First annual report on contractual congestions at gas interconnection points of the Energy Community Contracting Parties

December 2020

Content

INTRODUCTION

1. About ECRB

The Energy Community Regulatory Board (ECRB) operates based on the Energy Community Treaty. As an institution of the Energy Community ECRB advises the Energy Community Ministerial Council and Permanent High Level Group on details of statutory, technical and regulatory rules and makes recommendations in the case of cross-border disputes between regulators. [1] ECRB is the independent regional voice of energy regulators in the Energy Community. ECRB's mission builds on three pillars: providing coordinated regulatory positions to energy policy debates, harmonizing regulatory rules across borders and sharing regulatory knowledge and experience. ERCB also has a number of legal responsibilities such as issuing opinions on draft certification decisions of Contracting Parties' regulatory authorities or monitoring the implementation of Network Code Regulations.[2]

2. Background

Congestion management procedures aiming to mitigate contractual congestion are a key pillar of European gas legislation since the very beginning. Starting from Gas Regulation (EC) 1775/2005[3] the importance of rules for elimination of contractual congestion in the EU and Energy Community *acquis communautaire* (hereinafter 'acquis') steadily increased, finally leading to the adoption of an amendment to Annex I of Gas Regulation (EC) No 715/2009[4] focusing on again strengthening the congestion management requirements (hereinafter '**Congestion Management Guidelines**'). The deadline for implementation of this Decision was set to October 2018.

According to paragraph 2.2.1(2) of the Congestion Management Guidelines, ECRB starting with the year 2020 has to publish a monitoring report on congestion at gas interconnection points with respect to firm capacity products sold in the previous year,

[1] www.energy-community.org. The Energy Community comprises the EU and Albania, Bosnia and Herzegovina, North Macedonia, Georgia, Kosovo*, Moldova, Montenegro, Serbia and Ukraine. Armenia, Turkey and Norway are Observer Countries. Throughout this document the symbol * refers to the following statement: *This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Advisory Opinion on the Kosovo declaration of independence*.

[2] For more information on ECRB visit https://www.energy-community.org/aboutus/institutions/ECRB.html.

[3] OJ L 289 of 03.11.2005, p 1 *et seq*.

[4] Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks, OJ L 211 of 14.08.2009, p 36 *et seq* as adapted and adopted for the Energy Community by Decision of the Ministerial Council 2011/02/MC-EnC.

taking into consideration, to the extent possible, capacity trading on secondary market and the use of interruptible capacity.

The present report also serves as a **basis for implementation of firm-day-ahead use-it-or-lose-it** mechanisms ('FDA UIOLI'), as prescribed by paragraph 2.2.3 (1) of the Congestion Management Guidelines.

Namely, the Congestion Management Guidelines oblige national regulatory authorities (hereinafter NRAs or 'regulators') to require transmission system operators (TSOs) to apply FDA UIOLI if - on the basis of the present report - it is shown that at interconnection points (IPs) demand exceeded offers at the reserve price if auctions were used for capacity allocation in the year covered by the monitoring report for products used in either that year or in one of the subsequent two years:

(a) for at least three firm capacity products with a duration of one month or

(b) For at least two firm capacity products with a duration of one quarter or

(c) For at least one firm capacity product with a duration of one year or more or

(d) where no firm capacity product with a duration of one month or more has been offered.

In turn, if in the following year the ECRB report on contractual congestions shows that a situation described above is unlikely to reoccur in the upcoming three years, the relevant NRA(s) may decide to terminate the FDA UIOLI mechanism again.

3. Disclaimer

The present report could only be finalized with a delay of four months.[5] This is due to **lack of sufficiently and consistently available information** on gas cross-border flows on IPs between Energy Community Contracting Parties (hereafter 'Contracting Parties') as well as on IPs to EU Member States. This situation did not only negatively impacted the development of the present report but is at the same time a evident need to improve compliance of Energy Community gas TSOs with the transparency requirements of the acquis.

4. Scope and methodology

Article 2(21) of Regulation (EC) 715/2009 defines the concept of contractual congestion as "*a situation where the level of firm capacity demand exceeds the technical capacity*". The procedures set by the Congestion Management Guidelines are targeted towards reducing contractual congestions, to the extent identified.

[5] The Congestion Management Guidelines requires ECRB to publish its report by June every year.

In case transmission capacity is allocated via **auctions**, it is evident that contractual congestions exists, if an auction cleares with an auction premium. In the Contracting Parties, capacity allocation was not performed based on Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on gas capacity allocation mechanisms (hereafter 'CAM Network Code') before June 2020.

