

**DECISION No 14/2019
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 29 October 2019

**on the TSOs' proposal for amendment of the harmonised allocation rules
for long-term transmission rights**

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 Regulators¹, and, in particular, Article 5(2)(b) thereof,

Having regard to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation², and, in particular, Article 4(6)(d) and (12) thereof,

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

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

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (the 'FCA Regulation') laid down rules on cross-zonal capacity allocation in the forward markets. These rules include specific requirements for the development of harmonised allocation rules ('HAR').

¹ OJ L158, 14.6.2019, p. 22.

² OJ L259, 27.9.2016, p. 42.

- (2) On 2 October 2017, the Agency issued its Decision No 03/2017 on the TSOs' proposal for the HAR according to Article 51 of the FCA Regulation.
- (3) The present Decision of the Agency follows from the TSOs' proposal to amend the HAR as mandated by Decision No 03/2017. Annex I to this Decision sets out the amended HAR, pursuant to Article 51(1) of the FCA Regulation, as approved by the Agency.

2. PROCEDURE

- (4) On 16 May 2019, ENTSO-E, on behalf of TSOs, published proposed changes to the existing HAR for a public consultation. The consultation lasted from 20 May to 20 June 2019.
- (5) By email of 15 July 2019, ENTSO-E submitted, '*on behalf of all TSOs*', the amended '*Harmonised allocation rules for Long Term Transmission Rights in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation*' (the 'proposal for amendment') for approval pursuant to Article 5(2) of Regulation (EU) 2019/942.
- (6) A supporting document, which was submitted for information together with the proposal for amendment, describes the comments received during ENTSO-E's public consultation and the resulting changes to the amendments proposed in this consultation.
- (7) During the preparation of this Decision, the Agency closely cooperated with regulatory authorities and TSOs and consulted them on the possible changes to the proposal for amendment at teleconferences and meetings and through exchanges of draft texts.
- (8) On 23 August 2019, the Agency launched a public consultation on the proposal for amendment, inviting all market participants to submit their comments by 12 September 2019. The consultation document asked stakeholders to provide views on two topics, which were deemed as the most relevant - (i) the possibility of flexible reduction period; and (ii) added details in the remuneration rules - as well as on (iii) any other issues. The summary and evaluation of the responses received are presented in Annex II to this Decision.

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

- (9) According to Article 4(12) of the FCA Regulation, a proposal for amendment to the approved terms and conditions or methodologies shall be approved in accordance with the procedure set out in Article 4 of the same Regulation.
- (10) According to Article 4(6)(d) of the FCA Regulation, the HAR, pursuant to Article 51 of the same Regulation, shall be subject to approval by all regulatory authorities.

- (11) According to Article 5(2)(a) of Regulation (EU) 2019/942, proposals for terms and conditions or methodologies, based on network codes and guidelines adopted before 4 July 2019, which require the approval of all regulatory authorities, shall be submitted to the Agency for revision and approval.
- (12) The proposal for amendment has been submitted by all concerned TOSs and, under the FCA Regulation (i.e. a guideline adopted before 4 July 2019), would require approval by all concerned regulatory authorities.
- (13) Therefore, under the provisions of Article 5(2) of Regulation (EU) 2019/942 in conjunction with Article 4(6)(d) and (12) of the FCA Regulation, the Agency has become responsible to adopt a decision concerning the proposal for amendment by the submission of 15 July 2019.

4. SUMMARY OF THE PROPOSAL FOR AMENDMENT

- (14) The proposal for amendment includes the following elements:
- a) a ‘Whereas’ section;
 - b) general provisions, including on the scope of application and on harmonised definitions in Title 1;
 - c) requirements and process for participation in auctions and transfer, including harmonised provisions on participation conditions, in Title 2;
 - d) requirements for collaterals, including harmonised provisions on financial requirements, netting policies and financial collaterals for long-term transmission rights, in Title 3;
 - e) provisions on auctions, including the description of the forward capacity allocation process, with the auction specification, the submission of bids, the publication of auction results and contestation period, in Title 4;
 - f) harmonised provisions for the return of long-term transmission rights in Title 5;
 - g) harmonised provisions for the transfer of long-term transmission rights, including their notification, in Title 6;
 - h) principles regarding the use and remuneration of long-term transmission rights, including harmonised Use-It-Or-Sell-It (UIOSI) provisions in case of physical transmission rights, a description of the types of long-term transmission rights which are offered, including the remuneration principles, as well as principle description of the applicable nomination rules, in Title 7;
 - i) provisions regarding fallback procedures in Title 8;
 - j) provisions regarding curtailments, including provisions on firmness and compensation rules, in Title 9;
 - k) provisions regarding invoicing and payment, including harmonised provisions on financial requirements and settlement, in Title 10; and

