

Guidance notes for the Individual PRISMA Gas Capacity Contract

Introduction PRISMA Secondary Platform

PRISMA Secondary Trading is functional since January 2014. Currently, 28 European network operators are participating on the PRISMA Platform. EFET was asked by PRISMA to provide a contractual standard which all market participants could use for trading of eligible products (Art 21.1 of the PRISMA GTCs <https://platform.prisma-capacity.eu/center/download.xhtml?conversationContext=2>).

EFET understanding of the contractual relationships and mechanism in relation to trading on PRISMA Secondary is as follows:

PRISMA is currently not registered as multilateral trading facility under MiFID and BaFIN, the competent regulatory authority in Germany, does not consider PRISMA as an MTF. It is therefore expected that the Financial Conduct Authority (“FCA”), the relevant UK regulatory authority, will follow this assessment. EFET has as of the date this guidance is published no knowledge that this is intended to change or that FCA takes different position. Nevertheless users are encouraged to monitor any developments, in particular as PRISMA will change its registered seat from Germany to Belgium in the near future and the Belgian Financial Services and Markets Authority (“FSMA”) will then become the competent regulatory authority. FSMA’s view of the PRISMA is currently unknown.

It has been clarified during the consultation with PRISMA that PRISMA offers for trading of capacity the following products (i) assignment transactions and (ii) transfer of use transactions. It does not consider “sublet” transactions as transfer of use transaction and therefore does not cater for such transaction being traded via PRISMA Secondary especially as no validation by the relevant network operator(s) is required. Accordingly the Individual PRISMA Gas Capacity Contract only caters for Transfer of Use transactions and Assignments Transactions.

PRISMA GTCs only provide the legal framework for participating and trading at PRISMA; the rules of the relevant network operator(s) apply in addition and cannot be overwritten by either the PRISMA GTCs or the bilateral contract between the parties to the secondary capacity contract. Hence users who intend to use the Individual PRISMA Gas Capacity Contract are strongly encouraged to consult their own counsel before attempting to use this document and to familiarise themselves with the rules of the network operators, in particular, the differing rights and obligations involved in Transfer of Use Transactions and Assignment Transactions, e.g. accepted kind of transfer, restrictions volume or duration-wise, general acceptance of trading chains.

The PRISMA GTCs are governed exclusively by the laws of the country where PRISMA is seated according to the relevant commercial register. This is as of the date of this guidance notes Germany but will change in near future to Belgium.

The commercial details entered into the mask for secondary trading as ‘*proposal details*’ on the PRISMA Platform are forwarded to the Relevant Network Operator for Validation once matched on the PRISMA Platform.

Stand-Alone Contract vs. Appendix

The entities being involved in the discussion of a suitable approach for a trading documentation have decided that a stand-alone contract would be more appropriate than an Appendix to the EFET General Agreement Concerning the Delivery and Acceptance of Natural Gas (“EFET Gas”) for the following reasons:

- A stand alone contract allows the use by all participants of the capacity market not only users of the EFET Gas;
- Whether trading of gas capacities is eligible for close-out netting is not assessed by the existing Legal Netting Opinions; and
- The terms for a capacity transaction need to be posted on PRISMA and do not allow negotiation so that the GTC approach seems more suitable.

Structure

The Individual PRISMA Gas Capacity Contract is subdivided in two parts. Part I contains the commercial details, election to some general terms in Part II and other rules or amendments the user intends to introduce. Part II contains the pre-set general provisions.

To simplify its use, Part I is provided separately for unbundled products and for bundled products. PRISMA expects that in future bundled products with more than two relevant network operators may also be available. Unbundled products consist either of a Transfers of Use Transactions or an Assignment Transactions. Bundled products however may consist solely of Transfer of Use Transactions, solely of Assignment Transactions or a combination of Transfer of Use Transaction(s) and Assignment Transaction(s). Respective elections shall be made in Part I of the Individual PRISMA Gas Capacity Contract.

Following intense discussions the entities involved decided not to include credit provisions in Part II. As said the terms published as trading conditions are none negotiable, counterparty specific credit support as known from the EFET Gas is thus unsuitable. Additionally, in the majority of cases a capacity transaction cannot be unwound once validation is requested; both Parties depend on decision of the Relevant Network Operator(s). Thus even if credit provisions have been agreed, no suitable legal consequence will be available. Users may want to consider monitoring its possible counterparties and their credibility via the “Trader List” (Art 23 PRISMA GTCs) or product specific guarantees. Amendments in this regards by user need to be made at the end of Part I under “Amendments to Part II” so that any credit requirements are clearly visible to potential counterparties.

