

The binding phase of the Open Season procedure  
Consultations with the interested public  
14 July 2017

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**1. Article 2 paragraph 2: what payment security instruments are envisaged?**

The user can choose between 2 different payment security instruments:

- 1) irrevocable first demand bank guarantee or
- 2) monetary deposit to TSO's bank account; in the amount as specified in Article 2 Paragraph 2. of the contract.

In case the user contracts both the exit capacity from LNG terminal and interconnection capacity, or only interconnection capacity, then the Annex 2 of the Network Code of Transmission System applies, whereas in case the user contracts only exit capacity from LNG terminal, then Annex 1 of the Network Code of Transmission System applies to the gas transmission contract.

Article 8 of Annex 1 of the Network Code of Transmission System envisages possibility that the user submits a debenture note ("zadužnica") instead of bank guarantee/monetary deposit, in case that he has in the previous 12 months duly fulfilled his obligations towards Plinacro. However, please note that such provision is not applicable in case of users which are foreign entities. Namely, the debenture note issued by Croatian entity represents enforceable act, issued before Croatian public notary, based on which the creditor may directly collect due amount from debtor's bank accounts in banks in Croatia, and based on which the creditor may directly initiate enforcement procedure on debtor's entire property in Croatia. Since the debenture note which would be issued by a foreign entity, not having bank accounts and property in Croatia, would not have the same level of effectiveness, as debenture note issued by Croatian entity, Plinacro cannot accept as collateral debenture notes issued by foreign entities.

Hence, the users which are foreign entities may as a collateral only submit bank guarantee or monetary deposit.

**2. Article 2 paragraph 2b) – max 15 years only, but capacity can be booked for 20 years ahead**

Remark is accepted. In the Final Binding Open Season procedure the capacity will be offered for the period of 20 years.

**3. Article 2 paragraph 3 – what if the subject of this contract is to also contract Interconnector capacity into Hungary? And what if user is unable to negotiate transmission contract with FGSZ?**

The situation where the user enters into contract with Plinacro and is unable to negotiate transmission contract with FGSZ, is not possible, because Open Season procedure for capacity at interconnection point Dravaszerdahely is conducted jointly by Plinacro. and FGSZ, pursuant to Allocation Rules approved by Croatian Energy Regulatory Agency and Hungarian regulator. Pursuant to the respective Allocation Rules, the capacity at interconnection point Dravaszerdahely will be offered as bundled capacity.

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By submitting offer in Open Season procedure, the user (shipper) agrees to both Plinacro's and FGSZ's terms of service (gas transmission contract draft and General Terms and Conditions), hence there is no further negotiation on transmission contracts once the offers have been submitted.

4. Article 2 paragraph 6 – last sentence 'listed in this paragraph' is it this paragraph 6 or paragraph 5?

It refers to documents listed in this paragraph 6.

5. Article 4 paragraph 2 – does this mean that user needs to be a Croatia based company to book capacity?

The user does not need to be a Croatia based company in order to book capacity.

6. Article 4 paragraph 3 – this results in a payment period of 5 days, which is too short for us. We would need at least 10 days between invoice receipt and payment due date.

Plinacro will take in consideration this remark and see if it is possible to prolong the payment period.

7. Article 4 paragraph 4 – how is the default interest calculated? Will the TSO send a separate invoice or invoice following month? As stated above, we would need 10 days between receipt of invoice and payment.

The default interest rate is calculated from (including) the day after the maturity date, until the payment date. The default interest rate currently (on 22 September 2017) amounts 9,41% p.a. The default interest rate is regulated by the Croatian Civil Obligations Act.

The TSO issues separate invoice for the accrued default interest. Pursuant to Article 8 paragraph 3 of OU-INT, the accrued default interest becomes due within 8 days from the date the shipper receives calculation/invoice for default interest.

8. Article 4 paragraph 6 – it needs to be clearly stated that the tariff consists of a capacity charge and a commodity charge and that it is the capacity charge that needs to be paid regardless of actual usage by the shipper. Also, can the capacity be sold/assigned to someone else?

It is correct that only the capacity charge is to be paid regardless of actual usage by the shipper. In case there is no usage, the commodity charge will amount 0. We will amend the wording accordingly.

The manner (formula) of calculation of fee for the usage of transmission system is regulated in Methodology for determining the amount of the tariff items for gas transmission, passed by Croatian Energy Regulatory Agency (CERA). The gas transmission contract in Article 4 explicitly refers to application of the respective Methodology.

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Pursuant to Article 20 of OU-INT, neither the shipper nor the TSO can transfer the gas transmission contract, nor assign rights arising from it, to third parties without prior written consent of the other party. The procedure of assigning certain rights from the gas transmission contract in case when the shipper sells capacity at secondary market is regulated within the Network Code of Gas Transmission System.

**9. Article 6 – please clarify the clause around disputed payment security instrument**

Pursuant to Article 5 paragraph 20 of OU-INT and Article 8 paragraph 9 of OU, in case that any third party (e.g. guarantor from the agreed collateral) contests the validity of the collateral, the shipper is obligated to replace the contested collateral with a valid identical collateral pursuant to OU-INT/OU and gas transmission contract, which will be acceptable to the TSO; within 5 business days upon TSO's written request.