- l) miscellaneous provisions, referring also to the contractual framework between the single allocation platform and the market participants, including provisions on the applicable law, the applicable language, confidentiality, dispute resolution, liability and force majeure, in Title 11.
- (15) The proposal for amendment therefore consists of the complete HAR as contained in Annex I to the Agency's Decision No 03/2017, subject to the following amendments:
- a) addition of one sentence in Recital (5);
 - b) deletion of redundant definitions in Article 2(2);
 - c) replacing the term 'Allocation Platform' with 'Single Allocation Platform' throughout the document;
 - d) amendments to the foreseen communication method in Articles 9, 50 and 74;
 - e) amendments in Article 7, 9, and 15 to apply the requirements of Directive (EU) 2015/849;
 - f) amendments in Articles under Title 3 for an earlier provision of bank guarantees;
 - g) deletion of the second part of the sentence in Article 31(1)(f), to support the amendment of bids in the auction tool;
 - h) amendments to Article 58 for a direct reference to the proposal pursuant to Article 69 of the CACM Regulation; and
 - i) addition of formulas for the calculation of compensation caps in curtailment situations in Article 59.

5. ASSESSMENT OF THE PROPOSAL FOR AMENDMENT

5.1. Legal framework

- (16) Article 4(6)(d) and (12) of the FCA Regulation provides that amendments to the approved HAR in accordance with Article 51 of the same Regulation require approval.
- (17) Articles 51 and 52 of the FCA Regulation set out specific requirements for the proposal for the HAR for long-term transmission rights.
- (18) According to Article 51(1), the proposal for HAR shall be developed in accordance with the requirements of Article 52(2) and shall be subject to consultation in accordance with Article 6 of the FCA Regulation. In addition, according to Article 4(12) of the FCA Regulation, proposals of TSOs to amend the approved HAR shall also be subject to consultation in accordance with Article 6 of the FCA Regulation.
- (19) According to Article 52(1), the requirements for HAR for long-term transmission rights shall cover physical transmission rights, FTRs-options and FTRs-obligations, and TSOs shall consider and duly take into account specificities related to the different types of products.

- (20) According to Article 52(2), the proposal for HAR shall follow the principles of non-discrimination and transparency and at least contain the general requirements set out in subparagraphs (a) to (l) of Article 52(2).
- (21) As a general requirement, Article 4(8) of the FCA Regulation demands that every proposal for terms and conditions or methodologies includes a proposed timescale for their implementation and a description of their expected impact on the objectives of the FCA Regulation.
- (22) Further, for coherence reasons and as confirmed by Article 4(8) of the FCA Regulation, the proposal for terms and conditions or methodologies must be in line with the objectives of the FCA Regulation defined in its Article 3.

5.2. Assessment of the legal requirements

- (23) The proposal for amendment includes not only specific amendments to the HAR approved by the Agency's Decision No 03/2017, but also the rest of the approved HAR. To avoid duplication, the Agency will not reassess those parts of the proposal for amendment, which correspond to the approved HAR, and in that respect refers to its Decision No 03/2017. Rather, the Agency will focus in the following on the proposed amendments and the additional amendments made by the Agency.

5.2.1. Assessment of the requirements in Article 52(1) and (2) of the FCA Regulation

- (24) The proposed amendments update some provisions related to the requirements described in Article 52(1) and (2) of the FCA Regulation. These updates do not affect the finding in the Agency's Decision No 03/2017 that the requirements of Article 52(1) and (2) of the FCA Regulation are fulfilled. Therefore, the proposal for amendments fulfils the requirements of Article 52(1) and (2) of the FCA Regulation.
- (25) To add some clarification related to the requirements described in Article 52(2)(d) and (k) of the FCA Regulation, the Agency deems it necessary to amend Article 48(1) and Article 59(1) of the proposal for amendment. While these Articles do comply with the principles described in Article 35(3) of the FCA Regulation, the Articles do not cover all possible events in case of implicit allocation. The unlikely, but possible event of no clearing price in at least one of the two relevant bidding zones while results from the fallback solutions of the implicit allocation in the form of explicit auctions of transmission rights in day-ahead are available, is not described in the proposal for amendment and would therefore result in a remuneration of long-term transmission rights with the price of the initial auction of these transmission rights. The Agency, as well as all of the respondents to this question in the public consultation, are of the opinion that, in such an event, long-term transmission rights should be remunerated in line with the result of the fallback auction, as such approach would follow the principles described in Article 72(3)(d) of the CACM Regulation and would reflect a more accurate price situation in the case of such an event.

