

**DECISION No 09/2026
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 16 July 2026

**on the first amendment of the long-term capacity calculation methodology
of the Core capacity calculation region**

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(3) and Article 6(10) 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, paragraphs (5), (7)(a), (10) and (12) thereof,

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

Having regard to the outcome of the consultation with the Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 8 July 2026, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

¹ [OJ L 158, 14.6.2019, p. 22.](#)

² [OJ L 259, 27.9.2016, p. 42.](#)

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation ('FCA Regulation') lays down detailed rules on cross-zonal capacity allocation in forward markets. In particular, Article 10 requires transmission system operators ('TSOs') in each capacity calculation region ('CCR') to jointly develop common methodologies for determining cross-zonal capacity in the long-term time frame. These long-term capacity calculation methodologies must be approved in accordance with the procedure set out in Article 4 of the FCA Regulation: first by the regulatory authorities of the relevant region within six months and, where they fail to agree within that period or upon their joint request, by ACER within the following six months.
- (2) Under Article 4(12) of the FCA Regulation, TSOs may propose amendments to regional methodologies to the regulatory authorities of the relevant region. Such amendments must follow the same development and approval procedure as the original methodologies.
- (3) The initial long-term capacity calculation methodology for the Core CCR ('Core LT CCM') was developed by the Core TSOs and subsequently amended and approved by ACER Decision 14/2021 of 3 November 2021, following a referral by the Core regulatory authorities after they had failed to agree on it.
- (4) Following an appeal by PSE, the Polish TSO, against Decision 14/2021, ACER's Board of Appeal, by Decision A-001-2022 of 7 July 2022, remitted the case to the competent body of ACER. On 18 January 2023, ACER replaced Decision 14/2021 with Decision 03/2023. Annex I to Decision 03/2023 sets out the current Core LT CCM.
- (5) On 19 January 2026, the Core TSOs submitted to the Core regulatory authorities their proposal for the first amendment to the Core LT CCM ('Proposal').
- (6) As the Core regulatory authorities could not agree on the Proposal, on 4 February 2026, they referred it to ACER for decision, in accordance with Articles 4(7)(a), 4(10) and 4(12) of the FCA Regulation.
- (7) The present Decision decides on that Proposal. Annex I to this Decision sets out the Proposal as amended and approved by ACER.³ Annex II provides, for information, a consolidated version of the Core LT CCM reflecting those amendments.

³ The Core TSOs' proposal is referred to in this Decision as the '**Proposal**'. The version as amended by ACER and set out in Annex I is referred to as the '**amended Proposal**'.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (8) On 21 November 2025, the Core TSOs submitted the Proposal to the Core regulatory authorities for approval. The last Core regulatory authority received the Proposal on 19 January 2026.

2.2. Proceedings before ACER

- (9) By letter of 4 February 2026, the Chair of the Core Energy Regulators' Regional Forum (CERRF)⁴, acting on behalf of the Core regulatory authorities, referred the Proposal to ACER for decision pursuant to Article 4(10) of the FCA Regulation. The letter explained that the Core regulatory authorities could not agree on several key aspects of the Proposal and were therefore unable either to approve it or to request amendments.
- (10) On 12 February 2026, ACER initiated the decision procedure to decide on the Proposal, notified the parties of its initiation, and issued a public notice.
- (11) On 19 February 2026, the Core regulatory authorities supplemented their referral with a non-paper setting out their individual and joint positions on the Proposal ('non-paper', see section 5.1).
- (12) On 27 February 2026, ACER launched a public consultation⁵ on the Proposal, inviting interested parties to submit comments by 27 March 2026 (see section 5.2 and Annex III to this Decision).
- (13) Between 20 February and 17 April 2026, ACER engaged with the Core TSOs and the Core regulatory authorities to discuss the Proposal in detail, including three working meetings held on 20 February, 20 March and 14 April 2026.
- (14) In addition, ACER met with the Croatian and Slovenian regulatory authorities (HERA and AGEN-RS) on 19 March 2026 to gain a better understanding of their concerns regarding the potential impact of the Proposal on the Slovenia–Croatia bidding zone border. Following that meeting, on 27 and 30 March 2026, HERA and AGEN-RS submitted additional material elaborating their concerns.
- (15) As part of its assessment, ACER carried out simulations of Core long-term flow-based capacity calculation methodology on economic surplus, congestion income, remuneration costs of long-term transmission rights ('LTTRs') and final financial outcomes of Core CCR and of each individual Core TSO. ACER used 2024 grid data

⁴ CERRF is a platform of the Core regulatory authorities to consult and cooperate for reaching a unanimous agreement on NEMO's and TSO's proposals.

⁵ Consultation documents are available under this link: [PC 2026 E 03](#).

provided by the Core TSOs and market participants' bids available at the Joint Allocation Office ('JAO').

- (16) The regulatory authorities were regularly informed of the decision procedure through the Forward Capacity Allocation Task Force ('FCA TF') meetings of 12 March, 21 April and 27 May 2026, the ACER Electricity Working Group ('AEWG') meeting of 25 March and 20 May 2026, and the Board of Regulators ('BoR') meeting of 22 April 2026.
- (17) On 17 April 2026, ACER notified the Core TSOs and the Core regulatory authorities of its preliminary position on the Proposal, and invited their views by 6 May 2026. On 13 May 2026, to complement its preliminary position, ACER also shared the results of the completed simulations, and invited the parties to submit any additional views based on these results by 22 May 2026.
- (18) The parties submitted their written views by 6 May 2026 and, upon ACER's request, Core TSOs (except SEPS) provided further written explanations on 13 May 2026 concerning the sequence of capacity calculation. No further written views were submitted concerning ACER's simulations. Following HERA's response to ACER's preliminary position, ACER requested further clarifications, which HERA submitted on 19 May 2026.
- (19) At the parties' request, ACER held two oral hearings: with all Core TSOs on 6 May 2026 and with the Slovak TSO (SEPS) on 21 May 2026. Following this, ACER closed the hearing phase on 22 May 2026.
- (20) The AEWG consultation period was launched on 10 June 2026 and closed on 16 June 2026. The draft Decision was discussed at the AEWG meeting of 17 June 2026, and the AEWG provided its advice on 19 June 2026.
- (21) On 8 July 2026, ACER's BoR issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (22) Pursuant to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942, all regulatory authorities of the region concerned shall unanimously agree on proposals for terms and condition or methodologies for the implementation of those network codes or guidelines that were adopted before 4 July 2019 and require the approval of all the regulatory authorities of the region concerned; pursuant to the second subparagraph of Article 5(3) of Regulation (EU) 2019/942, those regulatory authorities may refer the proposals to ACER for approval pursuant to point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, and they shall do so pursuant to point (a) of the second subparagraph of Article 6(10) of that Regulation where they did not reach a unanimous agreement.
- (23) Pursuant to Article 4(7)(a) of the FCA Regulation, which has been adopted as a guideline before 4 July 2019, the proposal for a common capacity calculation

methodology pursuant to Article 10 of the same Regulation, and any amendments thereof, shall be subject to approval by all regulatory authorities of the concerned region.

