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COMMISSIE VOOR DE REGULERING VAN DE ELEKTRICITEIT EN HET GAS

DECISION

(B)151009-CDC-1465

on

“The Access Agreement Proposal with IUK, Access Code with IUK and System User Agreement for access to the Zeebrugge - Bacton interconnector, submitted by Interconnector (UK) Limited”

Taken pursuant to Article 41.6, c) of Directive 2009/73 of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and Articles 15/7 and 15/14, § 2, second paragraph, 6°, of the Law of 12 April 1965 regarding pipeline transmission of gaseous and other products.

9 oktober 2015

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I. INTRODUCTION

Pursuant to Article 41.6, c) of the Directive of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and Articles 15/7 and 15/14, § 2, second paragraph, 6°, of the Law of 12 April 1965 regarding pipeline transmission of gaseous and other products, the COMMISSION FOR THE REGULATION OF ELECTRICITY AND GAS (CREG) assesses below the Access Agreement Proposal with IUK, Access Code with IUK and the System User Agreement for access to the Zeebrugge - Bacton interconnector.

Interconnector (UK) Limited submitted the documents in writing on 13 July 2015 to CREG with proof of receipt. The consultation report and summary of the Access Agreement with IUK were enclosed with the letter.

Interconnector (UK) Limited submitted the Dutch version of the System User Agreement for access to the Zeebrugge – Bacton to CREG in a letter of 14 August 2015 with proof of receipt.

On 21 August 2015 Interconnector (UK) Limited submitted an amended version of the Access Agreement with IUK and Access Code with IUK for access to the Zeebrugge – Bacton interconnector with proof of receipt. The amendments are the result of the addition of a new reshuffling service. The consultation report was enclosed with the letter.

Besides the lexicon, this decision has 5 parts: this introduction, the legal framework of this decision, its antecedents, the evaluation of the submitted documents and the decision.

The CREG Executive Committee took this decision at its meeting of 9 October 2015.

LEXICON

‘CREG’: the Commission for the Regulation of Electricity and Gas, a federal independent organism established under Article 23 of the Law of 29 April 1999 on the organisation of the electricity market

‘IUK’: UK company Interconnector (UK) Limited certified by CREG on 11 July 2013

‘Gas Law’: the Law of 12 April 1965 on the pipeline transmission of gaseous and other products, amended last by the Law of 8 July 2015

‘Directive 2009/73’ of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC.

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

‘NC BAL’: Commission Regulation 312/2014 of 26 March 2014 establishing a network code on gas balancing of transmission networks

‘NC CAM’: Commission Regulation 984/2013 of 14 October 2013 establishing a network code on capacity allocation mechanisms in gas transmission systems and supplementing Regulation (EC) No. 715/2009 of the European Parliament and of the Council

‘Code of conduct’: Royal Decree of 23 December 2010 on the code of conduct for access to the natural gas transmission system, the natural gas storage facility and the LNG facility and amending the Royal Decree of 12 June 2001 on the general terms and conditions for the supply of natural gas and the conditions of granting natural gas supply permits.

‘IAA’: the Access Agreement with IUK

‘IAC’: the Access Code with IUK

‘SUA’: the System User Agreement

‘TSO’: Transmission System Operator

‘ISIS’: Interconnector Shippers Information System

‘STA’: Standard Transport Agreement

II. LEGAL FRAMEWORK

II.1 European Law

1. Article 2, paragraph 4 of Directive 2009/73 defines 'transmission system operator' as follows: "natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of gas"

2. Article 39, paragraph 1 of Directive 2009/73 states that: "Each Member State shall designate a single national regulatory authority at national level." In Belgium this authority is CREG and in the UK it is Ofgem.

3. Article 10, paragraph 1 of Directive 2009/73 states that: "Before an undertaking is approved and designated as transmission system operator, it shall be certified according to the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 3 of Regulation (EC) No.

Pursuant to this article, IUK was certified by CREG in a decision on 13 July 2013¹ and by Ofgem on 21 May 2013².

4. Article 41, paragraph 6 of Directive 2009/73 states that: "The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the conditions for:

(c) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.

5. Article 41, paragraph 9 of Directive 2009/73 continues: "The regulatory authorities shall monitor congestion management of national gas transmission networks including interconnectors, and the implementation of congestion management rules. To this end, the transmission system operators or market operators shall present their congestion

¹ Final decision (B)130711-CDC-1236 about "the certification application by Interconnector (UK) Limited"

² Certification decision of 21 May 2013: <https://www.ofgem.gov.uk/ofgem-publications/59214/certification-decision-interconnector-uk-limited-iuk.pdf>

management procedures, including capacity allocation, to the national regulatory authorities for approval. The national regulatory authorities can request amendments to these procedures.”

6. In accordance with Articles 42, paragraph 1, and 42, paragraph 2, a) and c) of Directive 2009/73 the regulatory authorities should work together on cross-border issues.

7. Regulation 715/2009 aims to establish additional non-discriminatory rules on access conditions for natural gas transmission systems to ensure the good operation of the internal gas market and to provide mechanisms to harmonise the network access rules for cross-border gas exchange. This includes the definition of harmonised principles on the establishment of third-party access services, the establishment of harmonised principles on capacity allocation and congestion management, the definition of transparency requirements, balancing rules and the promotion of capacity trading³

8. According to Article 12, paragraph 2 of Regulation 715/2009 TSOs promote operational arrangements in order to ensure the optimum management of the network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non- discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations and the integration of balancing mechanisms.

9. In particular, Article 14 of Regulation 715/2009 on third-party access services states that TSOs:

- a) “Ensure that they offer services on a non-discriminatory basis to all network users;
- b) Provide both firm and interruptible third-party access services. The price of interruptible capacity shall reflect the probability of interruption;
- c) Offer to network users both long and short-term services;

In regard to point (a) of the first subparagraph, where a transmission system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transmission contracts or a common network code approved by the competent authority in accordance with the procedure laid down in Article 41 of Directive 2009/73/EC.”

³ See Scope in Article 1 of Regulation 715/2009.

10. Article 14, paragraph 3 of Regulation 715/2009 states the following on credit guarantees: "Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate."

11. Articles 16, 18 and 20 of Regulation 2009/73 also discuss the general principles and mechanisms of capacity allocation and procedures for congestion management by TSO's, the transparency requirements for TSOs and record-keeping by system operators.

12. These principles are based on the gas regulation, must be implemented directly and take precedence over provisions of national law that are inconsistent with these principles.

13. The regulatory authorities also ensure that the guidelines of Annex 1 of Regulation 715/2009 are observed.

14. Finally, the result of the third energy package is also that to achieve better collaboration and coordination between TSOs, network codes must be entered for actual, transparent access to the transmission networks across borders.

15. In this context the following network codes have already come into force:

- d) NC BAL, effective from 1 October 2015 Recital 8 states: "This Regulation shall be applied taking into account the specific nature of interconnectors."
- e) NC CAM, effective from 1 November 2015. Recital 6 states: "This Regulation does apply to non-exempted capacities in major new infrastructures which have received an exemption from Article 32 of Directive 2009/73/EC or from the former Article 18 of Directive 2003/55/EC of the European Parliament and of the Council (3) to the extent the application of this Regulation does not undermine such an exemption and taking into account the specific nature of interconnectors when bundling."
- f) Congestion Management Procedures (hereinafter CMP) of Annex I of Regulation 715/2009 came into effect on 17 September 2012.

16. NC BAL and NC CAM have been adopted as regulations. They are therefore directly applicable and take precedence over national legislation on cross-border issues that are inconsistent with these regulations.

The implementation of Directive 2009/73 and Directive 2003/55 do not exempt capacity allocation. NC CAM therefore applies.

II.2 Belgian law

17. Article 1, 9° of the Gas Law defines 'transport company' ('vervoeronderneming in the Dutch version and 'entreprise de transport' in the French version) as follows: "every natural or legal person engaging in gas transport."

As part of IUK's certification, IUK's main activity was defined according to the shareholders' agreement as: the design, construction, installation, maintenance and operation of the pipeline system, including: (a) The deodorisation of gas facilities in Bacton and/or Zeebrugge; (b) The compression systems and other associated equipment linked to Bacton and/or Zeebrugge and/or other equipment required for the reverse flow; (c) Any other temporary measure related to (a) and (b);

This clearly shows that IUK's main activity is gas transport. IUK is consequently a transport company that is also TSO-certified.

18. Article 1, 10° of the Gas Law defines a transport network as: "any set of transport systems operated by one of the operators or by one and the same transport company, except upstream facilities and direct lines."

19. Pursuant to Article 15/7, § 1 of the Gas Law, transport companies are only allowed to refuse access to the transmission network provided that:

“1° The network does not have the necessary capacity for the transport.

2° Access to the network would prevent adequate operation of a public service by the transport company in question.

3° Access to the network by the relevant transport company entails or would entail economic and financial difficulties due to take-or-pay agreements it accepted as part of one or more gas purchasing contracts under the procedure set out in § 3.”

§ 2 continues: “Any denial of access to the transport network under § 1 must be substantiated and justified appropriately. The operators shall inform the commission of their substantiated decision to refuse access.”

20. Article 15/14, § 2, 2nd paragraph, 6° of the Gas Law states that CREG shall "approve the main conditions for transmission network access and shall monitor its implementation by the transport companies in their specific networks."

