PUBLIC

DECISION No 03/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 24 January 2020

on the Implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators[1], and, in particular, Article 6(10)(b) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing[2], and, in particular, Article 5(7) thereof,

Having regard to the outcome of the consultation with the concerned national regulatory authorities and transmission system operators,

Having regard to the favourable opinion of the Board of Regulators of 23 January 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

(1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of requirements for electricity balancing, platforms for the exchange of balancing energy, as well as pricing and settlement of balancing energy. These requirements

[1] OJ L158, 14.6.2019, p. 22.
[2] OJ L312, 23.11.2017, p. 6.

include the development of an implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation ('mFRRIF').

(2) Pursuant to Articles 4(1) and 5(2)(a) of the EB Regulation, all transmission system operators ('TSOs') are required to develop a common proposal for mFRRIF in accordance with Article 20 of the EB Regulation and submit it to all regulatory authorities for approval. In turn, according to Article 5(6) of the EB Regulation, all regulatory authorities shall reach an agreement and take a decision on the proposal for the mFRRIF within six months after the receipt of the proposal by the last regulatory authority. When all regulatory authorities fail to reach an agreement within the six-month period after the submission or upon their joint request, the Agency, pursuant to Article 5(7) of the EB Regulation, shall adopt a decision concerning the TSOs' proposal in accordance with Article 6(10)(b) of Regulation (EU) No 942/2019.

(3) The present Decision of the Agency follows from the request of all the regulatory authorities that the Agency adopts a decision on the proposal for the mFRRIF, which all TSOs submitted to all regulatory authorities for approval and on which those regulatory authorities could not agree on. Annex I to this Decision sets out the mFRRIF pursuant to Article 20(1) of the EB Regulation as decided by the Agency.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

(4) Article 20(1) of the EB Regulation requires all TSOs to submit a proposal for the mFRRIF no later than twelve months after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, all TSOs were required to submit a proposal for the mFRRIF by 18 December 2018.

(5) On 15 May 2018, all TSOs published for public consultation the draft 'all TSOs' proposal for the implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation in accordance with Article 20 of Commission Regulation (EU) 2017/2195 of 23 November 2017[3]'. The consultation lasted from 15 May 2018 until 16 July 2018.

(6) On 18 December 2018, all TSOs submitted to all regulatory authorities an 'all TSOs' proposal for the implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation in accordance with Article 20 of Commission Regulation (EU) 2017/2195 of 23

3 https://consultations.entsoe.eu/markets/mfrr_implementation_framework/supporting_documents/mFRR%20Implementation%20Framework%20%20Proposal.pdf

November 2017[4]' (hereafter referred to as the 'Proposal'). The last regulatory authority received the Proposal on 11 February 2019.

2.2. Proceedings before the Agency

(7) In a letter[5] dated 24 July 2019 and received by the Agency on the same day, the Chair of the Energy Regulators Forum[6], on behalf of all regulatory authorities informed the Agency that they jointly agreed to request the Agency to adopt a decision on the Proposal pursuant to Article 5(7) of the EB Regulation.

(8) The letter was accompanied by a document titled 'NON-PAPER OF ALL REGULATORY AUTHORITIES AGREED AT THE ENERGY REGULATORS' FORUM ON All TSOs' proposal for the implementation framework for the exchange of balancing energy from frequency restoration reserves with manual activation in accordance with Article 20 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing'[7], explaining the diverging views among all regulatory authorities. According to these documents, there are two main points of disagreement among all regulatory authorities: (a) the detailed design of the guaranteed volume to give access to TSOs to a sufficient amount of reserves, and (b) the use of scheduled counter-activations for the European Platform for the exchange of balancing energy from frequency restoration reserves with manual activation (hereafter referred to as the mFRR-Platform).

(9) On 28 October 2019, the Agency launched a public consultation on the Proposal, inviting all market participants to submit their comments by 18 November 2019. The summary and evaluation of the responses received are presented in Annex II to this Decision.

(10) Moreover, the Agency closely cooperated with all regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposals suggested by the Agency. In particular, the following procedural steps were taken and, in general, before each interaction the Agency shared with regulatory authorities and TSOs a new version of amendments proposed by the Agency to the Proposal:

- 24 and 25 July 2019: teleconference with all regulatory authorities;

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[4] https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/05%20mFRR%20IF/Action%201%20-%20mFRR%20IF%20proposal.pdf

[5] https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/05%20mFRR%20IF/Action%202%20-%20mFRR%20IF%20referral%20to%20ACER%20letter.pdf

[6] The all regulatory authorities' platform to consult and cooperate for reaching a unanimous agreement on NEMO's and TSO's proposals.

[7] https://www.ceer.eu/documents/104400/3705089/190724_ERF_mFRR+non-paper_final.pdf/3cdac792-8188-ef7d-da1e-bdf3ba971c1d

- 27 and 28 August 2019: discussion with all regulatory authorities in the framework of the Agency's Electricity Balancing Taskforce ('EB TF');
- 2 September 2019: teleconference with all regulatory authorities;
- 10 and 11 September 2019: teleconference with all regulatory authorities and TSOs;
- 18 and 19 September 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 27 September 2019: teleconference with all regulatory authorities and TSOs;
- 4 October 2019: teleconference with all regulatory authorities;
- 9 and 10 October 2019: teleconference with all regulatory authorities and TSOs;
- 23 October 2019: technical workshop with all regulatory authorities and TSOs,
- 24 October 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 12 November 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 13 November 2019: public workshop with all stakeholders including regulatory authorities and TSOs;
- 15 November 2019: teleconference with all regulatory authorities and TSOs;
- 19 November 2019: discussion with all regulatory authorities in the framework of the Agency's Electricity Working Group ('AEWG');
- 22 November 2019: teleconference with all regulatory authorities and TSOs;
- 27 November 2019: teleconference with all regulatory authorities and TSOs;
- 29 November 2019: teleconference with all regulatory authorities and TSOs;
- 4 and 5 December 2019: discussion with all regulatory authorities in the framework of the EB TF;
- 6 December 2019: teleconference with all regulatory authorities and TSOs;
- 11 December 2019: discussion with all regulatory authorities at the Board of Regulators' meeting;
- 12 December 2019: teleconference with all regulatory authorities and TSOs.

3. THE AGENCY'S COMPETENCE TO DECIDE ON THE PROPOSAL

(11) Pursuant to Article 5(7) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement or upon their joint request, the Agency shall adopt a decision concerning the submitted terms and conditions or methodologies within six months in accordance with Article 6(12)(a) of Regulation (EU) 2019/942.

(12) According to the letter of the Chair of the all Energy Regulators Forum dated 24 July 2019, all regulatory authorities agreed jointly to request the Agency to adopt a decision on the Proposal pursuant to Article 5(7) of the EB Regulation. At the time of this request, all regulatory authorities were competent to jointly refer the Proposal to the Agency, since it was made before the expiry of the six-month deadline after receiving the Proposal (i.e. 11 August 2019).

(13) Therefore, in accordance with Article 5(7) of the EB Regulation and Article 6(10) of Regulation (EU) 2019/942, the Agency became responsible to adopt a decision concerning the Proposal by the referral received on 24 July 2019.

4. SUMMARY OF THE PROPOSAL

(14) The Proposal consists of the following elements:

(a) The 'Whereas' section and Articles 1 and 2, which include general provisions, the scope of application and the definitions;

(b) Article 3, which includes the high-level design of the mFRR-Platform;

(c) Article 4, which describes the limits for mFRR balancing borders, including the determination of the cross-zonal capacity;

(d) Article 5, which provides the roadmap and timeline for implementation of the mFRR-Platform;

(e) Article 6 and 7, which specify the functions and the standard balancing energy products for the mFRR-Platform;

(f) Articles 8 and 9, which include a detailed description of the gate opening time and gate closure time for standard mFRR balancing energy product bids and the TSO energy bid submission gate closure, as well as the process for modifying bids and marking bids as unavailable;

(g) Article 10, which describes the organisation of common merit order lists;

(h) Article 11, which includes requirements for the optimisation algorithm;

(i) Article 12, which covers the designation of the entity that will perform all the functions of the mFRR-Platform;

(j) Articles 13 to 17, which describe the governance of the platform, the decision-making process, the categorisation and sharing of the costs, the framework for harmonisation of terms and conditions related to balancing, the publication as well as the implementation;

(k) Article 18, which includes provisions on language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY THE AGENCY

5.1. Initial observations of all regulatory authorities

(15) According to the letter of the Chair of the all Energy Regulators Forum of 24 July 2019, all regulatory authorities jointly identified shortcomings in the Proposal, as well as areas on which they disagreed.

(16) All regulatory authorities agreed that the Proposal should be amended with respect to the use of the terms positive/negative balancing energy, the definition of economic surplus, the coordination of the sequential allocation of cross-zonal capacities, the specification of the entity performing the functions of the mFRR-Platform and further minor aspects, which can be found in the non-paper.

(17) All regulatory authorities could not agree on two main aspects of the Proposal:

(a) the aspect of scheduled counter-activations and whether it should be allowed right at the beginning of the implementation of the mFRR-Platform; and

(b) the details on guaranteed volume and which bids should be part of it, especially if only the most expensive bids should be declared as unavailable for activation by other TSOs.

5.2. Consultation of all regulatory authorities and TSOs

(18) The Agency, in close cooperation and consultation with all regulatory authorities and TSOs as detailed in paragraph (10) above, and beyond the above-mentioned issues:

(a) discussed with TSOs and all regulatory authorities the comments received during the public consultation (see Section 5.3.) and the views of all regulatory authorities expressed in the aforementioned non-paper;

(b) with respect to elastic demand, further discussed the high-level principles and aspects for transparency;

(c) with respect to scheduled counter-activations, further clarified the reporting obligations by TSOs and possible amendments in case scheduled counter-activations would prove harmful to the mFRR-Platform;

(d) with respect to updating cross-zonal capacities, further discussed the whole process, the possible efficient design of such a process and the responsibilities of the parties involved, as well as the evolution of this process to a capacity management function;

(e) with respect to the product characteristics, further specified them especially the maximum bid size;

(f) with respect to modifying bids and changing the availability status of bids, further specified the principles on how and when these changes can be made and clarified the process to address operational security violations;

(g) with respect to the optimisation in the algorithm, further specified the high-level principles to be followed;

(h) regarding the proposed designation of an entity to perform the functions of the mFRR-Platform, clarified the proposed choice and ensured the legal compliance with the EB Regulation.

