



Ruling Chamber 7

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Ruling Chamber 7 – Position paper

Principles of capacity relocation within the Trading Hub Europe market area

1. Introduction

Relocating capacity within a market area is a reliable means for transmission system operators (TSOs) to exercise their responsibility for the operation of the system and management of capacity. However, there is a lack of legal provisions specifying the principles and processes of capacity relocation, leading to repeated legal uncertainties and a lack of transparency in practice. Past experience has shown that both German and non-German market participants need a great deal of explanation and information on this issue.

This position paper is intended to act as a guide to the capacity relocation process for TSOs as well as providing an overview of the process for other market participants. It should improve transparency and help to create a common basis of understanding. However, this paper does not constitute regulation. While it puts forward the legal opinion of the ruling chamber, it is not a determination within the meaning of section 29(1) of the German Energy Industry Act (EnWG). It is not suited to reassessing matters concluded in the past, nor is it intended to restrict the discretion of the Bundesnetzagentur in determination and supervisory proceedings.

Capacity relocation was the subject of an issue raised on the European Gas Network Codes Functionality Platform (FUNC issue 04/2019, Issue ID 605-19-08-30-0927). The solution note of the Agency for the Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators for Gas (ENTSOG), dated 4 June 2020, acknowledges that capacity relocations are essentially permissible. It formulates criteria and principles that are to be

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observed by the TSOs in this process.¹ The findings of the FUNC issue have been taken into consideration in this position paper.

In this position paper, "capacity relocation" is taken to mean the reduction of the designated or provided technical capacity at a network point of the market area Trading Hub Europe (THE) with the purpose of increasing the designated or provided technical capacity at another network point of the THE market area. "Network point" in this context is a bookable entry or exit point (cross-border interconnection point, virtual interconnection point, storage connection point, network connection point), an entry or exit zone or a network connection point at which internal orders from downstream operators are carried out.

2. Legal framework for capacity relocations

TSOs are required to maximise technical capacity. The aim of European and national legislation is to offer network users the largest possible amount of capacity (see Article 16(1) of Regulation (EC) No 715/2009,² Article 6(1) of Regulation (EU) 2017/459,³ section 20(1b) sentence 8 EnWG, section 9(2) sentence 3 of the Gas Network Access Ordinance (GasNZV). For this reason, the legislation contains wide-ranging cooperation requirements for TSOs in the German market area, complemented by European provisions for cooperation among TSOs across market areas (across borders).

TSOs are further obliged to enhance, reinforce and expand the network in line with requirements in order to guarantee security of supply and a secure and reliable network operation (see sections 11(1) and 15a(1) sentence 2 EnWG). Pursuant to section 17 GasNZV, the TSOs have to identify the long-term capacity requirements in the market area, taking account of the findings from the Community-wide network development plans as set out in Article 8(3)(b) of Regulation (EC) No 715/2009.

Given this legal framework, capacity relocation may be regarded as a permissible, and, under certain circumstances, even as a legally required tool for TSOs. The requirements to maximise capacity and identify long-term capacity demand do not have to be met by TSOs just once when the market area is created, but permanently/continuously as part of their supply obligations. The capacity provision at individual network points should therefore also be regarded not as static but as dynamic, ie, subject to change over time. If demand at a particular network point increases, the TSOs must consider the measures necessary to increase capacity and, where necessary, take them in order to permit the greatest possible extent of network access.

Higher capacity demand at a network point may therefore be a reason to relocate capacity. As far as is technically possible, TSOs must always base their decisions and actions on the non-

¹ Available at <https://www.gasncfunc.eu/gas-func/issues/04/2019/documents>.

² Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

³ Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013.

discriminatory handling of network access requests (see section 20(1) EnWG, Article 14(1) of Regulation (EC) No 715/2009). The legal requirements of section 2(1) EnWG in conjunction with section 1(1) EnWG must also be observed, in particular the aim of providing an energy supply that is as secure, low-priced and efficient as possible.

There are different types of capacity relocation affecting different combinations of network points. Where the network allows, it is possible to relocate capacity not only between the same type of network point (ie from one cross-border interconnection point to another, one network connection point to another, etc) but also between different types of network point, such as from a cross-border interconnection point to a network connection point or vice versa, or between a cross-border interconnection point and a connection point for internal orders or vice versa. Relocations are not limited to the network of the respective TSO but are also to be considered across networks within the market area as part of the TSOs' duty of cooperation.