5.2.2. Assessment of the requirements for consultation

- (26) The draft proposal for amendment was consulted Union-wide with stakeholders from 20 May to 20 June 2019.
- (27) The supporting document to the proposal for amendment describes the comments received from stakeholders, assesses them and explains why comments have or have not been taken into account. The explanatory document was published together with the proposal for amendment on 9 July 2019.
- (28) Therefore, the proposal for amendment has been subject to a public consultation in accordance with Article 6 of the FCA Regulation and complies with Article 4(12) of the FCA Regulation.

5.2.3. Assessment of the requirements in Article 4(8) of the FCA Regulation

- (29) Article 5 of the proposal for amendment provides that the HAR shall apply for capacity allocation for long-term transmission rights with a delivery period starting from 1 January in the subsequent year following the adoption of the HAR by all regulatory authorities or decided upon by the Agency.
- (30) Recitals (8) to (14) of the whereas in the proposal for amendment describe the expected impact of the HAR on the objectives listed in Article 3 of the FCA Regulation and remained unchanged in comparison to the version of the HAR according to the Agency's Decision No 03/2017.
- (31) Therefore, the proposal for amendment complies with the requirement of the implementation timescale and impact description in Article 4(8) of the FCA Regulation.

5.2.4. Assessment of other points in the proposal for amendment

- (32) The Agency deems it necessary to update the reference to Directive 2009/72/EC in Article 2 of the proposal for amendment with regard to Directive (EU) 2019/944 which replaces Directive 2009/72/EC.
- (33) In Article 28(2) of the proposal for amendment, the term 'by default' was deleted, in consultation with regulatory authorities and TSOs, to provide clarity in this paragraph.
- (34) The Agency deemed it necessary to amend Article 57 of the proposal for amendment to enhance transparency on the reasons for curtailment of long-term transmission rights in accordance with the objective under Article 3(f) of the FCA Regulation. The necessary transparency shall be ensured by publishing clearer information on which endangered operational security limit caused the curtailment and why the situation could not be solved by measures other than curtailment.
- (35) In addition, the Agency introduced a few additional editorial amendments.

6. CONCLUSION

- (36) For all the above reasons, the Agency considers the proposal for amendment in line with the requirements of the FCA Regulation, provided that the amendments described in this Decision are integrated in the proposal for amendment, as presented in Annex I to this Decision.
- (37) Therefore the Agency approves the proposal for amendment subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the proposal for amendment as amended and approved by the Agency,

HAS ADOPTED THIS DECISION:

Article 1

The harmonised allocation rules for long-term transmission rights pursuant to Article 51 of Regulation (EU) 2016/1719 are amended and approved as set out in Annex I to this Decision.

Article 2

This Decision is addressed to:

50Hertz Transmission GmbH
Amprion GmbH
AS Augstsprieguma tīkls
Austrian Power Grid AG
BritNed Development Limited
C.N.T.E.E. Tranelectrica S.A.
ČEPS a.s.
Creos Luxembourg S.A.
EirGrid Interconnector DAC
EirGrid plc
Eleclink Limited
Elektroenergien Systemen Operator EAD
Elering AS
ELES, d.o.o.
Elia System Operator NV/SA
Elia System Operator SA
Energinet
HOPS d.o.o., Hrvatski operator prijenosnog sustava
Independent Power Transmission Operator S.A. - ADMIE S.A.
MAVIR ZRt
Moyle Interconnector Limited
National Grid Electricity Interconnector Limited
National Grid Electricity Transmission plc
National Grid IFA2 Limited

Nemo Link Limited
Polskie Sieci Elektroenergetyczne S.A
Red Eléctrica de España S.A.
Rede Eléctrica Nacional, S.A.
Réseau de Transport d'Electricité
Slovenská elektrizačná prenosová sústava, a.s.
System Operator for Northern Ireland Ltd
TenneT TSO B.V.
TenneT TSO GmbH
Terna Rete Elettrica Nazionale S.p.A.
TransnetBW GmbH

Done at Ljubljana on 29 October 2019.

- SIGNED -

For the Agency
Director ad interim
Alberto POTOTSCHNIG

Annexes:

Annex I – Harmonised Allocation Rules for long-term transmission rights

Annex Ia – Harmonised Allocation Rules for long-term transmission rights (track-change version, for information only)

Annex II – Evaluation of responses to the public consultation on the proposal for Harmonised Allocation Rules for long-term transmission rights (for information only)

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.