5.3. Public consultation

(19) On 28 October 2019, the Agency launched a public consultation on the Proposal, inviting all stakeholders to provide their comments by 18 November 2019. The consultation document asked stakeholders to provide views on five topics, which were deemed as the most relevant: (i) elastic demand, (ii) scheduled counter-activations, (iii) declaration of bids as unavailable and their modification by TSOs, (iv) general principles for paradoxical rejection of bids and (v) other topics.

(20) The summary and evaluation of the responses received are presented in Annex II to this Decision. It presents the summary of stakeholders' concerns regarding some of the above mentioned issues and in particular on the questions, as well as initial views and proposals made by the Agency:

(a) regarding the suggested approach for elastic demand for TSOs and the high-level principles included in the Proposal, the majority of stakeholders did not support the proposed approach by the Agency. They argued that, in their view, elastic demand would put a cap on balancing energy prices and TSOs should not be active by themselves in the balancing energy market where they are also buyers. Some stakeholders, nonetheless, provided their support to the Agency's proposal;

(b) regarding the implementation of scheduled counter-activations, the majority of stakeholders supported the Agency's proposal to allow scheduled counter-activations in the mFRR-Platform subject to specific reporting obligations. Whereas some stakeholders could support scheduled counter-activations only for optimising balancing needs, another group completely opposes the principle, arguing that trading, some call scheduled counter-activations trading, should not be done by mFRR-Platform but facilitated by the (cross-zonal) intraday markets;

(c) regarding the modification of bids and the declaration of bids as unavailable by TSOs, the majority of stakeholder supported the Agency's proposal, in particular with regard to additional reporting obligations. Some other stakeholders were more critical on the potential misuse of this feature by TSOs. Some stakeholders asked for additional rules on the remuneration of these unavailable bids and others did not agree with the possibility of linking of bids;

(d) regarding the general principles for paradoxical rejection of bids, the majority of stakeholders supported the possible rejection of indivisible bids but would not support, with smaller majority, the rejection of divisible bids;

(e) regarding other issues, stakeholders expressed concerns with several design features of the mFRR-Platform, namely a full activation time of 15 minutes and one harmonised mFRR product (scheduled activation only) or instead two completely different products for scheduled and direct activation. Another concern regards the balancing energy gate closure time, which should be closer to real-time as well as the level of harmonisation (e.g. divisible vs. indivisible bids), and they asked for improved transparency (e.g. on fall-back procedures) and publication obligations.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

(21) Articles 4(1), 4(2) and 5(2)(a) of the EB Regulation require all TSOs to provide the proposal for the mFRRIF in accordance with Article 20(1) of the EB Regulation. This proposal must be submitted to all regulatory authorities for their approval.

(22) Article 20 of the EB Regulation sets out the requirements for the development of a proposal for the mFRR-Platform and its implementation. In this context, all TSOs are required to develop a proposal for the mFRRIF no later than twelve months after the entry into force of the EB Regulation. TSOs must consult the Proposal in accordance with Article 10 of the EB Regulation.

(23) Article 18 of the EB Regulation contains all the requirements for terms and conditions related to balancing at a Member State level. These national terms and conditions on balancing need to respect the framework for the establishment of the mFRR-Platform pursuant to Article 18(3) of the EB Regulation.

(24) Article 23 of the EB Regulation covers the cost sharing principles for establishing, amending and operating the mFRR-Platform pursuant to Article 20.

(25) Article 24 of the EB Regulation lays down the requirements for the balancing energy gate closure time for the mFRR Platform, which shall be as close as possible to real-time. Also, the specific requirements for TSOs with a central dispatching model are listed in this Article.

(26) Article 25 of the EB Regulation provides requirements for standard products and divides them into standard products for balancing energy and balancing capacity. Pursuant to Article 25(1) of the EB Regulation, standard products for balancing energy should be developed as part of the proposals for the implementation frameworks for the European platforms pursuant to Articles 19, 20 and 21 of the EB Regulation. Paragraphs (4) and (5) of this Article include non-exhaustive lists of optional and respectively mandatory characteristics of the standard products to be set out by the methodology.

(27) Article 26 of the EB Regulation covers the rules for specific products and especially the principles for the conversion rules of specific products into standard products that can be exchanged via the European platforms.

(28) Article 27 of the EB Regulation lays down the conversion rules for bids in a central dispatch model so that these bids can be exchanged via the European platform for mFRR.

(29) Article 28 of the EB Regulation lays down the rules for fall-back procedures to be followed when, for example, the coordinated activation of balancing energy fails. In this case, the deviations from the common merit order list are allowed.

(30) Article 29 of the EB Regulation contains the requirements for the activation of balancing energy bids from the common merit order list. This Article also covers the rules for modifying bids after the TSO energy bid submission gate closure time and changing the bids' availability status.

(31) Article 31 of the EB Regulation lays down the requirements for the activation optimisation function that facilitates the optimisation for the activation of balancing energy bids from different common merit order lists.

(32) Articles 36 and 37 of the EB Regulation list the requirements for using and updating the cross-zonal capacity for the exchange of balancing energy.

(33) Article 58 of the EB Regulation contains provisions for balancing algorithms, which will be operated by the activation optimisation function for the mFRR-Platform.

(34) Article 62 of the EB Regulation describes the possibilities for derogations and especially the derogation from the deadline for joining the mFRR-Platform.

(35) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for their implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

6.2.1.1. Development of the Proposal

(36) The Proposal fulfils the requirements of Articles 4(1), 4(2) and 5(2)(a) of the EB Regulation, as all TSOs jointly developed a proposal for the mFRRIF and submitted it for approval to all regulatory authorities.

(37) The procedure for the development of the Proposal did not respect the requirements of Article 20(1) of the EB Regulation, as the Proposal, while submitted by most TSOs by 18 December 2018, which is within twelve months after entry into force of the EB Regulation, was submitted by the last TSO on 11 February 2019. This is in breach of the twelve month-submission deadline. The Proposal was subject to consultation as described in Section 2.1 above.

6.2.1.2. Proposed timescale for implementation

(38) The Proposal fulfils the requirements of Article 5(5) of the EB Regulation with regard to the proposed timescale for implementation of the mFRRIF.

(39) Article 5 of the Proposal lays down the implementation deadlines for the mFRR-Platform and respects the deadlines in accordance with Articles 20(4), (5) and (6) of the EB Regulation. Yet, the Agency made some changes in Article 5 to clarify the obligations of TSOs during the implementation, adding transparency and improving the legal applicability.

(40) Many changes in paragraphs (1), (2) and (3) were made to improve the legal consistency with the text from the EB Regulation. The Agency also clarified in paragraph (2) the relation between the early implementation project MARI and the future mFRR-Platform after the approval of the Proposal.

(41) The Agency added in paragraph (4) a regular publication obligation for TSOs on the roadmap for the implementation of the mFRR-Platform to provide more transparency to stakeholders on the state of progress. Also possible derogations of TSOs from deadlines and other provisions from the EB Regulation should be made publicly available on a regular basis to give more clarity to stakeholders.

6.2.1.3. Description of the expected impact on the objectives of the EB Regulation

(42) The recitals in the Proposal provide a description of the expected impact of the mFRRIF on the objectives of the EB Regulation. The relevant objectives set in Article 3 of the EB Regulation are addressed in the recitals but in a general manner only. The Agency added specific sub-paragraphs (a) to (h) in a new recital (20) to address the expected impact on each of the objectives in more details.

6.2.2. Assessment of the high-level requirements of the mFRR-Platform

(43) Pursuant to Article 20(2) of the EB Regulation, the mFRR-Platform, operated by TSOs or by means of an entity the TSOs would create themselves, should be based on common governance principles and business processes and should consist of at least the activation optimisation function and the TSO-TSO settlement function. This European platform should apply a multilateral TSO-TSO model with common merit order lists to exchange all balancing energy bids from all standard products for frequency restoration reserves with manual activation, except for unavailable bids pursuant to Article 29(14) of the EB Regulation.

6.2.3. Assessment of the requirements for the high level design of the mFRR-Platform

(44) Pursuant to Article 20(3)(a) of the EB Regulation, the Proposal should include the high-level design of the mFRR-Platform, which is done in Article 3 of the Proposal. However, some important elements of the high-level design are missing in the Proposal.

(45) Following the request by the regulatory authorities in their referral letter, as well as the stakeholders' comments mentioned in paragraph (20)(e), the Agency added a new paragraph (11) in Article 3 of the Proposal with the description of the fall-back procedures. Pursuant to Article 28 of the EB Regulation, each TSO should ensure that fall-back solutions are in place when the coordinated activation of balancing energy fails. In that case, each TSO may deviate from the common merit order list activation and should inform the market participants as soon as possible. The new paragraph (11), added in Article 3 of the Proposal, describes this process, including specific transparency obligations for TSOs, in order to ensure that balancing service providers ('BSPs') receive timely and accurate information on the application of fall-back procedures.

(46) Article 29(13) of the EB Regulation allows TSOs to establish in the Proposal the conditions or situations in which the limits set out in Article 29(12) of the EB Regulation will not apply. Article 29(12) of the EB Regulation sets limits for the access of the TSOs to the total balancing energy volume of the common merit order list. Article 3(10) of the Proposal allows TSOs full access to the common merit order list, by making use of the possibility provided by Article 29(13) of the EB Regulation, and applying it by default. However, Article 29(13) of the EB Regulation sets a transparency obligation, i.e. when a TSO requests balancing energy bids beyond the limit set out in Article 29(12) of the EB Regulation. In this case, all other TSOs shall be informed. Hence, the Agency added this requirement in Article 3(10) of the Proposal, to make it compliant with the EB Regulation.

(47) Pursuant to Article 29(7) of the EB Regulation, the activation of balancing energy bids shall be based on a TSO-TSO model with a common merit order list, while pursuant to Article 2(21) of the EB Regulation, TSO-TSO model means a model for the exchange of balancing services where the BSP provides balancing services to its connecting TSO, which then provides these balancing services to the requesting TSO. Article 3(16) of the Proposal describes the TSO-TSO model, but the Agency deemed it necessary to amend it in order to better reflect the definition provided in Article 2(21) of the EB Regulation.