The PRISMA GTCs only differentiate between Assignment Transactions (*“assignment, where all rights and obligations are completely allocated from an Offering Shipper to a Requesting Shipper”*) and Transfer of Use Transaction (*“transfer or use, where the Requesting Shipper obtains the right to nominate the transferred capacity”*). EFET is aware that some participating network operators currently allow transfers that do not entirely fit into one of the given categories as they also contain aspects of the other transfer types. The Individual PRISMA Gas Capacity Contract tries to cater for such hybrids (e.g. with regards to Assignment Transactions catering for other contracts with the Relevant Network Operator(s) that may be required) but users are strongly encouraged to familiarise themselves with the rules of the Relevant Network Operator(s) and if necessary, adjust the general provisions of Part II in Part I.

The Individual PRISMA Gas Capacity Contract caters for trading chains in Assignment Transactions as well as in Transfer of Use Transactions but users are strongly encouraged to familiarise themselves with the rules of the Relevant Network Operator(s), especially if trading chains are permitted. User must be aware that trading chains of usage rights derived from other usage rights in capacities may incur additional risks to buying a usage right that is derived directly from the primary capacity or equivalent capacity. To raise the risk awareness and to make it easier for parties to a capacity Transfer of Use Transaction to estimate its risks, EFET has decided to provide a warranty that the usage right is derived directly from the primary capacity or assigned capacity (§5.1(a)(iv)).

Explanation of Specific Provisions of the Individual PRISMA Gas Capacity Contract

1. Conclusion of Contract

Based on the wording of Art 21.4 PRISMA GTCs (*“a concluded transaction is valid with regards to the TSO”*), the Individual PRISMA Gas Capacity Contract assumes in §3.1 that the contract is legally binding for the Parties from the time the terms of such contract have been concluded according to the means provided by PRISMA but requires the fulfillment of the suspensive condition (Validation) in order to become enforceable. This means that the contract between the Parties requires additionally the validation of the Relevant Network Operator(s) in order to become also enforceable against such Relevant Network Operator(s). If the contract is not validated by the Relevant Network Operator(s), damages have to be paid if the rejection to validate was caused by a failure of a party to the contract to comply with the rules of the Relevant Network Operator(s). Although validation is in most cases an automated process, PRISMA does not give any estimation how long the validation process may take.

2. Primary Obligations

§4.1 and §5.1 define the primary obligations of the Parties. Special attention should be made by the Seller to the obligation to ensure as far as possible that the Network Operator Capacity Contract(s) and any other capacity contracts with the Relevant Network Operator(s) required to be in force for the Transfer of Use Transaction or Assignment Transaction is effective and not terminated, withdrawn, suspended or amended in respect of the Gas Capacity until the end of the Total Capacity Period or in case of an Assignment Transaction until required by the Relevant Network Operator(s). In particular, if the Seller is trading on transfer of use rights or assignment hybrids it must be aware that it accepts responsibility for the existence of all contracts required between the Relevant Network Operator(s) and parties of the chain that are required to enable performance of the current capacity transaction becoming effective. If a Transfer of Use Transaction has been agreed, the Seller needs to pay or procure payment of the Tariff Rate. The Seller shall not encumber or change the Gas Capacity Type during the Total Capacity Period.

If the Seller is selling a transfer of use right derived from primary capacity or assigned capacity, it should give the representation in §5.1(a)(iv). Please note that this warranty is drafted with an opt-out election. Hence, if nothing is elected in Part I, the warranty is given by the Seller.

The Buyer needs to ensure that it has done all that is necessary to cater for Validation of the Capacity Transaction by the Relevant Network Operator(s) and the continuation of the agreement(s) with the Relevant Network Operator(s) for the duration of the transaction. This includes in particular the provision of all necessary credit support. The

Buyer, especially in respect of an Assignment Transaction, shall not change the Gas Capacity Type (e.g. Buyer is offered to upgrade capacity from interruptible to firm) with effect after the end of the Total Capacity Period.

3. Force Majeure

This clause caters for occurrences that makes it impossible for the party claiming Force Majeure to fulfill its obligation set out in §4.1. Force Majeure, in particular in respect to Transfer of Use Transactions, is not limited to period up to validation but covers the entire Total Capacity Period.