The table below shows the details of the different entry and exit points of the TSOs at which capacity could be relocated:

	Entry/exit points of transmission systems			
	Network access			Network operator cooperation (no bookable points for shippers)
	Cross-border interconnection point	Storage connection point	Network connection point	Internal order
	<ul style="list-style-type: none"> Interconnection points (Article 2 Regulation (EU) 2017/459) Entry/exit points from and to third countries 		<ul style="list-style-type: none"> Gas power plants LNG terminals Production Other final customers 	Network connection points and exit zones to distribution systems
Capacity provided to:	Shippers	Shippers	Shippers	Downstream DSOs
Capacity provided via:	Capacity allocation auctions as per Regulation (EU) 2017/459	Capacity allocation auctions as per Regulation (EU) 2017/459	Capacity allocation first-come-first-served as per section 13 GasNZV	Internal order as per sections 11f et seq main part KoV
Charges	Reference price methodology	Reference price methodology	Reference price methodology	Reference price methodology
Competing marketing as per Regulation (EU) 2017/459	+	+	-	-

3. Principles of capacity relocation

Any relocation of capacity must always be in line with demand. Capacity may be relocated permanently or temporarily. Only available capacity within the meaning of section 2 para 14 GasNZV/Article 2(1) point 20 of Regulation (EC) No 715/2009 can be relocated.

3.1. Reason: unmet demand for capacity at a location in the market area

TSOs must consider capacity relocation where an increase in the designated or provided technical capacity at a network point in the market area is necessary to offer enough capacity to meet demand.

TSOs are to determine whether there is increased capacity demand at a network point using objective analyses and transparent forecasts in accordance with the legal provisions. Indications of increased capacity demand at a network point may be provided by, in particular:

- requirements established pursuant to section 17 GasNZV in the course of the (latest) scenario framework pursuant to section 15a(1) sentence 4 EnWG,
- demand from adjacent market areas,
- current or forecast excess demand for capacity,
- past internal orders pursuant to section 8(3) GasNZV/section 11 point 5 et seq of the main part of the Cooperation agreement between the operators of gas supply networks in Germany (KoV) that were not permanently firm or only accepted as interruptible,
- internal orders that will be higher in the future,
- capacity reservations or reservation requests pursuant to section 38 GasNZV or connection requests pursuant to section 39 GasNZV,
- a change in the supply commitments, or
- other dynamic, sometimes non-yearly, effects on capacity demand.

Where there is a reason for the TSOs to consider a capacity relocation with the purpose of increasing the technical capacity at a network point with increased capacity demand, such cases may be divided into two groups:

3.2. Case group 1: excess capacity at another location in the market area

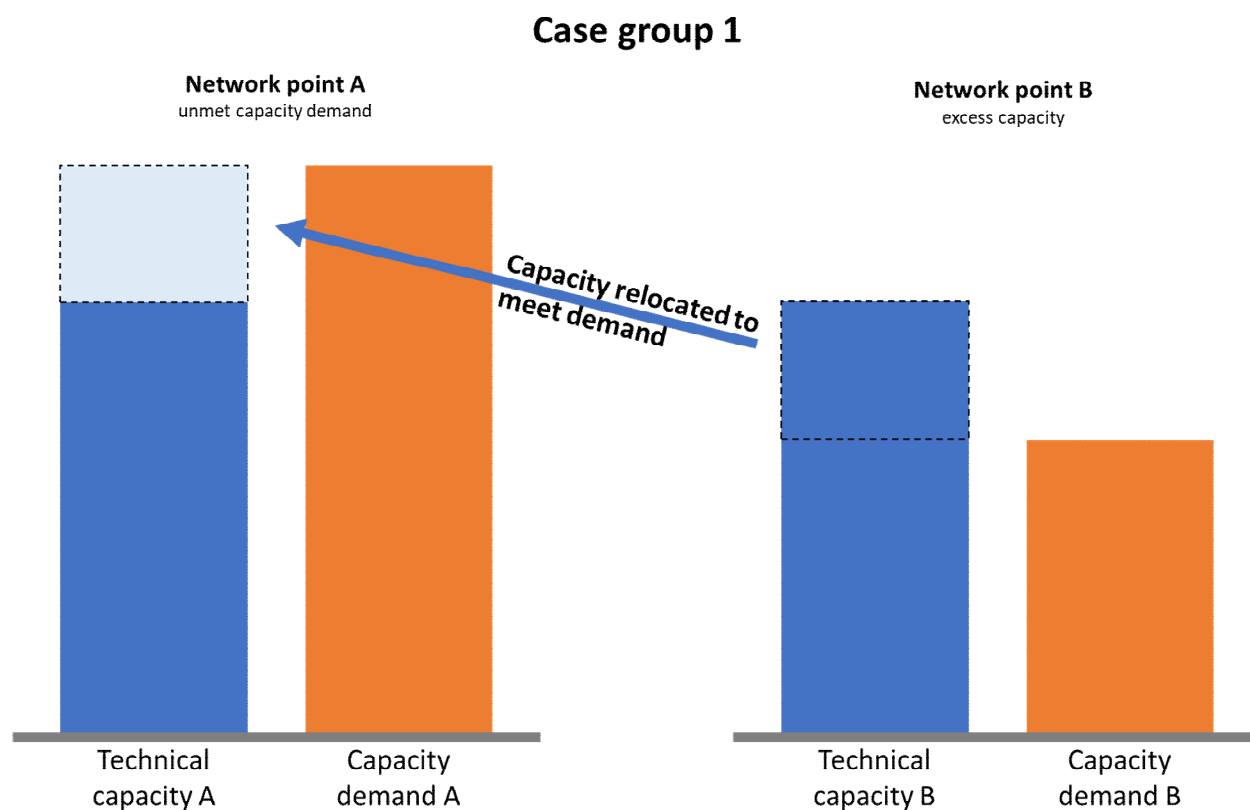
In the first group, it may be assumed that there is excess capacity somewhere else in the market area, ie at one or more other network points.

The TSOs' general obligation to maximise capacity may lead to excess capacity at one or more network points in the market area. It may be assumed that there is excess capacity if the amount of capacity provided at an entry/exit point for the purpose of efficient network operation is not needed to fulfil current or future supply commitments in the system or market area or an adjacent system or market area, or to secure or enable necessary flows/requested gas transports at that network point.

The TSOs must, in compliance with the legal provisions on the determining of technical capacity (section 9(1) and (2) GasNZV, Article 6 Regulation (EU) 2017/459), use past and forecast utilisation and past and forecast demand to examine whether there is excess capacity at another location in the market area. Indications of excess capacity may be provided by, in particular:

- requirements established pursuant to section 17 GasNZV in the course of the (latest) scenario framework as set out in section 15a(1) sentence 4 EnWG,
- demand from adjacent market areas,
- no/low demand for capacity in the past or no/low demand forecast for the future,
- no/low use of booked capacity in the past or no/low use forecast for the future,
- no/low flows in the transport direction in the past or no/low flows in the transport direction forecast for the future,
- a change in the supply commitments,
- internal orders that will be lower in the future, or
- other dynamic, sometimes non-yearly, effects on the capacity demand.

Where there is a case from group 1, it is in principle assumed that the capacity not needed at another location in the market area should be relocated to the entry/exit point in the amount required to satisfy the unmet demand. Additional network access requests pursuant to section 20(1) EnWG/Article 14(1) of Regulation (EC) No 715/2009 can thus be met. There would therefore be no shortage of capacity within the meaning of section 20(2) EnWG, which would justify a refusal of network access.



In the event of a case from group 1, it is not only the TSO in whose system there is identified unmet demand for capacity that faces obligations. If there is not sufficient excess capacity in the system of that TSO, excess capacity at entry/exit points of the systems of other TSOs in the market

area must also be used in the process of relocating capacity to meet demand. These other TSOs are also required to relocate capacity across systems or owners as far as technically feasible and economically reasonable and within the framework of the cooperation prescribed by law (section 20(1b) sentences 5 to 8 EnWG). This is the only way to meet the legal requirements to maximise capacity and provide capacity in line with demand in the market area.