6.2.3.1. Updating of cross-zonal capacities

(48) Article 3 of the Proposal describes the main processes executed by the mFRR-Platform, presenting an overview of the inputs and outputs of the functions, as well as the main procedures. However, Article 4 also describes an essential process of the platform, which is the updating of the capacities, which are limiting the balancing energy exchanges on mFRR balancing borders. The Agency changed the definition of these limits from 'mFRR cross-border capacity limits' to 'mFRR balancing border capacity limits'. This change was necessary because the reference to 'cross-border' is usually used for borders between Member States, but, in the context of the mFRR-Platform, the mFRR balancing borders do not always correspond to borders between Member States.

(49) Furthermore, the Agency amended Article 4 to clarify the difference between the mFRR balancing border capacity limits and cross-zonal capacities. The two

definitions are the same on mFRR balancing borders, which correspond to a bidding zone border and the mFRR balancing border capacity limits are equal to cross-zonal capacities, whose definition and updating is further defined in the subsequent paragraphs of Article 4 of the Proposal. In case an mFRR balancing border does not correspond to a bidding zone border, the mFRR balancing border capacity limits should be in principle infinite, but, nevertheless, a limit still needs to be defined for the purpose of the algorithm and for the possibility to impose limitations on balancing energy exchanges between TSOs, which are possible pursuant to Articles 146(3)(c), 147(3)(c), 148 (3)(c), 149(3) and 150(3)(b) of the Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation ('SO Regulation'). Thus, the Agency, in consultation with TSOs and regulatory authorities, defined this technical exchange limit to be 99,999 MW.

(50) Following the request by the regulatory authorities, as mentioned in their non-paper, for a coordinated and centralised approach on the update of the available cross-zonal capacities, the Agency, during the consultation with the regulatory authorities and TSOs, tried to clarify this process in terms of its overall functionality, as well as how it fits the structure of the mFRR-Platform.

(51) Article 37(1) of the EB Regulation requires that, after the intraday-cross-zonal gate closure time, TSOs shall continuously update the availability of cross-zonal capacity for the exchange of balancing energy, and that cross-zonal capacity shall be updated every time a portion of cross-zonal capacity has been used or when cross-zonal capacity has been recalculated. Additionally, Article 37(2) of the EB Regulation requires that TSOs use the cross-zonal capacities remaining after the intraday cross-zonal gate closure time.

(52) Following these requirements, Article 4 of the Proposal describes a process for the update of cross-zonal capacities. This process entails:

(a) defining the initial cross-zonal capacities, which are either the cross-zonal capacities remaining after the single intraday coupling or cross-zonal capacities calculated in accordance with the methodologies pursuant to Article 37(3) of the EB Regulation;

(b) updating the initial values to reflect additional cross-zonal capacities allocated to the RR and mFRR process pursuant to Article 38(1) of the EB Regulation;

(c) updating cross-zonal capacities based on the already allocated capacities in balancing timeframe, which can be capacities already allocated in other EU balancing platforms and capacities allocated by other local or regional TSOs processes (e.g. remedial actions); and

(d) updating cross-zonal capacities to reflect different legally possible limitations pursuant to Articles 146(3)(c), 147(3)(c), 148(3)(c), 149(3), 150(3)(b) and 171(1) of the SO Regulation.

(53) The process of updating cross-zonal capacities therefore entails the updating of cross-zonal capacities:

(a) during the operation of the mFRR-Platform (intra-platform level): e.g. due to balancing energy exchanges determined by the mFRR-Platform or other cross-zonal exchanges or limitations occurring during the operation of the mFRR-Platform;

(b) before the operation of the mFRR-Platform (inter-platform level): e.g. due to balancing energy exchanges determined by the platforms preceding the mFRR-Platform or other cross-zonal exchanges or limitations occurring before the operation of the mFRR-Platform.

(54) The regulatory authorities in their letter requested that the TSOs should coordinate and centralise the process of updating of cross-zonal capacities, as mentioned in paragraph (50) above.

(55) The Agency agreed with the request of all regulatory authorities and questioned the whole design of a decentralised and non-coordinated updating of cross-zonal capacities as proposed by TSOs. It suggested instead that TSOs should adopt a centralised approach, which would be more efficient and more transparent for the process of updating cross-zonal capacities. Following these suggestions, the TSOs acknowledged the need for a coordinated and centralised updating of cross-zonal capacities at the intra platform level, as well as inter-platform level.

(56) In the above context, the Agency also questioned how the whole process of updating cross-zonal capacities fits into the structure of the mFRR-Platform. The Agency understands that all platform processes must be accommodated within the functions of the platform. However, the Proposal does not make clear which function of the platform will perform the process of updating cross-zonal capacities. After consultation with TSOs, the Agency understands that the updating of cross-zonal capacities is not part of the activation optimisation function, since the output of the updating process (i.e. updated cross-zonal capacities) is defined as an input to the activation optimisation function. To this end, the Agency understands that the process of updating cross-zonal capacities does not fit into any of the functions proposed by TSOs and thereby introduced a new platform function, namely the 'capacity management function', which will perform the process of updating cross-zonal capacities. The introduction of this function is needed to comply with Article 20(3)(c) of the EB Regulation, which requires that the mFRRIF defines the functions, which are required to operate the European platform.

(57) Therefore, the Agency defined a requirement for the capacity management function to perform the updating of cross-zonal capacities needed as an input to the activation optimisation function. However, since TSOs originally did not plan to organise the updating of cross-zonal capacities as a central platform function, the Agency finds it reasonable to provide TSOs some additional implementation time for implementing this process as a platform function. This transition period aims to prevent any delays in the implementation of the platforms, since meeting the implementation deadline should have a higher priority than implementing this function. For this reason, the Agency provided two additional years (after the deadline for implementation of the mFRR-Platform) for implementing the capacity management function.

(58) Since the technical analysis of the process of updating cross-zonal capacities revealed that this process requires both intra-platform and inter-platform updating, the Agency considers that the capacity management function should be a central function that serves not only the mFRR platform, but also other platforms, which require the same process of updating cross-zonal capacities. As the implementation frameworks for the other platforms and the functions defined therein are not within the legal scope of the mFRRIF, the Agency provided this obligation conditionally, i.e. if the same obligation for the capacity management function is also imposed in other implementation frameworks. Therefore, the requirement to have the same capacity management function for different platforms is without prejudice to the decisions on the other implementation frameworks.

(59) Finally, Article 4 on the updating of cross-zonal capacities did not provide clarity on which requirement of the EB Regulation it addresses. After the clarification that this process is actually a description of a platform function, the Agency understands that the amended Article 4 aims to address the requirement to provide the high-level design of the mFRR-Platform in accordance with Article 20(3)(a) of the EB Regulation. To reflect this understanding, the Agency made the necessary amendments in Articles 3, 4 and 6 to reflect the introduction of the capacity management function as an mFRR-Platform function.

(60) Furthermore, Article 4 of the Proposal defines a number of cases linked to operational security limits that should be taken into account when updating cross-zonal capacities. The Agency, during the consultation with the regulatory authorities and the TSOs, clarified the cases linked to the HVDC[8] interconnectors, hence added the required references to the SO Regulation in the amended Article 4 of the Proposal.

6.2.3.2. Activations of balancing energy for system constraints purpose

(61) According to Section 4.4 of the explanatory document supporting the Proposal on the pricing methodology in accordance with Article 30 of the EB Regulation, the selection of bids for system constraint purposes *"…can be used in cases, where the cross-zonal capacity which was already allocated to market participants in the previous time frames exceeds the physically available cross-zonal capacity."* To the Agency's understanding, this reason represents a situation where the already allocated capacity (i.e. AAC) from previous timeframes is higher than the total available capacity in the balancing timeframe (i.e. NTC), which implies that the actually available capacity in the balancing timeframe (i.e. ATC), calculated as the difference between the NTC and the AAC, is negative. Therefore, the case described in the explanatory document can be expressed as setting the available transfer capacity to a negative value.

(62) The Agency consulted stakeholders on this issue with two questions: (a) whether the case described by the TSOs can be regarded as an update of the available cross-zonal

[8] High Voltage Direct Current

capacity and (b) whether the cross-border marginal price should reflect the available cross-zonal capacity at the time of the optimisation.

(63) Article 37(1) of the EB Regulation requires that, after the intraday-cross-zonal gate closure time, TSOs should continuously update the availability of cross-zonal capacity for the exchange of balancing energy or for operating the imbalance netting process, and that cross-zonal capacity should be updated every time a portion of cross-zonal capacity has been used or when cross-zonal capacity has been recalculated. According to the Agency's understanding, taking as base case the available cross-zonal capacity remaining after the intraday timeframe, pursuant to Article 37(2) of the EB Regulation, the TSOs propose to create two different categories of cross-zonal capacity updates and treat them differently with respect to classification of these updates and the related impact on the activation purpose:

(a) if cross-zonal capacity needs to be updated and such updates lead to the reduction (compared to the base case), which does not reduce cross-zonal capacities below zero, they consider such reduction as regular updating of cross-zonal capacities and the resulting difference in activations of balancing energy bids would be classified as activations for balancing purpose;

(b) if cross-zonal capacity needs to be updated and such updates lead to the reduction (compared to the base case), which reduce cross-zonal capacities below zero, they consider the reduction down to zero as regular updating of cross-zonal capacities and the reduction below zero as a system constraint. Therefore, the resulting difference in activations of balancing energy bids that reflect the reductions down to zero would be classified as activations for balancing purpose and the difference in activations of balancing energy bids that reflect the reductions below zero would be classified as activations for system constraints.

(64) The Agency does not find any legal and economic rationale why the reductions of cross-zonal capacities above zero and below zero should be treated differently with regard to their impact on classification of the purpose of activations of balancing energy. Both cases presented above can be handled in the mFRR-Platform with an update to cross-zonal capacities as described in Article 4 of the Proposal. Therefore, the Agency deleted in former Articles 11(4)(e) and 3(5)(f) of the Proposal any references to the activation purpose for system constraints.

6.2.3.3. Elastic demand as input for the activation optimisation function

(65) The Agency made changes in Article 3(4) of the Proposal to further specify the conditions for using elastic demand on the mFRR-Platform and the high-level principles for its application.

(66) All TSOs are required to send their activation requests for balancing energy bids to the optimisation function pursuant to Article 31(6) of the EB Regulation. In order to further clarify these activation requests, the Proposal introduces two definitions, one for elastic and one for inelastic demand.

(67) In Article 3 of the Proposal, all TSOs propose that they can define mFRR demand as elastic demand, which means that the price of such demand would not be determined by the technical price limits in accordance with Article 30(2) of the EB Regulation, but by the price TSOs would determine themselves. They propose three conditions that need to be fulfilled to submit an elastic demand to the mFRR-Platform. The first condition is that elastic demand can only be submitted for scheduled activation of mFRR. The second specifies that the high-level principles for applying elastic demand shall be communicated to the relevant regulatory authority. And the third condition is that elastic demand shall not impose a cap on balancing energy prices permanently.