- (24) Pursuant to Article 4(10) of the FCA Regulation, where the regulatory authorities have not been able to reach an agreement on the submitted proposal within 6 months, or upon their joint request, ACER shall adopt a decision concerning the submitted proposal in accordance with Article 5(3) and the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (25) Pursuant to Article 4(5) of the FCA Regulation, ACER, before approving the terms and conditions or methodologies, shall revise the proposals where necessary, after consulting the respective TSOs, in order to ensure that they are in line with the purpose of the FCA Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (26) Pursuant to the first subparagraph of Article 4(12) of the FCA Regulation, TSOs responsible for developing a proposal for terms and conditions or methodologies may propose amendments to regulatory authorities and ACER. Pursuant to the second subparagraph of Article 4(12) of the FCA Regulation, the proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedure set out in Article 6 and approved in accordance with the procedure set out in Article 4 of the same Regulation.
- (27) On 4 February 2026, the Core regulatory authorities informed ACER that they had not reached an agreement on the Proposal and were therefore unable to approve it or request amendments. They consequently jointly requested ACER to decide on the matter. ACER is therefore competent to decide on the Proposal under Article 5(3) and point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, as well as Articles 4(7)(a), 4(10) and 4(12) of the FCA Regulation.

4. SUMMARY OF THE PROPOSAL

- (28) The Core regulatory authorities' referral consists of the referral letter and the Core TSOs' submission. During the procedure, it was supplemented by the non-paper from the Core regulatory authorities explaining their positions.
- (29) The Core TSOs' submission consists of the following documents:
 - a) Core CCR TSOs proposal for the amendments to the common coordinated long-term capacity calculation methodology in accordance with Article 10 of Commission Regulation (EU) 2016/719 of 26 September 2016 establishing a guideline on forward capacity allocation ('Proposal');
 - b) Consolidated version of the Core CCR coordinated long-term capacity calculation methodology in accordance with Article 10 of Commission Regulation (EU)

2016/719 of 26 September 2016 establishing a guideline on forward capacity allocation;

- c) Explanatory document to the Core CCR TSOs proposal for the amendments to the common coordinated long-term capacity calculation methodology in accordance with Article 10 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation ('explanatory document'); and
 - d) Consultation report on Core CCR TSOs' proposal for the amendments to the methodology for long-term capacity calculation in accordance with Article 10 of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation ('consultation report').
- (30) The Proposal consists of two main amendments:
- a) Introduction of historic long-term Available Transfer Capacity ('ATC') values as a benchmark in the flow-based capacity calculation process ('benchmark ATC values'); and
 - b) Inclusion of the Ireland-Northern Ireland Single Electricity Market ('SEM') – France bidding zone border in the long-term capacity calculation following the commissioning of the Celtic Interconnector.
- (31) The other proposed amendments concern technical refinements to the Core LT CCM:
- a) Removing the automatic setting of high-voltage direct current ('HVDC') capacity to zero during planned outages;
 - b) Adjusting the deadline for improving the treatment of non-Core exchanges;
 - c) Amending fallback rules with statistical approach;
 - d) Clarifying fallback for the first calculation round; and
 - e) Improving transparency by requiring publication of zone-to-slack power transfer distribution factors ('PTDFs') instead of zone-to-zone PTDFs.
- (32) The two main amendments are explained by the Core TSOs as follows:
- 4.1. Introduction of the benchmark ATC values**
- (33) The Core TSOs propose to introduce benchmark ATC values to reshape the flow-based domain thus helping to align it with historically allocated long-term capacities.
- (34) Under the Proposal, the benchmark ATC values would be provided as an input to the long-term capacity calculation tool. The tool would apply those values before pre-

solving the final merged long-term domain. It would then adjust the Remaining Available Margin ('RAM') of each pre-solved Critical Network Element with Contingency ('CNEC') of the final long-term domain based on the calculated induced flow resulting from the benchmark ATC values.

- (35) This adjustment is intended to produce a flow-based domain that offers allocation opportunities comparable to those benchmark values. The resulting flow-based domain would then be used as input for long-term flow-based allocation. The allocation process itself remains outside the scope of the Core LT CCM.
- (36) The proposed benchmark ATC values for both yearly and monthly capacity calculations would be annexed to the Core LT CCM and read as follows:
- a) For most bidding zone borders, the values are based on the historically offered yearly and monthly capacities in 2025;
 - b) For the Germany–Austria border, the values are set at 50% of the 2025 historical ATC values for both directions;
 - c) For all Polish borders, the values are set at zero, reflecting the historical absence of offered long-term cross-zonal capacities on these borders; and
 - d) For the SEM–France border, the values would be determined closer to the commissioning date of the Celtic Interconnector.