Therefore, information presented in this report on actual capacity demand was provided by the NRAs of the Contracting Parties to the extent it was available to them. In addition to capacity demand, other possible indicators of contractual congestion as well as the implementation of the Congestion Management Guidelines were analyzed.

The report covers cross- border IPs between adjacent entry-exit systems of the Contracting Parties with an operational gas market as well as **between the Contracting Parties and the neighboring EU Member States**, whereby the information on the latter is available only for the Contracting Parties' side of the IP.

The report reflects the *status quo* with regard to **capacity demand in the years 2019, 2020 and 2021**.

Information on **Congestion Management Guidelines implementation** relates to June 2020.

FINDINGS

1. Capacity bookings

Long- term contracts

In 2019, most of the capacity for the years, 2019, 2020 and 2021, at the IPs between the Contracting Parties and between Contracting Parties and EU Member States was allocated based on **long- term contracts**.

Shorter- term contracts

In two Contracting Parties, Serbia and Ukraine also capacity with shorter duration was allocated in 2019.

In **Serbia**

- At the IP *Horgos- Kiskundoroszma,* i.e. the entry from Hungary to Serbia and at IP *Zvornik*, i.e. the exit from Serbia to Bosnia and Herzegovina, the gas company of Bosnia and Herzegovina, *BH Gas,* booked the long-term (yearly) capacity for 2019 and 2020;
- At IP *Horgos- Kiskundoroszma* also monthly and daily products were offered and booked in 2019.
- At all IPs **capacity allocation** follows a related invitation of the Serbian TSO that published on its web page and corresponding applications of the network users. In case demand is higher than the available capacity, allocation is done proportionally to the requests. In other words, **pro-rata allocation applies in case of congestion**. It is monitored with concern that in 2019 the Serbian TSO excluded IP *Horgos* from its public "invitation for contracting annual uninterrupted capacity" for the gas years 2019/2020, 2020/2021 and 2021/2022 and offered capacity in a non- transparent way.

In **Ukraine i**n 2019, capacity booking for different IPs depended on the gas flow direction.

- The IP capacity used for gas transit flows in the direction from Ukraine to EU Member States was not booked with the TSO but with *Naftogaz* based on a long-term contract signed in 2009.
    - On the other side, IP capacity used for gas import flows in the direction from EU Member States to Ukraine was booked based on the "first come-first served" approach. The rules also required capacity auction in case of a lack of capacity. Such however did not take place in practice due to sufficiently

available capacity. In 2019, all capacity booked at these IPs was daily capacity[6] meaning that network users were actually only submitting nominations to the TSO. As of 2020, multipliers for IPs became applicable and network users booked different capacity products. In addition, in July 2020 implementation of the CAM Network Code and Congestion Management Guidelines started for the gas year 2020/2021 via auctions at the GSA Platform for new virtual interconnection point "GCP GAZ-SYSTEM/UA TSO" which united existing physical interconnection points to the Polish transmission system and the RBP platform for capacities at Hungarian border.

For the reporting period, more specific information on capacity bookings at IPs of Serbia and Ukraine is to a certain extent available in Annex I of this report. For all other IPs in the Contracting Parties, only information on technical capacity can be found in Annex I.[7]

Based on the information on capacity bookings in the Contracting Parties in 2019, it cannot be concluded that contractual congestions occurred on the analyzed interconnection points.

2. Other possible indicators of contractual congestion

Indicators

In the absence of CAM Network Code implementation (other than to a certain extent in Ukraine, cf. chapter 1), which would allow using auction results as the main source of data for identification of contractual congestion, the ECRB Gas Working Group agreed to use another set of indicators as reference.

As for auction results, also the applied indicators aim at pointing out to a situation where demand for capacity exceeds offers. In this respect, the following questions were analyzed for the IP of the Contracting Parties:

- Whether there was any unsuccessful capacity request;
- Whether there was there any non-offer of capacity;
- Whether there was there any interruptible capacity offer and, if yes, was there any booking of interruptible capacity; and
- Whether there was any trade of capacity on secondary market.

[6] Multipliers for transmission tariff products were not applied in 2019.

[7] The relevant NRAs also provided data on monthly physical flows and, in some cases, on daily peaks. This information was used as a support to the analysis, but is not included in the report.

Unsuccessful capacity requests

TSOs of the Contracting Parties did not publish any information on the occurrence of unsuccessful capacity requests for firm capacity products. In the absence of such, it must be concluded that no unsuccessful capacity request for the IPs of the Contracting Parties occurred. In Ukraine, in line with the rules that were in place until July 2020, capacity allocation based on the first come-first served approach and, in case there would have been a lack of capacities, the TSO would have had to organize an auction for capacity allocations. According to information available to the Ukrainian regulator, NEURC, no auction organized in 2019 and there were no complaints from network users regarding unsuccessful capacity requests or non-offer of capacity.