(68) Some regulatory authorities expressed concerns with the use of elastic demand as it could impose an implicit cap on balancing energy prices, but could nonetheless accept elastic demand if certain additional conditions are met. They also expressed concerns especially about the transparency of elastic demand and how the TSOs would use this feature.

(69) Stakeholders were in general against TSOs using elastic demand in the mFRR-Platform. Stakeholders argued that TSOs should not become buyers on a market that TSOs organise themselves and that a price on TSOs' demand would be like a price cap on balancing energy, which is contradicting the legal provisions in the EB Regulation that allow only technical price limits for balancing energy.

(70) The Agency, in general, agrees with the TSOs' reasoning to use elastic demand for the mFRR-Platform. Putting a price on mFRR demand for scheduled activation will help TSOs to cover their imbalances in the most cost efficient manner because the mFRR demand for scheduled activation can be met with other alternatives as well. For example, TSOs can always cover the mFRR demand for scheduled activation with aFRR demand instead or with other specific mFRR products they have available locally. The same is not true for mFRR demand for direct activation or aFRR demand, where no such alternatives exist and, therefore, the mFRR demand for direct activation and the aFRR demand cannot be defined as elastic. As TSOs should be guided by cost efficiency in balancing, they should be able to choose the most cost efficient way to cover imbalances considering different alternatives.

(71) On the other hand, the Agency takes note of the concerns on transparency and the possibility of introducing a price cap on balancing energy. Therefore, the Agency further clarified the conditions under which elastic demand can be submitted by TSOs.

(72) Firstly, to improve transparency, the Agency included some additional high-level principles in the Proposal to be followed by all TSOs when applying elastic demand. Concretely, the Agency introduced the principle that the price of elastic demand should reflect the local alternatives and shall not be lower than the price of the cheapest alternative bids for positive balancing energy and not be higher than the price of the most expensive alternative bids for negative balancing energy in Article 3(4)(d) of the Proposal. In addition, the volume for which an elastic demand can be submitted should be limited to the available alternatives for the TSOs using elastic demand. With these provisions as points (d) and (e) in Article 3(4) of the Proposal and the explicit mentioning that no cap on balancing energy shall be introduced with elastic demand

in Article 3(4)(c) of the Proposal, the Agency considers that the above concerns should be addressed.

(73) Secondly, the Agency introduced a reporting obligation on TSOs in Article 13(1)(b)(i) of the Proposal to report on the usage of elastic demand and make an assessment if elastic demand effectively imposed a cap on balancing energy prices. Nevertheless, the Agency notes that, when TSOs have different equivalent alternatives for meeting the same demand, reflecting the price of these alternatives represents efficient arbitrage between alternatives and cannot be considered as an administrative cap on balancing energy prices.

6.2.4. Assessment of the requirements for the roadmap and timelines for implementation

(74) The Proposal generally fulfils the requirements of Article 20(3)(b) of the EB Regulation by including a roadmap, as well as timelines for the implementation of the mFRR-Platform in Article 5 of the Proposal.

(75) Regulatory authorities expressed concerns on the clarity of the Proposal regarding the point in time when the mFRR-Platform will be operational and the accession roadmap.

(76) Therefore, the Agency made some changes to clarify the wording and meaning of the provisions. In paragraph 4 of Article 5 of the Proposal, the Agency added an obligation for TSOs to update and publish regularly, and at least twice per year, the roadmap for the implementation to ensure transparency towards stakeholders on the progress. This publication shall also contain information on the derogations requested by TSOs and granted by the regulatory authorities pursuant to Article 62(2)(a) of the EB Regulation.

6.2.5. Assessment of the requirements for the functions of the mFRR-Platform

(77) Article 20(3)(c) of the EB Regulation requires that the Proposal includes the definition of the functions needed for the operation of the mFRR-Platform. Moreover, Article 20(2) of the EB Regulation specifies that the mFRR-Platform should consist of at least the activation optimisation function and the TSO-TSO settlement function. Article 6 of the Proposal provides a high-level description of these two functions. Article 6 of the Proposal also mentions that a third optional function may be added in the future, if deemed efficient, when implementing the methodology for cross-zonal capacity calculation, pursuant to Article 37(3) of the EB Regulation.

(78) As explained in section 6.2.3.1, during the Agency's consultation with the regulatory authorities and TSOs, it was commonly agreed that the update of cross-zonal capacities should be defined as a separate function. Therefore, the requirement of Article 20(3)(c) of the EB Regulation is not fulfilled in its entirety, since the Proposal does not define the function needed for the updating of cross-zonal capacities which is needed for the operation of the mFRR-Platform. The Agency added the capacity management function to the functions needed for the mFRR-Platform in Article 6 of the Proposal, and amended Article 4 of the Proposal to introduce the capacity management function and describe the processes. Further changes related to the

introduction of the capacity management function were introduced in Articles 3(3), 3(5)(b), 11(1)(c), 11(2)(c), recital (10) and recital (12) of the Proposal.

6.2.6. Assessment of the requirements on governance

(79) The Proposal fulfils the requirements of Article 20(3)(d) of the EB Regulation by containing rules on governance and operation of the mFRR-Platform. Article 13 of the Proposal includes the governance structure together with some monitoring obligations for TSOs, while Article 14 includes the rules for the decision-making process. These rules comply with the principle of non-discrimination between TSOs as all member TSOs have a vote in the changes to the mFRR-Platform and participate in both the decision-making body (i.e. the steering committee) and the expert group. The voting rules for the decisions taken by the steering committee regarding the operation of the mFRR-Platform are based on the provisions from Article 4 of the EB Regulation and comply with the principle of non-discrimination and equitable treatment of all member TSOs.

(80) However, since the provisions on the governance were included in the same Article as the monitoring obligations, the Agency split them and moved the two paragraphs on governance from Article 13 of the Proposal to Article 14 of the Proposal, which now includes all the rules on governance and operation of the mFRR-Platform, whereas Article 13 now includes only provisions on transparency and reporting. This change was needed to improve the overall structure of the mFRRIF and ensure a consistent scoping of each Article.

6.2.7. Assessment of the requirements for the proposed designation of the entity

(81) Article 20(3)(e) of the EB Regulation requires that the Proposal includes the proposed designation of the entity or entities that will perform the functions defined in the Proposal. The second sentence of Article 20(3)(e) of the EB Regulation requires that *"[W]here the TSOs propose to designate more than one entity, the proposal shall demonstrate and ensure:*

(i) a coherent allocation of the functions to the entities operating the European platform. The proposal shall take full account of the need to coordinate the different functions allocated to the entities operating the European platform;

(ii) that the proposed setup of the European platform and allocation of functions ensures efficient and effective governance, operation and regulatory oversight of the European platform as well as supports the objectives of this Regulation;

(iii) an effective coordination and decision making process to resolve any conflicting positions between entities operating the European platform;"

(82) Article 12 of the Proposal specifies that all TSOs shall appoint one entity entrusted to operate all the functions of the mFRR-Platform. Therefore, the Proposal fulfils the requirement of the first sentence of Article 20(3)(e) of the EB Regulation to the extent that it includes a proposal for an entity to perform the functions of the mFRR-Platform.

(83) However, Article 20(2) of the EB Regulation specifies that the mFRR-Platform should be operated by TSOs or by means of an entity the TSOs would create themselves. The Proposal specifies that the mFRR-Platform will be operated by one entity, and that this entity shall be a consortium of TSOs or a company owned by TSOs. The Agency understands that the entity prescribed by the EB Regulation can only be a legal entity that is a legal person and enjoys a full legal capacity. A consortium, on the other hand, typically does not possess full legal capacity as it is not a legal person. Therefore, the Agency understands that the proposed consortium option in Article 12(2) of the Proposal cannot be considered as a single entity with full legal capacity. Therefore, Article 12(2) of the Proposal is not consistent with Article 12(1) of the Proposal and it does not provide legal clarity on the proposed designation of the entity.

(84) Further, the Agency understands that the consortium of TSOs would mean that the mFRR-Platform would be operated by TSOs themselves, which implies that there is more than one entity performing the functions of the mFRR-Platform. In such case, the Proposal would need to be complemented by the requirements of the second sentence of Article 20(3)(e) of the EB Regulation, as cited above.

(85) The Proposal does not provide clarity whether one or multiple entities will perform the functions of the mFRR-Platform and, therefore, does not enable legal clarity whether the requirements of the second sentence of Article 20(3)(e) of the EB Regulation are fulfilled.

(86) The Agency consulted with TSOs and regulatory authorities on this topic and requested a clarification of the proposed designation of the entity. TSOs explained that they intend to designate one single TSO to operate the mFRR-Platform.

(87) The Agency analysed this proposal and provided an opinion that the mFRR-Platform operated by an entity TSOs would create themselves would be a more efficient solution to implement the platform. The Agency provided the following main reasons:

(a) **Operation of cross-platform functions.** During the proceedings, the technical analysis showed that the process of updating cross-zonal capacities is most efficiently facilitated by a capacity management function that is the same across different platforms. Hence, designating the same entity across different platforms would enable that a central capacity management function can support the operation of all platforms. Furthermore, future development of the mFRR-Platform may likely require other cross-platform functions, such as the capacity calculation function which is already foreseen in Article 6 of the Proposal, and amendments in activation optimisation function, which may in future be upgraded to accommodate automatic linking of bids or even joint activation of bids from different platforms.

(b) **Direct management control.** Designating a single TSO to operate the mFRR-Platform is based on a contractual framework between all TSOs and the designated TSO by which the designated TSO is obliged to implement decisions and instructions of all TSOs. However, this framework does not enable all TSOs the management control over the mFRR-Platform. Namely, any management

failure to implement the decisions or requests from all TSOs or a disagreement between all TSOs and the TSO designated as the entity may create significant risk for interruption in the implementation or operation of the mFRR-Platform and thereby may endanger the integration of EU balancing markets. In case the mFRR-Platform would be operated by a company TSOs would create themselves, any management failure or disagreement could be easily resolved by exercising management control as TSOs would be the owners of the entity.

