagraph (f).</p> <p><b>Paragraph 9(g):</b> (1 yes, 8 no) Respondents echo their statements on 20b(7)e about the timescales of the non-binding phase and demand assessment phase and whether they overlap.</p>	<p>network users;”</p> <p><b>Paragraph 9(g):</b> as discussed under 7(e)</p>
<p><b>Article 20c-Design phase for Incremental Capacity</b></p> <p><b>Paragraph 1:</b> ACER included the non-binding demand indications for the designing of coordinated offer levels for incremental capacity under Article 20 b (9)(g), as non-binding indications would come late in the design phase.</p> <p><b>Paragraph 3(a):</b> Concerning the proposal TSOs have to submit to NRAs, ACER deleted the non-binding indications and aligns with Articles 20(c)(1) &amp; 20(b)(9).</p> <p><b>Paragraph 3(b):</b> Concerning the requirements that TSOs proposal to NRAs have to include, ACER inserted that general rules and conditions for network users' contracts for the incremental capacity project shall be included to protect consumers.</p> <p><b>Paragraphs 3(c)-(e):</b> Concerning requirements of the TSOs proposal to NRAs, stakeholders reacted without ACER changes.</p> <p><b>Paragraph 3 (f)(or g):</b> Concerning the TSO requirements to NRAs, ACER deleted the point relating to the alternative allocation rule with the view that alternative CAM should not be decided already before the default allocation mechanism (ascending clock auction) .</p> <p><b>Paragraph 4:</b> Concerning the coordinated NRA decisions, those shall be delivered within six months of the receipt of the TSO proposal.</p>	
<p><b>Paragraph 1:</b> (1 yes, 6 no) Stakeholders think that ACER misunderstands the iterative nature of designing large and complex capacity projects, which imply an intensive collaborative process leading to the best solution before the design is fully finalised and binding bids are made. In particular, stakeholders expressed concerns about possible delays of projects due to the bi-annual frequency of the standard demand assessment. One respondent specified that the 'stand-alone' projects are meant to initiate technical studies outside of the DAR in order to allow incremental projects at any time and not to be bound to the 2 year sequence. Stakeholders' view is to keep the original wording.</p> <p><b>Paragraph 3a:</b> (2 yes, 6 no) The responses on the non-binding demand indication are in favour of keeping the ENTSOG wording.</p> <p><b>Paragraph 3b:</b> (6 yes, 4 no) Most respondents supported the change proposed by ACER because specific rules concerning incremental capacity projects will help network users to fully understand what would apply in case of delay/disruption. Stakeholders against ACER proposal highlighted that (1) on the protection of consumers: the economic test should be designed to ensure that consumers benefit from the incremental capacity; (2) the credit policy towards network users contracting capacity should not discriminate between existing and incremental capacity users. One stakeholder also suggested moving the ENTSOG provision under paragraph 5(b).</p>	<p><b>Paragraph 1:</b> ACER agrees that collaborative, transparent and clear processes are important for incremental projects. ACER takes note of the stakeholders' concerns and proposes to allow – next to the 2-year cycle process – a 1-year cycle process as well as the possibility to consider “ad-hoc” requests, where feasible.</p> <p><b>ACER</b> simplifies the incremental process. (see paragraph 3 of Art. 20(a) above) and <b>takes on board most proposals.</b></p> <p><b>Paragraph 3(a):</b> ACER's view is that the non-binding demand indications arriving too late in the design phase may not be considered in this cycle.</p> <p><b>Paragraph 3b:</b> ACER thinks that the current wording already ensures the right balance between the rights and obligations of both TSOs and shippers. The economic test is designed to ensure that the incremental capacity project meets the market's needs and by consequence is beneficial for consumers. The purpose of the amendment proposed by ACER is to establish a clear contractual framework, to make both TSOs and shippers responsible for their</p>

