

**17th round of Informal Russia-EU Consultations on EU Regulatory Topics  
&  
10<sup>th</sup> meeting of the EU-Russia Gas Advisory Council's  
Work Stream on Internal Market Issues**

**4 June 2013, ENTSOG Premises Brussels**

**MINUTES**

Please find the meeting agenda attached to the minutes.

- 1. Discussion on terms 'trade' and 'delivery' / continuation of delivery points under different implementation models of the 3rd Package and results of the discussion on the six questions posed in para 14 of the conclusions of the January GAC**

Mr. Jonathan Stern (Co-Speaker of Gas Advisory Council) briefly recalled that at the 6<sup>th</sup> GAC meeting in January 2013 it was agreed to develop answers to the following six questions (to be delivered at the 7<sup>th</sup> GAC meeting in June 2013):

1. Can the delivery points in the existing contracts be preserved?
2. Can the assurance be provided of sufficient capacity for delivery under existing supply contracts?
3. Is the gas dispatching service (GDS) compatible with the Third Package?
4. Are coordinated open seasons (COS) compatible with the Third Package?
5. What will be the investment regime and regulatory treatment for incremental and new capacity?
6. Whether new Russian cross-border transportation projects can be considered within the PCI framework and whether a PCI treatment could be awarded to those Russian projects that will be considered PMI?

Mr. Kovacs presented preliminary answers from the EU side to all above mentioned questions except to question 6 which was agreed to be answered separately by WS3. Mr. Kovacs' presentation was distributed to participants.

With respect to question 1, Mr. Kovacs noted that in principle EU law allows retention of delivery points especially with respect to existing long-term contracts. However, when it comes to delivery points in contracts, which have been concluded on the basis of commercial hub services (short to medium-term contracts), individual national laws in Member States (especially in Austria) may not allow retention of delivery points. Co-Chair Mr. Konoplyanik inquired if Member States are allowed to apply national laws which are stricter than EU law. Co-Chair Mr. Boltz explained that this was a standard situation (not only with respect to energy law/for instance for emissions law) and that EU

Member States may indeed design their national laws in a more specific manner than EU law. In Mr. Boltz's view, legislation on EU level may set minimum requirements that can be further detailed in national rules.

Mr. Wood paid attention to the possible difference between the national law of the EU MS and the applicable law of the contracts implemented within this MS. He commented that an EFET analysis has shown that most contracts, for instance, for Baumgarten were signed not under Austrian, but under English law, which raises the question whether Austrian law would be applicable to the law of other jurisdictions. In his view, legal analysis of specific contracts is needed on this specific issue.

Mr. Barnes noted that, in this context, entry capacity costs need to be taken into account as well and that the issue becomes more complex if delivery points need to be shifted: who will pay entry tariff in this case?

As far as question 2 is concerned, Mr. Kovacs explained that formally no absolute guarantee of sufficient capacity for delivery under existing supply contracts can be given (such risks exist), however, on the basis of the current situation in the EU transmission network with generally availability of capacity, the CAM NC principles, congestion management (CMP) rules as well as through on-going work on a framework for incremental capacity, assurance will likely be further enhanced as has been in the past. Co-Chair Mr. Boltz added that so far shippers have not reported any problems in this regard and asked the Russian side to alert the European side if there are unknown cases which deserve particular attention.

On question 3, Mr. Kovacs mentioned that a gas dispatching service could in theory be compatible with the 3<sup>rd</sup> Package depending on the specific design of this service. Concrete proposals would need to be analysed as to their compatibility with the 3<sup>rd</sup> Package and also in view of its associated potential costs and benefits. Mr. Kovacs added that at this stage it was, however, not clear what kind of dispatch service the Russian side is referring to. Co-Chair Mr. Konoplyanik explained that what might be considered in this context (under possible "narrow" interpretation of the term) is 'cooperation of TSOs' rather than the same sort of central dispatch service in operation in Russia. Ms. Cirlicova and Mr. Stern reported that Mr. Shtilkind, Co-Chair of Work Stream 3, had tabled a proposal which is broader in scope than a framework for TSO cooperation and that some incompatible parts with the 3<sup>rd</sup> Package could already preliminarily be detected. Mr. Stern suggested identifying in more detail which parts of the proposal are problematic.