(c) **Separating, monitoring, auditing and approving the costs.** Designating a single TSO to operate the mFRR-Platform makes it difficult to clearly establish the costs for operating the platform and separate them from the costs related to national TSO obligations. In particular, all TSOs will have difficulty to monitor and audit the costs attributed to the mFRR-Platform, and to assess whether they have been appropriately separated from other costs of the designated TSO, since all TSOs have no visibility in a designated TSO's financial sheets.

(d) **Maintaining a national responsibility for balancing.** All TSOs claimed that some of the tasks of the mFRR-Platform part of the national operations under the responsibility of each TSO, performed to balance their system. While the Agency cannot assess whether this is really the case, it notes that delegating such tasks to an entity without management control over that entity limits the TSOs' ability to maintain responsibility for these tasks. On the other hand, if these tasks were to be delegated to an entity that TSOs would create and own, TSOs would be able to more effectively maintain national responsibility for these tasks, as they would be able to exert management control over such entity.

(88) TSOs did not agree with the opinion of the Agency and, on 28 November 2019, sent a new text proposal for the designation of the entity for the mFRR-Platform. This proposal specified that the entity operating the functions of the mFRR-Platform will be a single TSO and that the entity will perform the activation optimisation function and the TSO-TSO settlement function. The Agency notified TSOs that additional clarifications are required from TSOs' side for the proposed setup (and listed the concerns that had not been addressed by the TSOs) and that within the framework of a single entity, such a proposal needs two amendments:

(i) the entity must perform all functions of the platform; and

(ii) to ensure compliance with Article 20(2) of the EB Regulation, the Agency proposes to keep both options available to TSOs, i.e. a single TSO or an entity the TSOs would create themselves.

(89) Following this evaluation by the Agency, the TSOs submitted a new proposal on the designation of the entity on 13 December 2019 (document with title *"TSOs' answers to ACER's questions"*), in which they proposed that all TSOs will designate one entity being a single TSO that will operate the activation optimisation function and the TSO-TSO settlement function. This proposal did not specify exactly which entity would perform the capacity management function or the capacity calculation function, but provided that, each time TSOs will implement a cross-platform function, they will

designate one entity entrusted to operate such function, which may be different from the entity designated to operate the mFRR-Platform.

(90) While the proposal sent on 13 December 2019 was submitted after the deadline for consultation that the Agency communicated to TSOs, the Agency nonetheless evaluated the proposal and concluded that it essentially proposes that the functions of the mFRR-Platform would be operated by more than one entity (i.e. one entity for the activation optimisation function and the TSO-TSO settlement function and one or two entities for capacity management function or the capacity calculation function). The Agency informed TSOs that, as for the original proposal, their last proposal does not comply with the second sentence of Article 20(3)(e) of the EB Regulation as it does not provide the elements required therein and cited in paragraph (84) above.

(91) Following this notification from the Agency, TSOs complemented their last proposal on 18 December 2019 in which they assert that although the capacity management function should indeed be the same across different platforms, such function is not a function required to operate the mFRR-Platform and therefore dos not need to be included in the list of functions pursuant to Article 20(3)(c) of the EB Regulation. Instead, TSOs consider that the capacity management function is a non-platform function, which can be operated by a different entity which will be a single TSO.

(92) The Agency understands that Article 20(3)(e) of the EB Regulation provides that the Proposal must fulfil different conditions for single entity or multiple entity. If the Proposal is based on the single entity framework, Article 20(3)(e) of the EB Regulation only requires that the Proposal includes the proposed designation of the entity that will perform the functions of the platform. However, if the proposal is based on the multiple entities framework, then additional conditions must be fulfilled, which are listed in the second sentence of Article 20(3)(e) of the EB Regulation.

(93) The Agency disagrees with TSOs' claim that the capacity management function is not a function required to operate the mFRR-Platform. As outlined in the analysis in Section 6.2.3.1, the capacity management function is an essential function required for operation of the mFRR-Platform, since the activation optimisation function requires continuously updated cross-zonal capacities for its operation and this updating of cross-zonal capacities is most efficiently done through a central function.[9] In this respect, the TSO-TSO settlement function (which is considered as the platform function by TSOs) is a much less essential function for the operation of the mFRR-Platform since the activation optimisation function can operate equally efficient without such a function. Given that capacity management function is a function required to operate the mFRR-Platform, the last proposal from TSOs is therefore clearly proposing the multiple entities framework, because it proposes that the

[99] This conclusion is independent from the transition period of two year referred to in paragraph (57), which the Agency provided to TSOs to implement the capacity management function in order not to delay the implementation of the mFRR-platform.

capacity management function would be operated by one TSO, while the activation optimisation function and the TSO-TSO settlement functions would be operated by another TSO. Therefore, this proposal does not meet the requirements of the second sentence of Article 20(3)(e) of the EB Regulation.

(94) The Agency evaluated that it cannot amend the proposal from TSOs to provide the requirements of the second sentence of Article 20(3)(e) of the EB Regulation, because such amendments would require significant revision and additions of the Proposal and the Agency is not able to draft most of the elements required by the second sentence of Article 20(3)(e) of the EB Regulation. For example, the Agency is not in a position to draft the rules for effective coordination and decision-making process to resolve any conflicting positions between entities operating the mFRR-Platform. As the consultation period with TSOs, which was already significantly extended, could not be extended further, the Agency could not request TSOs to complement their proposal with these requirements, namely because the time needed to develop these requirements and for regulatory scrutiny of these requirements would exceed the time needed for the Agency to make a decision (i.e. 6 months).

(95) The latest proposal from TSOs therefore neither proposes a multiple entity framework compliant with Article 20(3)(e) of the EB Regulation nor a single entity framework which would encompass all functions of the mFRR-Platform, including the capacity management function. For this reason, the Agency accepted the part of the TSOs proposal, which defines that the activation optimisation function and TSO-TSO settlement function shall be operated by a single entity. However, as regards the capacity management function, for which all TSOs propose to be performed by another entity, the Agency cannot accept the solution as submitted as it would imply a multiple entity framework that would need to be compliant with Article 20(3)(e) of the EB Regulation.

(96) In paragraph 57 the Agency decided that by two years after the deadline for the implementation of the mFRR-Platform the capacity management function shall be considered as a function required for the operation of the mFRR platform. This means that the exact designation of the entity that will perform this function is not required in this Decision and can be postponed in order to give TSOs more time for discussion, analyses and identification of the most efficient solution for the designation of the entity for this function. Therefore, instead of defining the entity for the operation of the capacity management function, the Agency provided an obligation on TSOs to develop a proposal for amendment of the mFRRIF in which they should propose the designation of the entity that will perform the capacity management function in accordance with Article 20(3)(e) of the EB Regulation. This proposal for amendment needs to be submitted for regulatory approval no later than eighteen months before the deadline for the implementation of the capacity management function, which is two years after the implementation of the mFRR-Platform. However, in case TSOs intend to implement the capacity management function at the time of implementation of the mFRR-Platform, the TSOs should develop a proposal for the designated entity to operate this function sufficiently before the implementation of the mFRR-Platform.

(97) The final provisions on the entity adopted in this Decision therefore allow the activation optimisation function and the TSO-TSO settlement function of the mFRR-Platform to be operated by a single TSO or by means of an entity that the TSOs would create themselves in accordance with Article 20(2) of the EB Regulation. It further complies with Article 20(3)(e) of the EB Regulation, as it clearly proposes a single entity and therefore the requirements of the second sentence of Article 20(3)(e) of the EB Regulation do not need to be met. Finally, this Decision leaves the decision on the entity performing the capacity management function open and requires from TSOs to develop a proposal in which they need to propose the designation of the entity performing this function in accordance with Article 20(3)(e) of the EB Regulation.

(98) Without prejudice to the legally possible options referred to in Article 20(2) of the EB Regulation that the mFRR-Platform can be operated by TSOs or by means of an entity TSOs would create themselves, the Agency considers that the proposal for the mFRR-Platform operated by TSOs does not sufficiently address the concerns raised by the Agency in paragraph 87 above. The Agency is of the opinion that, in the long run, there are considerable arguments in favour of all the functions of the mFRR-Platform being operated by an entity that the TSOs would create themselves and that this entity would operate also other European balancing platforms.

6.2.8. Assessment of the requirements for the harmonisation of terms and conditions

(99) The Proposal fulfils the requirements of Article 20(3)(f) of the EB Regulation regarding the framework for the harmonisation of the terms and conditions related to balancing. Article 16 of the Proposal sets out the process for future harmonisation needs of the mFRR-Platform into the terms and conditions for balancing where first an amendment to the mFRRIF in accordance with Article 6(3) of the EB regulation would be made and then each TSO has to implement the changes at national level. The process includes a consultation in accordance with Article 10 of the EB Regulation. In addition, the Proposal describes a process for a yearly survey after the implementation of the mFRR-Platform. TSOs would use the survey results to form a short list defined by priority with harmonisation needs.

(100) Regulatory authorities expressed a concern on the clarity of the proposed steps to be taken at national and at European level for the further harmonisation of terms and conditions.

(101) Therefore, the Agency added a new paragraph (f) in Article 16(2) to clarify the relation between national terms and conditions and the decision on the Proposal.

6.2.9. Assessment of the requirements for cost-sharing

(102) The Proposal fulfils the requirements of Article 20(3)(g) of the EB Regulation by including in Article 15 of the Proposal the rules on cost sharing and categorisation of costs. As required by Article 23 of the EB Regulation, regarding the categorisation of the costs into common, regional and national ones, Article 15(1) of the Proposal follows the same rule for splitting them into three categories, and the paragraphs 2, 6 and 10 of Article 15 of the Proposal further specify these categories. Additionally,

pursuant to Article 23(3) of the EB Regulation, the paragraphs 3, 5, 7 and 9 of Article 15 of the Proposal define the sharing of the common and regional costs.

(103) Furthermore, pursuant to Article 23(6) of the EB Regulation, in case the mFRRIF proposes that an existing project will evolve into the mFRR-Platform, all TSOs participating in the existing project may propose that a share of the costs, incurred before the approval of the Proposal directly related to the development and implementation of this project, and assessed as reasonable, efficient and proportionate, is considered as part of the common costs pursuant to Article 23(2)(a) of the EB Regulation. Article 15 of the Proposal specifies that any costs from the MARI project – which will evolve into the mFRR-Platform pursuant to Article 5 of the Proposal – before 1 January 2018 should not be considered as historical costs, but the costs between 1 January 2018 and until the approval of the Proposal may be regarded as common or regional costs. The Agency amended Article 5(2) of the Proposal to clarify that the decision on this possibility should be taken by all member TSOs.