If Force Majeure applies, only the corresponding acceptance or assignment/transfer obligation is released immediately. The Payment obligation is released in accordance with §6.5 only if the payment of the Tariff Rate is released, reduced or waived by the Relevant Network Operator under the primary capacity contract due to unavailability of the Gas Capacity for reasons of force majeure, maintenance, emergencies or for any other reasons. The party paying under the Individual PRISMA Gas Capacity Contract is in this respect treated identically as the buyer of primary capacity.

If the Force Majeure event just effects the secondary transaction (hence no implication on the relevant system or primary contract) the release of the payment obligation follows statutory law.

4. Defaults and Consequences

Following intense discussions, the entities involved agreed on the following defaults:

- a) Failure to Schedule, transfer, assign or accept of the contract as defined in §4;
- b) A failure to pay or to comply with the material obligations set out in §4.1;
- c) A failure by either Party to make a payment or to comply with any other material obligation to the Relevant Network Operator, e.g. the Seller does not pay the Tariff Rate to the relevant network operator, so that Buyer is then approached by Relevant Network Operator concerning payment of the Tariff Rate to ensure the uninterrupted use of the capacity or Buyer is not paying overrun charges to the Relevant Network Operator;
- d) Insolvency – identical to EFET Gas wording;
- e) In respect of the Seller: a termination by the Relevant Network Operator of any contract between it and any seller of the capacity that needs to be in place according to the rules of the relevant network operator(s) so that the capacity is no longer available to the Buyer. Especially this risk increases with the length of the trading chain;
- f) In respect of the Buyer: a termination of its contract with the Relevant Network Operator with the effect that the capacity reverts or transfers to the Seller.

The entities involved in drafting the contract are aware that e) and f) may also be covered by c) but a Default under c) does not require the termination of the contract with the Relevant Network Operator(s) but an affect of the other Party due to an action taken by the Relevant Network Operator. In order to underline the importance of the existence of all relevant contracts between the Relevant Network Operator(s) and the Parties to the Individual PRISMA Gas Capacity Contract as well as any other relevant contracts between the Relevant Network Operator(s) and a party in the trading chain and as result of the

experience following the bankruptcy of Lehman Bros in 2008, it was decided to name the termination of these contracts with the Relevant Network Operator explicitly as Default of the Seller. Equivalent to Validation, the termination will only be considered a Default under e) and f) if the termination was caused by culpable action of the Seller or insolvency or a culpable action of party in the trading chain that's action is attributed to the Seller.

The main remedy available to the non defaulting party (§7.4), (except for default d)), is a comprehensive indemnification against all losses, costs and expenses including any foreseeable consequential or indirect losses and foreseeable losses of income or profits, in each case howsoever arising and whether caused by tort (including negligence) breach of contract or otherwise. Users need to be aware that default under the Individual PRISMA Gas Capacity Contract affects the capacity as well as the delivery of natural gas by Buyer to third parties using the contracted gas capacity. To balance this comprehensive indemnification, the non defaulting party has duty to mitigate any losses it suffers or incurs under this Individual PRISMA Gas Capacity Contract as far as reasonably possible and it undertakes to use all commercially reasonable efforts to minimize such losses. This includes the obligation to purchase alternative capacity as well as Natural Gas at the delivery point of any affected third party contract that was intended to be served via the capacity transferred under the Individual PRISMA Gas Capacity Contract.

The Individual PRISMA Gas Capacity Contract provides also for the suspension and termination of this contract. However, users must note that unilateral suspensions, terminations or reversals of capacity transfers or assignments are in many participating networks *not* permitted. Before the non-defaulting Party elects to suspend or terminate an Individual PRISMA Gas Capacity Contract, it should check with the Relevant Network Operator(s) whether, and on what terms, it/they will suspend or reverse the transfer or assignment of Gas Capacity(ie)s.

5. Invoicing, Payment

The Individual PRISMA Gas Capacity Contract caters for a monthly payment on or before the 10 Business Days following the receipt of the invoice or a lump sum payment on the fifth Business Day following the receipt of the invoice. Such payment may be made by the Seller or Buyer as agreed between the Parties. The election of the applicable payment cycle has to be made in Part I, no default position has been provided.

6. Governing law

In line with the general approach by EFET, the Individual PRISMA Gas Capacity Contract is drafted for use under English or German law as governing law. As elected by the user of the Contract any disputes shall be solved by applicable courts or arbitration court. Users that wish to apply any other law as governing law or any other ordinary or arbitral court are strongly encouraged to consult their own counsel or seek external advice. The election of the applicable governing law and court has to be made in Part I, no default position has been provided.