Respondents' feedback	ACER views
<p><b>Paragraphs 3c-e:</b> (4 yes, 3 no) One stakeholder stressed that other elements should also be sent for NRA approval and communicated to shippers well in advance. Such elements are: the investment costs and the assumptions on which these costs are based (along with the methodology for determining any resulting tariffs, reserve prices or incremental bid prices). This will enable NRAs and network users to compare the efficiency of TSOs' unit investment costs on either side of the border and challenge any significant differential, which may indicate undue discrimination. Two respondents asked to extend the time period defined in Article 20e(1) beyond 20 years in case of exempted infrastructure, to avoid unnecessary reviews both for the relevant TSO and the network users holding exempted capacity.</p> <p><b>Paragraph 3 f (or g):</b> (3 yes, 10 no) Respondents stressed the importance of understanding the conditions for the alternative allocation mechanism before the start of the Open Season. Most of them do not support the introduction of a mandatory default rule (ascending clock auction) for all incremental projects. The Open Season option, in their view, should be considered as a flexible instrument where the appropriate allocation rule is chosen on a case by case basis. One stakeholder argued that as long as the Open Season is properly designed to be fair and transparent, there should be no regulatory concerns. One of the stakeholders supporting ACER's change stated that the default rule to allocate capacity should always be the ascending clock auction algorithm and that OS should be an alternative procedure to be carried out exceptionally. Respondents propose to keep ENTSOG's wording.</p> <p><b>Paragraph 4:</b> The vast majority of respondents (9 yes, 2 no) agreed with ACER's proposal. They considered that a fixed time commitment is helpful to shippers. One stakeholder proposed to publish the decision on the ENTSOG transparency platform. Two respondents believed that six months is too long and that it could delay the 2 years incremental process, therefore they proposed two months.</p>	<p>commitments and to reduce risks that could negatively impact final consumers. Furthermore, the amendment does not create discrimination between existing and incremental capacity, it rather takes account of the different risk levels associated with existing and incremental capacity. <b>ACER keeps its proposal.</b></p> <p><b>Paragraphs 3c-e:</b> ACER thinks that the requirements already foreseen in the Tariff network code are sufficient for the NRAs to take their decisions. The evaluation of the efficiency of TSO's unit investments costs are out of the scope of this Regulation. The above evaluation could be carried out at national level under the cooperation of the NRAs involved in the project. The 20 years is already a long period, which goes beyond the standards provided by NC CAM; if a longer timeline is necessary, the project may be candidate for an exemption. <b>ACER does not support these requests.</b></p> <p><b>Paragraph 3 f (or g):</b> ACER takes note of the concerns expressed by stakeholders. <b>ACER</b> simplifies the incremental process in its new proposal and the proposal <b>foresees that the CAM</b> (ascending clock auctions or alternative mechanism) is decided by NRAs and <b>published before the allocation starts.</b> (see also paragraph 3 of Art. 20(a) above)</p> <p><b>Paragraph 4: ACER keeps the 6 month period.</b> This timing is needed to make coordinated decisions for possibly complex projects.</p>
<p><b>Article 20d- Auctioning of Incremental capacity</b></p>	
<p><b>Paragraph 3: Concerning one-time bid revision, ACER improved the text to clarify how the one-time bid revision is performed.</b></p>	
<p><b>Paragraph 3:</b> (4 yes, 3 no) Opposing stakeholders do not see any reasoning why ACER has changed the incremental auction procedure and suggested to keep the initial wording. ENTSOG states that ACER changed the continuous approach for bid revision (which was</p>	<p><b>Paragraph 3: ACER is of the view that most options shall be integrated in the parallel process</b> foreseen by paragraph 2, which in itself would reduce the need of lots of</p>