4.2. Inclusion of the SEM–France bidding zone border

- (37) The proposed amendments aim to enable the inclusion of the SEM–France bidding zone border in the Core LT CCM following the commissioning of the Celtic Interconnector and once the technical conditions allow the commencement of long-term commercial operations.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial views of the Core regulatory authorities

- (38) The views of the Core regulatory authorities on the Proposal are presented in the referral letter and further detailed in the non-paper submitted to ACER.
- (39) The Core regulatory authorities agreed on the following:
- a) that long-term flow-based domains derived from the scenario-based LT CCM in accordance with Decision 03/2023 appear unsatisfactory in the simulations conducted by the Core TSOs;
 - b) that the process of reviewing and updating the benchmark ATC values set out in the Proposal is not fully clear; and

- c) that the SEM–France bidding zone border should be included in the long-term capacity calculation following the commissioning of the Celtic Interconnector.
- (40) However, the Core regulatory authorities failed to agree on several aspects of the Proposal, including:
- a) As regards the general concept, all Core regulatory authorities except the Slovak regulatory authority (URSO) support adjusting the long-term flow-based domain, on the basis of historical benchmark ATC values. They consider this a way to improve long-term flow-based domains. URSO opposes the concept, arguing that it is artificial and does not meet the requirements of fairness, transparency and non-discrimination. In its view, the proposed coordinated methodology would in practice be distorted and produce uncoordinated values;
 - b) As regards the determination of benchmark ATC values, most Core regulatory authorities do not object to the Proposal. However, URSO opposes the use of historical long-term capacities based on uncoordinated calculations. In addition, several authorities consider zero values on Polish borders to be inappropriate and call for alternative non-zero benchmarks;
 - c) As regards the benchmark ATC values in the Slovenia-to-Croatia direction, most Core regulatory authorities did not raise comments. However, HERA and AGEN-RS expressed concerns that introducing the long-term flow-based approach in the Core LT CCM may prevent the execution of the existing intergovernmental agreement ('IGA') between Croatia and Slovenia concerning the jointly owned Krško nuclear power plant ('NPP'). The shares of NEK (plant's operating company) are divided equally (50/50) between the Slovenian state-owned company GEN energija and the Croatian state-owned company HEP. The IGA governs the 50/50 sharing of electricity and capacity between GEN energija and HEP, linked to this co-ownership. As the NPP is located in Slovenia, under Article 5 of the IGA, the Slovene TSO (ELES) is tasked to ensure the transfer of power and electrical energy for HEP (approx. 350MW) via the shortest transmission path, and HEP is obliged to take the transmitted electrical energy and bear the relevant transmission cost. The IGA does not define the "shortest transmission path". According to HERA, this in practice represents the border between Slovenia and Croatia ('SI–HR border') taking into account direction towards Croatia.⁶ These concerns, along with the solutions proposed by HERA and AGEN-RS to address them, were further elaborated in a legal note submitted to ACER on 27 March 2026 and 30 March 2026 respectively, accompanied by the authorities' respective statements on the issue.

⁶ HERA's Position paper on the status of the nuclear power plan Krško in the context of the Core long-term capacity calculation methodology and future development of the European wholesale market design, submitted to ACER on 27 March 2026.

- d) As regards the use of the flow-based approach in the long-term capacity calculation, the French and Dutch regulatory authorities, CRE and ACM, reiterate their concerns about the overall concept of long-term flow-based capacity calculation.

5.2. Public consultation

- (41) In the public consultation (see recital (12)), ACER invited stakeholders to comment on several key aspects of the Proposal: (i) the introduction of the benchmark ATC values in the flow-based capacity calculation process; (ii) the way how the historic long-term benchmarks ATC values are determined; (iii) the application of the benchmark ATC values approach for Polish borders where no capacity was allocated in long-term timeframe in the past and (iv) the inclusion of the SEM–France bidding zone border in the long-term capacity calculation.
- (42) The responses to ACER’s public consultation are summarised and assessed in Annex III to this Decision. The key results are summarised below:
 - (a) Majority of stakeholders supported the introduction of the benchmark ATC values while some did not agree with the use of the historic ATC benchmark in the long-term flow-based capacity calculation as an input parameter for determining the final flow-based domain;
 - (b) Some stakeholders were concerned about the way how the historic long-term benchmarks ATC values are determined and highlighted the need for additional transparency and explanation;
 - (c) Majority of stakeholders were against applying zero values as ATC benchmark for Polish borders where no capacity was allocated in long-term timeframe in the past;
 - (d) Majority of stakeholders supported the inclusion of the SEM–France bidding zone border in the long-term capacity calculation.

5.3. Consultation on ACER’s preliminary position

- (43) This section summarises the main views of the Core TSOs and the Core regulatory authorities on ACER’s preliminary position. These comments are discussed in more detail as part of ACER’s assessment in section 6.
- (44) The Core TSOs, except the Slovak TSO (SEPS), submitted a joint response to ACER’s preliminary position. The joint response covered the following points:
 - (a) Capacity calculation process adjustments with technical and software implication;

- (b) Adjustments of the benchmarks ATC values and other amendments to the Core LT CCM,
 - (c) The application of benchmark ATC values as a transitional solution;
 - (d) Benchmark ATC values on Polish bidding zone borders.
- (45) Regarding point (a), the Core TSOs asked for maintaining the current capacity calculation sequence for the application of the LT CCM in relation to pre-solving (instead of ACER's proposed sequence where pre-solving is performed before the application of the ATC benchmark). This issue was discussed at the oral hearing and subsequently, upon ACER's request, the Core TSOs, except SEPS, provided additional written explanations that there is currently no possibility to implement changes in the IT system to reflect the changed sequence, and any IT adaptations can only expected to be completed by November, risking the timely implementation of the methodology.
- (46) Four Core regulatory authorities provided written comments and raised the following points:
- (a) AGEN-RS disagreed with ACER's preliminary position concerning the ATC benchmark on the Slovenia-Croatia bidding zone border. They reiterated their concerns (see recital (40), point (c)) and the proposal that half of Krško NPP's capacity (i.e. 350 MW) continues to be always available for allocation within the methodology (e.g. by treating it as pre-allocated schedule similar to already allocated capacity) or that this capacity is exempted from the methodology. AGEN-RS further proposed that the IGA-nominated capacity continues to be allocated via auctions as physical capacity on the Slovenia-Croatia border, and not in flow-based terms. AGEN-RS noted that ACER's proposal to increase the ATC benchmark for yearly capacities by 100 MW while improving the situation, would not eliminate the risk that the IGA-required capacity might not be available.
 - (b) HERA stated that ACER's preliminary position concerning the Slovenia-Croatia bidding zone border does not resolve the legal, regulatory and operational issues related to the execution of IGA. HERA welcomed ACER's proposal to increase the ATC benchmark for yearly capacities on the Slovenia-Croatia border by 100 MW (in the direction from Slovenia to Croatia), but stressed that the proposed increase would not adequately solve the identified underlying issue, which in turn would directly affect Croatia's security of supply. Therefore, HERA proposed a number of specific amendments to the Core LT CCM in order to ensure that the implementation of the IGA is not affected. Upon ACER's request, HERA provided further clarifications concerning the alleged security-of-supply risks that, in HERA's view, Croatia would face following the proposed introduction of Core long-term flow-based capacity calculation.
 - (c) The French regulatory authority (CRE) suggested not specifying in the Core LT CCM that the ATC benchmark is a temporary solution for a period of three years,

since it is uncertain at this stage how much time will be needed to develop the target model. CRE also suggested removing the reference to the LT CC target model being “full flow-based”, as this would, in their view, unnecessarily restrict the Core TSOs in proposing the model they consider most relevant and effective.