The complete process of relocation in these cases thus consists of (a) reducing technical capacity at entry/exit points where there is excess capacity, (b) increasing technical capacity at the network point where there is hitherto unmet demand and, where necessary, (c) the TSOs involved agreeing on the amount of technical capacity at connection points within the market area managed exclusively between themselves as required for the relocation.

Legal interests of the TSOs or other network users remain unaffected:

- The capacity relocation will in principle be economically reasonable for the relocating TSO, provided there is an applicable market area-wide uniform tariff and a compensation mechanism. Given the reference price methodology⁴ applicable market area-wide and the determined compensation mechanism,⁵ relocation of capacity has no significant effect on the revenue caps of the TSOs or on the capacity charges to be paid by network users.
- The reduction of technical capacity caused by relocation at a network point in the amount that it is not required does not lead to a negative impact on or impermissible refusal of network access requests within the meaning of section 20(1) EnWG/Article 14(1) of Regulation (EC) No 715/2009.
- Expanding the network as an alternative to relocating capacity does not come into consideration owing to the aim of a low-cost and efficient energy supply set out in section 1(1) EnWG, providing that demand in the network/market area can be fully and permanently met by relocating capacity.

3.3. Case group 2: competing demand at another location in the market area

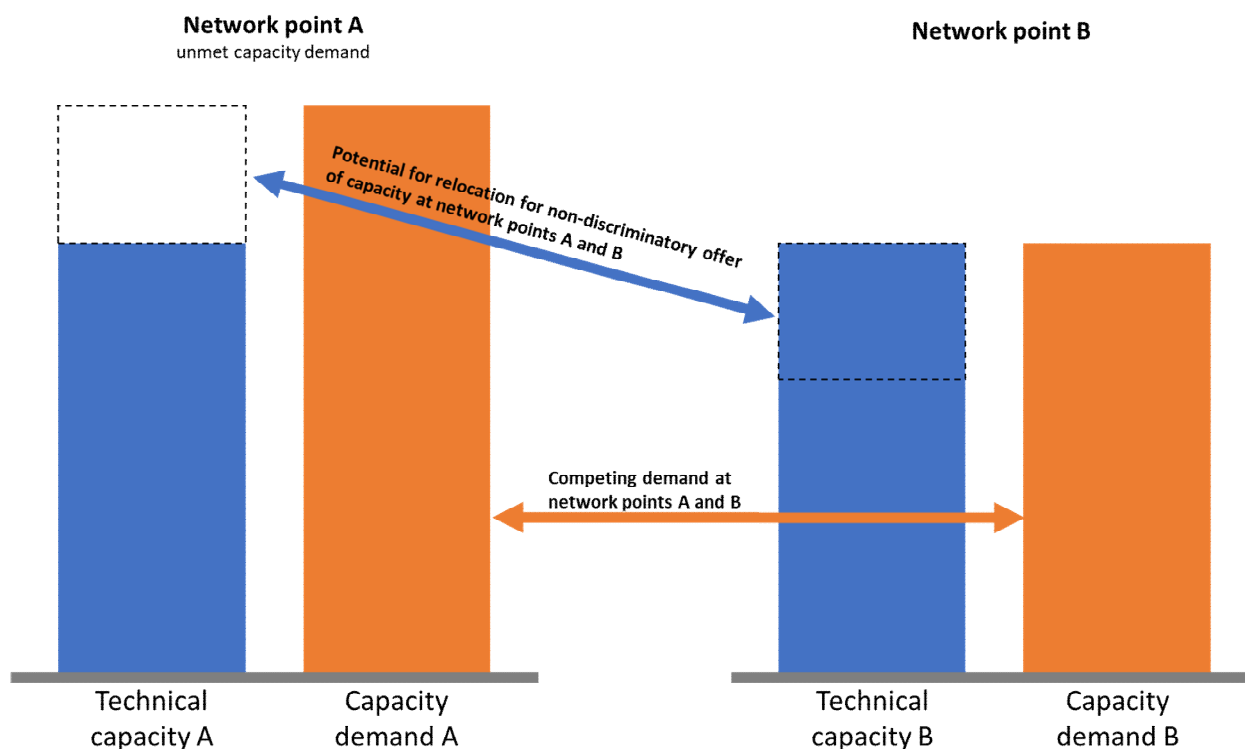
The second group of cases concerns the situation in which it may be assumed that there is no excess capacity at another location in the market area because the capacity provided there is actually needed to meet existing demand and corresponding transport requests. If the capacity in question could technically also be provided at the network point where there is increased capacity

⁴ Determination of Ruling Chamber 9 of 11 September 2020 concerning the periodic decision-making regarding the reference price methodology (BK9-19/610 - REGENT 2021).