CREG is therefore authorised to approve the conditions for access to cross-border infrastructures, including the procedures for capacity allocation and congestion management.

Article 1, 51° of the Gas Law defines the main conditions as "the standard contract for transmission network access and the corresponding operational rules."

In this case, the standard contract for transmission network access corresponds with the IAA and the operational rules for access to the Zeebrugge-Bacton interconnector is described further in the IAC and SUA.

21. In view of the definition of a "transport company / carrier" and based on Article 15/14, § 2, 2nd paragraph, 6° of the Gas Law, CREG has the same authority towards IUK as towards the natural gas transmission network operator, as both entities are qualified as being transport companies / carriers.

22. Article 15/14quater, § 1 of the Gas Law stipulates that for cross-border issues, CREG shall cooperate with the regulation authority / authorities of the relevant EU member states and with ACER.

23. For the sake of completeness, Article 25 of the Gas Law still stipulates that: "Chapters IVter and IVquater of this law do not apply to Interconnector or Zeepipe systems on Belgian soil." Chapters IVter and IVquater contain provisions regarding access to the natural gas transport network, natural gas storage facilities and LNG systems and about pricing, public service obligations and accounting.

24. However, on 16 October 2014 the European Commission held the Kingdom of Belgium liable for failing to adequately transpose Directive 2009/73⁴. The European Commission stated that: "Directive 2009/73/EC does not allow member states to approve any automatic exemption from the directive's implementation. According to Article 36 of the directive, exemption can be granted for large new gas infrastructure projects. However, this is only possible in connection with specific provisions, within a specified period and provided that the procedure and the requirements of these provisions are met. The situation is comparable

⁴ Procedure with reference number 2014/2189, document C(2014) 7337 final

as far as Article 22 of Directive 2003/54/EC is concerned, which is being replaced by Article 36 of Directive 2009/73/EC).

However, the interconnection that is referred to here (IUK) has never been the subject of an exemption according to Article 22 of Directive 2003/54/EC or according to Article 36 of Directive 2009/73/EC. It is therefore difficult to understand why in Belgium's opinion the directives' exemption rules justify the automatic exemption included in Article 25 of the Belgian Gas Law."

25. The European Commission concludes the following: "The Commission therefore considers Article 25 of the Belgian Gas Law not in accordance with Article 31, 32, 33, 41 paragraphs 6 to 10, read in conjunction with Article 36 of Directive 2009/73/EC."

26. In its reply of 17 February 2015, the Kingdom of Belgium replied⁵: *"The Gas Law is currently showing a gap in that respect and Article 25 must be amended so that IUK is not excluded from the implementation of the regulatory framework for network access and pricing. On 18 March 2014 the Belgian authorities informed the European Commission that they will work with CREG to examine IUK's status to see how the Gas Law should possibly be amended. Meanwhile the federal and regional parliaments and governments have changed following the general elections. The federal government took office on 11 October 2014. The intention to amend the Gas law as described above still exists."*

27. According to the principle of supremacy, European law has priority over member states' national law. The principle applies to all binding European legal acts. The member states cannot implement any national rules contrary to European law.

28. CREG and Ofgem certified IUK under the model of ownership unbundling. As a result, all binding European legal acts apply to IUK. Article 15/14, §2, 2nd paragraph, 6° of the Gas Law specifically authorises CREG to approve the main conditions for transport network access and to inspect their implementation by the transport companies. Every conflicting provision in

⁵ Freely translated from French: "La loi gaz présente une lacune sur ce point et l'article 25 doit être adapté pour ne plus exclure Interconnector (UK) Limited de l'application du cadre réglementaire en matière d'accès au réseau et de tarifs.

Les autorités belges ont informé la Commission européenne en date du 18 mars 2014 qu'elles examinaient avec la CREG le statut de l'IUK afin de voir dans quelle mesure une éventuelle modification de la Loi Gaz devait intervenir. Entretemps, des élections générales ont renouvelés les parlements fédéraux et régionaux ainsi que les Gouvernements. Le Gouvernement fédéral est entré en fonction le 11 octobre 2014. L'intention de modifier la loi gaz dans le sens indiqué ci-dessus demeure."

national legislation, including Article 25 of the Gas Law, must therefore be declared inapplicable by law.

29. CREG should therefore declare Article 25 of the Gas Law inapplicable.

30. In this case, CREG is mentioned in a IUK communication on IAA, IAC and SUA in letters of 13 July 2015, 14 and 21 August 2015. Pursuant to Article 15/14, §2, 2nd paragraph, 6° of the Gas Law, CREG shall exercise its approval authority as described by the Gas Law and as mentioned in the above documents.

In this respect, CREG can and must take into account the rules stated in Regulation 715/2009, the NCs BAL and CAM and the CMP guidelines, which take precedence over domestic law in case of any conflict. As these are regulations, the rules are immediately applicable in domestic law. The Belgian legislator does not need and is even unable to transpose them.

31. IUK implicitly acknowledges the CREG's approval authority, as Article 12.12 of Annex A of the IAA clearly states that amendments to the IAA and IAC shall only come into effect following the CREG's consultation and approval. If amendments need to be approved, this also applies to the initial versions of the IAA and IAC. Mutatis mutandis, this also applies to the SUA, as the signing of a SUA is a necessary requirement to reserve services with IUK.

32. Regulation 715/2009, the NCs BAL and CAM and the CMP guidelines are therefore additional legal grounds for CREG's authorisation to decide on IAA, IAC and SUA communication.

II.3 Assessment criteria

33. In case of an approval, the approving authority will check whether the deed to be approved is lawful and serves the general interest⁶.

A deed is not in conflict with any rule of law if it is consistent with European and national law. CREG's approval authorisation therefore obliges it to ensure that the IAA, IAC and SUA are in accordance with the law – primarily the (higher) sector-specific law – and that the right of access to the transport network and the rules of law regulating this right are complemented to effectively guarantee every IAA shipper right of access to the transport network.

⁶ See Van Mensel, A. , Cloeckaert, I., Onderdonck, W. and Wyckaert, S., *De administratieve rechtshandeling – Een Proeve*, Mys & Breesch, Gent, 1997, p. 101; Dembour, J., *Les actes de la tutelle administrative en droit belge*, Maison Ferdinand Larcier, Bruxelles, 1955, p. 98, no. 58.

34. CREG shall specifically check whether IAA, IAC and SUA do not obstruct access to the interconnector (and therefore respect Article 15/7 of the Gas Law) and do not compromise the safety, reliability and efficiency of the interconnector and the adjacent transport networks (and therefore similarly meet the operator obligations stated in Article 15/1, §1, 1° and 2° of the Gas Law instructing the operators on the operation, maintenance and development of the transport facilities in an economically acceptable, safe, reliable and efficient way).

35. Free access to the transport network is essential for liberalisation of the natural gas market and therefore for public policy. The right of access to the transport networks is one of the necessary basic pillars of the liberalisation of the natural gas market⁷. To allow competition on the natural gas market and to enable end consumers to freely choose their natural gas supplier, it is essential that the end users and their suppliers are guaranteed access to the transport networks and that they enjoy this right in a non-discriminatory way. Almost every imported, used or re-exported molecule of natural gas goes through the transport networks. A supplier can only supply the natural gas he is selling to its customers if it and its customers have access to the transport networks. The Zeebrugge-Bacton interconnector is operated by IUK, which is certified according to Articles 9 and 10 of the Directive 2009/73. The right of access to the interconnector is therefore a basic principle and a fundamental right that must not be interpreted restrictively to make cross-border exchange of gas possible. Every exception to or limitation of this right must be specifically provided and interpreted restrictively. Article 15/7 of the Gas Law states that the operators can only refuse access to the transport network if: 1° The network does not have the necessary capacity for the transport. 2° Access to the network would prevent adequate operation of a public service by the transport company in question. 3° Access to the network by the relevant transport company entails or would entail economic and financial difficulties due to take-or-pay agreements it accepted as part of one or more gas purchasing contracts under the procedure set out in Article 15/7, § 3 of the Gas Law. The refusal must also be substantiated with specific reasons.

36. In CREG's opinion, IUK must not be allowed to complicate, restrict or impede the right of access to the interconnector in any way by enforcing unfair, unbalanced, unreasonable or disproportional conditions, as this would also be contrary to the public interest.

⁷ See also Recital 7 of Directive 2009/73, specifically stating that effective competition requires non-discriminatory, transparent access to the network and reasonable prices, and Recital 4 of Directive 2009/73 stating that there is still no non-discriminatory network access. Finally we also refer to Recital 11 of Regulation 2009/715.

II.4 Consultation of involved natural gas companies

37. Annex 1 of Regulation 715/2009, item 2.1, 6 states that the TSOs must consult the network users about the procedures regarding the capacity allocation mechanisms and the congestion management procedures with TSOs and the application of these procedures in case of contractual congestion.

38. Both the NC CAM and the NC BAL include consultation obligations for the TSOs and the regulatory authorities.

39. In order to test the new transport model applicable to the Zeebrugge-Bacton interconnector after 2018 with the network users, IUK held a first market consultation about the proposals of the IAA, the IAC together with the services programmes and the SUA from 22 January 2015 to 18 February 2015.

40. IUK organised an additional market consultation regarding the introduction of the reshuffling service from 25 June to 23 July 2015.