In case that the shipper fails to replace the contested collateral in the manner and within terms as defined in OU-INT/OU, he will be obligated to pay liquidated damages to the TSO, pursuant to Article 6 of the gas transmission contract.

**10. Article 7 paragraph 1 – what is the process of acquiring such permit and can the TSO facilitate the process?**

Conditions under which a company that does not have registered seat in the Republic of Croatia can be a user of the gas transmission system differ depending on whether it is:

**(i) A company that has a registered seat in one of the member states of the European Union or in one of the Energy Community contracting parties:**

Pursuant to Article 8 of the Gas Market Act, CERA can issue a license **for gas trading or gas supply** to gas trader or gas supplier from the member state of the European Union and from the Energy Community contracting party, provided that: (i) such company is registered for performing of activity of gas supply or gas trading in the member state of the European Union or the Energy Community contracting party, (ii) such company provided to CERA appropriate collateral, and (iii) such company provided to CERA statement of it's representative on accepting the obligations envisaged in the Gas Market Act and it's subordinate bylaws.

Article 4, paragraph 3 of the Ordinance on Licenses for Energy Activities and Keeping the Register of Issued and Revoked Licenses for Energy Activities (hereinafter: the **Ordinance**) stipulates that CERA can issue a license to an active trader from the member state of the European Union and from the Energy Community contracting party, for performing of certain energy activities following a simplified procedure prescribed in Article 16 of the Ordinance. Article 16 of the Ordinance explicitly stipulates that license can be issued in simplified procedure only for **gas trading** (and not for gas supply).

The simplified procedure of obtaining energy license envisaged under Article 8 of the Gas Market Act and Article 16 of the Ordinance does not require that a company (gas trader/supplier) is registered in the Republic of Croatia.

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In the Croatian legal system, in case of discrepancies between a law and subordinate legislation, law takes precedence over subordinate legislation. Hence, Article 8 of the Gas Market Act, which envisages possibility to issue both gas trading and gas supply licenses in simplified procedure, should take precedence over Article 16 of the Ordinance, which envisages possibility to issue only gas trading license in simplified procedure. However, CERA informed us that in practice, they apply the Ordinance over the Gas Market Act, so that they issue in simplified procedure only licenses for gas trading, and not for gas supply.

**(ii) A company that has a seat in the third country:**

In order for a company that has a seat in the third country (i.e. a country other than the Republic of Croatia, member state of the European Union or Energy Community contracting party) to obtain an energy license, it must establish a company with the seat in the Republic of Croatia, which must obtain license for gas supply or gas trading, pursuant to the Ordinance.

**11. Article 8 paragraph 1b) – What does this obligation to use the capacity mean? Is there an obligation to enter gas volumes? Typically, the obligation of the shipper shall be limited to the obligation to pay the tariff.**

There is no obligation to enter gas volumes. The correct wording should be “right”, not “obligation”. Plinacro will amend the wording accordingly.

**12. Article 8 paragraph 4 – the liquidated damages have to be paid within a reasonable time after [A]. And last part needs to be clarified that the TSO and not shipper needs to prove that the delay is attributable to the TSO. Also please identify the amounts of compensation and the caps.**

Pursuant to the Croatian Civil Obligations Act, the existence of ordinary negligence of the debtor is assumed in all cases, unless the debtor proves otherwise. In other words, in case of dispute, the TSO would have to prove that the delay is not attributable to the TSO.

The total amount of the liquidated damages from Article 8 paragraph 4 shall not exceed the amount of 10% of the first 6 months fee for the booked capacity (capacity charge only). Liquidated damages will be calculated for each day of the delay in the amount of the 0.055% of the 6 months fee for the booked capacity, starting from 2 April 2020 (A). until 1 October 2020 (B).

**13. Article 9 paragraph 2 – should be an unconditional sunset clause allowing the shipper to terminate if the capacity is not made available by a given date.**

Article 9 paragraphs 2 and 3 regulate termination of the transmission contract in case the Date of Initial Application does not occur at the latest until 1 October 2020. The difference between these 2 paragraphs is in the consequences of termination (liability for damages), which differs when the reasons for termination are attributed to Plinacro (paragraph 2) and when the reasons for termination are attributable to any other person (it could be either LNG Hrvatska, or any third person) or event (force majeure), without Plinacro’s fault (paragraph 3). In paragraph 2,

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Plinacro shall be liable for damages, whereas in case of paragraph 3, Plinacro shall not be liable for damages.

**14. Article 9 paragraph 3 – doesn't the last part contradict Art. 6 and 8(4)?**

Article 9 paragraph 3 does not contradict Article 6, because Article 6 will be applicable after the Date of Initial Application occurs. At that time, the parties will no longer have option to terminate the contract based on Article 9 paragraph 3.