Lack of offer of firm capacities

Lack of offer of firm capacity could indicate that firm capacity is fully booked or that a part of capacity is withdrawn from the market, whereby the first indication may point out to an existence of contractual congestion and the second reveals lack of third party access to the transmission capacity. In the Contracting Parties, there was no indication of the fully reserved capacity.

As regards lack of non-discriminatory third party access it has been already outlined in chapter *Findings/1* that such has been indeed monitored in 2019 for the Serbian IP *Horgos* for the transparent offer of annual uninterrupted capacities for the gas years 2019/2020, 2020/2021 and 2021/2022.

Interruptible capacities

Booking of interruptible capacity at an IP, other than for backhaul, may also suggest that capacity demand is higher than its offer. It is also a requirement of Article 2.2.1 of the Congestion Management Guidelines to take into consideration the use of interruptible capacity when monitoring congestions at IPs.

- In **Ukraine**, all capacity at IPs *Hermanowize* and *Beregdaroc* is offered on interruptible basis, as prescribed by the relevant interconnection agreements, while at IP *Budince*, 22% of technical capacity was offered on interruptible basis in 2019. However, according to the regulatory authority of Ukraine, these offers of interruptible capacity do not point towards contractual congestions.
- In **Serbia**, 85,141,490 kWh/day of yearly interruptible capacity was booked in the gas year 2019/2020, out of 153,870,163 kWh/day offered. For monthly and daily capacity, the bookings were 20,518,459 kWh/day and 5,129,332 kWh/day, registered in February respectively March 2019. The reason for using interruptible capacity in Serbia is of procedural nature. Namely, according to the

applicable network code, the TSO offers the same amount of firm and interruptible capacity for all capacity products. If network users miss the deadline for requesting firm capacity, they request an interruptible capacity at a later stage but this does not mean that all firm capacity was already booked. For the gas year 2020/2021, only firm capacity was booked.

- In other Contracting Parties, no interruptible capacity was offered.

Secondary market

Finally, ECRB investigated whether there was any trading of IP capacities on the secondary market in 2019.

Based on the information provided by the NRAs, there was **no such commercial activity** in any of the Contracting Parties.

3. Implementation of congestion management procedures

Application of congestion management procedures in the event of contractual congestion is an obligation introduced by Congestion Management Guidelines. Capacity made available after congestion management procedures were applied has to be offered by TSOs in the regular allocation process. For the purpose of this report, the regulators were asked to provide an overview of the congestion management procedures implemented by their TSOs.

The responses showed that **only in Ukraine** certain measures exist in the transmission network code, namely long-term use-it-or-lose-it mechanism and surrender of contracted capacity. In practice, however, they would be hardly applied having in mind that capacity offered through congestion management procedures should be firm. The TSO, on the other side, concludes gas transmission contracts with network users for interruptible capacity at the IP *Hermanovychy* and *Beregdaroc* based on existing interconnection agreements.

In all other Contracting Parties, none of the congestion management procedures provided in the Congestion Management Guidelines was applied until June 2020.

CONCLUSIONS AND RECOMMENDATIONS

Having in mind that CAM Network Code was not used for transmission capacity allocation in the Contracting Parties in 2019, the identification of possible contractual congestions was performed based on the information on actual capacity demand, provided by the NRAs of the Contracting Parties. In addition to capacity demand, other possible indicators of contractual congestion as well as the implementation of Congestion Management Guidelines were analyzed.

Based on the information on capacity bookings in the Contracting Parties in 2019, it cannot be concluded that contractual congestions occurred on the analyzed interconnection points. Other possible indicators also did not point out to existence of contractual congestions.

Therefore, and with reference to Articles 2.2.1 and 2.2.3 of Congestion Management Guidelines, ECRB concludes that for the national regulatory authorities of the Contracting Parties no obligation develops to request transmission system operators to apply firm day- ahead use-it-or-lose-it mechanisms.

On the other side, during this analysis, ECRB relevant obstacles related to data availability, consistency and reliability.

ECRB reminds the transmission system operators of their obligations to comply with the transparency related provisions of Regulation (EC) 715/2009 and, in particular, Annex I thereof.

Finally, ECRB calls upon governments, national regulatory authorities and transmission system operators of the Contracting Parties and, where relevant, neighboring EU Member States, to enable full implementation of Congestion Management Guidelines and CAM Network Code on interconnection points between the Contracting Parties and between the Contracting Parties and EU Members States.