Respondents' feedback	ACER views
<p>supported by the stakeholders in the consultation) to a one-time revision and the specification which offer level should be revised is missing. More responses, however, supported ACER's changes.</p>	<p>reruns. The one time bid revision is foreseen for special cases, where under a positive economic test the auction closes with a premium. The rerun will take place on the lowest unsuccessful offer, as clarified by the ACER proposal. <b>ACER keeps the proposal.</b></p>
<p><b>Article 20e- Principles of open season procedures</b></p>	
<p><b>Paragraph 1:</b> In case open season procedures are applied, ACER inserted that binding commitments of network users for contracting capacity can be obtained for <i>up to 15 years</i> after the commissioning of the incremental capacity. ACER also deleted the obligation to align the periods with exemption decisions.</p>	
<p><b>Paragraph 1:</b> (3 yes, 5 no) Respondents think that ACER's proposals may lead to mismatches of capacity bookings and suggest to keep the initial wording. ENTSOG stresses the point that ACER strikes out the alignment of booking horizon to exempted infrastructure and suggests that it is beneficial to keep the alignment to exempted infrastructure as long as it is up to 20 years. Thus ENTSOG proposes to add: "but no longer than 20 years."</p>	<p>ACER is concerned of market foreclosure and a circumvention of the Article 36 (Directive 73/2009/EC) exemption requirements, if capacity is allocated beyond 15 years. Therefore, the <b>additional 5 years are meant to only allow for collection of one-sided commitments to book capacity</b> (without upfront allocations of capacity).</p>
<p><b>Article 20f- Allocation of incremental capacity in open season procedures</b></p>	
<p><b>Paragraph 1:</b> In the binding phase of the open season procedure, network users express their demand for incremental capacity by submitting binding commitments for contracting capacity. (No changes made by ACER)</p>	
<p><b>Paragraph 2:</b> In case the auction mechanism leads to a negative economic test, an alternative allocation rule has to be applied.</p>	
<p><b>Paragraph 3:</b> ACER inserted that the publication of the principles of the alternative allocation mechanism shall take place only after the default allocation, and at least 1 month before the alternative allocation mechanism is applied.</p>	
<p><b>Paragraph 4:</b> Options that should be considered in the alternative allocation mechanism. ACER proposed a list of options.</p>	
<p><b>Paragraph 1:</b> (2 yes, 8 no) This article seems to be the most controversial one. One respondent considers that the feasibility of regular auction should be tested before resorting to an alternative mechanism. Several respondents state that an auction in an open season procedure will fail by definition and that the application of auction as a default is therefore an unnecessary step that only leads to delays and would hinder important investments. Several respondents suggest that the default rule precludes the possibility to submit long-term binding commitments and that a default rule is not suited for the flexibility that an open season procedure should provide. One respondent considers that yearly auctions may be a difficult instrument to use for long term bookings of new capacity, because over a long-term horizon it is difficult for users to identify the appropriate size of the premium, which cannot simply be based on commodity price differentials like in the case of short-term capacity. (This point was made in reference to Article 20f(4) but it seems to fit better here).</p> <p><b>Paragraph 2:</b> (5 yes, 8 no) Respondents here have the same opposition and argumentation as in paragraph 1.</p> <p><b>Paragraph 3:</b> (4 yes, 9 no) Most of the respondents find that the alternative allocation procedure should be published up-front along with the other relevant information to be published about the open</p>	<p><b>Paragraph 1:</b> ACER took note of stakeholders concerns and simplified the overall incremental process. ACER proposes a default auction option or – if certain conditions are met - an alternative CAM option upon NRAs' approval. The conditions to run an alternative CAM are included in the new text proposal. The alternative CAMs are not predefined anymore, but they have to fulfil some general principles.</p> <p><b>Paragraph 3:</b> The new ACER proposal enhances transparency and predictability and <b>the alternative CAM is decided and</b></p>

Respondents' feedback	ACER views
<p>season procedure. Most respondents relate the necessity for this to the expectation that the default allocation rule of auction will fail in any case and that this will be known beforehand. One respondent considers that the procedure is already complex so transparency and predictability should be enhanced where possible.</p> <p><b>Paragraph 4:</b> (1 yes, 14 no) One respondent considers that irrespective of the allocation rule, one of the most important aspects for participating network users is to allow conditional commitments. Two respondents consider that ideally, the OS should satisfy all network users' demand. Alternatively, giving priority to the commitments with the higher total net present value would come closest to the 'willingness to pay' principle. Pro-rating should only be used as a last resort option. One respondent considers that every upstream producer is prepared to take beside the technical risks also the gas and, respectively, oil price risk into account. The target of the project development is to avoid any further risks, which would make the business case for project development uneconomic in a highly competitive market. The risk of getting insufficient and/or mismatching capacities at IPs in a straightforward (ascending clock) auction driven process shall be mitigated by an OS procedure, where priority in the allocation of capacity is given to shippers with the highest shipper's commitment. The shipper with the highest commitment will contribute the most to the cost recovery of incremental capacity. Pro-rata allocation is an additional risk for capital intensive upstream investment.</p>	<p><b>published before the binding phase.</b></p> <p><b>Paragraph 4:</b> ACER recognises the role of long term bookings and therefore leaves room for NRAs to take this into account when deciding on <b>the alternative allocation rule</b>. This <b>should be decided on a case-by-case basis</b> and therefore pro-rating, should not be ruled out by default. Also, the <b>alternative CAMs are not listed anymore, but shall fulfil general principles.</b></p>
<p><b>Linguistic and wording review:</b> Apart from the substantive changes ACER proceeded also to several changes concerning the language of certain articles. The followings are presented since they received opposition from stakeholders.</p> <p><b>Article 8(1):</b> Concerning the auctions used in the allocation methodology, ACER changed the: "unless provided otherwise in this Regulation" to: "unless provided otherwise under Article 20(f)."</p> <p><b>Article 20a (2):</b> The exact same change as in Article 8(1).</p> <p><b>Article 20b (1):</b> ACER changed the word "indicate" to "request" for the demand of incremental capacity.</p> <p><b>Article 20b (3):</b> ACER proceeded solely to a linguistic review.</p> <p><b>Article 20b (5):</b> ACER changed the wording of this paragraph that refers to the demand assessment report TSOs have to publish. ACER provided for clear reference in order to be in line with Article 20(a) (1).</p> <p><b>Article 20b (6)(a):</b> ACER reviewed this paragraph that establishes one of the criteria that the demand assessment report shall take into account dividing it into two points.</p>	
<p><b>Article 8(1):</b> (6 yes, 4 no) Stakeholders point out that using "unless provided otherwise under Article 20(f)" instead of "unless provided otherwise in the Regulation" leads to the application of CAM auctions to everything but incremental capacity in Open Seasons. This would mean they apply to within-day interruptible capacity, which is allocated through over-nomination, IPs with third countries, IPs to MS with a derogation or IPs with an implicit allocation mechanism. They suggested either keeping the ENTSOG wording or adopting the following: "unless provided otherwise under Article 20(f) and Article 21."</p> <p><b>Article 20b (1):</b> (5 yes, 4 no) Stakeholders state that "Indication" and "request" are used similarly within the document and suggest to keep the ENTSOG wording for consistency reasons or adopt the</p>	<p><b>Article 8(1) and Article 20a (2):</b> ACER agrees to keep ENTSOG's wording, which is also more flexible to future changes and exceptions.</p> <p><b>Article 20b (1):</b> ACER linguistically reviewed this paragraph so that the word "indicate" does not appear twice in a sentence. The</p>