41. CREG's internal rules state in Article 8, § 1 that: "Before a decision is taken, the Executive Committee shall ensure that all the involved electricity and/or natural gas companies have the opportunity to share their comments. The obligation mentioned in the first paragraph shall be observed by the relevant companies to be consulted on the draft decision proposed by the Executive Committee. However, the Executive Committee may decide that it is no longer necessary to submit the draft decision to a consultation if the relevant companies had the opportunity to share their views effectively in an earlier stage of the procedure. If this consultation did not take place at CREG's initiative, the Executive Committee shall ensure that all documents and information regarding the consultation are provided to CREG."

42. CREG believes that after the market consultations organised by IUK, no further consultations on this decision are necessary.

II.5 Entry into force of the IAA, IAC and SUA

43. The IAA, IAC and SUA on access to the Zeebrugge-Bacton interconnector can only come into force after both CREG and Ofgem have given their approval.

44. Under the transparency requirements of Article 18 of Regulation 715/2009, IUK shall publish the effective date together with the IAA, IAC and SUA approved by CREG and Ofgem on its website.

45. As stated in paragraph 15 of this decision, the NC CAM shall come into force on 1 November 2015. From the beginning of 2015 IUK shall make capacity available for use from 1 October 2015 and then at auctions held on Prisma from 1 November 2015.

46. The STA is a long-term contract under which all technical capacity is to be sold until 30 September 2018. This capacity shall become available on 1 October 2018. It is expected that from 1 October 2018 all unsold technical capacity can be purchased as part of the IAA. From that date, IUK can also offer interruptible capacity on top of fixed capacity under the IAA.

47. This means that 2 dates are important for the IAA's entry into force: 1 November 2015 – the date when capacity becomes available because the NC CAM comes into effect – and 1 October 2018 – the date when capacity becomes available because the STA long-term contracts come to an end on 30 September 2018.

II.6 Nullity

48. A distinction must be made between absolute and relative nullity. Absolute nullity sanctions a rule of public interest, public order or morality. It must therefore be invoked officially. Unlike relative nullity, absolute nullity cannot be "covered".

Relative nullity does not concern public order, protects rules on private interest and can be invoked by the interested party. It can be covered by the parties if necessary.

As a regulatory authority CREG can only approve or reject the conditions for connection and access to a transport network, in this case the interconnector. According to section 33 of this decision, CREG gives its approval if the deed is lawful and in the public interest. If a provision of the deed or the entire deed is not in the public interest, CREG must invoke its nullity. The nullity CREG can invoke must therefore be absolute.

The absolute nullity of a provision or a section of a provision does not automatically mean that the entire IAA, IAC or SUA cannot be applied.

III. ANTECEDENTS

III.1 General

49. IUK owns and operates the interconnector gas pipeline directly connecting the UK and Belgian gas markets and provides natural gas transport services under two transport contracts:

- The STA is the long-term transport contract under which all technical capacity at the start of the interconnector gas pipeline's operations in October 1998 were sold until 30 September 2018.
- The IAA, IAC and SUA form the new contractual framework under which IAA shippers can purchase and use long-term and short-term capacity. This concerns the supply and use of capacity becoming available following the implementation of Article 2.2 of Annex 1 of Regulation 715/2009, i.e. the congestion management procedure in case of contractual congestion and all capacity becoming available from 1 October 2018 under the NC CAM and offered on the Prisma trading platform from 1 November 2015.

50. The IAA, IAC and SUA are the subject of this decision.

III.2 Market consultation

51. Pursuant to the provisions of the NC CAM, NC BAL and CMP guidelines, IUK amended its access rules and drafted a new contractual framework. This rules of this contractual framework have been documented in the IAA, IAC and SUA provided to CREG. On 22 January 2015 IUK presented this contractual framework to all market players and asked them to provide comments, suggestions and remarks. The public consultation was closed on 18 February 2015.

52. IUK received responses from 6 market players, of which 3 indicated that they wished to have their responses treated as confidential. The consultation report was published on the IUK website together with the non-confidential responses of the market players and the newly updated IAA, IAC and SUA following the market consultation.

53. On 8 May 2015 IUK sent the English versions of the IAA, IAC and SUA and the consultation report with annexes to CREG and Ofgem in a letter. IUK stated that it took into account the feedback it received from the market players.
54. On 13 July 2015 IUK sent the Dutch IAA and IAC to CREG in a letter that also included the consultation report and annexes in English.
55. On 14 August 2015 IUK sent the SUA in Dutch to CREG in a letter.
56. On 25 June IUK announced by letter and on its website that it was considering offering a reshuffling service. This new service offers market players with long-term capacity more flexibility to manage their capacity portfolio and facilitates the transition in anticipation of the implementation of the NC CAM effective 1 November 2015.
57. On 21 August 2015 IUK submitted an amended version of the IAA and IAC to CREG. The amendments are the result of the introduction of a new reshuffling service. The consultation report was enclosed with the application. IUK received responses from 3 market players, who indicated that they wished to have their responses treated as confidential. The consultation report was published on the IUK website together with the non-confidential responses of the market players and the updated IAA and IAC.
58. IUK states that it took into account the feedback it received from the market players following the market consultation from 25 June 2015 to 23 July 2015 about the amended versions of the IAA and IAC.

IV. EVALUATION

IV.1 In general

59. It is established below whether the terms and conditions set out in the IAA, IAC and SUA imposed by IUK on its contractors are reasonable, fair, balanced and proportionate and are therefore in line with the law and the public interest.

60. A lack of remarks about the documents submitted by IUK or their acceptability is without prejudice to the future (motivated) use of CREG's approval authority, even if the item is submitted again in an identical way for the same activity at a later date.

61. Unless otherwise stated, the following analysis is structured in line with the successive parts, enclosures, chapters and titles of the documents submitted by IUK.

62. If several elements of the documents are related to an overall subject, CREG reserves the right to discuss these elements together rather than item by item. Where necessary CREG takes into account the particular nature of the proposed changes and offers comments item by item.

IV.2 IAA investigation

63. The IAA consists of 3 parts: the Corpus, Annex A "General terms and conditions" and Annex B "Definitions and interpretation".

IV.2.1 Corpus

64. The Corpus comprises 3 pages. It is the document that is signed by IUK and the IAA shipper. For the IAA shipper it is an admission ticket for purchasing transport services from IUK. Together, the Corpus and Annexes A and B of the IAA, IAC and SUA form the full contractual and regulatory framework enabling the IAA shipper to purchase transport services with IUK. All these documents should be considered as a whole, although any future amendments to Annexes A and B of the IAA and/or IAC do not require the Corpus of the IAA to be signed again by both parties.

The same logic applies for any future amendments to Annex A of the SUA. In this case, the Corpus of the SUA does not have to be signed again by both parties.

IUK considers the SUA as a separate agreement. Without the SUA the IAA shipper cannot use any transport services from IUK.

65. Article 6 of the Corpus states that the contractual and regulatory framework consists of the IAA, the IAC and the Capacity Transactions. As mentioned in paragraph 30, the IAA shipper also has to sign a SUA. Otherwise no transport services can be booked with IUK.

66. CREG has no remarks regarding the Corpus and approves it.

IV.2.2 Annex A: General terms and conditions

Article 2: Invoicing, payment and credit terms

67. CREG shall assume that the notification "in a way other" than an invoice presented by the IUK IT system as stated in Article 2.1 refers to the table in Article 10.2, Annex A, General terms and conditions. GREG invites IUK to clarify Article 2.1 in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

68. Article 2.4, (a) does not mention the fact that the non-disputed part paid by the IAA shipper is VAT inclusive. GREG concludes from this that the non-disputed part is VAT exclusive.

69. The distinction between Articles 2.5 and 2.6 is that Article 2.5 estimates the interest rate for a disputed, but subsequently due invoice amount, whereas Article 2.6 estimates the interest rate for an uncontested and due (payable) invoice amount.

70. The term for disputing the invoice and the amounts mentioned on invoice is 90 days (Article 2.7) and the invoice is payable within 14 days (Article 2.2, b)). It is therefore in the IAA shipper's best interest to dispute the invoice before the due date (within 14 days) to avoid the risk of a higher interest rate as stated in Article 2.6.

The invoice can obviously still be disputed afterwards (after the due date, but within the 90 days), but a higher interest rate may apply according to Article 2.6.

The so-called 'rating test' mentioned in Article 2.9, a) allows IUK to use a different rating it "reasonably" considers appropriate. Neither the provided article, nor Annex B Definitions and interpretation of the IAA explain exactly what this means.

The term "reasonably" gives IUK the opportunity to take a decision per IAA shipper. The objective criteria and/or methodology - how IUK will perform the 'rating test' - are not known in advance. This creates the risk that such a credit guarantee may cause undue market entry barriers and discrimination. This part of Article 2.9, a) is therefore inconsistent with Article 14, paragraph 3 of Regulation 715/2009 and considered null and void by CREG.

Otherwise CREG approves Article 2.9, a).

71. Not considering the rating test, Article 2.9, b) is implemented when the IAA shipper does not have a rating in accordance with Article 2.9, a).

Article 2.9, b) states that the credit support consists of the highest amount, which is either 100,000 Pound Sterling or the total monthly fees for the next 6 months. In other words, if the 100,000 Pound Sterling is higher than the sum of the monthly fees for the next 6 months, the 100,000 Pound Sterling shall apply and vice versa.

