

*Proposed request for derogation under Article 37 of the Network Code on
Harmonised Transmission Tariff Structures for Gas, Regulation EU 2017/460,
from the implementation of several articles of this Regulation.*

Introduction

In this application to Ofgem for derogation, BBL Company (BBLC) describes the Articles of the EU network code on harmonised transmission tariff structures for gas (TAR NC)¹, Regulation (EU) 2017/460, 1 - from which it proposes to seek derogation ; 2 - for implementation either with or without a proposed modifications to BBLC's GB Charging Methodology, and 3 – are not applicable to BBLC as a merchant interconnector.

Interested parties are invited to use this document for information purposes when submitting a response to BBLC's proposed modifications to its CM. These modifications are currently being consulted. As the CM consultation already provides interested parties with the opportunity to respond to BBLC's proposed implementation of the TAR NC, this proposed request for derogation itself is not being consulted.

The TAR NC entered into force on 6 April 2017. Several chapters have entered into force on 1 October 2017, which have not led to any changes to BBLC's CM, and several other chapters will enter into force from 31 May 2019. Some of these do require changes to the CM.

The TAR NC is designed to enhance tariff transparency and tariff coherency by harmonising basic principles and definitions used in tariff calculation, and also includes a mandatory comparison of national tariff-setting methodologies against a benchmark methodology. It also stipulates publication requirements for information on tariffs and revenues of transmission system operators. As a certified TSO, BBLC is subject to the EU network codes including the TAR NC. The code is applicable to the non-exempt part of BBLC's capacity.

The TAR NC is applicable to BBLC's CM through Interconnector Standard License Condition 10(4)²: “the charges and the application of the underlying charging methodology shall be objective, transparent, non-discriminatory and compliant with the Regulation and any relevant legally binding decision of the European Commission (EC) and/or the Agency”. The TAR NC is a relevant binding decision of the EC adopted under Article 6 of Gas 2009/715/EC.

This proposed request for derogation accompanies BBLC's proposed modifications to its CM during the consultation process. Several of the proposed modifications to the CM are required to demonstrate compliance with the TAR NC. Several other proposed modifications to the CM are on the initiative of BBLC and are not related to the TAR NC. These modifications fall outside the scope of this proposed request for derogation. All persons who may have a direct interest in BBLC's CM are invited to submit a written representation to the proposed modifications and to use this proposed derogation request document for information purposes in doing so.

Whilst BBLC is a regulated TSO subject to relevant EU and GB and Dutch national regulations, the regulatory framework that has been in place since the start of operations in 2006 has acknowledged the special nature of the interconnector and the competitive market environment the company

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0460>

² https://epr.ofgem.gov.uk/Content/Documents/Gas_Interconnector_SLCs_Consolidated%20-%20Current%20Version.pdf

operates in. As a non-revenue regulated interconnector, BBLC has no captive customers and therefore no baseline demand and no certainty of recovery of costs. With the expiration of long-term capacity commitments and changing market conditions, where shippers' focus is on shorter-term capacity products, the market environment is challenging. In addition, the services of other suppliers of flexibility, such as storage and LNG-facilities, may be a substitute for BBLC's services. The full implementation of TAR NC requirements may restrict BBLC's ability to compete on a level playing field and would lead to several negative consequences to the functioning of the gas markets.

Article 37 of the TAR NC has been included to enable NRAs to grant derogation from the application of one or more articles if the application would have one or several of the following negative consequences:

- a) not facilitate efficient gas trade and competition;
- b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;
- c) unreasonably distort cross-border trade;
- d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;
- e) not be implementable when taking into account the specific nature of interconnectors

Only an entity which operates an interconnector that has benefited from an exemption from Article 41(6), (8) and (10) of Directive 2009/73/EC in accordance with Article 36 of that Directive or a similar exemption, is allowed to submit a derogation request to its NRA(s).

BBLC qualifies under its 2005 exemption.

In the remainder of this document BBLC outlines the reasoning why it intends to request Ofgem for derogation from certain articles; which articles will be implemented either with or without a modification to BBLC's CM, and which articles do not apply to BBLC. Articles for which derogation will be sought are highlighted.

BBLC will consider any representations following the consultation of the proposed modifications to the CM and may amend this proposed derogation application as a result. The final derogation application will be submitted to Ofgem together with the request for approval to the modifications to the CM and the consultation conclusions report.

Oversight of TAR NC Articles and their effect on BBLC

Article	Implementable / no effect / derogation sought
Article 1	Implementable
Article 2	Implementable
Article 3	Implementable
Article 4	Article 4.1 is not applicable to interconnectors. Derogation from the remainder of the article will not be sought
Article 5	Derogation will be sought from Article 5
Article 6	Article 6.1 is not applicable if derogation will be granted from Article 26. Derogation from the remainder of the article will not be sought
Article 7	Derogation will be sought from Article 7(a). Derogation from the remainder of the article will not be sought
Article 8	Article 8 is not applicable to merchant interconnectors
Article 9	Article 9 is not applicable to BBLC
Article 10	Article 10 is not applicable to BBLC
Article 11	Implementable
Article 12	Derogation will be sought from Article 12.3. Derogation from the remainder of the article will not be sought
Article 13	Derogation will be sought from Article 13
Article 14	Implementable with proposed modifications to the GB CM
Article 15	Implementable with proposed modifications to the GB CM
Article 16	Implementable with proposed modifications to the GB CM
Article 17	Article 17 is not applicable to merchant interconnectors
Article 18	Article 18 is not applicable to merchant interconnectors
Article 19	Article 19 is not applicable to merchant interconnectors
Article 20	Article 20 is not applicable to merchant interconnectors
Article 21	Article 21 is not applicable to merchant interconnectors
Article 22	Article 22 is not applicable to merchant interconnectors
Article 23	Implementable
Article 24	Implementable with proposed modifications to the GB CM
Article 25	Article 25 is not applicable to merchant interconnectors
Article 26	Derogation will be sought from Article 26.1(a)(iii) and (iv) and 26.2. Derogation will not be sought from the remainder of the article
Article 27	Article is an obligation for the NRA and ACER
Article 28	Derogation will be sought from Article 28
Article 29	Derogation will be sought from Article 29(a) and (b)(i). Derogation will not be sought from the remainder of the article
Article 30	Derogation will be sought from Article 30.1(a)(ii and iii), 30.1(b)(i through v) and 30.2. Derogation from the remainder of the article will not be sought
Article 31	Derogation will be sought for Article 31.2(a). Derogation from the remainder of the article will not be sought
Article 32	Implementable if derogation is granted for Articles 29 and 30
Article 33	Implementable
Article 34	Implementable
Article 35	Implementable
Article 36	Implementable
Article 37	Implementable
Article 38	Implementable

Chapter I with Articles 1, 2 and 3 are about the NC's General Provisions.

Article 4.1 will not have effect on BBLC if derogation from Articles 26 and 27 is granted. Derogation from the remainder of the article will not be sought.

Article 4

Transmission and non-transmission services and tariffs

1. A given service shall be considered a transmission services where both of the following criteria are met:
 - a) the costs of such service are caused by the cost drivers of both technical or forecasted contracted capacity and distance;
 - b) the costs of such service are related to the investment in and operation of the infrastructure which is part of the regulated asset base for the provision of transmission services.

Where any of the criteria set out in points (a) and (b) are not complied with, a given service may be attributed to either transmission or non-transmission services subject to the findings of the periodic consultation by the transmission system operator(s) or the national regulatory authority and decision by the national regulatory authority, as set out in Articles 26 and 27.

2. Transmission tariffs may be set in a manner as to take into account the conditions for firm capacity products.
3. The transmission services revenue shall be recovered by capacity-based transmission tariffs.

As an exception, subject to the approval of the national regulatory authority, a part of the transmission services revenue may be recovered only by the following commodity-based transmission tariffs which are set separately from each other:

- a) a flow-based charge, which shall comply with all of the following criteria:
 - i. levied for the purpose of covering the costs mainly driven by the quantity of the gas flow;
 - ii. calculated on the basis of forecasted or historical flows, or both, and set in such a way that it is the same at all entry points and the same at all exit points;

- iii. expressed in monetary terms or in kind.
- b) a complementary revenue recovery charge, which shall comply with all of the following criteria:
 - i. levied for the purpose of managing revenue under- and over-recovery;
 - ii. calculated on the basis of forecasted or historical capacity allocations and flows, or both;
 - iii. applied at points other than interconnection points
 - iv. applied after the national regulatory authority has made an assessment of its cost-reflectivity and its impact on cross-subsidisation between interconnection points and points other than interconnection points.
- 4. The non-transmission services revenue shall be recovered by non-transmission tariffs applicable for a given non- transmission service. Such tariffs shall be as follows:
 - a) cost-reflective, non-discriminatory, objective and transparent;
 - b) charged to the beneficiaries of a given non-transmission service with the aim of minimising cross-subsidisation between network users within or outside a Member State, or both.

Where according to the national regulatory authority a given non-transmission service benefits all network users, the costs for such service shall be recovered from all network users.

According to Article 4.1 a service shall be considered a transmission service if two conditions are met. The costs of such service are caused by the cost drivers of both technical or forecasted contracted capacity and distance. And, the costs of such service are related to the investment in and operation of the infrastructure which is part of the regulated asset base for the provision of transmission services. Because BBLC is a non-revenue regulated TSO it does not have any infrastructure which is part of a regulated asset base. Therefore, this condition b does not have any effect.

Where the conditions are not complied with a given service may be attributed to either transmission or non-transmission services subject to the findings of the periodic consultation by the transmission system operator(s) or the national regulatory authority and decision by the national regulatory authority, as set out in Articles 26 and 27. BBLC requests derogation for these Articles for the

reasons described under those articles. If approved, Article 4.1 will not have any effect and BBLC will not seek derogation for Article 4.1.

BBLC requests an enduring derogation from Article 5.

Article 5
Cost allocation assessments

1. The national regulatory authority or the transmission system operator, as decided by the national regulatory authority, shall perform the following assessments and shall publish them as part of the final consultation referred to in Article 26:
 - (a) a cost allocation assessment relating to the transmission services revenue to be recovered by capacity-based transmission tariffs and based exclusively on the cost drivers of
 - (i) technical capacity; or
 - (ii) forecasted contracted capacity; or
 - (iii) technical capacity and distance; or
 - (iv) forecasted contracted capacity and distance;
 - (b) a cost allocation assessment relating to the transmission services revenue to be recovered by commodity-based transmission tariffs, if any, and based exclusively on the cost drivers of:
 - (i) the amount of gas flows; or
 - (ii) the amount of gas flows and distance.
2. The cost allocation assessments shall indicate the degree of cross-subsidisation between intra-system and cross-system network use based on the proposed reference price methodology.
3. The cost allocation assessment referred to in paragraph 1(a) shall be carried out as follows:
 - (a) the transmission services capacity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant capacity cost driver(s) for intra-system network use in order to calculate the intra-system capacity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$Ratio_{cap}^{intra} = \frac{Revenue_{cap}^{intra}}{Driver_{cap}^{intra}}$$

Where:

$Revenue_{cap}^{intra}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for intra-system network use;

$Driver_{cap}^{intra}$ is the value of capacity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted capacities contracted at each intra-system entry point and intra-system exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

- (b) the transmission services capacity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the

value of the relevant capacity cost driver(s) for cross-system network use in order to calculate the cross-system capacity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh/day, in accordance with the following formula:

$$Ratio_{cap}^{cross} = \frac{Revenue_{cap}^{cross}}{Driver_{cap}^{cross}}$$

Where:

$Revenue_{cap}^{cross}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from capacity tariffs and charged for cross-system network use;

$Driver_{cap}^{cross}$ is the value of capacity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted capacities contracted at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh/day.