- (d) The Luxemburg regulatory authority (ILR) proposed editorial changes aimed at improving the clarity and accuracy of the Core LT CCM.

5.4. Consultation of the AEWG

- (47) During the AEWG commenting phase, five regulatory authorities (HERA, AGEN-RS, URE, CRE and ILR) provided written comments. Their main concerns are summarised below and addressed either in this section or, where relevant, in Section 6.
- (48) The AEWG provided its advice on 19 June 2026, broadly endorsing the draft Decision, while noting three votes against, by HERA, AGEN-RS and URE. The AEWG noted that while compromise could still be searched, the discussions showed agreement with the expressed positions and the explanations provided by ACER on the critical points highlighted by the three NRAs are not compatible. In relation to the given comments by ILR and CRE, the AEWG invited ACER to consider the drafting suggestions. These are considered in Section 6.
- (49) HERA’s main points are summarised as follows:
- (a) HERA welcomed ACER’s proposed 100 MW increase of the yearly ATC benchmark in the direction from Slovenia to Croatia, but considered that it does not resolve the underlying issue.
 - (b) HERA reiterated its position that the NEK arrangement has a specific historical, technical and legal background, formalised in the IGA. According to HERA, the transfer of electricity from NEK to Croatia is not an ordinary market transaction, but the exercise of Croatia’s co-ownership rights over half of NEK’s production, and that the IGA regime is a legal and methodological instrument for protecting ownership rights, public security and security of supply.
 - (c) HERA further submitted that the requested IGA Delivery Corridor would be limited, targeted and proportionate, covering only approximately 350 MW in the SI→HR direction, and would not undermine market-based allocation principles.
 - (d) HERA considered that ordinary market imports would not be legally or operationally equivalent, as they would not guarantee physical delivery of Croatia’s NEK share via the shortest transmission path.
 - (e) HERA stressed that, besides a direct explicit allocation direction from Slovenia to Croatia, compliance with the IGA also requires physical cross-zonal capacity.

While this is addressed through the regional LTTR design, HERA emphasised its importance in the context of long-term capacity calculation and allocation under the FCA Regulation and ongoing EU electricity market design developments.

(f) HERA proposed amendments to the reasoning in the draft Decision and several editorial changes. In particular:

- In recital (98), HERA requested the deletion of the statement that the proposed arrangement would detract from the proper functioning of the internal electricity market. HERA argued that ACER had not provided evidence supporting that conclusion and reiterated that its proposal concerns only a limited volume of approximately 350 MW related to the implementation of the intergovernmental agreement, rather than preferential treatment of the entire SI-HR border.

In light of this comment, ACER has revised recital accordingly. The deleted wording was not essential to the reasoning underpinning the Decision, and the revision does not affect ACER's assessment of the proposed IGA delivery corridor.

- In recital (111), HERA requested the deletion of the statement that no evidence had been provided demonstrating an increased risk. HERA argued that the transition from separate border-specific long-term auctions to a coordinated flow-based allocation process could drastically increase the risk of not obtaining sufficient cross-zonal capacity in the SI→HR direction, as bids from all market participants in the Core region would compete within a single allocation process.

For ACER's response, see recitals (112) – (114).

- (50) AGEN-RS reiterated the position previously submitted during the hearing phase regarding the treatment of long-term cross-border capacities on the SI-HR border in the context of the Slovenian-Croatian IGA. AGEN-RS stated that it had no additional observations beyond those already submitted, continues to support the position of HERA and remains bound by the IGA. For that reason, AGEN-RS indicated that it cannot endorse the proposed first amendment to the Core LT CCM.
- (51) The Polish regulatory authority (URE) disagreed with the deletion of “benchmark ATC values” in Article 18(1) of the Core LT CCM, as they considered that such removal would prevent the annual update of the benchmark ATC values, unlike the other parameters referred to in Article 18(1), which are subject to annual updates. For ACER's response, see recital (81).
- (52) ILR raised two drafting comments: first, that Article 14(7) of the Core LT CCM still refers to minimum and maximum RAM adjustment values which are no longer defined; and second, that Article 22(7) of the Core LT CCM should clarify the link between the

transitional ATC benchmark approach and the possible extension of the CE CCR to the long-term timeframe, including the relevant deadline. For ACER's response, see recitals (72) and (75).

- (53) CRE requested that the Decision remains open to all approaches allowed under the FCA Regulation. CRE argued that referring only to a scenario-based alternative to statistical long-term flow-based capacity calculation is too restrictive, since Core TSOs could also propose a statistical coordinated NTC approach. For ACER's response, see recitals (74).

6. ASSESSMENT OF THE PROPOSAL

- (54) This section sets out ACER's assessment of the Proposal in light of the applicable legal framework and the observations received by ACER (see Section 5), and explains the amendments made where necessary.