Article 9 paragraph 3 does not contradict Article 8 paragraph 4. In case the capacity is not made available until 1 April 2020 due to Plinacro's fault, Plinacro will pay to the shipper liquidated damages, accrued until the date when the availability of capacity is achieved. In case the capacity is not made available until 1 October 2020, without TSO's fault (Article 9 paragraph 3), then each party can terminate the contract, without any right to damages.

**15. The metering unit is kWh/h (expressed in NCV based 15 °C/15°C) in Croatia, and GCV based 25°C/0°C) in Hungary. What is the conversion rate? Shall we book the Dravaszerdahely CR>HU bundled capacity and the Omišalj entry on the basis of GCV or NCV?**

The capacity expressed at the upper gas calorific value under normal conditions is used for the binding procedure at an interconnection. The capacity at the upper gas calorific value under normal conditions is calculated in such a manner that the capacity at the lower gas calorific value under standard conditions is divided by the coefficient 0.9010. Plinacro is aware of the problem of different calorific values for entry point Omišalj and interconnection point Dravaszerdahely and is working on that problem.

**16. Please provide the Croatian natural gas quality requirements.**

Croatian natural gas quality requirements are specified in General terms of gas supply ("Official Gazette" No. 158/13, 74/17)

**17. Do you have all the necessary licenses for the infrastructure development? Please let us know which licenses have you already gotten and which licenses haven't you gotten yet? Please send us the latest development schedule**

So far Plinacro has obtained the following licenses for the different scenarios.

Scenario 1. Omišalj-Zlobin

1. Environmental Impact Assessment Completed & Environmental Permit obtained,
2. Basic Design completed & Location Permit obtained,
3. Main Design completed & Building Permit (1st phase obtained, 2nd&3rd phase in progress)

Scenario 2. Zlobin-Bosiljevo

1. Environmental Impact Assessment completed & Environmental Permit obtained,

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2. Basic Design completed & Location Permit obtained

Bosiljevo-Sisak

1. Environmental Impact Assessment completed & Environmental Permit obtained,
2. Basic Design completed & Location Permit obtained

Sisak-Kozarac

1. Environmental Impact Assessment completed & Environmental Permit obtained,
2. Basic Design completed & Location Permit in progress

Scenario 3. Kozarac-Slobodnica

1. Environmental Impact Assessment completed & Environmental Permit obtained,
2. Basic Design completed & Location Permit in progress

The development schedule will be available after Plinacro takes the decision on the infrastructure scenario for the construction of the new gas pipeline for gas transmission from the LNG terminal.

18. If the LNG terminal is built, will the capacity booking be provided for shippers at the Omišalj entry, at the Croatian-Hungarian Interconnection point as well and vice versa? In order to avoid any doubts: is the transmission capacity booking firmly linked to the LNG terminal capacity booking?

The capacity allocation rules for the entry point Omišalj will be prescribed in more details in the Rules for the implementation of the binding phase. The booking of the LNG terminal capacity and the booking of the transmission system capacity are two different procedures to take place in parallel. In order to avoid any doubt, the shippers will have to book separately capacity for the LNG terminal and the capacity for the transmission system at the entry point Omišalj.

19. Will you publish the offered capacities and the reserve prices at the Omišalj entry at the Dravaszerdahely CR>HU interconnection point parallel with the capacity booking at the LNG terminal on the island of Krk?

The indicative tariff and the offered capacities for entry point Omišalj and interconnection point Dravaszerdahely CR>HU will be stated in The Rules for the implementation of the binding phase. The final binding phase of the Plinacro/FGSZ OSP and the final binding phase of the LNG Croatia OPS will be performed simultaneously.

20. The documentation of consultations with the interested public doesn't contain the traffic fees. Please inform us about the additional transmission fees, and kind to be applicable, too.

The documentation of consultations with the interested public contains the average cost of gas transmission from the entry into the transmission system in Omišalj to the exit at Dravaszerdahely IP which was stated for information purposes only. The current Methodology for determining the tariff items for the gas transmission ("Official Gazette" No. 85/13, 158/13, 118/15) will be applied for the calculation of the indicative tariffs. The fee

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for the usage of the transmission system consists of two elements; the capacity charge and the commodity charge.

21. Please send us the average cost of gas transmission for the period 2027-2039 as well. Unfortunately, the Open Season document contains it only for the period 2020-2026.

The average cost of gas transmission was calculated for the information purposes only. It was calculated on the basis of 10YNDP, investments based on infrastructural scenarios explained in the Consultation document and current Methodology. The indicative tariff that will be stated in Rules for the implementation of the binding phase will be a more precise indicator of the average cost of gas transmission for the period 2027-2039.

22. Will Plinacro and LNG Croatia harmonize their Open Season in terms of same bidding dates and with linked capacity booking procedure?

LNG Croatia and Plinacro/FGSZ will harmonize the dates of the bid submission period; however, there will be two separate capacity booking procedures. The allocation rules for the entry point Omišalj will prescribe that the shippers allocated capacity at the LNG Terminal will also be allocated capacity at the entry point Omišalj if they placed a bid in the Plinacro/FGSZ OSP. Therefore, the shippers who submitted the bids for both capacities may be sure they will be allocated the capacities both at the LNG Terminal and at the entry point Omišalj in the same amount.