- (c) the capacity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$Comp_{cap} = \frac{2 \times |Ratio_{cap}^{intra} - Ratio_{cap}^{cross}|}{Ratio_{cap}^{intra} + Ratio_{cap}^{cross}} \times 100\%$$

4. The cost allocation assessment referred to in paragraph 1(b) shall be carried out as follows:

- (d) the transmission services commodity revenue to be obtained from intra-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for intra-system network use in order to calculate the intra-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$Ratio_{comm}^{intra} = \frac{Revenue_{comm}^{intra}}{Driver_{comm}^{intra}}$$

Where:

$Revenue_{comm}^{intra}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged for intra-system network use;

$Driver_{comm}^{intra}$ is the value of commodity-related cost driver(s) for intra-system network use, such as the sum of the average daily forecasted flows at each intra-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

- (e) the transmission services commodity revenue to be obtained from cross-system network use at both all entry points and all exit points shall be divided by the value of the relevant commodity cost driver(s) for cross-system network use in order to calculate the cross-system commodity ratio, which is defined as a monetary unit per measurement unit, such as in euro per MWh, in accordance with the following formula:

$$Ratio_{comm}^{cross} = \frac{Revenue_{comm}^{cross}}{Driver_{comm}^{cross}}$$

Where:

$Revenue_{comm}^{cross}$ is the revenue, defined in a monetary unit such as the euro, which is obtained from commodity tariffs and charged on cross-system network use;

$Driver_{comm}^{cross}$ is the value of commodity-related cost driver(s) for cross-system network use, such as the sum of the average daily forecasted flows at each cross-system entry and exit point, or cluster of points, and is defined in a measurement unit such as MWh.

- (f) the commodity cost allocation comparison index between the ratios referred to in points (a) and (b), which is defined in percentage, shall be calculated in accordance with the following formula:

$$Comp_{comm} = \frac{2 \times |Ratio_{comm}^{intra} - Ratio_{comm}^{cross}|}{Ratio_{comm}^{intra} + Ratio_{comm}^{cross}} \times 100\%$$

5. The transmission services revenue to be obtained from intra-system network use at entry points referred to in paragraphs 3(a) and 4(a) shall be calculated as follows:
 - (g) the amount of allocated capacity or, respectively, flows attributed to the provision of transmission services for cross-system network use at all entry points shall be deemed equal to the amount of capacity or, respectively, flows attributed to the provision of transmission services for cross-system network use at all exit points;
 - (h) the capacity and, respectively, flows, determined as set out in point (a) of this paragraph shall be used to calculate the transmission services revenue to be obtained from cross-system network use at entry points;
 - (i) the difference between the overall transmission services revenue to be obtained at entry points and the resulting value referred to in point (b) of this paragraph shall be equal to the transmission services revenue to be obtained from intra-system network use at entry points.
6. Where distance is used as a cost driver in combination with technical or forecasted contracted capacity or flows, the capacity weighted average distance or, respectively, commodity weighted average distance shall be used. Where the results of the capacity, or respectively commodity cost allocation comparison indexes referred to in paragraph 3(c) or, respectively paragraph 4(c), exceed 10 percent, the national regulatory authority shall provide the justification for such results in the decision referred to in Article 27(4).

This article is about conducting a cost allocation assessment in order to limit cross-subsidization between intra-system use and cross-system network use and on how to perform this analysis. The BBL Interconnector has only one interconnection point and no domestic points with directly connected customers or local distribution companies. All of BBLC's revenues are collected through the capacity sales on this single IP. Therefore, and for the fact that BBLC is a non-revenue regulated TSO it is not relevant to perform a cost allocation assessment.

However, unless derogation is granted BBLC would have to perform the cost allocation assessment and deliver a report in line with the requirements in this article. In so far this would be possible, which we believe isn't for Articles 5.2 to 5.6, it does not take into account the specific nature of the BBL and its market environment.

Derogation will be sought for Article 5 because implementation would:

Article 37. 1 (a) not facilitate efficient gas trade and competition;

The Article does not take into account that the capacity-based transmission tariffs are also based on the market circumstances. It is not in BBLC's and the market's interest to develop tariffs based on the four exclusive cost drivers. For example, a tariff that is set too high would not lead to any capacity sales, limiting efficient gas trade and competition.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

For the same reason as described above an inappropriately set tariff could endanger existing levels of capacity.

Article 37.1 (c) unreasonably distort cross-border trade;

Again for the same reason as above.

BBLC request an enduring derogation from Article 6.1. Derogation from the remainder of the article will not be sought.

CHAPTER II REFERENCE PRICE METHODOLOGIES

Article 6

Reference price methodology application

1. The reference price methodology shall be set or approved by the national regulatory authority as set out in Article 27. The reference price methodology to be applied shall be subject to the findings of the periodic consultations carried out in accordance with Article 26 by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority.
2. The application of the reference price methodology shall provide a reference price.
3. The same reference price methodology shall be applied to all entry and exit points in a given entry-exit system subject to the exceptions set out in Articles 10 and 11.
4. Adjustments to the application of the reference price methodology to all entry and exit points may only be made in accordance with Article 9 or as a result of one or more of the following:
 - (a) benchmarking by the national regulatory authority, whereby reference prices at a given entry or exit point are adjusted so that the resulting values meet the competitive level of reference prices;
 - (b) equalisation by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the same reference price is applied to some or all points within a homogeneous group of points;
 - (c) rescaling by the transmission system operator(s) or the national regulatory authority, as decided by the national regulatory authority, whereby the reference prices at all entry or all exit points, or both, are adjusted either by multiplying their values by a constant or by adding to or subtracting from their values a constant.

BBLC is a non-revenue regulated TSO who operates at its own expense and risk in a competitive market environment. In the absence of an allowed target revenue and the possibility to implement a revenue reconciliation mechanism, BBLC is not certain of a reasonable return on its investments, or, for that matter, a guaranteed high enough revenue to cover the operating costs.

It is for this reason that when the first non-exempt capacity was offered to the market BBLC has had a charging methodology in place that allows for a 'merchant interconnector approach'. Within the limits of this methodology BBLC has the ability to adjust tariffs to better reflect the competitive situation in the market. Furthermore, it has allowed BBLC to adjust tariffs to better reflect the price differences between the TTF and NBP. This charging methodology and any future modifications to it

have to be approved by Ofgem after a market consultation in line with BBLC's Standard License Conditions.

Article 6.1 of the TAR NC refers to Articles 26 and 27. These articles are about the periodic consultation and periodic national regulatory decision-making. BBLC acknowledges the consultation and subsequent NRA approval process of any proposed modifications to its GB Charging Methodology. However, we are concerned about the consultation and subsequent NRA approval of the reference price or any of its underlying values that make up the reference price. If derogation is not granted for the basic principles of these articles BBLC would have to periodically propose tariffs and underlying values, consult these with the market, and get Ofgem's approval etc. BBLC currently does not have these obligations and it would not be practicable to operate on this basis.

These restrictions would undermine BBLC's ability to compete with other suppliers of flexibility such as storage and LNG facilities who are allowed to freely adjust prices. Furthermore, it would not allow BBLC to adjust tariffs during the gas year to better reflect market conditions, e.g. price differences between the Dutch and GB wholesale gas markets. Therefore, BBLC seeks derogation from articles 26 and 27, which will mean that Article 6.1 had no effect on BBLC. However, derogation is sought from Article 6.1 should derogation not be granted from Articles 26 and 27.

Derogation is requested for paragraph 1 of Article 6 for containing references to Articles 26 and 27 because implementation would:

Article 37.1 (a) not facilitate efficient gas trade and competition;

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

Article 37.1 (c) unreasonably distort cross-border trade;

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

We refer to the derogation request for Articles 26 and 27 for further details on these reasons.

BBLC request an enduring derogation from Article 7(a). Derogation from the remainder of the article will not be sought.

Article 7

Choice of a reference price methodology

The reference price methodology shall comply with Article 13 of Regulation (EC) No 715/2009 and with the following requirements. It shall aim at:

- (a) enabling network users to reproduce the calculation of reference prices and their accurate forecast;
- (b) taking into account the actual costs incurred for the provision of transmission services considering the level of complexity of the transmission network;
- (c) ensuring non-discrimination and prevent undue cross-subsidisation including by taking into account the cost allocation assessments set out in Article 5;
- (d) ensuring that significant volume risk related particularly to transports across an entry-exit system is not assigned to final customers within that entry-exit system;
- (e) ensuring that the resulting reference prices do not distort cross-border trade.

According to Article 7 (a) the network user should be enabled to reproduce the calculation of reference prices and their accurate forecast. We have outlined before the importance for BBLC to be able to quickly adjust its tariffs to follow developments in the market. From BBLC's GB Charging Methodology and the tariff related information on its website the network user can reproduce the calculation of the reference prices that are into effect at the present time. Developing an accurate forecast of the future reference prices is something that BBLC itself is not able to do. The reference price is partly subject to the market conditions. Therefore, we would not be able to provide information that would facilitate network users to accurately forecast reference prices.

Furthermore, even if it were possible to accurately forecast market conditions and, subsequently, forecast reference prices, from a competition point of view publication of these forecasts would be undesirable. Non-interconnector competitors like storages and LNG facilities have the ability to adjust prices quickly and would use the information BBLC provided to assist them in their decision-making process.

Derogation is sought for paragraph a) of Article 7 because implementation would:

Article 37.1. (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

Competing infrastructure owners may use BBLC's forecast reference price information for their tariff setting decisions which would create an unlevel playing field and could distort competition.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

As an interconnector with no base line demand of its own it would not be possible to accurately forecast future capacity demand and therefore references prices. Market conditions are an important factor in BBLC's tariff setting decisions.

Derogation from Article 7(b) through (e) will not be sought.

Article 8 is not applicable to interconnectors. Derogation from this article will not be sought.

Article 8

Capacity weighted distance reference price methodology

1. The parameters for the capacity weighted distance reference price methodology shall be as follows:
 - (a) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs;
 - (b) the forecasted contracted capacity at each entry point or a cluster of entry points and at each exit point or a cluster of exit points;
 - (c) where entry points and exit points can be combined in a relevant flow scenario, the shortest distance of the pipeline routes between an entry point or a cluster of entry points and an exit point or a cluster of exit points;
 - (d) the combinations of entry points and exit points, where some entry points and some exit points can be combined in a relevant flow scenario;
 - (e) the entry-exit split referred to in Article 30(1)(b)(v)(2) shall be 50/50.

Where entry points and exit points cannot be combined in a flow scenario, this combination of entry and exit points shall not be taken into account.

2. The reference prices shall be derived in the following sequential steps:
 - (a) the weighted average distance for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated, taking into account, where relevant, the combinations referred to in paragraph 1(d), in accordance with the following respective formulas:
 - (i) for an entry point or cluster of entry points, as the sum of the products of capacity at each exit point or cluster of exit points and the distance from this entry point or cluster of entry points to each exit point or cluster of exit points, divided by the sum of capacities at each exit point or cluster of exit points:

$$AD_{En} = \frac{\sum_{all\ Ex} CAP_{Ex} \times D_{En,Ex}}{\sum_{all\ Ex} CAP_{Ex}}$$

Where:

AD_{En} is the weighted average distance for an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points;

$D_{En,Ex}$ is the distance between a given entry point or a cluster of entry points and a given exit point or a cluster of exit points referred to in paragraph 1(c).

- (ii) for an exit point or cluster of exit points, as the sum of the products of capacity at each entry point or cluster of entry points and the distance to

this exit point or cluster of exit points from each entry point or cluster of entry points, divided by the sum of capacities at each entry point or cluster of entry points:

$$AD_{Ex} = \frac{\sum_{all\ En} CAP_{En} \times D_{En,Ex}}{\sum_{all\ En} CAP_{En}}$$

Where:

AD_{Ex} is the weighted average distance for an exit point or a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

$D_{En,Ex}$ is the distance between a given entry point or a cluster of entry points and a given exit point or a cluster of exit points referred to in paragraph 1(c).