Respondents' feedback	ACER views
<p>following: "Transmission system operators shall enable network users and other interested parties to submit non-binding demand indications for incremental capacity."</p> <p><b>Article 20b (6)(a):</b> ENTSOG and another stakeholder state that NNNDPs are not part of the TYNDP and they don't always cover the same, therefore the national Network Development Plan is not a sub-group of the TYNDP criteria, which is why they propose to insert a "b)" point instead of "ii)".</p>	<p>word "request" may be too broad and lead to different interpretations, so <b>ENTSOG's wording will be kept.</b></p> <p><b>Article 20b (6)(a):</b> ACER acknowledges the request and will take on board the renumbering, <b>a wording close to the ENTSOG version.</b></p>
<p><b>Article 8- Allocation methodology</b>  <b>Paragraph 8: Quotas of capacity that shall be set aside at each interconnection point and offered no earlier than the annual quarterly capacity auction, part of the NC CAM.</b></p>	
<p><b>Paragraph 8:</b> Although ACER did not change this paragraph, some respondents stated that quotas of capacity set aside for the annual quarterly capacity auctions are not necessary. The quantity of incremental capacity is variable and can therefore meet the legitimate need of shippers who can participate in auctions as well as in OSs. Moreover having such quotas affect the economic test by effectively increasing the f-factor.</p>	<p><b>Paragraph 8:</b> ACER would only open the issue of quotas if the market would support such requests and those would be well reasoned.</p>
<p><b>Article 11- Annual yearly capacity auctions</b>  <b>Paragraph 8: ENTSOG deleted a clause, according to which TSOs shall notify network users whether any additional capacity may be made available. ACER did not change anything.</b></p>	
<p><b>Paragraph 8:</b> Although ACER did not change this paragraph, there was some opposition from the respondents, who claimed that TSOs should notify network users if any additional capacity may be made available. Allocation notice for incremental capacity should be published at least two months before the auction. (Art. 20 (c) (5)).</p>	<p><b>Paragraph 8:</b> Additional capacity meant here is the reoffered existing capacity that has not been used, the capacity offered via CMP's. There is no distinction between additional and existing capacity. ACER supports the changes.</p>

## 5. Summary of changes made to the INCREMENTAL text proposal

Version of 4 February 2015	Version of 17 July 2015
	<b>Chapter IVa: INCREMENTAL PROCESS</b>
<b>Article 20a: "General provisions"</b>	-
"General provisions"	The concept of general provisions was repealed.
TSOs cooperate to assess the market demand. ENTSOG coordinates the process.	Remained in the same article but the article is restructured.
Open Season procedures and the prerequisites for their application.	In the new version all the incremental processes are run, as Open Seasons and allocations are made under ascending clock auctions or an alternative mechanism approved by NRAs. The alternative capacity allocation mechanism is described under Article 20d.
NRAs decision on the parameters of the single economic test.	Moved to Article 20b.
TSOs and NRAs publication requirements (publication of respective points of contact for incremental capacity projects).	TSOs publication of the market demand assessment report in Article 20a.
NRAs coordinated decision making and the procedure in case of disagreement.	Moved to Article 20b.
<b>Article 20b: "Process of demand assessment for incremental capacity"</b>	<b>Article 20a: "Demand assessment"</b>
"Process of demand assessment for incremental capacity"	Demand assessment is moved to Article 20a.
TSOs shall enable shippers to declare their interest in incremental capacity by submitting their requests.	Moves to Article 20a.
Non-binding demand indications and their content (elements that should be included).	Moves to Article 20a.
8 weeks for TSOs to respond to the demand indications and the content of the response.	Moves to Article 20a.
Demand Assessment Report (and the elements to be included in DAR and what DAR should take into account, e.g. the TYNDP).	Moves to Article 20a.
Joint DAR when more than one TSOs in one entry-exit system.	Deleted
Public Consultation: 12 weeks after publication of the DAR (and elements to be included in the PC).	Remained in Article 20a but under a different structure. PC is launched after the technical studies of the TSOs, after the design phase.
<b>Article 20c: "Design phase for the incremental capacity"</b>	<b>Article 20b: "Design phase"</b>
"Design phase for the incremental capacity"	Design phase is moved to Article 20b.
TSOs: technical studies for incremental capacity projects in order to design co-ordinated offer levels for incremental capacity. (Cooperation with NRAs).	Moved to Article 20b.