Mr. Kovacs answered question 4 with a clear yes (whether coordinated seasons were compatible with the 3<sup>rd</sup> Package) and added that similar approaches are currently being discussed on the EU side and are being developed in the Blueprint on Incremental Capacity.

With respect to question 5, Mr. Kovacs referred to the CEER Blueprint on Incremental Capacity currently under development. The answer to this question is therefore not yet available and will depend on the specific nature of the framework on incremental capacity once it is finalized.

An answer to question 6 will be developed by Work Stream 3.

## 2. CEER Blueprint on Incremental Capacity – results of CEER Workshop (03 June 2013) & way forward with due consideration of the proposed case study on Art.13.2 procedure ('Sweet dream' Project)

Mr. Esnaut presented the outcome of the CEER workshop on incremental capacity held on 3 June 2013 referring to the scope and main comments made by the audience at the workshop. The presentation was distributed to participants. Co-Chair Mr. Konoplyanik summarized that the discussion on incremental capacity addresses both small amounts of incremental capacity (interconnectors within the EU) and development of bigger amounts of new capacity, e.g. big projects such as South Stream. Co-Chair Mr. Konoplyanik analyzed that the current version of the Blueprint on incremental capacity is more targeted at smaller scale incremental capacity and focuses more on the short rather than the long and medium term. According to Co-Chair Mr. Konoplyanik, within WS2, a discussion on large scale new capacity is more important and relevant when the major non-EU supplier is involved. He mentioned that the core is to avoid contractual mismatches at border crossings (to match supply and transportation contracts at each Interconnection Point (IP)) and ensure coordination of TSOs via an appropriate instrument between the zones (to match capacities within the chain of IP from the first entry point into the EU to the customer in the distant zone inside the EU). Co-Chair Mr. Konoplyanik added that a discussion on coordinated open seasons and their organizational details alone is not sufficient. Guaranteeing financeability of the projects developing new capacity is mutually important both for producer/potential shipper and TSO/potential investor & developer of new capacity (acc. to Art.13.2 of the Third Gas Directive). This means that the pro-rata principle of allocation of new capacity (available in CAM NC) will not work for producer/potential shipper since it will contradict with project financing principles (will not guarantee adequate flow of revenues to pay back the upstream CAPEX in production of volumes to be supplied through new capacities requested). In Mr. Konoplyanik's view, debates during the CEER workshop on incremental capacity held on 03 June showed that further discussion on project financing aspects of developing new capacity is needed. Thus, CAM NC demands reservation of at least 10% of extra capacity for potential short-term trade even if not yet booked and also allows that the f-factor is below 100%, which both require socialization of project costs and lead to stranded assets. This is especially important in case new capacity might be much bigger compared to existing one (which might be the case with new capacity originated from Russia, which is proposed to be considered under case study on 'Sweet Dream Project' ).

Thus, according to Co-Chair Mr. Konoplyanik, the Blueprint should address different approaches for development of new capacity procedures, initiated both as "top-down" procedures (as in today's version of the Blueprint), as well as "bottom-up" procedures, as proposed to test in the case study. In accordance with this proposal, Co-Chair Mr. Konoplyanik explained his vision of the Blueprint which should both apply CAM and auctioning for (small scale) incremental capacity (on the basis of capacity offer to the market by TSO) and introduce a new approach for large scale new capacity considering legally binding demand for capacity by the shippers (their readiness to firmly book new capacity) as the basis for the economic test and development of new capacity by the TSO with the obligatory covering of the shippers-producers capacity demand.

Co-Chair Mr. Konoplyanik then asked how WS2 should best proceed with respect to the proposed case study on the 'Sweet Dream' project and suggested raising this question at the GAC on 14 June 2013.

Co-Chair Mr. Konoplyanik concluded by voicing possible suggestions on the Blueprint paper such as perhaps creating two sections within the Blueprint, one on (small scale) incremental capacity (based on CAM NC auction-based procedures) and one on (large) new capacity (based on coordinated "Open Seasons" - yet to be developed procedures). He said this could be done in a small subgroup

and on the basis of the list of questions (as a starting point) posed by the Russian side at the joint WS3-WS2 March 21, 2013 workshop on CAM NC.

The further time schedule on the Blueprint was clarified and 30 November was mentioned to be the date at which a final proposal on incremental capacity will be ready. The final product will be incorporating the issues, which should be brought forward as possible amendment to the CAM NC, according to Mr. Kovacs with reference to Madrid Forum. The participants were also informed that written comments could be made until 17 June 2013.