(104) The Agency added a clarification in Article 15 of the Proposal that the cost-sharing rules apply to member TSO and third countries to align it with Article 23(3) and (5) of the EB Regulation.

6.2.10. Assessment of the requirements for the balancing energy gate closure time

(105) The Proposal fulfils the requirements of Article 20(3)(h) of the EB Regulation, which requires the definition of the balancing energy gate closure time for all standard products for mFRR in accordance with Article 24 of the EB Regulation, by setting, in Article 8, the balancing energy gate closure time to 25 minutes before real-time for the mFRR-Platform. Article 24 of the EB Regulation requires that all TSOs harmonise within the Proposal the balancing energy gate closure time for standard mFRR balancing energy products at the Union level. Moreover, the balancing energy gate closure time should: (a) be as close as possible to real-time; (b) not be before the intraday cross-zonal gate closure time; (c) ensure sufficient time for the necessary balancing processes.

(106) The proposed balancing energy gate closure time (i.e. 25 minutes before real-time) is after the intraday cross-zonal gate closure time (set at 60 minutes before real-time), hence it respects the requirement of Article 24(2)(b) of the EB Regulation. Regarding the other two requirements of Article 24(2) of the EB Regulation, they are to some degree contradicting, as the requirement for being as close as possible to real-time needs to be assessed together with the requirement to ensure sufficient time for the necessary balancing processes. The TSOs, in their explanatory document, describe the market considerations with respect to the definition of the balancing energy gate closure time, but they also refer to the technical boundaries that are set by the amount of time used by the platform and the TSOs to perform consistency checks, congestion management analysis, fall-back rules and IT communications.

(107) As mentioned in paragraph (20)(e), a few stakeholders asked for a balancing energy gate closure time even closer to real-time and questioned the processing time that TSOs would take for themselves to submit the received standard mFRR balancing

energy product bids to the mFRR-Platform. These stakeholders also argue that setting the balancing energy gate closure time closer to real-time than proposed would limit the implications of this gate closure time on some national intraday markets, which will be open even after the proposed balancing energy gate closure time (i.e. 25 minutes before real-time).

(108) The Agency understands that the TSOs have taken into account the concerns from stakeholders, with respect to the interactions between the balancing platforms, as well as with the intraday market, and also the required technical processes that need to be finalised before real time. The Agency also considers that, since there is no early implementation project for the mFRR-Platform, no previous experience can be used, in order to assess the time needed for the technical processing between the bid submission by the BSPs to the TSOs and the bid submission by the TSOs to the mFRR-Platform. However, the Agency understands that shorter balancing energy gate closure time would allow market participants to also react to changes closer to real-time. While, currently this option is deemed to be too risky for implementation of the mFRR-Platform, it should, in the Agency's opinion, be explored after the implementation of the mFRR-Platform. Therefore, the Agency currently sees no need to make changes to the balancing energy gate closure time of 25 minutes before real-time, since it gives TSOs sufficient time to assess the received standard mFRR balancing energy product bids for possible risks to operational security by errors in bids or the process of submission. Sufficient time is also needed for the conversion of specific products in accordance with Article 26 of the EB Regulation.

(109) Article 8 of the Proposal includes also the rules for central dispatching systems, which deviate due to specifics of the integrated scheduling process. In addition to the gate closure time, Article 8 of the Proposal also defines a common gate opening time for submission of standard mFRR balancing energy product bids at the latest 12:00 market time on the previous day.

(110) The Agency made small changes in this Article to clarify that only the participating TSOs in self-dispatching system receive the bids from BSPs, whereas different rules apply in central dispatch systems. Therefore, the definition for 'available standard mFRR balancing energy product bid' was also slightly changed to cover the case of central dispatching TSOs.

6.2.11. Assessment of the requirements for standard products

(111) The Proposal fulfils the requirements of Article 20(3)(i) and Article 25 of the EB Regulation by defining one standard mFRR product which complies with the requirements from Article 25 of the EB Regulation. Article 25 of the EB Regulation lists all the requirements for standard balancing energy and capacity products. Pursuant to Article 25(1) of the EB Regulation, standard products for balancing energy should be developed as part of the proposals for the implementation frameworks for the European platforms, pursuant to Articles 19, 20 and 21 of the EB Regulation. Therefore, the definition of the standard mFRR balancing energy product in Article 7 of the Proposal fulfils the requirement of Article 25(1) of the EB Regulation.

(112) Article 25(4) of the EB Regulation incudes the characteristics of a standard product bid that may be set in the standard product definition. Most of these characteristics are defined for the standard mFRR product in Article 7 of the Proposal, namely the full activation time, the minimum and maximum quantity, the minimum duration of the delivery period, the validity period and the mode of activation. All TSOs defined these static characteristics in Article 7(1) of the Proposal, as well as the activation type, the bid granularity and the price resolution.

(113) Moreover, Article 25(5) of the EB Regulation lists the minimum set of variable characteristics of a standard product, them being the price of the bid, the divisibility, the location and the minimum duration between the end of the deactivation period and the following activation. Paragraphs 2 and 4 of Article 7 of the Proposal provide specifications for all the variable characteristics listed in Article 25(5) of the EB Regulation and describe a few more, in a non-exhaustive list. To ensure harmonisation and legal clarity, the Agency amended the list to be an exhaustive one in terms of the standard mFRR balancing energy product characteristics, while also allowing the TSOs to define more at national level, in accordance with the national terms and conditions for BSPs, pursuant to Article 18 of the EB Regulation.

(114) Furthermore, Article 25(6) of the EB Regulation requires that standard products should: (a) ensure an efficient standardisation, foster cross-border competition and liquidity, and avoid undue market fragmentation; (b) facilitate the participation of demand facility owners, third parties and owners of power generating facilities from renewable energy sources, as well as owners of energy storage units as BSPs. The standard mFRR balancing energy product defined in Article 7 of the Proposal does not introduce any technology linked requirements, hence it facilitates the participation of all possible BSPs. Moreover, it ensures an efficient standardisation, fosters liquidity and avoids undue market fragmentation, since only one standard mFRR product has been specified for the mFRR-Platform.

(115) Article 31(4) of the EB Regulation, requires that TSOs ensure that the balancing energy bids submitted to the common merit order lists are expressed in euros and make reference to the market time unit. Article 7(2) of the Proposal specifies that the price of the standard mFRR balancing energy product bid shall be provided in EUR/MWh, together with the validity period the bid refers to. The validity period makes the required reference to the relevant market time unit. Therefore, the Proposal fulfils the requirements of Article 31(4) of the EB Regulation.

(116) Regulatory authorities asked for improvement on the clarity of the terms validity period and economic linking.

(117) Therefore, the Agency made minor changes to clarify the characteristics on the delivery of direct activatable mFRR bid, the mFRR market time unit the bid refers to and the maximum bid size.

(118) A few stakeholders do not support that the standard mFRR balancing energy product has two types of activation: scheduled or direct activation. They see the two as two different products, which will have to compete in the same common merit order list.

Due to the more complex procedure to be followed for direct activation, this will be reflected in the price and increases costs. They argue that TSOs should only use scheduled activations for mFRR and replace direct activations with alternatives like automatic frequency restoration reserves.

(119) The Agency sees currently no need for changes on the above mentioned topic because the big majority of stakeholders supports the proposed two activation types and because TSOs explained their need for direct activation for mFRR. The direct activations will be used to solve large imbalances within the time to restore frequency[10] of 15 minutes which can occur at any point in time and can result in n-1 violations.

6.2.11.1. Indivisible vs. divisible bids

(120) Only very few stakeholders asked to harmonise the divisibility of bids for the mFRR-Platform because the preference for one or the other is linked to the general principle of unit-based bidding versus portfolio-based bidding. Few stakeholders from load frequency control areas with unit-based bidding asked to keep indivisible bids and others from load frequency control areas with portfolio-based bidding asked for future harmonisation to divisible bids only.

(121) Article 25(5)(b) of the EB Regulation requires that divisibility shall be a variable characteristic of any standard mFRR balancing energy bid but does not require a harmonisation of this characteristic either through the Proposal or in the national terms and conditions.

(122) Therefore, the Agency agrees with the all TSOs' proposal to not harmonise the characteristic of divisibility of standard mFRR balancing energy bids to make sure that local specifics do not limit the incentive to submit standard mFRR balancing energy bids to the mFRR-Platform. This characteristic will be defined in national terms and conditions for balancing service providers in accordance with Article 18(5) of the EB Regulation.

(123) On the other hand, the majority of stakeholders agrees that indivisible bids can be rejected in order to satisfy TSO demand accurately and for the optimisation to find a stable solution.

6.2.11.2. Full activation time

(124) All TSOs propose for the standard mFRR balancing energy product a full activation time of 12.5 minutes. The time to restore frequency is 15 minutes in accordance with Annex III of the SO Regulation, which means that any frequency incidents have to be

[10] See Regulation (EU) 2017/1485 establishing a guideline on transmission system operation Table 1, Annex III

dealt with within that 15 minutes period. Setting the full activation for mFRR to 12.5 minutes will ensure sufficient time for restoring frequency.

(125) Regulatory authorities and the majority of stakeholders support this choice. Few stakeholders prefer a full activation time of 15 minutes.

(126) Article 25(4) of the EB Regulation incudes the characteristics of a standard product bid that may be set in the standard product definition. Although Article 25(4) of the EB Regulation does not specify clear requirements for the elements of the standard product to be standardised, the Agency considers that the full activation time is the most important product feature that needs to be standardised.

(127) The Agency agrees with the all TSOs' proposal and did not change the full activation time.

6.2.12. Assessment of the requirements for the TSOs' energy bid submission gate closure time

(128) The Proposal fulfils the requirements of Article 20(3)(j) of the EB Regulation as Article 9 of the Proposal sets the TSOs' energy bid submission gate closure time to 12 minutes before the beginning of the validity period of the respective standard mFRR balancing energy product bid. Article 9 of the Proposal also includes the rules for modification of bids in accordance with Article 29(9) of the EB Regulation and the rules for unavailability in accordance with Article 29(14) of the EB Regulation.

6.2.12.1. Declaring bids as unavailable or their modification by TSOs

(129) Article 9 of the Proposal suggests that TSOs have the possibility to modify bids in accordance with Article 29(9) of the EB Regulation or declare bids as unavailable in accordance with Article 29(14) of the EB Regulation.