- (b) the weight of cost for each entry point or each cluster of entry points and for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$W_{c,En} = \frac{CAP_{En} \times AD_{En}}{\sum_{all\ En} CAP_{En} \times AD_{En}}$$

$$W_{c,Ex} = \frac{CAP_{Ex} \times AD_{Ex}}{\sum_{all\ Ex} CAP_{Ex} \times AD_{Ex}}$$

Where:

$W_{c,En}$ is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$ is the weight of cost for a given exit point or a cluster of exit points;

AD_{En} is the weighted average distance for an entry point or a cluster of entry points;

AD_{Ex} is the weighted average distance for an exit point or a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points.

- (c) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points and the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points shall be identified by applying the entry-exit split;
- (d) the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at each entry point or each cluster of entry points and

for each exit point or each cluster of exit points shall be calculated in accordance with the following respective formulas:

$$R_{En} = W_{c,En} \times R_{\Sigma En}$$

$$R_{Ex} = W_{c,Ex} \times R_{\Sigma Ex}$$

Where:

$W_{c,En}$ is the weight of cost for a given entry point or a cluster of entry points;

$W_{c,Ex}$ is the weight of cost for a given exit point or a cluster of exit points;

R_{En} is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an entry point or a cluster of entry points;

R_{Ex} is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at an exit point or a cluster of exit points;

$R_{\Sigma En}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all entry points;

$R_{\Sigma Ex}$ is the part of the transmission services revenue to be recovered from capacity-based transmission tariffs at all exit points.

- (e) the resulting values referred to in point (d) shall be divided by the forecasted contracted capacity at each entry point or each cluster of entry points and at each exit point or each cluster of exit points in accordance with the following respective formulas:

$$T_{En} = \frac{R_{En}}{CAP_{En}}$$

$$T_{Ex} = \frac{R_{Ex}}{CAP_{Ex}}$$

Where:

T_{En} is the reference price at an entry point or each entry point within a cluster of entry points;

T_{Ex} is the reference price at an exit point or each exit point within a cluster of exit points;

CAP_{En} is the forecasted contracted capacity at an entry point or a cluster of entry points;

CAP_{Ex} is the forecasted contracted capacity at an exit point or a cluster of exit points.

Article 9 is not applicable to interconnectors. Derogation for this article will not be sought.

Article 9

Adjustments of tariffs at entry points from and exit points to storage facilities and at entry points from LNG facilities and infrastructure ending isolation

1. A discount of at least 50% shall be applied to capacity-based transmission tariffs at entry points from and exit points to storage facilities, unless and to the extent a storage facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.
2. At entry points from LNG facilities, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems, a discount may be applied to the respective capacity-based transmission tariffs for the purposes of increasing security of supply.

Article 10 is not applicable to BBLC. The single BBLC-GTS entry-exit system is not within a single Member State but covers more than one Member State. Derogation will not be sought.

Article 10

*Rules for entry-exit systems within a Member State
where more than one transmission system operator is active*

1. In accordance with Article 6(3), the same reference price methodology shall be applied jointly by all transmission system operators within an entry-exit system within a Member State.
2. As an exception to paragraph 1 and subject to paragraph 3, the national regulatory authority may decide:
 - (a) that the same reference price methodology is applied separately by each transmission system operator within an entry-exit system;
 - (b) as an exception to Article 6(3), when planning entry-exit system mergers, on intermediate steps allowing for different reference price methodologies to be applied separately by each transmission system operator within the entry-exit systems concerned. Such a decision shall set out the time period for the application of the intermediate steps. The national regulatory authority or the transmission system operators, as decided by the national regulatory authority, shall carry out an impact assessment and a cost benefit analysis prior to implementing such intermediate steps.

As a result of applying different reference price methodologies separately, the transmission services revenue of the transmission system operators involved shall be adjusted accordingly.

3. In order to allow for the proper application of the same reference price methodology jointly, an effective inter-transmission system operator compensation mechanism shall be established.

The decision referred to in paragraph 2(a) or, respectively, paragraph 2(b) may be taken where the following conditions are complied with:
 - (a) an effective inter-transmission system operator compensation mechanism is established with the aim to:
 - (i) prevent detrimental effects on the transmission services revenue of the transmission system operators involved;
 - (ii) avoid cross-subsidisation between intra-system and cross-system network use;
 - (b) such separate application ensures that the costs correspond to those of an efficient transmission system operator.
4. The maximum time period set out in the decision referred to in paragraph 2(a) or, respectively, paragraph 2(b) shall be no later than five years as from the date referred to in Article 38(2). Sufficiently in advance of the date set out in that decision, the national regulatory authority may decide to postpone this date.
5. At the same time as the final consultation in accordance with Article 26, the national regulatory authority shall conduct a consultation on the principles of an effective inter-transmission system operator compensation mechanism referred to in paragraph 3 and its consequences on the tariff levels. The inter-transmission system operator compensation mechanism shall be applied in accordance with Article 41(6)(a) of Directive 2009/73/EC and published together with the consultation responses received.
6. The reserve price referred to in Article 22(1) shall be calculated as set out therein. Where paragraph 2 is applied, the following two calculations shall be carried out:
 - (a) the calculation set out in Article 22(1) shall be carried out by each transmission system operator involved;
 - (b) the weighted average of the resulting values referred to in point (a) shall be calculated in accordance with the formula set out in Article 22(1)(b), mutatis mutandis.
7. The final consultation referred to in Article 26 shall be conducted by all transmission system operators jointly or by the national regulatory authority. Where paragraph 2 is applied, such consultation shall be conducted by each transmission system operator separately or by the national regulatory authority, as decided by the national regulatory authority.
8. The information referred to in Articles 29 and 30 shall be published on an aggregated level for all transmission system operators involved. Where paragraph 2 is applied, the following two actions shall be carried out:
 - (a) such information shall be published individually for each transmission system operator involved;
 - (b) the information on the entry-exit split referred to in Article 30(1)(b)(v)(2) for the entry-exit system shall be published by the national regulatory authority.

Article 11 is applicable to the single BBLC-GTS entry-exit system. No derogation will be sought.

Article 11

*Rules for entry-exit systems covering more than one Member State
where more than one transmission system operator is active*

The same reference price methodology may be applied jointly or separately or different reference price methodologies may be applied separately where more than one transmission system operator is active in an entry-exit system covering more than one Member State.

BBLC seeks an enduring derogation for Article 12.3. Derogation for the remainder of the article will not be sought.

**CHAPTER III
RESERVE PRICES**

Article 12

General provisions

1. For yearly standard capacity products for firm capacity, the reference prices shall be used as reserve prices. For non-yearly standard capacity products for firm capacity, the reserve prices shall be calculated as set out in this Chapter. For both yearly and non-yearly standard capacity products for interruptible capacity, the reserve prices shall be calculated as set out in this Chapter. The level of multipliers and of seasonal factors, set out in accordance with Article 13, and the level of discounts for the standard capacity products for interruptible capacity, set out in accordance with Article 16, may be different at interconnection points.
2. Where the tariff period and gas year do not coincide, separate reserve prices may be applied respectively:
 - (a) for the time period from 1 October to the end of the prevailing tariff period; and
 - (b) for the time period from the beginning of the tariff period following the prevailing tariff period to 30 September.
3. The respective reserve prices published according to Article 29 shall be binding for the subsequent gas year or beyond the subsequent gas year in case of fixed payable price, beginning after the annual yearly capacity auction, unless:
 - (a) the discounts for monthly and daily standard capacity products for interruptible capacity are recalculated within the tariff period if the probability of interruption referred to in Article 16 changes by more than twenty percent;
 - (b) the reference price is recalculated within the tariff period due to exceptional circumstances under which the non-adjustment of tariff levels would jeopardise the operation of the transmission system operator.

Derogation will not be sought for Article 12.1 as it only carries definitions. Derogation for Article 12.2 will not be sought as it refers to a tariff period which BBLC does not have.

Derogation will be sought for Article 12.3. According to Article 12.3 the reserve prices shall be binding for the subsequent gas year or beyond the subsequent gas year in the case of fixed payable prices. Derogation will be sought because implementation would not allow BBLC to adjust prices within the gas year. With the increasing expiration of existing long-term contracts it is of importance for BBLC to be able to set competitive reserve prices for its products. In particular for the short-term products for which the capacity sales are mostly subject to TTF-NBP price differences it is of importance to BBLC to be able to quickly adjust prices. A reserve price that is set too high would not lead to any capacity sales.

The current GB Charging Methodology allows BBLC to adjust tariffs during the gas year. BBLC has no captive customers, no guaranteed demand for its products and has no certainty of recovery of costs. As long as BBLC is operating in a competitive market environment, it needs to be able to respond quickly to developments in the market. This becomes even more important in the current market environment where capacity tends to be transacted on a short term basis with shippers using shorter term capacity contracts to exploit the trade opportunities between the TTF and NBP.

Derogation is sought for Article 12.3 because implementation would:

Article 37. 1 (a) not facilitate efficient gas trade and competition;

TTF-NBP price differences that do not justify the costs for new bookings of transport capacity result in no additional gas trade at all. Being able to adjust the BBL reserve price, as part of the total costs of transport between the Netherlands and the GB, when this is deemed appropriate would allow for more efficient gas trade and competition.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

The financial viability of the installation of the new physical reverse flow capacity (from GB to NL) on the BBL is dependent on forecasted short term capacity sales from trade opportunities between the TTF and NBP. If BBLC were not able to adjust tariffs to better reflect the market conditions, this would lead to an unacceptable risk to the project. A tariff that is set too high, and is fixed for a year, will not lead to any capacity sales. A tariff set too low may not allow for a positive return on the reverse flow investment. If the ability to adjust prices were revoked or severely limited, the project may have to be reconsidered.

The provision of existing levels of forward flow capacity may be reconsidered if for a longer period of time BBLC does not succeed in selling enough capacity to cover its operational and capital expenditure. The forward flow technical capacity of 20.6 GWh/h is made possible by four compressors. In the absence of sufficient capacity sales and a positive outlook it would

make financial sense to reconsider the operational commitments, e.g. how many compressors are operational.

Article 37.1 (c) unreasonably distort cross-border trade;

It is in BBLC's interest to set tariffs at an appropriate level. Being too expensive would not lead to any new capacity sales and could unwantedly distort cross-border trade. However, setting tariffs below the operating and capital costs for an enduring period of time would also lead to financial uncertainty. Because BBLC is not able to accurately predict gas demand and the price developments in the Dutch and GB wholesale gas markets, and is therefore unable to accurately forecast capacity bookings, it needs to be able to adjust prices to better reflect changing market circumstances.

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

If BBLC were required to publish tariffs for the subsequent gas year without the possibility to adjust these, this would lead to a competitive advantage to other suppliers of flexibility services such as storage and LNG facilities who do have this flexibility.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

BBLC is a non-revenue regulated TSO. It has no directly connected customers who provide a certain level of baseline demand. Furthermore, it is not able to accurately forecast price developments at the TTF and NBP wholesale gas markets, whose price differences are expected to allow for most future capacity bookings. As long as BBLC cannot socialise costs and cannot implement a revenue recovery mechanism, it must have the flexibility to adjust tariffs to meet market conditions.

BBLC seeks an enduring derogation from Article 13.

Article 13
Level of multipliers and seasonal factors

1. The level of multipliers shall fall within the following ranges:
 - (a) for quarterly standard capacity products and for monthly standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 1.5;
 - (b) for daily standard capacity products and for within-day standard capacity products, the level of the respective multiplier shall be no less than 1 and no more than 3. In duly justified cases, the level of the respective multipliers may be less than 1, but higher than 0, or higher than 3.
2. Where seasonal factors are applied, the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factors shall be within the same range as for the level of the respective multipliers set out in paragraph 1.
3. By 1 April 2023, the maximum level of multipliers for daily standard capacity products and for within-day standard capacity products shall be no more than 1.5, if by 1 April 2021 the Agency issues a recommendation in accordance with Regulation (EC) No 713/2009 that the maximum level of multipliers should be reduced to this level. This recommendation shall take into account the following aspects related to the use of multipliers and seasonal factors before and as from 31 May 2019:
 - (a) changes in booking behaviour;
 - (b) impact on the transmission services revenue and its recovery;
 - (c) differences between the level of transmission tariffs applicable for two consecutive tariff periods;
 - (d) cross-subsidisation between network users having contracted yearly and non-yearly standard capacity products;
 - (e) impact on cross-border flows.