6.1. Legal framework

- (55) Article 9 of Regulation (EU) 2019/943 on the internal market for electricity ('Electricity Regulation') sets the broader EU framework for forward markets and long-term hedging. In particular, Article 9(1) requires TSOs, in accordance with the FCA Regulation, to issue LTTRs or ensure equivalent hedging arrangements unless regulatory authorities find that sufficient hedging opportunities already exist. Article 9(2) requires such rights to be allocated regularly, transparently, on a market-based and non-discriminatory basis through a single allocation platform, with allocation frequency and maturities supporting the efficient functioning of Union forward markets. More broadly, Article 9(3) to (8) aims to ensure that forward markets provide effective tools for market participants to hedge price risks, while also providing for possible future EU measures on allocation frequency, maturities, product design, secondary markets and regional virtual hubs, as well as possible additional national regulatory intervention where hedging opportunities are insufficient.
- (56) While Article 9 of the Electricity Regulation forms part of the broader legal framework, the key provisions relevant for assessing the Proposal are set out in the FCA Regulation, in particular Articles 4, 9, 10 to 16 and 23.
- (57) As regards substance, under Article 9 of the FCA Regulation, TSOs must calculate long-term cross-zonal capacity for each forward allocation and at least on annual and monthly time frames. Under Article 10(2) and (3), the common LT CCM must use either a coordinated NTC-based or flow-based approach and must be compatible with the day-ahead and intraday CCMs under Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management ('CACM Regulation'). Under Article 10(4) of the FCA Regulation, the methodology must address long-term uncertainty either through security analysis based on multiple scenarios or, where justified, a statistical approach based on historical capacities. The use of a flow-based approach for long-term time frames is further subject to the conditions in Article 10(5).

- (58) The FCA Regulation also specifies the elements that must form part of the Core LT CCM. Under Article 11, it must include a reliability margin methodology meeting the requirements of Article 22 of the CACM Regulation. Under Article 12, it must include methodologies for operational security limits and contingencies meeting the requirements of Article 23(1) and (2) of the CACM Regulation. Under Article 13, it must include a generation shift keys methodology meeting the requirements of Article 24 of the CACM Regulation. Under Article 15, it must include a cross-zonal capacity validation methodology meeting the requirements of Article 26 of the CACM Regulation. In addition, under Article 14, where remedial actions are taken into account in long-term capacity calculation, each TSO must ensure that those remedial actions are technically available in real-time operation and comply with Article 25 of the CACM Regulation.
- (59) The FCA Regulation further clarifies how long-term capacity is to be calculated depending on the chosen approach. Article 23(1) sets minimum requirements where a statistical approach is used, while Article 23(2) refers to the relevant CACM requirements where multiple-scenario security analysis is used.
- (60) As regards its purpose, the Core LT CCM, including any amendments thereto, should be interpreted and assessed in light of the objectives of the FCA Regulation set out in Article 3, in particular promoting effective long-term cross-zonal trade and hedging opportunities for market participants, optimising the calculation and allocation of long-term cross-zonal capacity, ensuring non-discriminatory access to such capacity, respecting fair and orderly forward capacity allocation and price formation, and contributing to transparency and the efficient long-term operation and development of the transmission system. In addition, under Article 4(5) of the FCA Regulation, the methodology, including any amendment thereto, must be revised where necessary so as to ensure that it is in line with the purpose of the Regulation and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (61) As regards the procedure for developing a proposal to amend the LT CCM, Article 4(12) of the FCA Regulation provides that the TSOs responsible for that methodology may propose amendments. Pursuant to Article 4(8), such proposal must include a proposed timescale for implementation and a description of its expected impact on the objectives of the FCA Regulation. Article 4(12) further requires that any proposal for amendments be subject to consultation in accordance with Article 6 and approved in accordance with the procedure laid down in Article 4.

6.2. Requirements for developing the Proposal

- (62) The Proposal complies with Articles 4(1), 4(12) and 6 of the FCA Regulation, in that the proposed amendments were jointly developed by the Core TSOs and publicly consulted between 22 September and 22 October 2025, in accordance with Article 6.

In November 2025, the Core TSOs have published a report⁷ from the consultation providing justification for including or not the views resulting from the consultation, as required by Article 6(3) of the FCA Regulation.

- (63) The Proposal complies with Article 4(8) of the FCA Regulation, as it includes a proposed timescale for implementation, further specified in the explanatory document, and describes in its recitals its expected impact on the objectives of the FCA Regulation.

6.3. Introduction of the benchmark ATC values

- (64) Pursuant to Article 10(2) of the FCA Regulation, the approach used in the common capacity calculation methodology for the long-term timeframe shall be either the coordinated NTC-based approach or the flow-based approach.
- (65) While the Core CCR already applies flow-based capacity calculation in the day-ahead timeframe, the long-term timeframe has not yet reached the fully coordinated target model. The currently applied NTC-based arrangements provide a degree of practical coordination between Core TSOs, but do not constitute the coordinated capacity calculation approach required under Article 10(2) of the FCA Regulation. They therefore remain an interim operational solution pending the implementation of the approved flow-based Core LT CCM.
- (66) Following ACER Decision 14/2021 approving Core LT CCM, the Core TSOs intended to implement a scenario-based flow-based approach for long-term capacity calculation. However, that approach did not produce satisfactory results and raised concerns regarding the size of long-term capacities and revenue adequacy. This contributed to delays in the implementation of the flow-based Core LT CCM. In order to provide flow-based capacities comparable with previously allocated capacities with NTC approach, certain improvement measures of the scenario-based flow-based approach were necessary, either through the application of minimum RAM or by applying a benchmark mimicking historical capacities to certain extent. The minimum RAM approach proved to have limitations, as certain elements required very high value to be applied, in order to provide sufficient capacity. In this context, during joint discussions involving Core regulatory authorities, TSOs and ACER, the ATC benchmark approach was proposed and further discussed.
- (67) ACER is aware that the FCA Regulation does not expressly provide for the use of an ATC benchmark as part of a coordinated capacity calculation methodology. However, ACER also notes that the FCA Regulation does not provide guidance on how the transition towards the target coordinated approach should be managed where the implementation of a purely flow-based methodology encounters significant practical

⁷ <https://eepublicdownloads.entsoe.eu/clean-documents/nc-tasks/CORE%20LTCCM%201st%20amendment%20proposal%20-%20Consultation%20Report.pdf>

difficulties, and where previous attempts to apply a coordinated NTC approach have also failed.