Design phase notice form TSOs.	Deleted.
Project proposal to NRAs for approval (and elements to be included in the proposal).	Moved to Article 20b.
NRAs co-ordinated decision on project proposal.	Moved to Article 20b.
TSOs allocation notice.	Moved to Article 20b.
<b>Article 20d:</b> "Auctioning of incremental capacity"	<b>Article 20c:</b> "Auctioning of incremental capacity"
"Auctioning of incremental capacity"	Auctioning of incremental capacity is moved to Article 20c.
TSOs should offer incremental capacity along with available capacity.	Moved to Article 20c.
One-time bid revision-prerequisites for it to be established.	Moved to Article 20c.
If new auction does not result in a positive economic test outcome,... the allocation results of the preceding auction will prevail.	Unchanged. Moved to Article 20c.
<b>Article 20e:</b> "Principles of Open Season procedure"	The whole process is considered now an Open Season procedure. The principles of the alternative capacity allocation mechanism are described in Article 20d.
O.S. procedures: prerequisites for O.S. procedures to take place.	A.C.A.M. and its prerequisites are described in Article 20d.
Binding conditional commitments may be submitted by network users (and their content).	Same but for A.C.A.M.
<b>Article 20e:</b> "Principles of open season procedures"	The article was repealed, as all incremental processes run, as open seasons
<b>Article 20f:</b> "Allocation of incremental capacity in Open Season procedures"	<b>Article 20d:</b> "Principles for alternative capacity allocation mechanisms"
"Allocation of incremental capacity in Open Season procedures"	The article describes the framework in which an alternative capacity allocation mechanism is allowed.

## 5. Overview of new chapter IVa “Incremental Process”

### Article 20a: “Demand assessment”:

- When does it start? After the annual yearly capacity auction.
- TSOs shall cooperate to assess the market demand.
- TSOs have to publish a Market Demand Assessment Report (MDAR).
- Shippers should submit the demand indications (elements that should be included in the indications) within 8 weeks from the annual yearly capacity auction. Possibility for ad hoc requests.
- MDAR: what it should take into account, which are the elements included.

### Article 20b: “Design phase”:

- TSOs should conduct technical studies at the relevant IPs for incremental capacity projects in order to design coordinated offer levels based on the MDAR.
- Public Consultation: 12 weeks after the start of the design phase (content of PC).
- Project proposal to NRAs for approval.
- NRAs: decision on project proposal within 6 months of delivery.
- TSOs: allocation notice.

### Article 20c: “Auctioning of incremental capacity”:

- TSOs should offer incremental capacity along with available capacity.
- One time bid revision.

### Article 20d: “Principles of alternative capacity allocation mechanism”:

- Alternative capacity allocation mechanism and its prerequisites.
- Binding conditional commitments, as submitted by network users (and their content).

## Annex 1

Name	Type of organisation	Segment	Country of Origin
ENAGAS	Company	TSO	Spain
EDF GROUP	Company	Network User	France, UK
EDISON SPA	Company	Producer, Network User	Italy
EDP	Company	Network User	Portugal, ES
EFET	Association	Network User / Trader	Europe
ENEL	Company	Producer, Network User	Italy
ENTSOG	Association	TSO	Europe
EURELECTRIC	Association	Network User	Europe
EUROGAS	Association	Network User	Europe
GAZPROM M&T	Company	Network User	United Kingdom
IFIEC EUROPE	Federation	Network User	international
IOGP	Association	Producer	Europe
OMV PETROM S.A.	Company	Producer, Network User	Romania
STATOIL	Company	Producer, Network User	Norway
UPRIGAZ	Professional Union	Network User	France