⁵ Determination of Ruling Chamber 9 of 11 September 2020 concerning the introduction of an effective inter-transmission system operator compensation mechanism within the single German market area (BK9-19/607 - AMELIE 2021).

demand, it may be assumed that there is competing demand or competing network access requests within the meaning of section 20(1) EnWG/Article 14(1) of Regulation (EC) No 715/2009 at the different network points. It is therefore clear that this competing demand and these competing requests cannot be fully and permanently met by relocating capacity.

Case group 2



In such cases, capacity relocations come into consideration – including across networks and owners where technically feasible and economically reasonable – to the extent and for as long as demand in the market area cannot be met by suitable expansion measures. As a priority, a competing capacity allocation must also be considered:

- TSOs must assess whether, and to what extent, they are required to enhance, reinforce or expand the network in line with demand as set out in sections 11(1) and 15a(1) sentence 2 EnWG. At present, in such cases only the physical expansion of the network can create a situation in which all competing demand and network access requests in the market area can be fully and permanently met.⁶

Capacity relocation thus only comes into consideration if, in a specific case, it is not possible to expand the network to meet demand for legal or practical reasons, or relocation may be carried out temporarily until such time as a planned network expansion or maintenance measure has been implemented.

⁶ In future, a possible alternative to the physical expansion of the network may also be the use of market-based instruments, provided these have proven effective within the framework of the oversubscription and buy-back scheme approved in the decision of 25 March 2020 (BK7-19-037 "KAP+").

- TSOs must also examine the legal and actual possibility of a competing capacity allocation between the different network points. Where possible, a competing capacity allocation takes priority over a capacity relocation.

In accordance with Article 8(2) sentence 3 second half-sentence of Regulation (EU) 2017/459, in derogation from the principle that allocation must be carried out in auction processes that are independent of each other, competing capacity can also be allocated competitively subject to the agreement of the directly involved transmission system operators and the approval of the relevant authorities. This means that capacity is offered simultaneously at different network points of the technical competition zone but can only be allocated once. The capacity is allocated at the network point at which network users show the greatest willingness to pay in the course of the auctions. Unlike in the case of capacity relocation, with competing allocation the TSOs do not decide on an ex ante division of the available capacity among the competing network points. The competing capacity allocation thus ensures that competing network access requests are dealt with in a non-discriminatory manner. It is not limited to the network of a single TSO but should also be carried out across networks within a market area in accordance with the legal requirements. The current legal framework permits competing capacity allocation at network points at which capacity is allocated using auctions, ie at cross-border interconnection points, VIPs, network points to third countries⁷ and, in accordance with section 13(1) sentence 4 GasNZV, at network points to storage facilities.

Where capacity relocation comes into consideration in case group 2, it can be a suitable and, in some cases, necessary means of meeting competing demand and requests between different network points in a lawful manner. TSOs must base their decisions and actions on the legal requirement to handle network access requests in a non-discriminatory manner (see section 20(1) EnWG, Article 14(1) of Regulation (EC) No 715/2009).

Whether, to what extent and for how long capacity is to be relocated between network points in this group in order to handle network access requests in a non-discriminatory manner must be decided by the TSOs individually or in cooperation on a case-by-case basis. They must assess the different demands in accordance with the legal requirements, in particular with regard to security of supply in their own market area (section 11(1) EnWG) and in adjacent European market areas (see Regulation (EU) 2017/1938).⁸ They must examine whether, and to what extent, the

⁷ Article 2(1) sentence 2 of Regulation (EU) 2017/459 and Ruling Chamber 7 Determination of 14 August 2015 adjusting capacity rules in the gas sector (BK7-15-001 - KARLA Gas 1.1).