- (68) In this regard, ACER considers that the ATC benchmark constitutes a pragmatic transitional measure that seeks to address the shortcomings of the purely scenario-based flow-based approach while preserving progress towards the implementation of the target model set out in the FCA Regulation. As evidenced by the previous implementation attempts, a purely scenario-based approach did not produce satisfactory results and did not achieve a level of long-term capacity allocation that could be considered acceptable by market participants and regulatory authorities. In contrast, the ATC benchmark allows the Core TSOs to better approximate historically achievable capacity levels and thereby supports the gradual implementation of coordinated long-term capacity calculation.
- (69) ACER therefore considers that, in the specific circumstances of the present case, the use of an ATC benchmark may be accepted as a temporary gap-filling measure pending the development and implementation of a fully coordinated capacity calculation approach in accordance with Article 10(2) of the FCA Regulation. While the ATC benchmark does not form part of the target model envisaged by the FCA Regulation, ACER considers that its temporary use is justified insofar as it facilitates a gradual transition towards that target model and better contributes to the achievement of the objectives of coordinated capacity calculation than the currently available alternative.
- (70) Following this transitional phase, a fully coordinated long-term capacity calculation methodology should be implemented. In light of the limitations observed with the scenario-based approach, ACER considers that the statistical flow-based approach in accordance with Article 10(2), 10(4)(b) and 10(5) of the FCA Regulation should be assessed as the target solution for the Core CCR. However, if the Core TSOs demonstrate that an alternative coordinated approach permitted under the FCA Regulation, (in particular flow-based scenario-based or coordinated NTC-based scenario-based⁸) would deliver better results, they may propose such an approach instead. The approved ATC benchmark values may be amended where justified. Any such amendment would require a proposal from the Core TSOs and approval by the Core regulatory authorities.
- (71) During the oral hearing (see section 5.3), the Core TSOs, except SEPS, expressed concerns regarding the application of the ATC benchmark as a transitional solution. In particular, they argued that no further amendment to the Core LT CCM should be required. According to the Core TSOs, the Core LT CCM may be soon replaced if the CE CCR, which is currently limited to the day-ahead and intraday capacity calculation timeframes, is extended to include the long-term capacity calculation timeframe. In that

⁸ While a coordinated NTC-based statistical approach is, in principle, permitted under Article 10 of the FCA Regulation, ACER considers that it is not applicable for the Core CCR, since the historical day-ahead and intraday capacities that would serve as its statistical basis are determined using the flow-based approach.

case, long-term capacity calculation would no longer be governed by the Core LT CCM, but by the future CE long-term capacity calculation methodology (CE LT CCM). Therefore, any requirement to amend the Core LT CCM could become obsolete before it is implemented. The Core TSOs, except SEPS, also submitted that a further amendment may be premature in view of the expected revision of the FCA Regulation, which may introduce different requirements relevant to long-term capacity calculation.

- (72) In view of these concerns and taking into account CRE's comment (see recital (46), point (c)) ACER has amended Article 1(17) of the Proposal, making the future amendment of the Core LT CCM to remove the ATC benchmark dependent on the planned extension of the CE CCR to the long-term timeframe and the expected revision of the FCA Regulation, rather than imposing an unconditional fixed deadline for its submission. Following ILR's comment (see recital (52)), ACER further amended Article 1(17) to clarify that the obligation of Core TSOs to submit a future amendment to the Core LT CCM by 31 May 2028 ceases with the submission, by 30 June 2027, of all TSO proposal to amend the methodology for the determination of CCRs with a view to extending the CE CCR to the long-term capacity calculation timeframe.
- (73) Regarding the request of the Core TSOs (except SEPS) to maintain the current capacity calculation sequence for the application of the LT CCM in relation to pre-solving (see recital (45)), ACER understands that the time for changing the IT system in time for the planned implementation start date (November 2026) is insufficient, and therefore agrees to maintain the current sequence as proposed by the Core TSOs. However, the Core TSOs should implement the necessary changes without undue delay once the required IT adaptations can be made in a technically feasible and proportionate manner.
- (74) To address CRE's request that the Decision remain open to all capacity calculation approaches allowed under the FCA Regulation (see recital (46), point (c), and recital (53)), ACER has amended Article 1(16) of the Proposal to clarify that its objective is to ensure the implementation of a fully coordinated capacity calculation approach, as required by the FCA Regulation, without prejudging the methodology ultimately proposed by the Core TSOs, provided that it meets the requirements of that Regulation.
- (75) To address ILR's comment (see recital (52)), ACER retained the concept of minimum and maximum benchmark ATC values, as established by the Core TSOs, but clarified that those values are identical for each CNEC, thereby resulting in a single benchmark ATC value per CNEC. These revisions are reflected in Articles 1(12) and 1(18) of the Proposal. ACER considers it appropriate to retain the Core TSOs' concept, as this would facilitate potential future amendments to the Core LT CCM: should the Core TSOs wish to apply different minimum and maximum benchmark ATC values, only Annex I of the Core LT CCM would need to be amended.

6.3.1. Benchmark ATC values on the Polish borders

- (76) The Core TSOs proposed to set the benchmark ATC values on the Polish borders at zero, reflecting the fact that no long-term cross-zonal capacities have historically been offered on those borders.

- (77) During the proceedings, ACER asked PSE to propose non-zero benchmark values on the Polish borders. PSE provided ACER with their methodology, based on which PSE calculated the yearly and monthly ATC values at their borders. They also provided ACER with the calculated ATC values.
- (78) The provided values are calculated based on historical day-ahead ATC values from 2025 obtained with ATC extraction method and then the yearly and monthly values are derived as the 5th percentile of the ATC values per border, from all MTUs.
- (79) ACER considers that non-zero values based on the PSE methodology are more appropriate than zero values because they provide long-term hedging opportunities for market participants at the Polish borders. As they were statistically derived from historical day-ahead capacity values, ACER considers they properly reflect the available level of cross-zonal capacity on the long-term time frame. In contrast, setting the values to zero would restrict long-term hedging opportunities.
- (80) Accordingly, ACER has revised Article 1(18) of Proposal to set the benchmark ATC values for all Polish borders to non-zero values.
- (81) Regarding URE's request not to delete the benchmark ATC values from the list of parameters subject to annual review and update by the Core TSOs (see recital (51)), ACER notes that the benchmark ATC values are not comparable to those parameters. Those parameters are determined and updated by the Core TSOs as required by the CACM Regulation. By contrast, the benchmark ATC values are set out in Annex 1, which forms part of the Methodology and is subject to regulatory approval.
- (82) This is necessary because the benchmark ATC values are introduced for the first time as part of a transitional solution towards the coordinated capacity calculation target model. Unlike the other parameters listed in Article 27(4) of the CACM Regulation, their use and potential impact on the capacity domain and on capacity allocation across the Core CCR have not yet been fully tested in practice. Since these values are directly linked to the flow-based capacity calculation framework, a change on one bidding zone border may affect capacity allocation on other Core borders. ACER therefore considers that these values should not be updated by the Core TSOs alone, but should remain part of the Methodology and be amended only through the regulatory approval process.
- (83) To address URE's concern that deleting the benchmark ATC values from that list would prevent their regular review, ACER has added a new paragraph 8 to Article 1(15) of the Proposal, requiring the Core TSOs to review the benchmark ATC values regularly, and at least once a year. Where that review shows that an update is necessary, the Core TSOs are required to propose an amendment to the Core LT CCM.
- (84) To avoid any misunderstanding that the benchmark ATC values still fall within the annual review and update process applicable to other parameters, ACER has also deleted the reference to Article 10a of the Core LT CCM from paragraph 1 in Article 1(15) of the Proposal.