Given the concerns expressed by the Russian side earlier, Mr. Kovacs once again strongly urged Gazprom to get involved in the process and declare its views on incremental capacity. In his view, the Blueprint should cover both the issues related to incremental capacity, as well as to new capacity.

Mr. Heidelberger has mentioned that discussions at the CEER Workshop on Incremental Capacity (03 June) made it clear that at least some principles of "Open Season" need to be codified, and the case study can be helpful in defining what to put and what not to put in the Blueprint on "Open Season". Mr. Sisman proposed that the case study can be helpful in defining how/whether to incorporate "Open Season" procedure into the CAM NC algorithm, or to develop it as additional algorithm to CAM NC. Mr. Wood has underlined that the aim of the Blueprint is to give more confidence in developing new capacity not to be based on an exemption regime.

### **3. Discussion on 7 EU MS 'transit contract' cases (further to ACER report on Transit Contracts)**

Further to a recent ACER report on the compatibility of EU Member States' transit contracts with the 3<sup>rd</sup> Package, Mr. Barnes asked about the consequences this report would have given that 7 EU Member States were identified to have partially incompatible contracts. He also asked how the European Commission would deal with contracts that were signed in good faith. Mr. Kovacs said he could not tell what the exact consequences will be given that the Commission has just received ACER's report and has not yet studied the results and possible consequences in detail but one option was certainly for the EC to launch infringement proceedings in case the rules of the Third Package have not been followed in the context of these contracts.

Co-Chair Mr. Boltz stated that the overall aim was to ensure equal treatment of in-country transport and transit. Since this has not happened in all EU Member States yet, ACER produced a report in order to help the European Commission identify the concerned countries. Co-Chair Mr. Boltz reminded the participants that there was no detailed prescription on how equal treatment between in-country and transit flows needs to be implemented in each Member State. He further noted that it was also not the role of the European Commission to tell the Member States how they should ensure equal treatment. Thus, for information on the individual arrangements in Member States, the Russian side would have to turn to them directly.

Co-Chair Mr. Konoplyanik explained that Gazprom was interested to know how the Commission will react to the 7 cases identified in the ACER report in order to be able to assess the consequences for the Russian side. Co-Chair Mr. Konoplyanik asked if Gazprom could be kept up to date on the Commission's further proceedings and if a dialogue on this subject could be established either within

WS2 or in another forum. Mr. Kovacs agreed and stated that the Commission is interested to hear Gazprom's views.

#### 4. Discussion on the FG on Tariffs

Mr. Maes presented the current status, content and next steps of the FG on Tariffs. The presentation was distributed to participants.

Mr. Barnes presented several questions on the Tariffs FG (presentation was distributed to participants). He started by inquiring on the status of chapter 3 on cost allocation. Mr. Maes explained that chapter 3 of the FG is not yet ready and that it will be subject to a separate public consultation. Meanwhile the incomplete FG is published on the ACER website.

Mr. Barnes then expressed his concern on the foreseen timing of the new tariffs and noted that 2017 could be too fast given that the NC will significantly affect transportation costs throughout the EU and firms will need to adjust supply contracts to take account of new transportation costs.

Mr. Barnes also particularly pointed to the uncertainties that come with floating tariffs. In this context, a number of participants argued that there was no clarity on how floating tariffs will enable shippers to book incremental capacity for long periods given that the new tariffs will not be known in advance. Furthermore, Mr. Barnes mentioned the risk of cross subsidies among different network users and explained that low or zero reserve prices for short term capacity would subsidize traders at the expense of longer term capacity holders and will thereby drastically remove incentives for long term capacity booking. In this context, Mr. Barnes also explained that marginal pricing for backhaul subsidizes reverse flow shippers at the expense of forward flow shippers as forward flow shippers pay all network costs without which backhaul could not take place. At this point, Mr. Barnes expressed that it was unclear to him how backhaul could at all exist in an entry/exit system and requested an explanation. Mr. Maes responded that what is meant in this context is only the non-physical backhaul (not bi-directional pipelines) and that at exit points backhaul capacity could be offered and should be priced at marginal costs. Based on the discussion, Mr. Barnes further demanded clarification on the difference between backhaul and interruptible capacity, which he said, looked rather identical considering the circumstances. Mr. Poillion agreed with Mr. Barnes on this point. Mr. Maes explained that treatment of backhaul and interruptible was different because backhaul is seen as a way to open up markets which is why regulators decided to give more weight to this objective and price it differently.