In its current GB Charging Methodology no restrictions are in place for the level of the multipliers and seasonal factors. BBLC proposes to include a multiplier range in its GB Charging Methodology which will be wider than prescribed by Article 13.1. A multiplier cap of 1.5 for the quarterly and monthly capacity products and 3 for the daily and within-day capacity products until 1 April 2023 and 1.5 thereafter, may not be high enough to incentivise shippers to book any yearly capacity products.

However, if the market conditions remain such that the market does not show much appetite for yearly capacity products, BBLC would like to have the option in its Charging Methodology to choose a different pricing strategy and set reserve prices for the non-yearly capacity products below the

reference price. For this multipliers less than 1 would have to be applied. Therefore, derogation is also sought for the minima of the TAR NC multiplier range.

BBLC wants to have the freedom to reduce the multipliers to a level which could be lower than the TAR NC defaults. This is justified to facilitate maximum gas flow opportunities between the TTF and NBP when the spreads are lower than anticipated, which is in the interest of shippers, and allow BBLC to benefit from actual market reflections.

The proposed ranges to include in the GB Charging Methodology would be:

Capacity product	Quarterly	Monthly	Day-ahead	Within-day
Minimum multiplier	0.5	0.5	0.1	0.1
Maximum multiplier	1.5	3	6	6

In accordance with Article 7.2 the arithmetic mean over the gas year of the product of the multiplier applicable for the respective standard capacity product and the relevant seasonal factors shall be within the same range as for the level of the respective multipliers set out in the table above. However, it is not BBLC's intention to apply a wide range of seasonal factors, or change the current approach where the seasonal factors are set to 1, resulting in no effect on the reserve prices.

BBLC acknowledges the importance for shippers to learn well in advance of the capacity auctions what the multipliers and the resulting reserve prices for the non-yearly standardized capacity products will be. Therefore, at the latest 30 days before the annual auction of the yearly capacity products, BBLC will publish the maximum multiplier, which will fall within the proposed range, for each capacity product it will auction in the upcoming gas year. This annual maximum multiplier will be based on BBLC's expectations of what a competitive reserve price for the various non-yearly capacity products would be plus a risk margin. It is the intention to publish a realistic maximum as far as possible.

Taking into account the published maximums BBLC will be able to reduce the multipliers, and therefore the reserve prices of the non-yearly capacity products, with a minimum notice period of one week for the quarterly and monthly capacity products, 3 hours for the day-ahead capacity product and 1 hour for the within-day capacity product.

Derogation will be sought for Article 13 because implementation would:

Article 37. 1 (a) not facilitate efficient gas trade and competition;

TTF-NBP price differences that do not justify the costs for new bookings of transport capacity result in no additional gas trade at all. Being able to adjust the costs of transport between the Netherlands and the GB through the BBL reserve prices, as part of the total costs, would allow for more efficient gas trade and competition. Adjusting the level of multipliers and seasonal factors are means to achieve this. Relative to the reference price, short-term capacity tariffs could be lower or higher. BBLC believes its reserve prices of non-yearly capacity products should not be restricted by the TAR NC prescribed range of its underlying values.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

For the financial viability of BBLC it is important to replace expiring long term contracts. To incentivise shippers to book yearly capacity products these need to be priced attractively compared to the non-yearly capacity products. A multiplier range higher than prescribed by the TAR NC may be required. If BBLC does not succeed in securing long term booking commitments a different pricing strategy may be required through the use of multipliers less than 1.

Article 37.1 (c) unreasonably distort cross-border trade;

It is in BBLC's interest to set tariffs at an appropriate level. Being too expensive would not lead to any new capacity sales and would distort cross-border trade. However, setting tariffs below the operating and capital costs for an enduring period of time would also lead to financial risk for the company because a substantial auction premium is not guaranteed. As BBLC is not able to predict the price developments in the Dutch and GB wholesale gas markets, and is therefore unable to accurately forecast capacity bookings, it needs to be able to adjust prices to better reflect changing market circumstances.

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

Competition would be distorted if competing infrastructure operators have freedom to adjust their tariffs and BBLC does not. It is in BBLC's interest to set a competitive reserve price for its capacity products compared to other companies who offer services of a similar nature. It is not in BBLC's interest to set a high, non-competitive reserve price or a reserve price which would never allow traders to benefit from a TTF-NBP price difference.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

BBLC is a non-revenue regulated TSO. It has no directly connected customers who provide a certain level of baseline demand. Furthermore, it is not able to accurately forecast gas demand and price developments at the TTF and NBP wholesale gas markets, whose price differences are expected to allow for most future capacity bookings. As long as BBLC cannot socialise costs and cannot implement a revenue recovery mechanism, it needs to be able to use a multiplier and seasonal factor range wider than those applicable to revenue regulated TSOs.

BBLC proposes modifications to its GB Charging Methodology to comply with Article 14.*Article 14**Calculation of reserve prices for non-yearly standard capacity products
for firm capacity in absence of seasonal factors*

The reserve prices for non-yearly standard capacity products for firm capacity shall be calculated as follows:

- (b) for quarterly standard capacity products, for monthly standard capacity products and for daily standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 365) \times D$$

Where:

P_{st} is the reserve price for the respective standard capacity product;

M is the level of the multiplier corresponding to the respective standard capacity product;

T is the reference price;

D is the duration of the respective standard capacity product expressed in gas days.

For leap years, the formula shall be adjusted so that the figure 365 is substituted with the figure 366.

- (c) for within-day standard capacity products, in accordance with the following formula:

$$P_{st} = (M \times T / 8760) \times H$$

Where:

P_{st} is the reserve price for the within-day standard capacity product;

M is the level of the corresponding multiplier;

T is the reference price;

H is the duration of the within-day standard capacity product expressed in hours.

For leap years, the formula shall be adjusted so that the figure 8760 is substituted with the figure 8784.

In its current GB Charging Methodology BBLC is able to adjust the reserve prices for each of the non-yearly capacity products through the multipliers, seasonal factors or the competitive forces factor. In the modification proposal the competitive forces factor will be removed from the tariff formula for

the non-yearly capacity products. In the absence of seasonal factors the resulting calculation will then be in line with the requirements of Article 14.

The competitive forces factor will remain in place for the calculation of the reference price, and therefore the reserve price of the yearly capacity product. BBLC's Dutch Charging Methodology contains a base price for the yearly capacity product which is the tariff that has been in place since the start of operations in 2006 and has been subject to indexation since. In order to adjust the reference price an adjusting mechanism is required which does not undermine the Dutch Charging Methodology. This mechanism has become the competitive forces factor in the GB Charging Methodology.

For more information on the calculation of the reference price and the reserve prices of all capacity products we refer to BBLC's proposed modifications to the GB Charging Methodology.

BBLC seeks an enduring derogation from Article 15.*Article 15**Calculation of reserve prices for non-yearly standard capacity products
for firm capacity with seasonal factors*

1. Where seasonal factors are applied, the reserve prices for non-yearly standard capacity products for firm capacity shall be calculated in accordance with the relevant formulas set out in Article 14 which shall be then multiplied by the respective seasonal factor calculated as set out in paragraphs 2 to 6.
2. The methodology set out in paragraph 3 shall be based on the forecasted flows, unless the quantity of the gas flow at least for one month is equal to 0. In such case, the methodology shall be based on the forecasted contracted capacity.
3. For monthly standard capacity products for firm capacity, the seasonal factors shall be calculated in the following sequential steps:
 - (a) for each month within a given gas year the usage of the transmission system shall be calculated on the basis of forecasted flows or forecasted contracted capacity using:
 - (i) the data for the individual interconnection point, where the seasonal factors are calculated for each interconnection point;
 - (ii) the average data on the forecasted flows or the forecasted contracted capacity, where the seasonal factors are calculated for some or all of the interconnection points.
 - (b) the resulting values referred to in point (a) shall be summed up;
 - (c) the usage rate shall be calculated by dividing each of the resulting values referred to in point (a) by the resulting value referred to in point (b);
 - (d) each of the resulting values referred to in point (c) shall be multiplied by 12. Where the resulting values are equal to 0, these values shall be adjusted to whichever of the following is the lower: 0.1 or the lowest of the resulting values other than 0;
 - (e) the initial level of the respective seasonal factors shall be calculated by raising each of the resulting values referred to in point (d) to the same power which is no less than 0 and no more than 2;
 - (f) the arithmetic mean of the products of the resulting values referred to in point (e) and the multiplier for monthly standard capacity products shall be calculated;
 - (g) the resulting value referred to in point (f) shall be compared with the range referred to in Article 13(1), as follows:
 - (i) if this value falls within this range then the level of seasonal factors shall be equal to with the respective resulting values referred to in point (e);
 - (ii) if this value falls outside of this range then point (h) shall apply.

- (h) the level of seasonal factors shall be calculated as the product of the respective resulting values referred to in point (e) and the correction factor calculated as follows:
 - (i) where the resulting value referred to in point (f) is more than 1.5, the correction factor shall be calculated as 1.5 divided by this value;
 - (ii) where the resulting value referred to in point (f) is less than 1, the correction factor shall be calculated as 1 divided by this value.
- 4. For daily standard capacity products for firm capacity and within-day standard capacity products for firm capacity, the seasonal factors shall be calculated by carrying out the steps set out in paragraph 3(f) to (h), mutatis mutandis.
- 5. For quarterly standard capacity products for firm capacity, the seasonal factors shall be calculated in sequential steps as follows:
 - (a) the initial level of the respective seasonal factors shall be calculated as either of the following:
 - (i) equal to the arithmetic mean of the respective seasonal factors applicable for the three relevant months;
 - (ii) no less than the lowest and no more than the highest level of the respective seasonal factors applicable for the three relevant months.
 - (b) the steps set out in paragraph 3(f) to (h) shall be carried out, using the resulting values referred to in point (a), mutatis mutandis.
- 6. For all non-yearly standard capacity products for firm capacity, the values resulting from the calculation referred to in paragraphs 3 to 5 may be rounded up or down.

For the last two years ago BBLC's seasonal factors have had the value of 1. Therefore, and for the reason that the multipliers also have been the value of 1, the reserve prices for each of the four quarterly capacity products within the calendar year have been the same. Similarly, the reserve price for each of the monthly capacity products within the calendar year is also the same. The day-ahead and within-day capacity products are not affected by the application of the seasonal factor.

The TAR NC defines the seasonal factor as the factor reflecting the variation of demand within the year which may be applied in combination with the relevant multiplier. This variation of demand is reflected in the calculation for the level of seasonal factors as described in Article 15. Generally speaking, in periods with a high demand, as expressed by forecast flows or forecast capacity sales, the calculation will lead to a higher seasonal factor. And in periods with a lower demand the outcome will be a lower seasonal factor. The resulting outcome has to be compared with the range referred to in Article 13.1. If the outcome falls outside the range a correction factor will be applied to make it fall within the range.

BBLC's forecast flows and forward flow capacity sales during the spring and summer period are zero or close to zero. Most, if not all flows and capacity sales will be in the autumn and winter period. The reverse is true for expected reverse flow sales and flows. Compared to most other TSOs this is a very

high fluctuation in demand during the year. The resulting outcome of the seasonal factor calculation, which will be performed for forward and reverse flow capacity products separately, would be that BBLC's seasonal factors are at the top of the range during periods of relatively high demand and at the bottom of the range during periods of very little demand. The effect on the reserve prices for the non-yearly capacity products would be significant.

As a solution, Article 14 provides the possibility of not applying seasonal factors. This would have the same result as applying seasonal factors with the value of 1. However, this would not allow BBLC to introduce a seasonal factor should circumstances change. BBLC will request derogation from Article 15 to have flexibility but intends to continue to apply seasonal factors, with the value of 1 for the foreseeable future,.