6.3.2. Benchmark ATC values on the SI–HR border

- (85) HERA and AGEN-RS are concerned that the long term flow-based Core-wide (instead of per border) calculation and allocation may result in allocating insufficient cross-zonal capacity for the direction from Slovenia to Croatia, thereby preventing ELES to meet its obligation under IGA (see section 5.1, recital (40) point (c), and section 5.4, recitals (49) and (50)). In the submitted legal note, HERA and AGEN-RS propose to address this concern through either:
- a) a guaranteed allocation of 350 MW at the SI–HR border, in one direction (from Slovenia to Croatia). The proposal is to introduce an ‘IGA Delivery Corridor’ parameter that would ensure that the required capacity volume (‘IGA-nominated volume’, i.e. 350 MW) is available on the shortest-path delivery across the market timeframes. In Core LT CCM, IGA-nominated volume would be represented as a “transparent non-market constraint / pre-allocated schedule on the relevant border(s) along the shortest physical path”.⁹ In response to ACER’s preliminary position, AGEN-RS suggested treating the IGA-nominated volume as a pre-allocated schedule or already allocated capacity (‘AAC’)¹⁰, while continuing to allocate it through auctions, but only as physical capacity assigned to the SI–HR border in the Slovenia-to-Croatia direction; or
 - b) that this capacity is exempted from the Core LT CCM.
- (86) ACER cannot accept either of the two proposed measures.
- (87) Concerning the exemption, the SI–HR border is not subject to any derogation under the Electricity Regulation or Directive (EU) 2019/944 (‘Electricity Directive’). Consequently, those acts, together with the network codes and guidelines adopted pursuant to them, including the FCA Regulation, apply in full to the SI–HR border. ACER has no competence to exempt the SI–HR border from the application of those acts, nor from the Core LT CCM adopted on their basis. The power to grant derogations from the provisions of the Electricity Regulation or the Electricity Directive rests

⁹ Point 8.2 of the legal basis note entitled “Accommodation of the Croatia–Slovenia Intergovernmental Agreement on NPP Krško in the application of EU Electricity Market Rules (FCA/CACM) and Core LT CCM”, submitted to ACER by HERA on 27 March 2026 and by AGEN-RS on 30 March 2026, respectively.

¹⁰ In the preliminary position, ACER noted that modelling the IGA-nominated volume as a ‘pre-allocated schedule’ would be conceptually closest to treating it as already allocated capacity (AAC). In that case, the 350 MW carved-out volume would be reflected in the capacity calculation as a prior commitment that must be respected, thereby reducing the remaining margin available for subsequent allocation. The practical effect would therefore be to lower the long-term cross-zonal capacity offered to the market, in particular in the monthly timeframe, to the extent that the 350 MW is taken into account through the AAC-related flow component in the RAM calculation.

exclusively with the Commission, subject to the conditions set out in these acts. Therefore, ACER cannot exempt the IGA-nominated volume from the Core LT CCM.

- (88) Concerning the guaranteed allocation, the HERA and AGEN-RS proposal implies explicit capacity reservation and priority access outside the EU capacity calculation and allocation rules, which would create a conflict with EU law.
- (89) Under the Core LT CCM, as governed by the Electricity Regulation and the FCA Regulation, cross-zonal capacity is calculated in three steps (TSO inputs, regional calculation of the flow-based domain, and TSO validation), based mainly on technical limits (PTDFs, RAM). Allocation constraints are additional caps introduced where operational security limits cannot be modelled as line constraints.¹¹ Modelling the IGA-nominated volume as an allocation constraint would withhold capacity from the market by imposing an additional cap, reducing cross-zonal capacity when binding and potentially restricting trade beyond a single border. Treating the IGA-nominated volume as a pre-allocated schedule (similar to already allocated capacity - AAC)¹² would also reduce the remaining capacity available to the market by reflecting a prior commitment in the calculation.
- (90) First, reserving capacity in this manner cannot be accommodated methodologically within the Core LT CCM, which allows allocation constraints only in limited operational cases and treats allocated capacity as part of the market process, not as a permanent reservation tool.
- (91) More fundamentally, however, such a carve-out of cross-zonal capacity would be incompatible with EU law, as it would remove capacity from market-based allocation and grant priority access to a specific participant, thereby potentially breaching the principle of market-based, non-discriminatory allocation set out in Article 9 of the Electricity Regulation, the objectives of the FCA Regulation as well as the principle of non-discriminatory third-party access pursuant to the Electricity Directive.
- (a) The principle of market-based, non-discriminatory allocation

¹¹ The main technical limits are usually line/transformer constraints on critical network elements, expressed through PTDFs and RAM. Allocation constraints are additional zone-level import/export limits used when a security issue cannot be modelled as a line limit. They are entered as inputs to the capacity calculation and act as extra caps alongside the normal RAM-based flow constraints.

¹² Modelling the IGA-nominated volume as a 'pre-allocated schedule' would be conceptually closest to treating it as already allocated capacity (AAC). In that case, the 350 MW carved-out volume would be reflected in the capacity calculation as a prior commitment that must be respected, thereby reducing the remaining margin available for subsequent allocation. The practical effect would therefore be to lower the long-term cross-zonal capacity offered to the market, in particular in the monthly timeframe, to the extent that the 350 MW is taken into account through the AAC-related flow component in the RAM calculation.