72. There are four types of credit support, which are described in Article 2.9, b), (i) to (iv).

In Article 2.9, b), (i) the company or entity providing the credit support must have a rating that matches the 'rating test' at least. CREG refers to section 37 of this decision with regard to its remark about the 'rating test'.

A second option is an irrevocable standby letter of credit drafted and confirmed by an international bank (Article 2.9, b) (ii)). IUK also applies the 'rating test' here in order to accept the international bank. CREG refers to section 70 of this decision with regard to its remark about the 'rating test'.

The third option of credit support is that CREG asks how the reserved cash amount is in Pound Sterling (Article 2.9, b), (iii)). CREG suspects that the cash amount does not exceed either 100,000 Pound Sterling or the total monthly fees for the next six months, as stated in Article 2.9, b). CREG invites IUK to clarify Article 2.9, b), (iii) in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

CREG concludes by asking what is the meaning of 'another form of credit support acceptable to IUK' (Article 2.9, b), iv)). This fourth option for credit support does not meet the principles stated in Article 14, paragraph 3 of Regulation 715/2009 and is considered null and void by CREG.

73. Article 2.10 allows IUK to use the cash collateral mentioned in Article 2.9, b) (iii) to meet any of the IAA shipper's payment obligations without informing the IAA shipper. First, CREG asks why this collateral is not paid into an escrow account rather than an IUK account.

Pursuant to Article 2.10, IUK can also claim the collateral in cash to meet any payment obligation owed by the IAA shipper that is due under this agreement. In concrete terms, this means that the collateral in Article 2.9, b) (iii) cannot only be used to pay due and payable invoices, but for any other due and payable amounts under the agreement.

Regarding the latter, CREG asks whether the IAA respects the reciprocity principle: if IUK owes an amount under the agreement, can the IAA shipper obtain payment in the same way?

Article 2.10 also states that IUK shall not inform the IAA shipper when it claims the collateral in cash. CREG asks whether the collateral needs to be replenished after IUK uses the collateral in cash according to Article 2.9, b) at the risk of a breach of contract on the part of the IAA shipper. Reference is made to Article 3.2, c), which states that the IAA shipper must meet the credit criteria at all times, for example. Or will IUK immediately implement Article 2.12 in that case, which states that the IAA shipper shall be informed in writing that he no longer meets the credit criteria? GREG invites IUK to clarify Article 2.10 in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

74. Article 2.11 is applied as soon as IUK feels the IAA shipper is no longer able to meet its IAA obligations due to an actual or suspected event or circumstance. If IUK makes this decision, the IAA shipper shall need credit support according to Article 2.9, b), more specifically one of the types provided in (i) to (iv). However, Article 2.11's current wording offers IUK a wide margin of discretion on when Article 2.9, b) is to be applied or not. Article 14, paragraph of Regulation 715/2009 states that credit guarantees must be non-discriminatory, transparent and proportionate. In other words, it must be clear in advance to every IAA shipper which objective criteria will be used to implement Article 2.9, b). It is also not clearly indicated within which term the IAA shipper is to meet Article 2.9, b) (i) to (iv) after IUK's notification. For these reasons CREG considers Article 2.11 as null and void. It is currently in conflict with Article 14, paragraph 3 of Regulation 715/2009.

75. With regard to the credit support of a type mentioned in Article 2.9, b) (i), Article 2.13 states that the IAA shipper shall provide IUK with a number of documents at least 5 business days before the guarantee start date.

These documents are:

- A certified copy of the company formation documents of the IAA shipper's guarantor:

The guarantor probably refers to the company or entity with a rating according to Article 2.9, a). CREG understands the company formation documents to be only those documents available to the public, such as the published articles of association. GREG invites IUK to clarify Article 2.13 a) in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

- A certified copy of the decision made by the guarantor's Board of Directors or Committee of Directors (Article 2.13, b)) meeting the provisions of (i) to (iv).

CREG does wish to clarify what is meant by 'if applicable'. GREG invites IUK to clarify Article 2.13, b), (iv) in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

- A legal opinion on the guarantee's enforceability and the guarantor's capacity and competence (Article 2.13, c)):

The legal opinion must be drafted by an external legal advisor operating in the jurisdiction where the guarantor is established.

With regard to Article 2.13, CREG also asked the general question of how IUK will assess the content of these documents. Which objective criteria will be used and what consequences will IUK attach to these? GREG invites IUK to clarify Article 2.13 in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

76. CREG approves Article 2, except the implementation of the 'rating test' and Article 2.11. CREG considers these provisions null and void, as they are not in the public interest. This invalidity does not mean that the other provisions of Article 2 cannot be implemented. Taking into account the remarks, CREG invites IUK to clarify Article 2 when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

Article 3: Representations and warranties

77. Article 3.2, a) only applies to the interconnector entry point and not the exit point.

78. Article 3.2, e) states that the IAA shipper shall act as a 'principal' rather than an 'agent' for another person/entity. In concrete terms, this means that the IAA shipper must not act as a contractor on behalf of another person/entity towards IUK.

79. 'Potential' means 'possibly present', 'conceivable'. CREG asks how an IAA shipper can prove that it may be the subject of an insolvency event, as stated in Article 3.2, f). When does this notification requirement come into effect? GREG invites IUK to clarify Article 3.2, f) when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

80. Article 3.3. states that if Article 3.2, a) or b) are violated, the IAA shipper shall pay for the damage caused to IUK. It is not specified which type of damage is considered here or how the damage shall be evaluated. There is also no equivalent provision for violations of Article 3.1 by IUK causing damage to the IAA shipper. CREG asks why the provision of Article 8 is not applied to Article 3. GREG invites IUK to clarify Article 3.3 in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

81. CREG approves Article 3 and invites IUK to clarify Article 3 when making the next amendments, modifications and additions to the IAA, IAC and/or SUA, taking into account the provided comments.

Article 4: Bribery and corruption practices

82. CREG asks why Article 4.2 is not reciprocal, as Article 4.1 states that both IUK and the IAA shipper shall not engage in any bribery and corruption practices.

83. CREG approves Article 4 and invites IUK to clarify Article 4.2 when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

Article 5: Force Majeure

84. Article 5.3, c) deprives the IAA shipper from the possibility to consider an event beyond its control as 'force majeure' if this event results in the IAA shipper's inability to make the gas deliveries at an entry point (Bacton or Zeebrugge), leaving the IAA shipper's capacity unused. CREG asks why Article 5.3, c) is written in a very general way. After all, it is not impossible that the gas delivery cannot take place due to a force majeure situation on the adjacent TSO transport network of Fluxys Belgium or National Grid.

During the market consultations, some market players have made some comments on the consequences of force majeure.

CREG invites IUK to clarify Article 5.3, c) in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

85. CREG has the following comment regarding Article 5.6. Force majeure is an unforeseen, sudden and uncontrollable event. Article 5.6's statement that a force majeure situation will 'probably' occur, does not correspond with the notion of 'force majeure'. During the consultations, some market players have made some comments on this, all the more because IAA shippers must still meet their payment obligations within the constraints of Article 5.5.

86. Article 5.7, c) must include an exact time period valid for every IAA shipper during which the transport services can be started up again once the force majeure situation has ended.

87. CREG approves Article 5 and invites IUK to clarify Article 5 when making the next amendments, modifications and additions to the IAA, IAC and/or SUA, taking into account the provided comments.

Article 6: Suspension and termination

88. CREG asks what the meaning is of 'without prejudice to IUK's other rights or remedies' as stated in Article 6.1. In fact, IUK can only draw on the rights or remedies resulting from the agreement.

In CREG's opinion, the suspension term must be the same as the duration of the event causing the suspension of the transport services. As soon as the cause of the suspension of the transport service no longer exists, the suspension of the transport services must be terminated immediately without discussion. The right of access is public policy and access cannot be refused without a valid reason (Article 35, Directive 73/2009). IUK is invited to amend the first paragraph of Article 6.1 in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

The phrase 'during a term IUK is free to determine entirely as it sees fit' opens the door to discrimination between IAA shippers and is neither objective nor transparent.

89. CREG asks what the meaning is of a 'material breach'. The implementation of Article 6.1, b) may lead to discrimination, as it is not impossible that IUK applies this provision arbitrarily and is stricter towards some IAA shippers than towards others. IUK is invited to amend Article 6.1, b) in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA. The same comment applies to Article 6.1, c).

90. It is better to word Article 6.1, d) in the affirmative: the declaration or guarantee 'is' incorrect or misleading rather than 'is found to be' unworthy or misleading. GREG invites IUK to clarify Article 6.1, d) in that respect when making the next amendments, modifications and additions to the IAA, IAC and/or SUA.

91. The CREG asks: on the basis of which objective criteria will IUK judge that the Credit Support Provider is no longer acceptable (Clause 6.1(f))? The CREG invites IUK to clarify Clause 6.1(f) to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA..

92. In concrete terms Clause 6.2(d) means that as long as the transportation services are suspended the IAA Shipper remains obliged to pay its Capacity Charges regardless of whether IUK has reallocated the suspended transportation services in the meantime. Settlement will only be made once the reason for suspension has ended, pursuant to Clause 6.3(a).

93. The options for parties to end the IAA, i.e. the contract, are:

- Both IUK and the IAA Shipper: if an Insolvency Event occurs or in the event of bribery and corrupt practices on the part of a party (Clause 6.4):

The termination shall take immediate effect, no notice period is provided, and for the estimate of indemnity Clause 6.6 shall apply. The indemnity shall cover all amounts due and payable, plus all amounts that the IAA Shipper still owes, in the context of its booked transportation services, for the remaining term of the transportation services.