Derogation will be sought for Article 15 because implementation would:

Article 37. 1 (a) not facilitate efficient gas trade and competition;

High reserve price fluctuations during the year do not contribute to efficient gas trade and competition. In times of high capacity demand BBLC would have to increase the reserve price for its products significantly which makes efficient gas trade and competition more difficult.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

Being able to set prices at a competitive level is important for BBLC's long-term financial viability. High seasonal factors during periods with low demand would lead to an increase the reserve prices with the risk that BBL capacity would be considered too expensive with less capacity sales as a result. This would not contribute to maintaining existing levels of capacity. The lower seasonal factors during the spring and summer period, and the resulting reduced reserve prices, would not make buying capacity more attractive because the TTF-NBP spread is mostly negative during this period resulting in no demand for forward flow capacity products. The opposite applies to potential physical reverse flow capacity products.

Article 37.1 (c) unreasonably distort cross-border trade;

Applying the calculation of Article 15 would likely lead to reserve prices that would not be attractive based on the TTF-NBP spreads. This would distort cross-border trade.

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

Storage and LNG facilities do not have to apply the requirements of Article 15. In times of demand it is very likely that BBLC would outprice itself.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

Article 15 does not take into account the high demand fluctuations of interconnectors compared to other TSOs. BBLC believes that this article is not designed for TSOs such as interconnectors who have periods with little or no demand and are not revenue regulated.

BBLC does not seek derogation from Article 16.

Article 16
Calculation of reserve prices for standard capacity products
for interruptible capacity

1. The reserve prices for standard capacity products for interruptible capacity shall be calculated by multiplying the reserve prices for the respective standard capacity products for firm capacity calculated as set out in Articles 14 or 15, as relevant, by the difference between 100% and the level of an ex-ante discount calculated as set out in paragraphs 2 and 3.
2. An ex-ante discount shall be calculated in accordance with the following formula:

$$D_{\text{ex-ante}} = \text{Pro} \times A \times 100\%$$

Where:

$D_{\text{ex-ante}}$ is the level of an ex-ante discount;

Pro factor is the probability of interruption which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, and which refers to the type of standard capacity product for interruptible capacity;

A is the adjustment factor which is set or approved in accordance with Article 41(6)(a) of Directive 2009/73/EC pursuant to Article 28, applied to reflect the estimated economic value of the type of standard capacity product for interruptible capacity, calculated for each, some or all interconnection points, which shall be no less than 1.

3. The Pro factor referred to in paragraph 2 shall be calculated for each, some or all interconnection points per type of standard capacity product for interruptible capacity offered in accordance with the following formula on the basis of forecasted information related to the components of this formula:

$$\text{Pro} = \frac{N \times D_{\text{int}}}{D} \times \frac{\text{CAP}_{\text{av. int}}}{\text{CAP}}$$

Where:

N is the expectation of the number of interruptions over D;

D_{int} is the average duration of the expected interruptions expressed in hours;

D is the total duration of the respective type of standard capacity product for interruptible capacity expressed in hours;

$\text{CAP}_{\text{av. int}}$ is the expected average amount of interrupted capacity for each interruption where such amount is related to the respective type of standard capacity product for interruptible capacity;

CAP is the total amount of interruptible capacity for the respective type of standard capacity product for interruptible capacity.

4. As an alternative to applying ex-ante discounts in accordance with paragraph 1, the national regulatory authority may decide to apply an ex-post discount, whereby network users are compensated after the actual interruptions incurred. Such ex-post discount may only be used at interconnection points where there was no interruption of capacity due to physical congestion in the preceding gas year.

The ex-post compensation paid for each day on which an interruption occurred shall be equal to three times the reserve price for daily standard capacity products for firm capacity.

The reserve prices for interruptible forward flow capacity products have been a combination of an ex-ante discount and an ex-post compensation. Since the start of operations in 2006 an ex-ante discount of 10% to firm forward flow capacity products has been applied. The 10% discount is derived from the calculated probability of interruption in so far this has been possible to calculate. No forward flow interruptible capacity on the BBL has been sold, and therefore none of this capacity has been interrupted; the calculation is somewhat ambiguous but in line with Articles 16.1 through 16.3.

In addition to the 10% discount to the reserve price of the firm capacity product, in the event of an interruption the interrupted shippers will be compensated for the actual period of interruption in so far capacity has been nominated. The shipper will have its capacity booking costs compensated for the number of hours of the interruption. This could be considered an ex-post discount. However, the ex-post compensation has not been three times the reserve price for the firm daily standard capacity product as Article 16.4 prescribes, but the pro-rata part of its total booking costs based on the number of hours of interruption.

BBLC considers its combination of ex-ante and ex-post discounts shipper friendly and appropriate for interconnectors. However, implementing the article would not lead to any of the negative consequences of Article 37.1. Therefore, BBLC will not seek derogation for Article 16 and will propose to apply an ex-ante discount only based on a periodically updated assessment of the probability of interruption.

Article 17 is not applicable to interconnectors. Derogation will not be sought.

CHAPTER IV RECONCILIATION OF REVENUE

Article 17 General provisions

1. Where and to the extent that the transmission system operator functions under a non-price cap regime, the following principles shall apply:
 - (a) the under- or over-recovery of the transmission services revenue shall be minimised having due regard to necessary investments;
 - (b) the level of transmission tariffs shall ensure that the transmission services revenue is recovered by the transmission system operator in a timely manner;
 - (c) significant differences between the levels of transmission tariffs applicable for two consecutive tariff periods shall be avoided to the extent possible.
2. Where and to the extent that the transmission system operator functions under a price cap regime or applies a fixed payable price approach set out in Article 24(b), no revenue reconciliation shall occur and all risks related to under- or over-recovery shall be covered exclusively by the risk premium. In such case Articles 18, 19(1) to (4) and 20 shall not apply.
3. Subject to the requirements of periodic consultations pursuant to Article 26 and subject to approval in accordance with Article 41(6)(a) of Directive 2009/73/EC, non-transmission services revenue may be reconciled as set out in this Chapter, mutatis mutandis.

Article 18 is not applicable to interconnectors. Derogation will not be sought.

Article 18
Under- and over-recovery

1. The under- or over-recovery of the transmission services revenue shall be equal to:

$$R_A - R$$

Where:

R_A is the actually obtained revenue related to the provision of transmission services;
R is the transmission services revenue.

The values of R_A and R shall be attributed to the same tariff period and, where an effective inter-transmission system operator compensation mechanism referred to in Article 10(3) is established, shall take such mechanism into account.

2. Where the difference calculated in accordance with paragraph 1 is positive, it shall indicate an over-recovery of the transmission services revenue. Where such difference is negative, it shall indicate an under-recovery of the transmission services revenue.

Article 19 is not applicable to interconnectors. Derogation will not be sought.

Article 19
Regulatory account

1. The regulatory account shall indicate the information referred to in Article 18(1) for a given tariff period and may include other information, such as the difference between the anticipated and the actual cost components.
2. The transmission system operator's under- or over-recovered transmission services revenue shall be attributed to the regulatory account, unless other rules have been enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC.
3. Where incentive mechanisms for capacity sales are implemented, subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, only a part of the transmission system operator's under- or over-recovery shall be attributed to the regulatory account. In such case, the residual part thereof shall be kept or paid, as relevant, by the transmission system operator.
4. Each transmission system operator shall use one regulatory account.
5. Subject to a decision in accordance with Article 41(6)(a) of Directive 2009/73/EC, the earned auction premium, if any, may be attributed to a specific account separate from the regulatory account referred to in paragraph 4. The national regulatory authority may decide to use this auction premium for reducing physical congestion or, where the transmission system operator functions only under a non-price cap regime, to decrease the transmission tariffs for the next tariff period(s) as set out in Article 20.

Article 20 is not applicable to interconnectors. Derogation will not be sought.

Article 20

Reconciliation of regulatory account

1. The full or partial reconciliation of the regulatory account shall be carried out in accordance with the applied reference price methodology and, in addition, by using the charge referred to in Article 4(3)(b), if applied.
2. The reconciliation of the regulatory account shall be carried out pursuant to the rules enacted in accordance with Article 41(6)(a) of Directive 2009/73/EC over a given reconciliation period, meaning the time period over which the regulatory account referred to in Article 19 shall be reconciled.
3. The regulatory account shall be reconciled with the aim of reimbursing to the transmission system operator the under-recovery and of returning to the network users the over-recovery.

Article 21 is not applicable to interconnectors. Derogation will not be sought.

**CHAPTER V
PRICING OF BUNDLED CAPACITY AND CAPACITY AT VIRTUAL
INTERCONNECTION POINTS**

Article 21

Pricing of bundled capacity

1. The reserve price for a bundled capacity product shall be equal to the sum of the reserve prices for the capacities contributing to such product. The reserve prices for corresponding entry and exit capacities shall be made available when the bundled capacity product is offered and allocated by means of a joint booking platform referred to in Article 37 of Commission Regulation (EU) NEWCAM XXX.
2. The revenue originating from the bundled capacity product sales corresponding to the reserve price for such product shall be attributed to the respective transmission system operators as follows:
 - (a) after each transaction for a bundled capacity product;
 - (b) in proportion to the reserve prices for the capacities contributing to such product.
3. The auction premium originating from the bundled capacity product sales shall be attributed in accordance with the agreement between the respective transmission system operators which is subject to the approval by the national regulatory authority or authorities to be granted no later than three months before the start of the annual yearly capacity auctions. In absence of such approval by all national regulatory

authorities involved, the auction premium shall be attributed to the respective transmission system operators equally.

4. Where the interconnection point concerned connects adjacent entry-exit systems of two Member States, the respective national regulatory authorities shall submit the agreement referred to in paragraph 3 to the Agency for information.

Article 22 is not applicable to interconnectors. Derogation will not be sought.

Article 22

Pricing of capacity at a virtual interconnection point

1. The reserve price for an unbundled standard capacity product offered at a virtual interconnection point shall be calculated in accordance with either of the following approaches:
 - (a) calculated on the basis of the reference price, where the applied reference price methodology allows for taking into account the established virtual interconnection point;
 - (b) equal to the weighted average of the reserve prices, where such average is calculated on the basis of the reference prices for each interconnection point contributing to such virtual interconnection point, where the applied reference price methodology does not allow for taking into account the established virtual interconnection point, in accordance with the following formula:

$$P_{st, VIP} = \frac{\sum_i^n (P_{st, i} \times CAP_i)}{\sum_i^n CAP_i}$$

Where:

$P_{st, VIP}$ is the reserve price for a given unbundled standard capacity product at the virtual interconnection point;

i is an interconnection point contributing to the virtual interconnection point;

n is the number of interconnection points contributing to the virtual interconnection point;

$P_{st, i}$ is the reserve price for a given unbundled standard capacity product at interconnection point i ;

CAP_i is technical capacity or forecasted contracted capacity, as relevant, at interconnection point i .

2. The reserve price for a bundled standard capacity product offered at a virtual interconnection point shall be calculated as set out in Article 21(1).

BBLC's GB Charging Methodology is compliant with Article 23. Derogation will not be sought.

**CHAPTER VI
CLEARING PRICE AND PAYABLE PRICE**

Article 23

Calculation of clearing price at interconnection points

The clearing price for a given standard capacity product at an interconnection point shall be calculated in accordance with the following formula:

$$P_{cl} = P_{R,au} + AP$$

Where:

P_{cl} is the clearing price;

$P_{R,au}$ is the applicable reserve price for a standard capacity product which is published at the time when this product is auctioned;

AP is the auction premium, if any.

BBLC proposes modifications to its GB Charging Methodology to comply with Article 24.*Article 24**Calculation of payable price at interconnection points*

The payable price for a given standard capacity product at an interconnection point shall be calculated in accordance with either of the following formulas:

- (a) where the floating payable price approach is applied:

$$P_{\text{flo}} = P_{\text{R,flo}} + \text{AP}$$

Where:

P_{flo} is the floating payable price;

$P_{\text{R,flo}}$ is the reserve price for a standard capacity product applicable at the time when this product may be used;

AP is the auction premium, if any.