(130) The Agency understands the importance of providing the TSOs with the flexibility to act, by declaring bids as unavailable, when operational security limits are endangered or where the bids are no longer available because some other bids, which are conditional on these bids, have been activated outside the mFRR-Platform after the mFRR balancing energy gate closure time. However, because TSOs are buyers of balancing energy, the Agency deems it important that the option by which these same TSOs can modify the supply of the balancing energy are strictly regulated, justified and transparent. Therefore, in order to ensure that TSOs are not unduly changing the bids submitted by BSPs or impacting the market functioning, the cases for bid modification and changes of the availability status need to be limited. In addition, a more transparent framework is necessary, so that every time this option is used, the responsible TSO provides a reason for changing a bid, notifies the affected BSPs and publishes and reports on a yearly basis on the usage of this option in more details. The main motivation of this framework is to clearly specify and limit cases when TSOs can modify the bids submitted by balancing service providers in order to ensure that TSOs do not unduly discriminate between balancing service providers and the bids they have submitted to them.

(131) Based on the above, the Agency consulted on a proposal for clarifying the main aspects of such actions, including the timing for taking such actions, the process on the mFRR-Platform, the reasons for the changes, limitation to the bids that can be changed, and obligations on TSOs regarding monitoring and reporting.

(132) The majority of stakeholders supported the Agency's proposed amendments and clarifications to the provisions on the modification of bids and changing their availability status, while some only provided their support if the use of this option would be closely monitored and TSOs would provide reasons for the changes. Some stakeholders did not support the Agency's proposal and some others had concerns regarding the transparency of this feature in the mFRR-Platform.

(133) The Agency made major changes to Article 9 of the Proposal to provide clarity to the process for modification of bids and changing the availability status of bids, following also the comments received from stakeholders. In addition, paragraph 10 in Article 3 of the Proposal was deleted because the topic was moved to Article 9 of the Proposal and renamed from guaranteed volume to respecting TSOs' reserve capacity requirements.

(134) In paragraph (2) the Agency clarified that the bids can be modified in accordance with Article 29(9) of the EB Regulation and the availability status of bids can be changed in accordance with Article 29(14) of the EB Regulation, before the TSOs' energy bid submission gate closure time. After the TSOs' energy bid submission gate closure time, these changes are only possible when new information becomes available, affecting the possibility to activate a standard mFRR balancing energy product bid. The TSOs should define the latest possible time until such changes are possible.

(135) The Agency added a new paragraph (3) to Article 9 of the Proposal, which specifies that the bids affected by the change should still be submitted to the mFRR-Platform and the changes of bids are limited to changes of available volume or availability status only. Additionally, the Agency specifies the publication requirement stemming from Article 12(3)(b)(v), extending it to all cases of changes and not only to the ones related to unavailability status, including also the justification for the change.

(136) The Agency added a new paragraph (4) to Article 9 of the Proposal, where the cases for changing the bids are listed. The changes of bids are limited to cases related (a) to violations of operational security limits or frequency limits within the TSO or DSO control areas, and (b) to activation of bids, which are conditional on bids that have been activated outside the mFRR-Platform in other balancing processes. The first case allows changes to bids, when not allowing such changes could lead to violation of operational security limits or frequency limits. This could be either because the TSO would not be able to fulfil his required reserve capacity or because there is a technical unavailability of the reserve providing unit. In this case, BSPs have to report any unavailable volumes even after the balancing energy gate closure time to the TSO without undue delay in accordance with Article 24(4) of the EB Regulation and in

accordance with Article 158(4)(b) of the SO Regulation11. Since BSPs, in accordance with Article 24(3) of the EB Regulation, shall not update their submitted bids after the balancing energy gate closure time and because they also would not have the technical ability, the TSO instead should make the changes under the condition that this is necessary for maintaining operational security. The second case allows BSPs to submit conditional bids for different balancing processes, among them being also standard mFRR balancing energy product to the mFRR-Platform, in order to allow them to arbitrage between different platforms. Since the balancing energy gate closure time for the aFRR-Platform and the mFRR-Platform are both at 25 minutes before real-time, this does not allow for sequential bidding, so the BSPs should choose where to bid or bid in both platforms with the risk of not being activated. In order to increase the possibility for BSPs to get an activation for a submitted bid, the possibility of submitting conditional bids is introduced and is handled via Article 9(4)(b) of the amended Proposal by the Agency, with a change to the availability status.

(137) In the mFRR-Platform, both scheduled and directly activatable bids will be organised in the same common merit order list for scheduled activation. Only the remaining bids after the scheduled activation in the common merit order list can be used for direct activations. To guarantee that TSOs have access to sufficient amount of directly activatable bids after the scheduled activation, when a need occurs, Article 9(5) of the Proposal allows TSOs to declare standard mFRR balancing energy bids for direct activation as unavailable for activation by other TSOs in accordance with Article 29(14) of the EB Regulation. This means that the participating TSO, who submitted these bids, can still activate them from the common merit order list. In this case, the limitation is that the TSO can only activate the bids, which have been declared as unavailable to other TSOs for respecting frequency limits and the required reserve capacity, for local needs.

(138) The Agency added paragraph (6) in Article 9 of the Proposal, to clarify the principles for non-discrimination for bids with a capacity contract and balancing energy only bids in accordance with Article 16(7) of the EB Regulation. The Agency also clarified that national terms and conditions on balancing should ensure non-discrimination between available standard mFRR balancing energy product bids and unavailable standard mFRR balancing energy product bids. This is to ensure non-discrimination between BSPs in accordance with the objective of Article 3(2)(a) of the EB Regulation.

(139) The Agency added paragraph (7) in Article 9 to ensure transparency for TSOs using modification of bids or changing the availability status. TSOs have to provide a reason for any change they make to a bid after the TSO' energy bid submission time, providing the information listed in this paragraph. In addition to general information listed under points (a) and (b), the TSO also has to indicate if the change was for

[11] Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation

respecting thermal limits or frequency limits. Point (d) covers the case where, due to linking of bids, a BSP will ask for the change in available volume of a bid, which will be covered with reporting and publication as well.

(140) The Agency added paragraph (8) in Article 9 to take account of stakeholders' and regulatory authorities' concerns. The possibility to declare standard mFRR balancing energy bids as unavailable for activation by other TSOs is limited to the most expensive bids of the connecting TSO. While, at the same time, these bids need to have an impact on the concerned operational security limits (thermal or frequency limits). This condition shall make sure that, when bids are declared as unavailable to other TSOs and will be used to counteract operational security limits, like thermal limits, the bids will be effective and have an impact on the operational security violation.

(141) With respect to monitoring and reporting, the Agency added paragraph (9) to Article 9 of the Proposal, including the obligation for the TSOs to inform all other TSOs and the affected BSPs on the changes by 30 minutes after the end of the relevant validity period, and to report this information in aggregated form in the annual report of Article 13 of the Proposal.

6.2.13. Assessment of the requirements for common merit order lists

(142) The Proposal fulfils the requirements of Article 20(3)(k) and Article 31 of the EB Regulation by defining the process for the creation and update of common merit order lists for all submitted standard mFRR balancing energy product bids. The Proposal defines rules for setting up two common merit order lists, one for positive and one for negative balancing energy in accordance with Article 31(2) and (3) of the EB Regulation. In addition, Article 31(2) of the EB Regulation specifies that common merit order lists should consist of balancing energy bids from standard products, and that all TSOs should establish the necessary common merit order lists for the standard products. The common merit order lists shall be used for scheduled activation first and are sorted for positive balancing energy in ascending order of price and for negative balancing energy in descending order of price. The common merit order lists contain all available bids from the standard product in accordance with Article 31(1)(c) of the EB Regulation.

(143) Regulatory authorities asked for clarification that all standard mFRR balancing energy bids shall be part of the common merit order lists and not only the available bids.

(144) The Agency did not make any changes in this Article to reflect the regulatory authorities' concerns because the process for unavailable bids was changed in Article 9 of the Proposal to be more transparent, which addresses the concerns (see section 6.2.12.1).

(145) The Agency made minor changes to the wording to align the text with the EB Regulation and clarified that only the participating TSOs in self-dispatching system receive the bids from BSPs and forward them to the mFRR-Platform.

6.2.14. Assessment of the requirements for the description of the algorithm

(146) The Proposal does fulfil the requirements of Article 20(3)(l) and Article 58 of the EB Regulation regarding the description of the algorithm for the operation of the activation optimisation function of the mFRR-Platform.

(147) Article 58(1) of the EB Regulation requires this algorithm to: (a) respect the activation method of balancing energy bids pursuant to Article 29 of the EB Regulation; (b) respect the pricing method for balancing energy pursuant to Article 30 of the EB Regulation; (c) take into account the process descriptions for imbalance netting and cross-border activation pursuant to Part IV Title III of Regulation (EU) 2017/1485. Additionally, Article 58(4) of the EB Regulation requires this algorithm to: (a) respect operational security constraints; (b) take into account technical and network constraints; (c) if applicable, take into account the available cross-zonal capacity.

(148) Article 3 of the Proposal provides a high-level description of the mFRR-Platform, hence also of the algorithm, while Article 11 of the Proposal describes the optimisation algorithm, i.e. the inputs, the objective functions, the constraints and the outputs. Additionally, Article 4 of the Proposal describes the update of cross-zonal capacities that serves as one of the constraints (i.e. inputs) to the algorithm.

(149) The methodologies, pursuant to Articles 29 and 30 of the EB Regulation, have not been approved yet, however, the Proposal refers to them. Article 3 of the Proposal specifies that the mFRR-Platform should implement: (a) the methodology for pricing balancing energy and cross-zonal capacity used for the exchange of balancing energy or operating the imbalance netting process in accordance with Article 30 of the EB Regulation, and (b) the classification methodology for the activation purposes of balancing energy bids in accordance with Article 29 of the EB Regulation. Moreover, in the outputs of the algorithm in Articles 3 and 11 of the Proposal, the prices for mFRR balancing energy, as well as the prices for cross-zonal capacity used for the exchange of standard mFRR balancing energy products, determined using the methodology in accordance with Article 30 of the EB Regulation, are included.

(150) The Proposal takes into account the process descriptions for imbalance netting and cross-border activation pursuant to Part IV Title III of Regulation (EU) 2017/1485, in the definition of the inputs and outputs of the algorithm, in Articles 2, 3 and 11 of the Proposal.