Mr. Sisman added that the impact of potential new rules regarding tariffs should be assessed in a clear quantitative manner. In his opinion, arithmetics should dominate the process and serve as the basis for developing the NC on tariffs. Mr. Poillion agreed and said that he had access to quantified data through an analysis made at GRTgaz, which he was open to share if participants are interested.

During the discussion, Co-Chair Mr. Konoplyanik stated that it was still unclear to him how the F-factor in the Blueprint on Incremental Capacity would influence tariffs (except that the F-factor below 100% will definitely increase tariff level for long-term shippers and will discriminate project financing of new capacity). He furthermore noted that FGs and NCs should take short-, medium- and

long-term aspects into account as a matter of principle. According to Co-Chair Mr. Konoplyanik, currently short-term aspects are paid much more attention to. Mr. Kovacs responded that this was not entirely the case and explained that up to now long-term aspects heavily dominated the agenda. The current approach indeed brings new short-term elements into the picture, however, this does not mean that long-term issues are not anymore represented according to Mr. Kovacs.

#### 5. Discussion on WS2 topics to be presented at next GAC Meeting

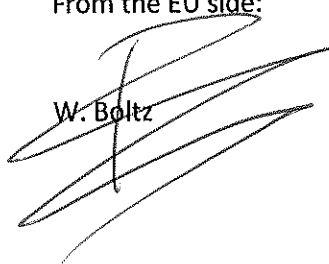
This agenda point was not explicitly covered but addressed in several other agenda points.

#### 6. Way forward and next meeting

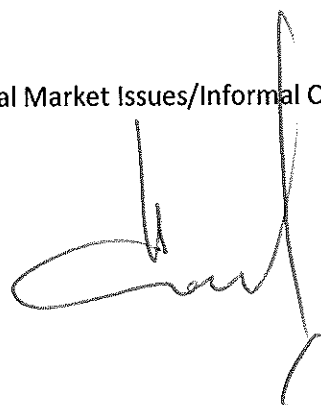
Participants were informed that the next WS2 meeting will take place on 10-11 September 2013 in St. Petersburg and that visa and travel arrangements should preferably be completed before the summer.

Co-Chairs of Work Stream 2 on Internal Market Issues/Informal Consultations

From the EU side:

  
W. Boltz

From the Russian side:

  
A. Konoplyanik

10-11 September 2013, St. Petersburg

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**4 June 2013**

**ENTSOG Premises Brussels**

**Avenue de Cortenbergh 100 / second floor  
1000 Brussels**

**AGENDA**

Please note: due to limited availability of a number of speakers, items might be interrupted or shifted on an ad-hoc basis during the meeting

Time	Items	Presenters
<p align="center"><b>Morning Session</b></p> <p><b>Start: 10:00</b></p>	<ol style="list-style-type: none"> <li>1. Discussion on terms 'trade' and 'delivery' / continuation of delivery points under different implementation models of the 3<sup>rd</sup> Package and results of the discussion on the six questions posed in para 14 of the conclusions of the January GAC</li> <li>2. CEER Blueprint on Incremental Capacity – results of CEER Workshop &amp; way forward with due consideration of the proposed case study on Art.13.2 procedure ('Sweet dream' Project)</li> </ol>	<p>Mr. Konoplyanik, Mr. Kovacs, Mr. Boltz, Mr. Stern</p> <p>Mr. Esnault, Mr. Barnes, Mr. Konoplyanik, Ms. Zhur</p>
<p align="center"><b>Afternoon Session</b></p> <p><b>End: 16:00</b></p>	<ol style="list-style-type: none"> <li>3. Discussion on 7 EU MS 'transit contract' cases (further to ACER report on Transit Contracts)</li> <li>4. Discussion on the FG on Tariffs</li> <li>5. Discussion on WS2 topics to be presented at next GAC Meeting</li> <li>6. Way forward and next meeting</li> </ol>	<p>Mr. Gudkov, Mr. Barnes</p> <p>Mr. Maes (CEER), Mr. Barnes</p>