However, Clause 6.6 has been drafted unilaterally and shall not apply if an IAA Shipper terminates the IAA for reasons of insolvency, bribery or corrupt practices on the part of IUK. The CREG asks why the IAA does not provide any indemnity in favour of the IAA Shipper. The CREG invites IUK to clarify Clause 6.6 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

- IUK only: if the suspension of the transportation services lasts longer than 3 months and there are reasons for the suspension continuing (Article 6.5):

In application of Clause 6.5 IUK determines to terminate the IAA 'at its absolute discretion'. The date of termination of the IAA will be determined by IUK. The application of Clause 6.5 does not permit all IAA Shippers to be assessed in the same manner. Consequently, there is a risk that the principle of non-discrimination will not be respected. In addition to the respecting of a notice period, the IAA Shipper must also pay an indemnity pursuant to Clause 6.6. The CREG invites IUK to clarify Clause 6.5 with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

- Both IUK and the IAA Shipper: at any time (Clause 6.7(a)):

In other words, IUK has the right, subject to the agreement of the other party, to terminate the IAA at any time without reason, without notice period or cancellation fee and without indemnity, for the remaining term of the booked transportation services.

- The IAA Shipper only: subject to the respecting of a notice period 'not to be less than' 3 months, on condition that the term of the booked Transportation Service has come to an end and there are no more outstanding or accrued obligations or liabilities, and that the IAA Shipper has no obligations that will only fall due after the date of termination (Clause 6.7(b), (i) to (iii)):

The CREG believes that the notice period must be the same for every IAA Shipper. The term 'not to be less than' is not being complied with in this instance. The CREG invites IUK to clarify Clause 6.7(b) to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

- IUK only: if IUK is no longer economically able to comply with its statutory obligations arising from Article 16 of Regulation 715/2009 (Clause 6.8):

A notice period of no less than 12 months will be applied by IUK in respect of all IAA Shippers and IUK shall not owe any indemnity. In concrete terms, this amounts to a closure of IUK's business activities, as a result of which all IAA agreements ongoing at the time will be terminated. The CREG notes that if IUK applies a notice period of more than 12 months, this must be applied in respect of all IAA Shippers.

94. The CREG approves Clause 6 and invites IUK, taking the comments into account, to clarify Clause 6 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 7: Quality

95. In terms of quality, the CREG notes that the terminology and the formulation of the proposal are closely connected with the existing contractual situation, in particular the STA agreement between an IUK shipper and IUK. The CREG points out that, with its proposal, IUK's precise aim is to renew the existing contractual framework and bring it in line with the provisions of the third legislative package. To that effect, the CREG does not understand why the old wording regarding quality was retained. The CREG takes note of the fact that in the proposal the existing transport agreements between IUK shippers and the IUK are being disregarded. For that reason, in its assessment the CREG follows the distinction that is also made in the proposal, i.e. between the period prior to termination of the current transport agreements (the Initial Period) and the period that follows (after the Initial Period). In the discussion the CREG shall partially adopt the terminology and partially propose a wording that is in accordance with the tasks, obligations and responsibilities as provided for in the third package. Nevertheless, the CREG wishes to clarify that certain terms must be replaced in any case. For example, the wording 'the gas that the IAA Shipper supplies to IUK' should be read as 'the gas that the IAA Shipper makes available to IUK'. This finding shall apply by analogy to the 'gas that IUK makes available to the IAA Shipper'.

96. Generally, the CREG notes that opening up the gas market and, more specifically, the disconnection of the transport and delivery activities, has radically altered the responsibilities of the market actors in terms of complying with quality requirements. The role of the IAA Shipper is being literally reduced, and restricted to the use of the transport network. The operational management of the network is, on the other hand, the exclusive authority of the manager of the transport network. Operational management also includes the monitoring and management of the quality of the transported gas. In concrete terms this means that, once the Natural Gas has been accepted by the manager and allowed into the transport network, the guaranteeing of the quality requirements of the Natural Gas in question is the exclusive responsibility of the manager.

Furthermore, the CREG finds that a distinction needs to be made between the Connection Point between Interconnector and the Belgian transport network (i.e. IZT) on the one hand, and between Interconnector and the British Transportation System in Bacton. The CREG only

wishes to express its views on the provisions relating to the quality of the Natural Gas at the Zeebrugge Connection Point (IZT).

The Initial Period from 1 November 2015 to 30 September 2018

97. Generally, in the 'Initial Period' the IAA Shipper will be held responsible for respecting the quality requirements for the Natural Gas presented for transportation. It is the IAA Shipper that, in accordance with previous agreements, must ensure that the gas delivered meets the obligations imposed by IUK. Observing these requirements entails not only obligations of a technical nature, but also of a contractual nature. The latter are part of the IAA (Appendix A, Clause 7).

Furthermore, in the IAA a distinction is made between:

- An Entry Point during the Initial Period on the one hand, and the Bacton Entry Point after the Initial Period on the other. The Initial Period is the same as the period running from 1 November 2015 to 30 September 2018. As far as the contractual provisions after the Initial Period are concerned (those to which the comments mentioned here apply only relate to the Entry Point at Bacton), the CREG refers to its comments in the section "The period 'after the Initial Period'" above in this text. The CREG, in accordance with its comment in the second paragraph of paragraph 96, is considering only the Zeebrugge Entry Point where the IAA Shipper delivers the Natural Gas to IUK⁸ (Clause 7.1). If the IAA Shipper supplies Natural Gas which does not comply with the Specification to IUK at this Point, the IAA Shipper, in addition to its obligations set out in Section H of the IAC, is obliged to pay IUK an indemnity. The estimate of the indemnity is set out in Clause 7.4(a), (i) to (vi). The maximum amount from Clause 8.6 shall not apply to the indemnity to be paid. Consequential Losses are excluded, except for those costs and expenses listed under Clause 7.1(a), (vi), i.e. consequential losses to the Adjacent TSOs (Fluxys Belgium, National Grid) and third Parties.
- The Exit Points: these relate to both the Bacton Exit Point and Zeebrugge Exit Point, where IUK supplies Natural Gas to the IAA Shipper (Clauses 7.2 and 7.3). The CREG, in accordance with its comment in the second paragraph of paragraph 96, is only considering the Zeebrugge Exit Point. Payment by IUK of an indemnity

⁸ See Appendix B Definitions and Interpretation: "Entry Point" means any Connection Point which allows the delivery of Natural Gas into the Transportation System from the relevant AT System (whether or not Natural Gas is physically flowing at that point at any given time); "AT System" means the National Transmission System or the Fluxys Transmission System;

to the IAA Shipper for the delivery of non-compliant Natural Gas to this point shall only apply if the following conditions are fulfilled:

- all IAA Shippers have delivered Natural Gas that is compliant with the Specifications to the Entry Point; and
- the IAA Shipper accepts the non-compliant gas.
- The CREG asks why the last paragraph of Clause 7.2 is not analogous with the last paragraph of Clause 7.1.
- Under Clause 7.3 IUK is not liable to pay an indemnity to the IAA Shipper if the cause of pollution is attributable to another IAA Shipper or in the case of Force Majeure. In that event, the disadvantaged IAA Shipper has no redress against IUK but must look towards the other IAA Shippers. The CREG asks what happens if IUK does not accept the non-compliant Natural Gas at the Zeebrugge Entry Point.

The period 'after the Initial Period'

98. The CREG repeats its comment from paragraph 95 regarding the terminology used and, in what follows, clarifies the implications of the third package on contractual responsibility of parties.

In the case of the Belgian transport network no distinction needs to be made between 'the Initial Period' and 'after the Initial Period'. Belgium does not have its own gas production and the Natural Gas can only enter Belgium via the Connection Points. Fluxys Belgium bears responsibility for the acceptance of the Natural Gas and also remains exclusively responsible for guaranteeing the quality of such during transportation.

With regard to the Zeebrugge Entry Point where the IAA Shipper delivers Natural Gas to IUK after the Initial Period (Clause 7.4), reference is made in Clause 7.4(a) to the Interconnection Agreement concluded between IUK and Fluxys Belgium. The CREG has no knowledge of the content of this Interconnection Agreement. Nor do the IAA Shippers. Furthermore, they are not contractual parties to the agreement. The parties, i.e. IUK and Fluxys Belgium can freely determine in this agreement how they wish to see their mutual liability (contractual and non-contractual) regulated. For example, it is not ruled out that IUK and Fluxys Belgium will decide to fully exonerate themselves, leading to the IAA Shippers being left out in the cold for non-compliant gas that is made available by Fluxys Belgium to IUK at the Zeebrugge Entry Point. Because of this uncertainty, the CREG deems it necessary for this aspect to be clarified.

The CREG also asks what happens if IUK does not accept the non-compliant Natural Gas at the Zeebrugge Entry Point.

Clause 7.4(b) (i) to (iii), where the IAA Shipper indemnifies IUK if IUK recover costs and expenses under paragraph 1.6(d) of Section H of the IAC, or from Fluxys Belgium on the basis of the Interconnection Agreement, or because Fluxys Belgium refuses to pay, is unacceptable.

The Natural Gas that enters the interconnector via the Zeebrugge Entry Point has already made a long journey through several transmission systems. The IAA Shipper cannot exercise any influence over this at all. The transportation of Natural Gas is a TSO responsibility and this also applies to the quality of the Natural Gas.