- (b) where the fixed payable price approach is applied:

$$P_{\text{fix}} = (P_{\text{R,y}} \times \text{IND}) + \text{RP} + \text{AP}$$

Where:

P_{fix} is the fixed payable price;

$P_{\text{R,y}}$ is the applicable reserve price for a yearly standard capacity product which is published at the time when this product is auctioned;

IND is the ratio between the chosen index at the time of use and the same index at the time the product was auctioned;

RP is the risk premium reflecting the benefits of certainty regarding the level of transmission tariff, where such premium shall be no less than 0;

AP is the auction premium, if any.

BBLC will continue the fixed payable price approach with an indexation factor and the auction premium, if any. As part of the proposed modifications to the GB Charging Methodology the Risk Premium has been included in the tariff formula to comply with Article 24. It is BBLC's intention to apply an enduring Risk Premium of 1, which will, therefore, not affect the reserve price of any capacity product.

Article 25 does not apply to interconnectors. No derogation for Article 25 will be sought.

<p style="text-align: center;"><i>Article 25</i> <i>Conditions for offering payable price approaches</i></p>	
1.	<p>Where and to the extent that the transmission system operator functions under a non-price cap regime, the conditions for offering payable price approaches shall be as follows:</p> <ul style="list-style-type: none"> (a) for cases where only existing capacity is offered: <ul style="list-style-type: none"> (i) the floating payable price approach shall be offered; (ii) the fixed payable price approach shall not be allowed. (b) for incremental capacity and existing capacity offered in the same auction or same alternative allocation mechanism: <ul style="list-style-type: none"> (i) the floating payable price approach may be offered; (ii) the fixed payable price approach may be offered where one of the following conditions is met: <ul style="list-style-type: none"> (1) an alternative allocation mechanism set out in Article 30 of Regulation (EU) 2017/459 is used; (2) a project is included in the Union list of projects of common interest as set out in Article 3 of Regulation (EU) No 347/2013 of the European Parliament and of the Council.
2.	<p>Where and to the extent that the transmission system operator functions under a price cap regime, the floating payable price approach or the fixed payable price approach, or both, may be offered.</p>

BBLC does not function under a price cap regime as defined in Article 3:

‘price cap regime’ means a regulatory regime under which a maximum transmission tariff based on the target revenue is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

BBLC also does not function under a non-price cap regime as defined in Article 3 :

‘non-price cap regime’ means a regulatory regime, such as the revenue cap, rate of return and cost plus regime, under which the allowed revenue for the transmission system operator is set in accordance with Article 41(6)(a) of Directive 2009/73/EC;

Non-revenue regulated interconnectors are not subject to any target revenue or an allowed revenue. Therefore, Article 25 is not applicable and no derogation will have to be requested in order to continue the fixed payable price approach.

BBLC seeks an enduring derogation from Article 26.1(a)(iii), 26.1(a)(iv) and 26.2.

CHAPTER VII CONSULTATION REQUIREMENTS

Article 26 *Periodic consultation*

1. One or more consultations shall be carried out by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority. To the extent possible and in order to render more effective the consultation process, the consultation document should be published in the English language. The final consultation prior to the decision referred to in Article 27(4) shall comply with the requirements set out in this Article and Article 27, and shall include the following information:
 - (a) the description of the proposed reference price methodology as well as the following items:
 - (i) the indicative information set out in Article 30(1)(a), including:
 - (1) the justification of the parameters used that are related to the technical characteristics of the system;
 - (2) the corresponding information on the respective values of such parameters and the assumptions applied.
 - (ii) the value of the proposed adjustments for capacity-based transmission tariffs pursuant to Article 9;
 - (iii) the indicative reference prices subject to consultation;
 - (iv) the results, the components and the details of these components for the cost allocation assessments set out in Article 5;
 - (v) the assessment of the proposed reference price methodology in accordance with Article 7;
 - (vi) where the proposed reference price methodology is other than the capacity weighted distance reference price methodology detailed in Article 8, its comparison against the latter accompanied by the information set out in point (iii);
 - (b) the indicative information set out in Article 30(1)(b)(i), (iv), (v);
 - (c) the following information on transmission and non-transmission tariffs:
 - (i) where commodity-based transmission tariffs referred to in Article 4(3) are proposed:
 - (1) the manner in which they are set;
 - (2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;
 - (3) the indicative commodity-based transmission tariffs;

- (ii) where non-transmission services provided to network users are proposed:
 - (1) the non-transmission service tariff methodology therefor;
 - (2) the share of the allowed or target revenue forecasted to be recovered from such tariffs;
 - (3) the manner in which the associated non-transmission services revenue is reconciled as referred to in Article 17(3);
 - (4) the indicative non-transmission tariffs for non-transmission services provided to network users;
 - (d) the indicative information set out in Article 30(2);
 - (e) where the fixed payable price approach referred to in Article 24(b) is considered to be offered under a price cap regime for existing capacity:
 - (i) the proposed index;
 - (ii) the proposed calculation and how the revenue derived from the risk premium is used;
 - (iii) at which interconnection point(s) and for which tariff period(s) such approach is proposed;
 - (iv) the process of offering capacity at an interconnection point where both fixed and floating payable price approaches referred to in Article 24 are proposed.
- 2. The final consultation prior to the decision referred to in Article 27(4) shall be open for at least two months. Consultation documents for any of the consultations referred to in paragraph 1 may require that replies submitted in response to the consultation shall include a non-confidential version suitable for publication.
- 3. Within one month following the end of the consultation, the transmission system operator(s) or the national regulatory authority, depending on the entity that publishes the consultation document referred to in paragraph 1, shall publish the consultation responses received and their summary. To the extent possible and in order to render more effective the consultation process, the summary should be provided in the English language.
- 4. The subsequent periodic consultations shall be conducted in accordance with Article 27(5).

After consulting the European Network of Transmission System Operators for Gas (hereinafter 'ENTSOG'), the Agency shall develop a template for the consultation document referred to in paragraph 1. The template shall be made available to national regulatory authorities and transmission system operators before 5 July 2017.

This article prescribed the information that has to be consulted by either the NRA or TSO before a final decision by the NRA on the consulted information and proposals is taken. Most of the Article is considered not to have any effect on merchant interconnectors: Article 26.1 contains mostly references to the reference price methodology, allowed or target revenues .

Derogation is sought for Articles 26.1(a)(iii) and (iv) and 26.2 because implementation would:

Article 37.1 (a) not facilitate efficient gas trade and competition;

If implemented the requirements of this article would require BBLC to publish commercially sensitive information and consult this with the market. For example: its costs of capital, capital expenditures, operational expenditures and incentive mechanisms and efficiency targets. This would be valuable information to owners of other merchant interconnectors and to suppliers of flexibility such as storages and LNG facilities.

In addition, if BBLC were not allowed to adjust its tariffs when market conditions warrant, this would not facilitate efficient gas trade and competition. It is in the interests of both the market and BBLC to have appropriately set tariffs. Tariffs should be high enough to ensure the long-term viability of the BBL-interconnector. And should be low enough to regularly justify the costs of new capacity bookings. In the event of a consultation and subsequent NRA decision supporting BBLC's proposals, tariffs that are fixed until the next gas year are too restrictive to facilitate gas trade in a competitive market.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

The financial viability of physical reverse flow capability on the BBL is highly dependent on forecast short-term capacity sales from trade opportunities between the TTF and NBP. If BBL is unable to adjust tariffs to better reflect these trade opportunities, this would result in a huge risk to the project. A tariff that is set too high, and is fixed for a year, is very unlikely to lead to any capacity sales. A tariff set too low could mean that a positive return on the investment may not be possible.

Existing capacity levels for forward flow capacity might need to be reconsidered if BBLC were no longer able to adjust prices. If none, or only a limited amount of capacity was sold for a lengthy period of time and if a positive capacity sales outlook is missing, BBLC would need to consider the current configuration of its facilities to ensure the company remained viable. This could include the mothballing of compressors at Anna Palowna. In that event the existing levels of technical capacity would not be maintained.

Article 37.1 (c) unreasonably distort cross-border trade;

A tariff that does not reflect market conditions and cannot be changed for up to a year could distort cross-border trade.

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

It would be unreasonable for BBLC to have to publish and consult indicative prices well in advance of the auction if suppliers of other sources of flexibility were not required to do this. They could adjust their prices based on the information BBLC provides and would still have the possibility to adjust their own tariffs whenever they deemed necessary.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

BBLC is unable to accurately forecast the price differences between the Dutch and GB wholesale gas markets. The price differences are expected to result in short-term capacity

bookings when the costs of acquiring new transport capacity are justified. We believe that under current market conditions it is unlikely that the expiring long-term capacity contracts will be replaced with significant levels of new long-term capacity bookings. For both short term and long-term capacity BBLC is not able to accurately forecast expected capacity demand and reserve prices that would need to reflect this.

As an interconnector operator BBLC has no captive customers which ensure a certain level of baseline capacity demand. The company operates in a competitive market together with other suppliers of flexibility. The future of the company is increasingly dependent on price differences between the two market it connects. In the absence of a revenue recovery mechanism, and subsequently the ability to socialize lost revenues, BBLC needs to be able to adjust tariffs to reflect market conditions.

Article 27 is about obligations for the NRA and ACER. No derogation will be sought.

Article 27

Periodic national regulatory authority decision-making

1. Upon launching the final consultation pursuant to Article 26 prior to the decision referred to in Article 27(4), the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority, shall forward the consultation documents to the Agency.
2. The Agency shall analyse the following aspects of the consultation document:
 - (a) whether all the information referred to in Article 26(1) has been published;
 - (b) whether the elements consulted on in accordance with Article 26 comply with the following requirements:
 - (1) whether the proposed reference price methodology complies with the requirements set out in Article 7;
 - (2) whether the criteria for setting commodity-based transmission tariffs as set out in Article 4(3) are met;
 - (3) whether the criteria for setting non-transmission tariffs as set out in Article 4(4) are met.
3. Within two months following the end of the consultation referred to in paragraph 1, the Agency shall publish and send to the national regulatory authority or transmission system operator, depending on which entity published the consultation document, and the Commission the conclusion of its analysis in accordance with paragraph 2 in English.

The Agency shall preserve the confidentiality of any commercially sensitive information.
4. Within five months following the end of the final consultation, the national regulatory authority, acting in accordance with Article 41(6)(a) of Directive 2009/73/EC, shall take and publish a motivated decision on all items set out in Article 26(1). Upon publication, the national regulatory authority shall send to the Agency and the Commission its decision.
5. The procedure consisting of the final consultation on the reference price methodology in accordance with Article 26, the decision by the national regulatory authority in accordance with paragraph 4, the calculation of tariffs on the basis of this decision, and the publication of the tariffs in accordance with Chapter VIII may be initiated as from the entry into force of this Regulation and shall be concluded no later than 31 May 2019. The requirements set out in Chapters II, III and IV shall be taken into account in this procedure. The tariffs applicable for the prevailing tariff period at 31 May 2019 will be applicable until the end thereof. This procedure shall be repeated at least every five years starting from 31 May 2019.

BBLC seeks an enduring derogation for Article 28.*Article 28**Consultation on discounts, multipliers and seasonal factors*

1. At the same time as the final consultation carried out in accordance with Article 26(1), the national regulatory authority shall conduct a consultation with the national regulatory authorities of all directly connected Member States and the relevant stakeholders on the following:
 - (a) the level of multipliers;
 - (b) if applicable, the level of seasonal factors and the calculations set out in Article 15;
 - (c) the levels of discounts set out in Articles 9(2) and 16.