ANNEX I- TECHNICAL AND BOOKED CAPACITY

Interconnection point	Information on capacity
IP Horgos- Kiskundoroszma **Hungary to Serbia**	Technical capacity: 153,870,164 kWh/day Booked yearly capacity in 2019: 102,943,002 kWh/day (87,523,002 kWh/day for network users in Serbia and 15,420,000 kWh/day is allocated to BH Gas based on long-term contract) 3 monthly products were booked in 2019 (February, March and October). The maximally booked monthly capacity was 20,518,459 kWh in February 2019. 23 daily products (April and November) Booked yearly capacity in 2020: 87,812,191kWh/day The yearly capacity for 2021 was not booked in 2019.
IP Zvornik **Serbia to Bosnia to Herzegovina**	Technical capacity: 20,526,314kWh/day Booked yearly capacity in 2019: 17,578,440kWh/day (15,420,000 kWh/day is allocated to BH Gas based on a long-term contract) Booked yearly capacity in 2020: 17,883,647kWh/day The yearly capacity for 2021 was not booked in 2019.
IP Zdilovo – Kuystendil **Bulgaria to North Macedonia**	Technical capacity: 20,820,000 kWh/day
IP Drozdovichi	Technical capacity: 1,539,972,860 kWh/day

Ukraine to Poland	This IP was used for gas transit and capacity allocation was done via long-term contract that was not signed with the TSO.
IP Hermanovize **Poland to Ukraine**	Technical capacity from January to April and from September to December 2019: 67,971,215 kWh/day, from May to August: 45,668,161 Daily capacity booked in 2019.
IP Budince **Slovakia to Ukraine**	Technical capacity: 254,892,059 kWh Daily capacities booked in 2019
IP Uzgorod - Velke Kapushany, **Ukraine to Slovakia**	Technical capacity: 2,993,919,649 kWh/day This IP was used for gas transit and capacity allocation was done via long-term contract that was not signed with the TSO.
IP Beregdaroc **Hungary to Ukraine**	Technical capacity: 207,099,798 kWh/d Daily capacities in 2019 booked
IP Beregovo **Ukraine to Hungary**	Technical capacity: 426,944,120 kWh/day This IP was used for gas transit and capacity allocation was done via long-term contract that was not signed with the TSO.
IP VIP Mediesu Aurit – Isaccea **Ukraine to Romania**	Technical capacity: 370,881,593 kWh/day, in September 2019: 381,964,047 kWh This IP was used for gas transit and capacity allocation was done via long-term contract that was not signed with the TSO.
IP Orlovka - Isaccea I **Ukraine to Romania**	Technical capacity: 190,492,461 kWh/day This IP was used for gas transit and capacity allocation was done via long-term contract that was not signed with the TSO.
IP Oleksiivka **Ukraine to Moldova**	Technical capacity: 109,416,667 kWh/day

IP Oleksiivka **Moldova to Ukraine**	Technical capacity: 260,000,001 kWh/day Not used in 2019
IP Ananiv **Ukraine to Moldova**	Technical capacity: 260,000,001 kWh/day Not used in 2019.
IP Ananiv **Moldova to Ukraine**	Technical capacity: 1,841,667kWh/day Not used in 2019
IP Lymanske **Ukraine- Moldova**	Technical capacity: 7,800,000 kWh/day Not used in 2019.
IP Lymanske **Moldova to Ukraine**	Technical capacity: 23,400,000 kWh/day
IP Grebenyky **Ukraine to Moldova**	Technical capacity: 1,066,000,004 kWh/day
IP Grebenyky **Moldova to Ukraine**	Technical capacity: 42,900,000 kWh/day Not used in 2019.
IP Kaushany **Ukraine to Moldova**	Technical capacity: 171,166,667 kWh/day Not used in 2019
IP Kaushany **Moldova to Ukraine**	Technical capacity: 1,066,000,004 kWh/day

ANNEX II- INTERCONNECTION POINTS AND CAPACITIES IN GEORGIA AND ARMENIA

Interconnection point	Information on capacity
Russia- Georgia	Technical capacity: 174,912,000 kWh/day
Azerbaijan- Georgia	Technical capacity: 92,922,000 kWh/day
Armenia- Georgia	Technical capacity: 27,330,000 kWh/day Not used in 2019.
Georgia- Armenia	Technical capacity: 130,000,000 kwh/day Booked yearly flow in 2019: 22,861,850,000 kWh
Iran- Armenia	Booked yearly flow in 2019: 3,993,175,000 kWh