The same is true for Clause 7.4(c). Due to the final paragraph of Clause 7.4 the liability regime of a disadvantaged IAA Shipper is once again stricter than IUK's liability regime. The CREG believes that after the Initial Period (from 1 October 2018) the IAA Shipper bears no responsibility at all if it can demonstrate that it supplied the Natural Gas which complies with Specification at a transmission system Entry Point. If non-compliant Natural Gas is delivered to the IAA Shipper at the Zeebrugge Exit Point, the shipper is still entitled to an indemnity, irrespective of who caused the pollution of the Natural Gas, be it the other IAA Shippers, the Adjacent TSOs, or IUK.

99. The CREG reiterates that, as far as the provisions that apply 'after the Initial Period' are concerned, guaranteeing the quality of the Natural Gas is the exclusive, joint responsibility of Fluxys Belgium and IUK. The CREG notes that its standpoint on this subject is not new. More generally, the CREG refers to Article 166(1)(5) of the Code of Conduct on the conclusion of Interconnection Agreements with managers of adjacent transport networks. Furthermore, the CREG points out that in its decision (B)120510-CDC-1155 of 10 May 2012, which forms the basis for the approval by the CREG of Fluxys Belgium's current market-based Transportation System, and more specifically in paragraph number 121, it has already stated that 'In its decision of 19 April 2012 the CREG asked Fluxys N.V. to start negotiations by 1 May 2012 at the latest with these managers, in order to conclude Interconnection Agreements with them. Under separate cover Fluxys N.V. will be invited by the CREG to inform it of the current state of affairs'.

The CREG therefore believes that, as far as the IZT Connection Point is concerned, and with a view to the preparation of the contractual framework applicable after the Initial Period, the proposal should be amended and that the responsibility for gas quality should be the shared responsibility of IUK and Fluxys Belgium.

100. The CREG approves Clause 7 and invites IUK, taking the comments into account, to clarify Clause 7 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 8 Liability

101. The CREG asks whether it is actually correct that the IAA Shipper - if it is liable - must indemnify IUK in respect of all claims for the loss of or physical damage to the IAA Shipper's property (Clause 8.1(a)). The same question applies to Clause 8.2(a). This refers to the liability of IUK, where IUK indemnifies the IAA Shipper in respect of all claims for the loss or or physical damage to the IAA Shipper's property. The CREG invites IUK to clarify Clause 8.1(a) and 8.2(a) to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

102. Furthermore, the CREG asks why Clauses 8.5 and 8.6 are not analogous with each other and why a stricter liability regime applies to the IAA Shipper, where the maximum amount for the IAA Shipper does not apply with regard to indemnities as a result of non-compliant gas at the Entry Point (Clauses 7.1 and 7.4(b) and c)) and following termination of the IAA (Clause 6.6)? The CREG invites IUK to clarify Clause 8.6 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

103. The CREG approves Clause 8 and invites IUK, taking the comments into account, to clarify Clause 8 with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 12: General

104. What does IUK mean by "have entered into or subsequently enter into any other written agreement relating to the Transportation Services" as set out in Clause 12.1? A market operator formulated a comment on this provision during the consultation. The CREG invites IUK to clarify Clause 12.1 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

105. Changes referred to in Clause 12.6 can only be validly made after consultation and after approval by the CREG of the consulted change. Clause 12.12 confirms the foregoing.

106. In addition to the IAA and the IAC the SUA is also part of the documents to be approved by the CREG. Changes to the SUA can therefore only come into effect once they have been consulted and approved by the CREG.

107. The CREG approves Clause 12 and invites IUK, taking the comment formulated in paragraph 70 into account, to clarify Clause 12 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 13: Resolution of Claims and Disputes

108. The CREG asks why Clause 13.2, 'appointment of an expert' can only be applied by IUK and not by the IAA Shipper?

Furthermore, the CREG asks why an expert can only be called in when there is a dispute where several IAA Shippers are involved, which have a common interest.

109. The CREG approves Clause 13 and invites IUK, taking the formulated comments into account, to clarify Clause 13 with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 14: Arbitration

110. The CREG finds that the wording of the last sentence of Clause 14.1 is not terribly clear and probably attributable to a poor translation from English into Dutch.

111. The CREG asks what is meant by 'a fee in such reasonable sum' as shall be demanded by IUK of the IAA Shipper (Clause 14.5(a)). What is the purpose of this fee? How will IUK estimate this fee?

112. What is meant in Clause 14.5(b) by the sending of a copy of the Summary to 'all' other IAA Shippers? Shouldn't this be limited to the IAA Shippers that are involved in the dispute?

113. The same remark applies to Clause 14.5(c). In addition, the CREG asks why any IAA Shipper that wishes to intervene in a dispute must only send its copy of written notice to IUK and not to the other IAA Shipper(s) already involved in the dispute.

114. Clause 14.6(a) mentions that even if an IAA Shipper did not participate in the arbitration proceedings, the IAA Shipper shall recognise the final arbitration award. One may ask why this only applies to the IAA Shippers and not to IUK. Furthermore, a statement of judgment affecting a third party in an arbitration decision shall only be given after new

proceedings for this have been initiated against the third party IAA Shipper in respect of which one wishes to apply the final arbitration award.

115. Article 192(1) of the Swiss Private International Law Act says (loose translation): *“If none of the parties has its domicile, habitual residence or business establishment in Switzerland, they may, by an express statement in the arbitration agreement or by a subsequent written agreement, waive judicial recourse against, or setting aside of, the Award; or they may limit it to one or several of the grounds listed in Article 190(2).”*

The CREG asks whether Clause 14.6(b) of the IAA should be regarded as an arbitration agreement. And if not, in an agreement on a dispute arising, can there be a waiver of the right to lodge an appeal against an arbitration award (see the grounds summarised in Article 190(2) of the Swiss Private International Law Act)?

116. The CREG approves Clause 14 and invites IUK, taking the formulated comments into account, to clarify Clause 14 with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 16: Sanctions and Use of Proceeds

117. The CREG asks whether it is actually correct that failure on the part of an IAA Shipper to give notice to IUK under Clause 16.3 shall not result in suspension or termination of the IAA. Which sanction does apply, then? A market operator also raised a question on this point during the consultation.

118. The CREG approves Clause 16 and invites IUK, taking the comment in paragraph 83 into account, to clarify Clause 16 with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

IV.2.3 Appendix B: Definition and Interpretation

119. The definition "Consequential Losses" refers, among other things, to "consequential cost", which the CREG understands to be depreciation of buildings and equipment, immovable property taxes and insurance. Should this definition not correspond to what IUK understands by it, the CREG deems it desirable for the term "consequential cost" to be further defined, in order to avoid problems of interpretation.

IV.3 Examination of the Access Code - IAC

IV.3.1 Section A: Introduction

120. The IUK Access Code ('IAC') establishes the rules that apply to Shippers that wish to acquire and use Entry Capacity and Exit Capacity.

121. This part of the IAC gives a short summary of Sections B to I, below.

122. The amended IAC submitted to the CREG on 21 August 2015 by IUK adds the "reshuffling service" under point 2 of this part.

123. The CREG approves Section A, Introduction.

IV.3.2 Section B: Capacity

124. This section of the IAC contains provisions governing the acquisition, registration, transfer, assignment, surrender and buy-back of Entry Capacity and Exit Capacity.

125. The terms Offered Capacity and Registered Capacity are defined and the Allocation Mechanism is described. In addition, the characteristics of the various Capacity Products and their characteristics are summed up and the registration process that follows the Subscription Process is laid down. The method and procedure to follow for Voluntary Surrender of Capacity and Long Term Use It Or Lose it, imposed by the CMP regulations, are laid down in this section of the IAC, together with the rules regarding Re-allocation. Lastly, the provisions applicable to Capacity Transfer between shippers themselves (secondary market) are laid down.

126. Annex B-1 describes the rules applicable to the Joint Booking Platform PRISMA, Annex B-2 contains the Long Term Use It Or Lose It procedure and, lastly, Annex B-3 is the Capacity Transaction Confirmation Template for first 2015 sale of post-2018 capacity.

127. With regard to Annex B-1, the comment of a market operator regarding point 2.8 "voluntary bundling by an IAA-shipper" was taken into account. This point was deleted completely and consequently not re-included in the IUK Access Code submitted by IUK for approval.

128. A market operator asks what should be understood by the term "any person" in point 2 (a) of Annex B-2. IUK is retaining this term and not replacing it with "IAA Shipper" as suggested by the market operator. The CREG agrees with this, given that the use of the term "IAA Shipper" would restrict the start of the Long Term Use It Or Lose It procedure to that section of market operators that wish to book capacity, in particular the existing "IAA Shippers".

129. As far as Annex B-3 is concerned, the CREG wishes to note that IUK, together with the amended IAA and IAC submitted to the CREG on 21 August 2015 following the insertion of a new service for reshuffling, informed it that a second subscription window for 2015 sale of post-2018 capacity was opened, which will run until 15 October 2015. Annex B-3 was amended slightly as a result, to bring the quoted deadlines into line with the start and end of the second subscription window. The subscription rules for this second subscription window were published by IUK on its website⁹.