After the end of the consultation a motivated decision shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC on the aspects referred to in points (a) to (c) of this paragraph. Each national regulatory authority shall consider the positions of national regulatory authorities of directly connected Member States.
2. The subsequent consultations shall be conducted every tariff period as from the date of the decision referred to in paragraph 1. After each consultation and as set out in Article 32(a), the national regulatory authority shall take and publish a motivated decision on the aspects referred to in paragraph 1(a), (b) and (c).
3. When adopting the decision referred to in paragraphs 1 and 2, the national regulatory authority shall take into account the consultation responses received and the following aspects:
 - (a) for multipliers:
 - (i) the balance between facilitating short-term gas trade and providing long-term signals for efficient investment in the transmission system;
 - (ii) the impact on the transmission services revenue and its recovery;
 - (iii) the need to avoid cross-subsidisation between network users and to enhance cost-reflectivity of reserve prices;
 - (iv) situations of physical and contractual congestion;
 - (v) the impact on cross-border flows;
 - (b) for seasonal factors:
 - (i) the impact on facilitating the economic and efficient utilisation of the infrastructure;
 - (ii) the need to improve the cost-reflectivity of reserve prices.

Derogation is requested for Article 28 because implementation would:

Article 37. 1 (a) not facilitate efficient gas trade and competition;

BBLC operates in a competitive market. For all the reasons described before it needs to be able to adjust prices to better reflect changing market conditions. Multipliers, seasonal factors and discounts for interruptible capacity are important instruments to adjust the tariffs for short-term capacity products.

These components are already part of BBLC's GB Charging Methodology and will be updated to include the proposed ranges as described in response to Article 13. The Charging Methodology outlines how the components lead to the reference price and the reserve prices. The actual values of the components and resulting reserve prices are published on the BBL website. This approach avoids a modification to the charging methodology at any time that the value is changed.

If BBLC were required each year to annually consult the values of the multipliers, seasonal factors the interruptible discount, or any other component that make up the reserve prices, it would no longer be possible to adjust prices quickly to meet changing market conditions. This would not facilitate efficient gas trade and competition.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

The financial viability of the installation of physical reverse flow capability on the BBL is highly dependent on expected short-term capacity sales from trade opportunities between the TTF and NBP. If BBLC were unable to quickly adjust tariffs this would lead to a huge risk for the project.

BBLC invests at its own expense and risk. This will be the case for the new reverse flow capacity and has been the case for all forward flow capacity. BBLC needs to be able to decide on the appropriate tariff levels and therefore on the value of the components that are part of the tariff formula.

Furthermore, it is not in BBLC's interest to set tariffs to a level that does not result in sufficient capacity sales to make a positive return on the investment. If the tariffs, or any components that make up the tariffs, need adjustment this needs to happen quickly without a lengthy consultation and approval process.

Article 37.1 (c) unreasonably distort cross-border trade;

We refer to the argumentation above. Tariffs that do not reflect market conditions would harm both BBLC and cross-border trade.

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

The NRAs have followed a merchant interconnector approach because of the competitive environment that the interconnectors operate in.

If BBLC were to lose the authority to decide on its multipliers, seasonal factors, discount of interruptible capacity or any other component that is used in the calculation of the reserve prices it would be placed in an unfavourable competitive position compared to storage facilities and LNG terminals who do have the ability to adjust prices quickly and at their discretion.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

Just like every other market participant, BBLC is not able to accurately forecast future price differences between the Dutch and GB wholesale gas markets. In the absence of a guaranteed regulated revenue BBLC needs to be allowed to adjust prices to changing market circumstances.

BBLC is not able to predict what appropriate multipliers and seasonal factors for the coming gas year would be. As BBLC operates at its own expense and risk in this unpredictable environment it has to be allowed to decide its reserve prices and the components that are used in the calculation of the reserve prices.

BBLC seeks an enduring derogation for Article 29 (a) and (b)(i).

CHAPTER VIII PUBLICATION REQUIREMENTS

Article 29

Information to be published before the annual yearly capacity auction

For interconnection points and, where the national regulatory authority takes a decision to apply Regulation (EU) 2017/459, points other than interconnection points, the following information shall be published before the annual yearly capacity auction in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:

- (a) for standard capacity products for firm capacity:
 - (i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;
 - (ii) the multipliers and seasonal factors applied to reserve prices for non-yearly standard capacity products;
 - (iii) the justification of the national regulatory authority for the level of multipliers;
 - (iv) where seasonal factors are applied, the justification for their application.
- (b) for standard capacity products for interruptible capacity:
 - (i) the reserve prices applicable until at least the end of the gas year beginning after the annual yearly capacity auction;
 - (ii) an assessment of the probability of interruption including:
 - (1) the list of all types of standard capacity products for interruptible capacity offered including the respective probability of interruption and the level of discount applied;
 - (2) the explanation of how the probability of interruption is calculated for each type of product referred to in point (1);
 - (3) the historical or forecasted data, or both, used for the estimation of the probability of interruption referred to in point (2).

BBLC seeks derogation from Article 29(a) and proposes an alternative implementation which is included in the proposed modifications to the GB Charging Methodology. At the latest thirty days before the annual yearly capacity auctions BBLC will publish on its website the maximum reserve prices applicable in the upcoming gas year for all capacity products. Furthermore, BBLC will publish the maximum multipliers and seasonal factors that are part of the calculation of the maximum reserve prices.

BBLC will be able to reduce the published maximum reserve prices with a minimum notice period of one week for the quarterly and monthly capacity products, 3 hours for the day-ahead capacity

product and 1 hour for the within-day capacity product. To enable this derogation is sought from Article 29(a)(iii), the justification of the NRA for the level of multipliers. As the multiplier is a means to adjust the reserve prices of the non-yearly capacity products BBLC proposes to publish its explanation for the level of the multipliers and seasonal factors on its website.

Derogation is sought for Article 29(b)(i) for the publication of the reserve prices for the interruptible capacity products until at least the end of the gas year. If BBLC were allowed to adjust reserve prices for firm capacity products during the gas year, the reserve prices for interruptible capacity products would also be adjusted.

From the introduction of the EU Network Code on Capacity Allocation Mechanisms on 1 November 2015, BBLC has offered all its available capacity on the PRISMA auction platform. The ENSTOG auction calendar is fully applicable to the auctions of BBL-capacity. The calendar provides dates for the capacity auctions and decides when the relevant information for the upcoming auction has to be made available by the TSO to the PRISMA platform. For the avoidance of doubt, BBLC does not seek derogation for the timescales of the ENTSG auction calendar or the auction process for its standardized products.

Derogation will be requested for Article 29 (a) and (b)(i) because implementation would:

Article 37. 1 (a) not facilitate efficient gas trade and competition;

BBLC operates in a competitive market. For all the reasons described before it needs to be able to adjust prices to better reflect unpredictable market conditions. Multipliers, seasonal factors and discounts for interruptible capacity products are important instruments to adjust the tariffs for non-yearly capacity products which will contribute to the efficient functioning of the gas markets.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

BBLC invests at its own expense and risk. This will be the case for the new reverse flow capacity and has been the case for all the forward flow capacity. BBLC should, therefore, be able to decide on the appropriate tariff level and on the value of the underlying components that are part of its tariff formula. Existing capacity levels could be reduced if for a lengthy period of time BBLC is no longer be able to cover its operating and capital expenditure. Investments in new capacity will be riskier if the tariffs that BBLC are allowed to charge are uncertain and fixed for the gas year.

Article 37.1 (c) unreasonably distort cross-border trade;

We refer to the argumentation above. Tariffs that do not reflect market conditions would harm both BBLC and cross-border trade.

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

It would not be in the interest of competition if BBLC were to have to consult and have approved its proposed tariffs, multipliers, seasonal factors, or any other component of its tariff formula, if its competitors did not have the same obligation Furthermore, these

competing suppliers of flexibility services have the opportunity to adjust tariffs and tariff components whenever they like.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

BBLC is not able to accurately forecast what would be appropriate firm and interruptible reserve prices for the upcoming gas year. Because BBLC operates at its own expense and risk in this unpredictable environment, it needs to be able to determine the values of the components that are part of its tariff formula.

BBLC seeks enduring derogation from Article 30.1 (a)(ii and iii), 30.1 (b)(i through v) and 30.2.

Article 30

Information to be published before the tariff period

1. The following information shall be published before the tariff period in accordance with the requirements set out in Articles 31 and 32 by the national regulatory authority or the transmission system operator(s), as decided by the national regulatory authority:
 - (a) information on parameters used in the applied reference price methodology that are related to the technical characteristics of the transmission system, such as:
 - (i) technical capacity at entry and exit points and associated assumptions;
 - (ii) forecasted contracted capacity at entry and exit points and associated assumptions;
 - (iii) the quantity and the direction of the gas flow for entry and exit points and associated assumptions, such as demand and supply scenarios for the gas flow under peak conditions;
 - (iv) the structural representation of the transmission network with an appropriate level of detail;
 - (v) additional technical information about the transmission network, such as the length and the diameter of pipelines and the power of compressor stations.
 - (b) the following information:
 - (i) the allowed or target revenue, or both, of the transmission system operator;
 - (ii) the information related to changes in the revenue referred to in point (i) from one year to the next year;
 - (iii) the following parameters:
 - (1) types of assets included in the regulated asset base and their aggregated value;
 - (2) cost of capital and its calculation methodology;
 - (3) capital expenditures, including:
 - (a) methodologies to determine the initial value of the assets;
 - (b) methodologies to re-evaluate the assets;

- (c) explanations of the evolution of the value of the assets;
 - (d) depreciation periods and amounts per asset type.
- (4) operational expenditures;
- (5) incentive mechanisms and efficiency targets;
- (6) inflation indices.
- (iv) the transmission services revenue;
- (v) the following ratios for the revenue referred to in point (iv):
 - (1) capacity-commodity split, meaning the breakdown between the revenue from capacity-based transmission tariffs and the revenue from commodity-based transmission tariffs;
 - (2) entry-exit split, meaning the breakdown between the revenue from capacity-based transmission tariffs at all entry points and the revenue from capacity-based transmission tariffs at all exit points;
 - (3) intra-system/cross-system split, meaning the breakdown between the revenue from intra-system network use at both entry points and exit points and the revenue from cross-system network use at both entry points and exit points calculated as set out in Article 5.
- (vi) where and to the extent that the transmission system operator functions under a non-price cap regime, the following information related to the previous tariff period on regarding the reconciliation of the regulatory account:
 - (1) the actually obtained revenue, the under- or over-recovery of the allowed revenue and the part thereof attributed to the regulatory account and, if applicable, sub-accounts within such regulatory account;
 - (2) the reconciliation period and the incentive mechanisms implemented.
- (vii) the intended use of the auction premium.
- (c) the following information on transmission and non-transmission tariffs, accompanied by the relevant information related to their derivation:
 - (i) where applied, commodity-based transmission tariffs referred to in Article 4(3);
 - (ii) where applied, non-transmission tariffs for non-transmission services referred to in Article 4(4);
 - (iii) the reference prices and other prices applicable at points other than those referred to in Article 29.

2. In addition, the following information shall be published with regard to transmission tariffs:

- (a) explanation of the following:

- (i) the difference in the level of transmission tariffs for the same type of transmission service applicable for the prevailing tariff period and for the tariff period for which the information is published;
 - (ii) the estimated difference in the level of transmission tariffs for the same type of transmission service applicable for the tariff period for which the information is published and for each tariff period within the remainder of the regulatory period.
 - (b) at least a simplified tariff model, updated regularly, accompanied by the explanation of how to use it, enabling network users to calculate the transmission tariffs applicable for the prevailing tariff period and to estimate their possible evolution beyond such tariff period.
3. For the points excluded from the definition of relevant points referred to in point 3.2(1)(a) of Annex I to Regulation (EC) No 715/2009, the information on the amount of forecasted contracted capacity and the forecasted quantity of the gas flow shall be published as set out in point 3.2(2) of Annex I to Regulation (EC) No 715/2009.