6.2.14.1. Scheduled counter-activations

(151) Optimisation algorithm of the mFRR-Platform performs a multi-stage optimisation where in the first stage the algorithm maximises the economic surplus. This maximisation can lead, in two cases, to the simultaneous activation of an upward and a downward bids by the activation optimisation function, which is called counter-activations. The first situation is when there are negative balancing energy bids with higher prices than positive balancing energy bids and a simultaneous activation of both would increase economic surplus. In the second case, only a part of the indivisible bid would be needed to satisfy TSO demand. If there is no counter-activations allowed

this cost efficient indivisible bid would be skipped for a more expensive bid or the TSO demand would not be satisfied. With counter-activations, it is more likely that the cost efficient indivisible bid can be fully activated together with another divisible bid in the other direction to ensure that supply equals demand.

(152) In the consultation process, some regulatory authorities expressed concerns for this approach and one regulatory authority even completely objected it, whereas the majority was in favour of scheduled counter-activations. Regulatory authorities, who raised concerns, see scheduled counter-activations as an action going against the purpose of the mFRR-Platform, being not in line with the TSO role and turning the mFRR-Platform into an attractive trading alternative. Regulatory authorities in favour of scheduled counter-activations see it as an important feature to enhance efficiency, ensuring more efficient dispatch of energy, which would increase the economic surplus of the mFRR-Platform. All regulatory authorities would be willing to allow scheduled counter-activations as a starting point on the mFRR-Platform but could not agree on the conditions supporting this.

(153) The majority of stakeholders also supported the Agency's proposal to have scheduled counter-activations in the mFRR-Platform with the objective to increase economic surplus.

(154) The Agency agrees that scheduled counter-activations will lead to increased economic surplus in the mFRR-Platform and has a positive impact for the two cases listed above and therefore did not make changes in Article 11(3)(a) of the Proposal. On the other hand, the Agency understands the concerns of some regulatory authorities and stakeholders raised during the consultation. Therefore, the Agency took a solution from all regulatory authorities' non-paper, which was not supported by all and introduced more strict reporting obligations for TSOs together with the possible amendment of the Proposal if scheduled counter-activations were to prove harmful for the mFRR-Platform in the TSOs' report. In detail, the Agency added a new paragraph (3) in Article 13 of the Proposal, so that all TSOs shall publish a report on scheduled counter-activations by three years after the implementation of the mFRR-Platform. This timeline shall ensure that enough TSOs have connected to the platform and that a sufficient amount of data can prove if counter-activations are harmful to the performance of the mFRR-Platform.

(155) Another reason for the Agency to allow scheduled counter-activations from the start of the mFRR-Platform is the great concern with the feasibility of effectively blocking scheduled counter-activations. TSOs were not able to present a feasible solution for the implementation of blocking scheduling counter-activation in the mFRR-Platform and, at the same time, guaranteeing its timely implementation. Therefore, the Agency supported the TSOs' report to be published three years after the implementation of the mFRR-Platform in order to facilitate the deadline to be met.

6.2.14.2. General principles for paradoxical rejection of bids

(156) All TSOs did not include any principles for the rejection of bids in the Proposal but included their views on the rejection of bids in the activation optimisation function in the explanatory document and during the consultation

(157) Regulatory authorities agreed with the proposed principles for the rejection of bids made by TSOs but asked for the inclusion of the principles into the Proposal.

(158) The majority of stakeholders agreed only with the rejection of indivisible bids, although some stakeholders supported the rejection of both divisible and indivisible bids. The main concern raised was that no divisible bid below the marginal price should be rejected as this would be a discrimination of BSPs who submit divisible bids.

(159) The Agency agrees with TSOs that the principles for rejection have an impact on the activation optimisation algorithm because they will be translated into constraints for the algorithm and have an impact on the algorithm performance. Therefore, the Agency sees the need to give TSOs the possibility to use rejection rules for both divisible and indivisible bids in a new paragraph (7) of Article 11 of the Proposal.

(160) The Agency added a general rule that preference shall be given to the rejection of indivisible bids, which, among other things, shall incentivise BSPs to submit more divisible bids. By allowing the rejection of both divisible and indivisible bids in the algorithm for optimisation, it is more likely that a feasible solution will be found and that more inelastic TSO demand can be fulfilled. These two cases are listed as conditions when the rejection of bids can be allowed in the algorithm. The third case covers the condition that the acceptance of a bid equal or below/above the cross-border marginal price would increase/decrease the cross-border marginal price above/below the bid price.

(161) The definition for ‘cross-border marginal price’ was added in the definitions in Article 2 of the Proposal because the term is used to describe the situations for the paradoxical rejection of bids.

6.2.15. <u>Amendments necessary to ensure legal clarity and consistency with existing legal provisions</u>

(162) Throughout the Proposal, the Agency made changes to clarify the obligations of the participating TSO versus the connecting TSO. For that reason, the term submitting TSO was replaced with one of the above mentioned notions for TSOs. These changes were made in Article 3(4)(c) to replace submitting TSO with participating TSO. The changes concerning the replacement of connecting TSO with participating TSO were made in Articles 8(1), 8(2), 9(1), 10(1) and 10(3) of the Proposal. The changes were needed to clarify that not all member TSOs will become participating TSOs and that not all connecting TSOs will be actively participating in the mFRR-Platform. This covers the case where an LFC area consists of more than one monitoring area, in which case only the appointed TSO will become a participating TSO.

(163) In the definition for 'availability status', the Agency added the respective legal references from the EB Regulation.

(164) The term 'balancing market time unit' was replaced with 'mFRR market time unit' but the content was not changed and the period of 15 minutes is kept.

(165) The Agency aligned the definition of 'economic surplus' with the definition of the term in the Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management ('CACM Regulation'), and deleted the bidding zone border definition, because the term is already implicitly defined in the CACM Regulation with the definition of bidding zones and because introducing a new definition in the mFRRIF would risk legal inconsistency.

(166) The definition of 'implementation of the mFRR-Platform' was removed and the content was moved to the recitals section because the proposed definition describes a process relevant for the Proposal.

(167) In the definition for 'inelastic mFRR demand', the Agency added a reference to the technical price limit as defined in the methodology pursuant to Article 30(1) of the EB Regulation.

(168) The changes in the definitions for 'mFRR demand' and 'participating TSO' were made to reflect better the legal provisions from the EB Regulation and the SO Regulation.

(169) In the definitions for elastic mFRR demand, mFRR balancing border and mFRR demand, the Agency removed those parts of the proposed definitions, which were containing detailed specifications. The Agency moved detailed specifications to the respective Articles of the mFRRIF

(170) The Agency also made a few minor amendments in Article 3 of the Proposal, which are reflecting the amendments required by the assessment of legal requirements as described in Section 6.2.5, with respect to the reference to the capacity management function, as well as some amendments requested by all regulatory authorities aiming to improve legal clarity and consistency.

6.2.16. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.16.1. Consultation and involvement of stakeholders

(171) When drafting the Proposal, all TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.

(172) As indicated in paragraph (5) above, all TSOs fulfilled the requirements of Article 10 of the EB Regulation, since stakeholders were consulted on the draft Proposal pursuant to Article 10(1) of the EB Regulation. This involvement took place during a public consultation, which ran from 15 May 2018 until 16 July 2018. In addition, all

regulatory authorities were regularly informed and consulted pursuant to Article 10(1) of the EB Regulation. The justifications regarding the consideration given to the views expressed by stakeholders during the public consultation in the drafting of the Proposal were provided in a separate document dated 10 July 2018 and submitted to all regulatory authorities.

6.2.16.2. Reporting and transparency

(173) The Agency added some reporting and monitoring obligations for TSOs in Article 13 of the Proposal to enhance the transparency which was asked for by stakeholders for certain design features of the mFRR-Platform. The additions for reporting on elastic demand are described in section 6.2.3.3 and on scheduled counter-activations are described in section 6.2.14.1.

(174) The Agency added to the yearly report an obligation for TSOs to include the total volume of paradoxically rejected bids, separately for divisible and indivisible bids. Also, the Agency introduced a new report three years after the implementation of the mFRR-Platform assessing the rejection of bids while focusing on inefficiencies due to maximum bid size.

(175) The EB Regulation requires TSOs to publish information for the event that the activation of balancing energy bids deviates from the results of the activation optimisation function. Therefore, the Agency added this obligation in Article 13(1)(d) of the Proposal.

(176) In addition, the Agency added reporting on the available cross-zonal capacity for the mFRR exchange on the platform.

(177) The Agency clarified that the yearly report shall be published and that if any inefficiencies are identified in the reports the TSOs should include a recommendation on how to deal with the identified problems. Such a recommendation should lead where relevant to an amendment of the current Proposal.

7. CONCLUSION

(178) For all the above reasons, the Agency considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.

(179) Therefore the Agency approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by the Agency,

HAS ADOPTED THIS DECISION:

Article 1

The implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation in accordance with Article 20 of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to all TSOs:

50Hertz Transmission GmbH,
Amprion GmbH,
AS Augstsprieguma tĪkls,
Austrian Power Grid AG,
BritNed Development Limited (NL),
BritNed Development Limited (UK),
C.N.T.E.E. Transelectrica S.A.,
ČEPS a.s.,
Creos Luxembourg S.A.,
EirGrid Interconnector DAC,
EirGrid plc,
Elektroenergien Sistemen Operator EAD,
Elering AS,
ELES, d.o.o.,
Elia System Operator SA,
Elia System Operator NV/SA,
Energinet Electricity System Operator,
Fingrid Oyj,
HOPS d.o.o.,
Hrvatski operator prijenosnog sustava,
Independent Power Transmission Operator S.A.,
Kraftnät Åland Ab,
Litgrid AB,

MAVIR ZRt,
Moyle Interconnector Limited,
National Grid Electricity Interconnector Limited,
National Grid Electricity System Operator,
Nemo Link Limited,
Polskie Sieci Elektroenergetyczne,
Red Eléctrica de España S.A.,
Rede Eléctrica Nacional, S.A.,
Réseau de Transport d'Electricité,
Slovenská elektrizačná prenosová sústava, a.s.,
Statnett,
Svenska kraftnät,
System Operator for Northern Ireland Ltd,
TenneT TSO B.V.,
TenneT TSO GmbH,
Terna Rete Elettrica Nazionale S.p.A.,
TransnetBW GmbH and
VÜEN-Vorarlberger Übertragungsnetz GmbH.

Done at Ljubljana, on 24 January 2020.

- SIGNED –

For the Agency
The Director

C. Zinglersen

Annexes:

Annex I – Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation in accordance with Article 20 of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

Annex Ia (for information only) – Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation in accordance with Article 20 of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing – with track changes

Annex II (for information only) – Evaluation of responses to the public consultation on the Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.