130. The amended IAC submitted to the CREG on 21 August 2015 by IUK following the insertion of a new service for reshuffling, inserts a number of additional provisions and amends a number of provisions in this Section B:

- a new point 3.8 that enables the IAA Shipper to use the reshuffling service with reference to point 9 as regards the reshuffling procedure;
- amendment of point 5.2 that defines the term Capacity Transaction and expands it to the exchange of capacity between the IAA Shipper and IUK;
- amendment of point 5.3 that enables the registration of the Capacity Transaction inserted under point 5.2;
- a new point 9 with the rules applicable to the Reshuffling Process, and where reference is made to the Reshuffling Rules that are forwarded to those shippers that have shown interest (see also Annex B-4);
- a new Annex B-4, this being the template that will be used in Reshuffling for the Confirmation for a Capacity Transaction between IUK and the appropriate IAA.

131. The Reshuffling Process makes it possible for the IUK shippers to move capacity that they have contracted under the existing STA transport contract that expires on 1 October 2018 to a later date (time shift) and/or another IP (location shift). The reason why IUK offers this reshuffling service has, in the first place, to do with securing their income post-2018 by

⁹ See IUK website:

http://www.interconnector.com/media/102183/interconnector_capacity_sale_q3_2015.pdf

transferring income that would be realised in the period from 1 January 2016 to 1 October 2018 to the period post 1 October 2018.

132. IUK has consulted the market operators on this and published the consultation report on its website¹⁰. IUK received three written replies from the market operators, E.On Global Commodities, ENGIE and EDF/EDF trading. All three market operators supported IUK's proposal. Two market operators referred to the successful Reshuffling Process organised by Fluxys Belgium and suggested working with an administrative fee, as at Fluxys Belgium. One market operator pointed out that this service needs to be offered in consultation with the neighbouring transmission network managers and one market operator suggested resuming the Reshuffling Process annually even after the start of the NC CAM on 1 November 2015.

133. The reshuffling service as proposed by IUK gives the IAA Shipper the opportunity to apply for a location shift and/or a time shift for transportation services already subscribed to with IUK. The shipper concerned must have at its disposal subscribed fixed capacity under the existing long term STA contract with IUK for the period from 1 January 2016 to 1 October 2018. The shipper concerned will, as an initial step, transfer from the STA to the IAA the capacity that it wishes to rearrange. In a subsequent step it will offer capacity to IUK, making use of the Reshuffling Process as described in the IAA and IAC. The shippers remain subject to the payment obligations embodied in the STA but will receive a fee from IUK for making this Capacity available. The shipper concerned will, at the same time, apply for capacity under the Subscription Rules for the second 2015 subscription window as published by IUK on its website¹¹.

134. The reshuffling of long-term STA capacity to IAA post-2018 capacity is subject to the basic principle that the value of the post-2018 acquired capacity must be greater than the value of the STA capacity made available for reshuffling. However, the use of an administrative fee as applied by Fluxys Belgium (location shift) is not workable for IUK (time shift). IUK allows IUK shippers to rearrange capacity over longer periods after 1 October 2018. As a consequence, when valuing the rearranged capacity, the time factor must be taken into account. The detailed conditions and parameters that apply are set out under point 8 of the Reshuffling Rules. These Reshuffling Rules were published on the IUK website¹².

¹⁰ See IUK website: <http://www.interconnector.com/about-us/our-consultations/archived-consultations/>

¹¹ See IUK website : http://www.interconnector.com/media/102186/subscription_rules_for_second_2015_subscription_process.pdf

¹² See IUK website:

135. The CREG approves Section B, Capacity.

IV.3.3 Section C: Nominations and Matching Procedures

136. This section of the IAC contains the provisions that govern the way in which an IAA Shipper can use its Entry Capacity by nominating quantities of Natural Gas for delivery at an Entry Point and use its Exit Capacity by nominating quantities of Natural Gas for redelivery at an Exit Point.

137. In addition to Nomination and Renomination rules this section of the IAC also contains the rules regarding Nomination Matching and Nomination Confirmation. The IAA Shipper is not permitted to nominate more than its Registered Capacity unless it submits a Nomination under the Overnomination Allocation Mechanism, whereby IUK makes Interruptible Capacity available as Within Day Capacity.

138. This section of the IAC lays down the rules applicable to Buy-back and Forced Buy-back. IUK has, in application of the rules imposed by CMP, developed an oversubscription mechanism, with which additional capacity can be made available to the market on top of the offered technical capacity. This oversubscription mechanism takes as its starting point the conclusion that, on the assumption that not all IAA Shippers will exercise their right to nominate capacity at the same time and to the maximum extent, more capacity can be offered than the technically maximum provided capacity. If aggregate Nominations of IUK Shippers exceed the physical capability of the Transportation System, then IUK shall determine the amount of capacity that must be bought back, the way in which the shippers can offer Capacity for Buy-back, the Buy-back process and the procedure for Forced Buy-back in the event that the amount of Offered Capacity is insufficient to meet the Buy-back Requirement.

139. The CREG approves Section C, Nominations and Matching Procedures.

IV.3.4 - Section D: Allocation of Gas, Compressor Electricity and Shrinkage

140. This section of the IAC contains the provisions that govern the way in which IUK allocates Natural Gas that the IAA Shipper has nominated for delivery or redelivery. To manage the Steering Differences, IUK has concluded operational balancing agreements ("OBAs") with

Adjacent TSOs. As a result the Allocations at the Entry Points and Exit Points are in principle equal to the Confirmed Nomination Quantities. In exceptional circumstances where it is not possible for IUK to apply the above arrangement, the gas quantities will be allocated pro rata, according to the Confirmed Nomination Quantities.

141. This section of the IAC also contains provisions governing how IUK shall allocate Fuel Gas, Shrinkage and Compressor Electricity for the IAA Shippers and the way in which this information is reported to the IAA Shippers.

142. The CREG approves Section D, Allocation of Gas, Compressor Electricity and Shrinkage.

IV.3.5 Section E: Balancing and Trade Notifications

143. This section of the IAC contains the provisions applicable to the maintenance of the balance between delivery and redelivery and the trade in Quantities of Natural Gas between the IAA Shippers among themselves on the Interconnector pipeline.

144. The IAA Shipper will ensure that the sum of the Confirmed Nomination Quantities at the Entry Points and the traded quantities for acquisition are equal to the sum of the Confirmed Nomination Quantities at the Exit Points and the traded quantities for sale each hour of the Gas Day. IUK can set up a tolerance limit that makes it possible to deviate from the above rule, and will notify the IAA Shippers of this. The Daily Imbalance that will be carried forward to the following day within this tolerance limit. The Daily Imbalance that lies outside the tolerance limit (positive or negative) will be settled in accordance with rules as provided for in Section F of the IAC.

145. Lastly, this section contains the rules that apply with regard to the trade in Natural Gas within the Interconnector pipeline.

146. The CREG approves Section E, Balancing and Trade Notifications.

IV.3.6 Section F: Charging

147. This section of the IAC sets out the Charges an IAA Shipper is to pay IUK and any payments made or rebates that IUK can apply in respect of an IAA Shipper.

148. The amended IAC submitted to the CREG on 21 August 2015 by IUK following the insertion of a new service for Reshuffling, adds under point 4.2 and point 11 of this section

provisions regarding the Charge (rebate) that applies in the case of Reshuffling (see Section B point 9).

149. The CREG approves Section F, Charging.

IV.3.7 Section G: Measurement, Sampling and Analysis

150. This section of the IAC contains provisions governing the measurement, sampling and analysis of the Natural Gas that is delivered and redelivered.

151. Furthermore, the rules are laid down in terms of Maintenance and Calibration of the measuring devices and it is determined how any adjustments in the Quantities of allocated Natural Gas will be adjusted in accordance with a Measurement Error. If the allocation happens at a Connection Point where an OBA applies, the differences between Nominations and allocated Quantities are managed as provided in Section D of the IAC.

152. The CREG approves Section G, Measurement, Sampling and Analysis.

IV.3.8 Section H: Quality Requirements and Operating Conditions

153. In the examination of the IAA, and more specifically in paragraphs 95 to 99 of this decision, the CREG has already argued at length that opening up the gas market and, more specifically, the disconnection of the transportation and delivery activities, has radically altered the responsibilities of the market actors in terms of complying with quality requirements.

The role of the network user (in this case the IAA Shipper) is being literally reduced, and restricted to the use of the transport network. The operational management of the network is, on the other hand, the exclusive authority of the manager of the transport network. Operational management also includes the monitoring and management of the quality of the transported gas. In concrete terms this means that, once the Natural Gas has been accepted by the manager and allowed into the transport network, the guaranteeing of the quality requirements of the Natural Gas in question is the exclusive responsibility of the TSOs.

In Section H the reasoning regarding responsibilities and obligations of Clause 7 of Appendix A to the IAA is further developed. to that effect Section H contains no new insights. Section H simply provides more information about the communication between the TSOs on the one hand and the TSOs and the IAA Shippers on the other, as regards provisions relating to quality. The CREG is of the opinion that it has already set out its standpoint on quality in detail, in the discussion of the IAA. It refers for this to the explanation in the discussion of the IAA and in

particular focuses attention on the second paragraph of paragraph 99 in which it asks IUK to adapt the contractual template applicable after the Initial Period so that the responsibility regarding gas quality becomes a shared responsibility of IUK and Fluxys Belgium. Following on from this, Section H of the IAC must be adapted accordingly.