Implementation of Article 30.1(a)(ii) and (iii) is impossible because in the absence of a minimum baseline gas demand level like those of TSOs with directly connected customers, BBLC is unable to accurately forecast future contracted capacity and gas demand and supply scenarios under peak conditions.

Derogation is sought from Article 30.1(b)(i through v) as this would lead to the publication of commercially sensitive information. If BBLC were a revenue regulated TSO, with the possibility to socialize costs and recover disappointing revenues through a revenue reconciliation mechanism, it would make sense to publish the information described in this article. However, BBLC operates at its own expense and risk and is in competition with other suppliers of flexibility who do not have to publish commercially sensitive information.

Although BBLC does not have a tariff period, for the sake of clarity derogation is sought from Article 30.2 as it requires the publication of an explanation of differences in transmission tariffs for different tariff periods. BBLC is unable to provide any explanation except for the explanation that market conditions change over time.

Derogation is requested from Article 30.1 (a)(ii), 30.1 (b)(i through iv) and 30.2. because implementation would:

Article 37. 1 (a) not facilitate efficient gas trade and competition;

BBLC believes that the publication of commercially sensitive information and inaccurate forecasts would have an adverse effect on competition.

Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;

The requirement to publish commercially sensitive information would not contribute to a positive decision to invest in new capacity. Furthermore, if competitors of BBLC were to have access to commercially sensitive information they could use this for their own pricing decisions. This would harm BBLC and would not contribute to maintaining existing levels of

capacity. With the expiration of long term contracts and in the absence of sufficient replacement capacity bookings it is very well possible that the technical capacity of the BBL will be reduced to save costs.

Article 37.1 (c) unreasonably distort cross-border trade;

We refer to the same arguments as above. Publication of commercially sensitive information and inaccurate forecast would distort competition and cross-border trade.

Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;

We refer to the same arguments as above.

Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

Making accurate forecasts for contracted capacity may be possible for TSO with directly connected customers such as large industries, gas fired power plants and domestic consumers through the connection with regional distribution systems. It is, however, not possible for the operator of a single pipeline whose only purpose is to connect markets between two countries.

BBLC seeks an enduring derogation from Article 31.2(a).

Article 31
Form of publication

1. The information referred to in Articles 29 and 30 shall be published as set out in Article 32 via a link on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009 to the website of the respective entity.

Such information shall be accessible to the public, free of charge and of any limitations as to its use. It shall be published:
 - (a) in a user-friendly manner;
 - (b) in a clear, easily accessible way and on a non-discriminatory basis;
 - (c) in a downloadable format;
 - (d) in one or more of the official languages of the Member State and, unless one of the official languages of the Member State is English, to the extent possible, in English.
2. The following information shall be published for interconnection points on the platform referred to in point 3.1.1(1)(h) of Annex I to Regulation (EC) No 715/2009:
 - (a) at the same time as set out in Article 29, the reserve prices for standard capacity products for firm capacity and for standard capacity products for interruptible capacity;
 - (b) at the same time as set out in Article 30, a flow-based charge referred to in Article 4(3)(a), where applied.
3. The information referred to in paragraph 2 shall be published in the following manner:
 - (a) as set out in paragraph 1(a) to (c);
 - (b) in English;
 - (c) in a standardised table *which shall include at least the following information*:
 - (i) the interconnection point;
 - (ii) the direction of the gas flow;
 - (iii) the names of the relevant transmission system operators;
 - (iv) the start and the end time of the product;
 - (v) whether the capacity is firm or interruptible;
 - (vi) the indication of the standard capacity product;
 - (vii) the applicable tariff per kWh/h and per kWh/d in the local currency and in the euro taking into account the following:
 - (1) where the applied capacity unit is kWh/h, the information on the applicable tariff per kWh/d shall be non-binding, and vice versa;
 - (2) where the local currency is other than the euro, the information on the applicable tariff in euro shall be non-binding.

In addition, at the same time as set out in Article 30, such standardised table shall include the simulation of all the costs for flowing 1 GWh/day/year for each interconnection point in the local currency and in the euro subject to point vii(2).

4. Where the information referred to in paragraph 2 is different from the respective information referred to in paragraph 1, the respective information referred to in paragraph 1 shall prevail.

Derogation from Article 31.2(a) is sought because it requires publication of reserve prices for firm and interruptible standardized capacity products at the same time as publication of the requirements of Article 29. Instead, BBLC wishes to follow the notification periods that are included in its proposed modifications to its GB Charging Methodology. A minimum notice period of one week is proposed for the quarterly and monthly capacity products, 3 hours for the day-ahead capacity product and 1 hour for the within-day capacity product.

Derogation will be requested for Article 31.2(a) because it is linked to Articles 29 and 30 and implementation would:

- Article 37.1 (a) not facilitate efficient gas trade and competition;
- Article 37.1 (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;
- Article 37.1 (c) unreasonably distort cross-border trade;
- Article 37.1 (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;
- Article 37.1 (e) not be implementable when taking into account the specific nature of interconnectors.

For the same reasons as outlined by Articles 29 and 30.

BBLC does not seek derogation from Article 32.

Article 32
Publication notice period

The deadline for the publication of the information set out in Articles 29 and 30 shall be as follows:

- (a) for the information set out in Article 29, no later than thirty days before the annual yearly capacity auction;
- (b) for the information set out in Article 30, no later than thirty days before the respective tariff period;
- (c) for the respective transmission tariffs updated within the tariff period as set out in Article 12(3), immediately after the approval in accordance with Article 41(6)(a) of Directive 2009/73/EC.

Each update of the transmission tariffs shall be accompanied by information indicating the reasons for the changes in their level. Where Article 12(3)(b) is applied, it shall also be accompanied by the updated report referred to in Article 29(b) for the respective types of standard capacity products for interruptible capacity.

Derogation will not be sought from Article 33.

CHAPTER IX INCREMENTAL CAPACITY

Article 33

Tariff principles for incremental capacity

1. The minimum price at which transmission system operators shall accept a request for incremental capacity is the reference price. For the calculation of the economic test, reference prices shall be derived by including into the reference price methodology the relevant assumptions related to the offer of incremental capacity.
2. Where the fixed payable price approach set out in Article 24(b) is considered to be offered for incremental capacity, the reserve price referred to in Article 24(b) shall be based on projected investment and operating costs. Once the incremental capacity is commissioned, such reserve price shall be adjusted proportionally to the difference, irrespective whether positive or negative, between the projected investment costs and the actual investment costs.
3. In case the allocation of all incremental capacity at the reference price would not generate sufficient revenues for a positive economic test outcome, a mandatory minimum premium may be applied in the first auction or alternative allocation mechanism in which the incremental capacity is offered. The mandatory minimum premium may also be applied in subsequent auctions when the capacity is offered that initially remained unsold or when capacity is offered that was initially set aside according to Article 8(8) and (9) of Commission Regulation No (EU) 2017/459. The decision on whether and in which auctions to apply a mandatory minimum premium shall be taken in accordance with Article 41(6)(a) of Directive 2009/73/EC.
4. The level of the mandatory minimum premium shall enable a positive economic test outcome with the revenues generated by the offered capacity in the first auction or alternative allocation mechanism in which the incremental capacity is on offer. The range of the level for the mandatory minimum premium, depending on the expected allocated capacity, shall be submitted to the relevant national regulatory authorities for in accordance with Article 25(1)(c) of Regulation (EU) 2017/459.
5. A mandatory minimum premium approved by the national regulatory authority shall be added to the reference price for the bundled capacity products at the respective interconnection point and shall exclusively be attributed to the transmission system operators for which the mandatory minimum premium was approved by the respective national regulatory authority. This default principle for the attribution of a mandatory minimum premium is without prejudice to the split of a possible additional auction premium according to Article 21(3) or an alternative agreement between the involved national regulatory authorities.

Derogation will not be sought from Article 34.

CHAPTER X
FINAL AND TRANSITIONAL PROVISIONS

Article 34

*Methodologies and parameters used to determine the allowed or target revenue of
transmission system operators*

1. Before 6 April 2019, the Agency shall publish a report on the methodologies and parameters used to determine the allowed or target revenue of transmission system operators. The report shall be based on at least the parameters referred to in Article 30(1)(b)(iii).
2. National regulatory authorities shall submit to the Agency, in accordance with the process defined by the Agency, all necessary information related to the methodologies and parameters used to determine the allowed or target revenue of transmission system operators.

Derogation will not be sought from Article 35.*Article 35*
Existing contracts

1. This Regulation shall not affect the levels of transmission tariffs resulting from contracts or capacity bookings concluded before 6 April 2017 where such contracts or capacity bookings foresee no change in the levels of the capacity- and/or commodity-based transmission tariffs except for indexation, if any.
2. The contract provisions related to transmission tariffs and capacity bookings referred to in paragraph 1 shall not be renewed, prolonged or rolled over after their expiration date.
3. Before 6 May 2017, a transmission system operator shall send the contracts or the information on capacity bookings, if any, referred to in paragraph 1 to the national regulatory authority for information.

Derogation will not be sought from Article 36.*Article 36*
Implementation monitoring

1. In order to assist the Agency in its monitoring duties pursuant to Article 9(1) of Regulation (EC) No 715/2009, ENTSOG shall monitor and analyse in accordance with Article 8(8) and (9) of Regulation (EC) No 715/2009 how transmission system operators have implemented this Regulation. In particular, ENTSOG shall ensure the completeness and correctness of all relevant information to be provided by transmission system operators. ENTSOG shall submit to the Agency that information in accordance with the following deadlines:
 - (a) 31 March 2018 as regards the requirements under Chapter VIII;
 - (b) 31 March 2020 as regards all other provisions of this Regulation.
2. Transmission system operators shall submit to ENTSOG all information required by ENTSOG to comply with its obligations pursuant to paragraph 1, in accordance with the following deadlines:
 - (c) 31 December 2017 as regards the requirements under Chapter VIII;
 - (d) 31 December 2019 as regards all other provisions of this Regulation.
3. The implementation monitoring cycle as set out in paragraphs 1 and 2 shall be repeated in forthcoming years subject to corresponding requests from the Commission.
4. The confidentiality of commercially sensitive information shall be preserved by ENTSOG and the Agency.
5. Within three years as from the entry into force of this Regulation, the Agency shall publish a report on the application of reference price methodologies in Member States.

Derogation will not be sought from Article 37.

Article 37
Power to grant derogations

1. National regulatory authorities may, at the request of an entity which operates an interconnector that has benefited from an exemption from Article 41(6), (8) and (10) of Directive 2009/73/EC in accordance with Article 36 of that Directive or a similar exemption, jointly grant such entity a derogation from the application of one or more Articles of this Regulation in accordance with paragraphs 2 to 6 of this Article where the application of those Articles to such entity would have one or several of the following negative consequences. It would:
 - (a) not facilitate efficient gas trade and competition;
 - (b) not provide incentives for investment for new capacity or to maintain existing levels of capacity;
 - (c) unreasonably distort cross-border trade;
 - (d) distort competition with other infrastructure operators that offer services of a similar nature to those of the interconnector;
 - (e) not be implementable when taking into account the specific nature of interconnectors.
2. The entity requesting a derogation under paragraph 1 shall include in its request a detailed reasoning, with all supporting documents, including, where appropriate, a cost-benefit analysis, demonstrating that one or more of the conditions in paragraph 1(a) to (e) are complied with.
3. The national regulatory authorities concerned shall jointly assess the request for a derogation and deal with it in close cooperation. Where the relevant national regulatory authorities grant a derogation, they shall specify its duration in their decisions.
4. The national regulatory authorities shall notify their decisions granting such derogations to the Agency and the Commission.
5. The national regulatory authorities may revoke a derogation if the circumstances or underlying reasons, or both, no longer apply or upon a reasoned recommendation of the Agency or the Commission to revoke a derogation due to a lack of justification.

Derogation will not be sought from Article 38.

Article 38
Entry into force

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply as from entry into force.
3. However, Chapters VI and VIII shall apply as from 1 October 2017. Chapters II, III and IV shall apply as from 31 May 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.