⁸ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010.

competing network access requests are to be treated equally under the legal provisions or if unequal treatment is objectively justifiable or legally required:

- If legal provisions require demand or network access requests to be prioritised, eg for reasons of security of supply to protect final customers and protected customers (section 11(1) and 53a EnWG, Regulation (EU) 2017/1938), TSOs must take these circumstances into account as far as possible by relocating capacity accordingly.
- Where demand or network access requests are to be regarded as legally equal, capacity relocation comes into consideration to provide the available capacity at competing network points equally. Where this is not done and capacity that must be allocated in accordance with Regulation (EU) 2017/459 comes into consideration for relocation, the TSOs must make clear ahead of the next auctions that this capacity can be relocated to another point to meet demand in the event that it is not booked. In such cases it may be assumed that relocation is mandatory if capacity at a network point is offered to the market again and still not booked even after a notification that relocation could take place if there is no booking.

Where capacity relocation takes place under these circumstances, the other legal provisions concerning the offer of capacity must also be complied with. That means that the proportion of capacity that needs to remain at the former network point to fulfil the legally required reserve quotas must be removed from the relocation (see Article 8(6) to (8) of Regulation (EU) 2017/459). Under the current legal framework, there are provisions concerning reserve quotas for cross-border interconnection points, VIPs, network points to third countries⁹ and network points to storage facilities¹⁰.

TSOs must be able to show objective reasoning and transparency in their decision-making processes for the relocation of capacity. This applies both to decisions to carry out capacity relocations (in particular with regard to their duration and scope) and to decisions not to relocate capacity in individual cases. Where a decision leads to the full or partial refusal of network access requests, the requirements of section 20(2) EnWG must be observed.

4. The capacity relocation process

TSOs must ensure that the process of relocating capacity is as uniform and transparent as possible.

⁹ Ruling Chamber 7 Determination of 14 August 2015 adjusting capacity rules in the gas sector (BK7-15-001 - KARLA Gas 1.1).

¹⁰ See section 13(1) sentence 4 GasNZV in conjunction with Article 8(6) to (9) of Regulation (EU) 2017/459 and Ruling Chamber 7 Determination of 6 December 2018 concerning the approval of reserve quotas for the allocation of capacity at entry points to and exit points from storage facilities (BK7-18-087 – supplement to BK7-15-001, KARLA Gas 1.1).

The ruling chamber is to be notified of planned or assessed and refused capacity relocations by the TSOs involved at an early stage, where possible. A uniform, standardised method should be used to do this. The notification must contain the key data of the planned or assessed and refused measure, in particular the names of the relevant network points, the scope and duration of the measure, and a comprehensible justification of the decision on the capacity relocation that is or is not to be carried out. These requirements would be fulfilled, from the point of view of the ruling chamber, by submitting the notification form for assessed capacity relocations provided as an annex to this position paper.

Network operators affected by capacity relocations in their own market area or adjacent European market areas should be involved in the decision-making process at an early stage, particularly in the case of long-term capacity relocations (a gas year or longer), and their interests and concerns should be given appropriate consideration.

If cross-border interconnection points and/or VIPs are affected by a capacity relocation, the TSOs should also ensure that the adjacent regulatory authority or authorities is/are informed. The content of the above-mentioned notification form may be suitable for this purpose, but the information could also be sent via the adjacent network operator. If the parties concerned are of the opinion that, in the specific case of relocation, there is a need for further talks and coordination, the TSOs must make sure that such a meeting, attended by the relevant network operators and regulatory authorities, can take place based on the framework given in the solution note of ACER and ENTSOG in the FUNC process (ID 605-19-08-30-0927). The ruling chamber assumes that such coordination will mostly be necessary in the event of long-term capacity relocations.

Finally, the market is also to be informed by a publication or communication ahead of a capacity relocation so that market participants can adjust to the upcoming change in the capacity situation in good time. If capacity is first to be offered again at the current network point and only relocated in the event that it is not booked, an announcement of this should be made in good time ahead of the capacity allocation process as part of the general publication requirements for capacity to be marketed. In the event of auctions via a capacity booking platform, the corresponding auction notifications should also be made ahead of the relevant auctions.