154. The CREG approves Section H Quality Requirements and Operating Conditions and invites IUK, taking the comments into account, to clarify Section H with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

IV.3.9 Section I: Interruption, Constraints and Maintenance

155. This section of the IAC contains the provisions regarding interruptions and constraints together with the rules that apply to maintenance of the IUK transportation installation.

156. The way in which Interruptible Capacity will be interrupted or reduced as laid down under point 1 is in accordance with the provisions provided for in Clause 24 of the NC CAM. As regards the constraints, a distinction is made between constraints that are the result of constraints on the IUK Transportation System and those that are the result of constraints on the neighbouring transportation systems. Lastly, this section contains the ballingén regarding maintenance where a distinction is made between Planned Maintenance and Short-Term Maintenance not included in the Annual Planned Maintenance. If the aggregate number of planned Maintenance Days exceeds 15 days, the Capacity Charge owed by the IAA Shippers will be reduced for the days above this limit.

157. The CREG approves Section I Interruption, Constraints and Maintenance.

IV.3.10 Conclusion

158. The CREG has no further comments and, except as regards the comments relating to the quality requirements as set out in Section H of the IAC, is able to agree with the IUK Access Code proposed by IUK.

IV.4 SUA

IV.4.1 Examination of the SUA

159. The SUA contains the general terms and conditions for access to ISIS.

160. Clause 11.3 of Appendix A of the IAA provides that the System User shall sign the SUA before obtaining access to the ISIS information system. The System User, who is the IAA Shipper and STA Shipper, must consequently also sign the SUA, in addition to the Corpus of the IAA and the STA, if it wishes to be able to buy transportation services from IUK. On the basis of the SUA, the System User will obtain via the information system ISIS all information about Natural Gas flows, stock of gas in the pipeline, Nominations, Allocations etc. The information system ISIS generates the flow of reports and associated communications with the Adjacent TSOs, Fluxys Belgium and National Grid.

161. The CREG also refers to paragraphs 59 to 62 of this decision.

IV.4.2 Corpus

162. The SUA consists of a Corpus and a single Appendix A, General Terms and Conditions.

163. The CREG refers to paragraphs 64 and 66 of this decision, to the effect that the Corpus is signed by IUK and the System User. Future amendments to Appendix A of the SUA do not require a new signature from IUK and the System User of the SUA. Only future amendments to the corpus will require a new signature from IUK and the System User of the SUA.

IV.4.3 Appendix A: General Terms and Conditions

Clause 1: Definitions and Interpretations

164. In the list of definitions included under Clause 1 the CREG asks why the second part of the definition regarding Consequential Losses only applies to IUK. The CREG invites IUK to clarify Clause 1 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

165. The CREG asks why the SUA Effective Date can also be established by IUK at a later date than the date of signing by both parties.

166. The CREG approves Clause 1 and invites IUK, taking the comments into account, to clarify Clause 1 with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 2: Duration

167. The CREG notes that the term 'Sub-Letting' in Clause 2.2 is written with a capital letter even though this term is not included in the list of definitions.

168. The CREG approves Clause 2 and invites IUK, taking the comment into account, to clarify Clause 2 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 3: Use of the System

169. In Clause 3.2 the terminology 'in its absolute discretion' is used. IUK is invited to stipulate the criteria based on which it will give access to the system as an agent on behalf of the user to one company but not the other, designated by the System User.

170. The CREG approves Clause 3 and invites IUK, taking the comment into account, to clarify Clause 3 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 5: Conditions of Use of Equipment and/or Access to the System

171. In Clause 5.1 the terminology 'in its discretion' is used. IUK is invited to stipulate the criteria based on which it will exercise control and supervision regarding access to the system. After all, if a shipper does not obtain access to the system, it cannot book transportation services either and, as a result, has no access to the Interconnector.

172. Terms such as 'or is likely to be the cause of' and 'subject to any reasonable charges as IUK shall determine' offer no legal certainty at all that IUK will apply Clause 5.1(2) objectively and in a non-discriminatory way in respect of all shippers.

173. The CREG finds that subject to what is provided in the IAA in respect of suspension of transportation services and termination of the IAA, Clause 5.1(3) provides for an additional opportunity for IUK to suspend the transportation services or terminate the IAA.

Reference is made to Clause 5.1(1). The CREG asks whether the reference should not be a breach of Clause 5.1(2) rather than of 5.1(1).

174. The CREG approves Clause 5 and invites IUK, taking the comments into account, to clarify Clause 5 with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 8: Liability

175. The CREG asks why, pursuant to Clause 8.3, a maximum amount equal to GBP 125,000 applies in respect of liability for IUK only.

176. The CREG approves Clause 8 and invites IUK, taking the comment into account, to clarify Clause 8 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 10: Suspension and Termination

177. According to Clause 10.1 IUK can 'in its absolute discretion' determine the period of suspension for access to the System. The CREG is of the opinion that the suspension for access to the System ceases to exist as soon as the incident based on which suspension of access to the System is given, ceases to exist.

178. Clause 10.1(1)(d) can only be applied by IUK if the Transportation Agreement, i.e. the IAA and the STA, is suspended for reasons mentioned in the Transportation Agreement.

179. The CREG asks to what extent each party, including IUK, can terminate the SUA without the IAA being terminated in advance and/or at the same time. On the other hand, the CREG believes that IUK cannot simply terminate an SUA in application of Article 10(2) since this constitutes a breach of the right of access.

180. The CREG approves Clause 10 and invites IUK, taking the comment into account, to clarify Clause 10 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 11: Force Majeure

181. The CREG asks how Clause 5 of the IAA together with Clause 11.1 of the SUA should be read and applied, taking into account the comments set out in paragraphs 84 to 87 inclusive of this decision.

182. The CREG approves Clause 11 and invites IUK, taking the comment into account, to clarify Clause 11 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 14: Amendment of System User Agreement

183. Clause 14.1 provides that IUK may amend the System User Agreement from time to time. These amendments can only be validly made after consulting the shippers and after submission to the regulatory authorities, including the CREG, for approval. It is hoped that IUK will amend Clause 14.1 to that effect.

184. The CREG approves Clause 14 and invites IUK, taking the comment into account, to clarify Clause 14 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 20: Illegality

185. With regard to Clause 20.1 the same comment as formulated by the CREG in paragraph 182 of this Agreement shall apply. IUK is invited to amend Clause 20.1 to that effect.

186. The CREG approves Clause 20 and invites IUK, taking the comment into account, to clarify Clause 20 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

Clause 22: Law and Jurisdiction

187. The CREG asks which courts shall have jurisdiction in a dispute arising in part from the IAA and in part from the SUA, knowing that pursuant to the IAA disputes, controversies and claims shall be decided by arbitration (Clause 14 Appendix A, IAA General Terms and Conditions) whereas pursuant to the SUA the courts of England and Wales shall have jurisdiction (Clause 22.2, SUA)?

188. The CREG approves Clause 22 and invites IUK, taking the comment into account, to clarify Clause 22 to that effect with the first change, amendment, or supplement to the IAA, and/or IAC, and/or SUA.

V. CONCLUSION

189. In application of Article 41.1(c) of Directive 2009/73 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC and in application of section 15/7 and 15/14(2), paragraph 2, sub-paragraph 6, of the Act of 12 April 1965 concerning the transport of gaseous products and others by means of pipelines and in view of the foregoing analysis, in particular the assessment criteria in Section II and the examination in Sections III and IV of this decision, the CREG decides to approve:

- The IUK Access Agreement (IAA).
- IUK Access Code (IAC),
- and the System User Agreement (SUA)

submitted to the CREG by courier on 13 July 2015 and on 14 and 21 August 2015, with the exception of the 'Ratings Test' mentioned in Clause 2 as well as Clause 2.11 of Appendix 2 of the Access Agreement (IAA).

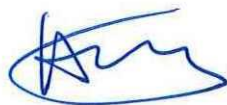
The approval will come into effect on 1 November 2015 at the latest, the date on which Commission Regulation 984/2013 (EU) of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council comes into effect.

The CREG invites Interconnector (UK) Limited, in application of Article 41.10 of Directive 2009/73 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, in connection with the first amendment, change and/or supplement to the Access Agreement with IUK (IAA), the Access Code with IUK (IAC) and the System User Agreement (SUA) but no later than three months prior to 1 October 2018 and after consultation, to submit an amended proposal to the CREG that takes into account the comments formulated in Sections III and IV of this decision. If not IUK gives grounds that the formulated comments cannot be complied with.

Furthermore, the CREG decides that IUK will publish the Access Agreement with IUK (IAA) approved by the CREG, the Access Code with IUK (IAC) and the System User Agreement (SUA) on its website, together with this decision of the CREG.

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Voor de Commissie voor de Regulering van de Elektriciteit en het Gas:



Andreas TIREZ  
Director



Marie-Pierre FAUCONNIER  
Chairwoman of the Management Board

## **APPENDIX 1**

### **IUK ACCESS AGREEMENT, IUK ACCESS CODE AND THE SYSTEM USER AGREEMENT FOR ACCESS TO THE ZEEBRUGGE-BACTON INTERCONNECTOR**

**Submitted for approval on 13 July 2015 and on 14 and 21  
August 2015**

[IUK ACCESS AGREEMENT](#)

[IUK ACCESS AGREEMENT SUMMARY](#)

[IUK ACCESS CODE](#)

[SYSTEM USER AGREEMENT](#)