- (92) Article 9(2) of the Electricity Regulation requires that LTTRs are allocated in a transparent, market-based and non-discriminatory manner through a single allocation platform.
- (93) Carving out the IGA-nominated volume, whether through an allocation constraint or by treating it as a pre-allocated schedule, would essentially remove that capacity from the total capacity to be allocated through the single allocation platform, and give priority access to that capacity to market participants from one Member State (e.g. HEP in this case), thereby breaching the principle of market-based and non-discriminatory allocation.
- (94) The fact that, as AGEN-RS suggests, this capacity would still be auctioned as physical capacity attributed to the SI–HR border would not remove the non-compliance with the principle of market-based and non-discriminatory allocation. LTTRs in the Core CCR are currently auctioned as border-specific products, with the SI–HR border being the only one offering physical transmission rights (‘PTRs’). However, once long-term flow-based allocation is introduced, those border-specific rights, whether physical or financial, will no longer be allocated through isolated border-by-border auctions. While they will remain legally and commercially linked to individual borders, the allocation itself will be carried out through a single regional optimisation across all oriented Core borders within the CCR, using one flow-based algorithm and taking into account common regional, i.e. inter-zonal and inter-border constraints. The decisive issue, therefore, is not whether the capacity is formally auctioned, but whether it is included in the common Core market-based allocation process. The IGA-nominated volume would not be. Even if formally auctioned, it would in substance be carved out from the coordinated Core allocation and offered through a separate border auction designed for a predetermined beneficiary and a predetermined cross-zonal flow. That volume would therefore not be exposed to full competition among market participants, nor allocated by the regional algorithm in light of competing demand across Core borders. In substance, this amounts to a non-market-based reservation of cross-zonal capacity and preferential treatment for a specific beneficiary, which would be incompatible with the principle of market-based, non-discriminatory allocation.

(b) The objectives of the FCA Regulation

- (95) Under Article 3, the FCA Regulation pursues several objectives, including the optimisation of long-term cross-zonal capacity calculation and allocation, non-discriminatory access to such capacity, fair and non-discriminatory treatment of TSOs and market participants, and a fair and orderly forward capacity allocation process.
- (96) Carving out the IGA-nominated volume from the long-term capacity calculation and treating it as a ‘non-market constraint’ or ‘pre-allocated schedule’ would remove part of the cross-zonal capacity from the common market-based allocation process and reserve it for a predetermined border and transaction. This would artificially reduce the capacity made available to market participants, rather than optimise its calculation and allocation, and would confer structural priority access on a specific border, direction and user outside the non-discriminatory auction framework. In doing so, it would

undermine non-discriminatory access to long-term cross-zonal capacity, distort the level playing field between the TSOs and between market participants, and compromise the requirement of fair and orderly forward capacity allocation.

- (97) Article 4(5) of the FCA Regulation requires that methodologies adopted under the FCA Regulation be consistent with its purpose and contribute to the objectives of market integration, non-discrimination, effective competition, and the proper functioning of the internal electricity market.
- (98) The proposed guaranteed allocation of the IGA-nominated volume would impede market integration by reducing the volume available for long-term cross-border trading, undermine non-discrimination by conferring preferential access on a specific border, direction and beneficiary, weaken effective competition by excluding other market participants from competing for that capacity.
- (99) It follows that ACER, as the authority responsible for assessing and approving the methodology, cannot approve a methodology that incorporates a guaranteed allocation of the IGA-nominated volume, as such an allocation would be incompatible with the purpose of the FCA Regulation as set out in Article 3 of the FCA Regulation and the objectives listed in Article 4(5) of the FCA Regulation.
- (c) The principle of non-discriminatory third-party access
- (100) Article 6 of the Electricity Directive requires Member States to ensure a system of third-party access ('TPA') to transmission and distribution systems that is based on objective and non-discriminatory terms. The Directive also requires system operators to ensure non-discrimination between system users and not to restrict, distort or prevent competition in generation or supply. In other words, access to scarce transmission capacity must remain open to all eligible users on equal terms, rather than being reserved ex ante for a designated transaction or beneficiary.
- (101) A carve-out of 350 MW on the border from Slovenia to Croatia for the exclusive transfer of electricity from the Krško NPP to Croatia would also raise serious concerns under the principle of non-discriminatory TPA. By reserving part of the available cross-zonal transmission capacity for a predefined transaction outside the ordinary market-based allocation process, such a measure would grant preferential access to a specific user (HEP) and deprive other market participants of the possibility to compete for that capacity on equal terms. This concern remains even if, as suggested by AGEN-RS, the capacity is formally allocated via auctions but restricted to that specific border and direction (see above, recital (94)). This carve-out would go against the Directive's requirement that access to transmission systems be provided on an objective and non-discriminatory basis, and with the corresponding obligations on TSOs not to discriminate between system users or to restrict, distort or prevent competition in generation or supply. The Court of Justice of the European Union (the Court) confirmed this in case C-17/03 *VEMW* making it clear that even pre-existing contractual or public-interest arrangements cannot justify priority allocation of cross-border

transmission capacity outside the harmonised non-discriminatory framework.¹³ Following the *VEMW* case, the European Commission initiated infringement proceedings against several Member States maintaining such arrangements, leading to their removal.^{14,15}

- (102) Finally, ACER notes that, if, as advanced by HERA and AGEN-RS, the application of the EU legal framework may in future prevent the execution of the IGA, that agreement, concluded between two EU Member States, cannot override EU law. Under both international law, and particularly, the principle of primacy of EU law, such an interstate agreement may apply only to the extent that it is compatible with EU law.

6.3.2.1. Conflict rules under international law (lex posterior)

- (103) Under Article 30(3) of the Vienna Convention on the Law of Treaties ('VCLT'), where all parties to an earlier treaty are also parties to a later treaty, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty. The IGA (2002) predates Slovenia's accession (2004), and Croatia's accession (2013). Following accession, both Slovenia and Croatia became parties to the EU Treaties, which constitute a later treaty between the same parties. Accordingly, even under general international law, the IGA can only apply insofar as it is compatible with EU law.

6.3.2.2. Primacy of EU law as lex specialis

- (104) The *lex posterior* rule is not decisive when it comes to conflicts involving EU Member States and EU law. Under the Treaties and the Court's case law, EU law (both primary and secondary)¹⁶ has primacy over conflicting national law and inter se agreements, as a *lex specialis* rule displacing the VCLT framework between Member States. The Court has consistently held that inter se agreements incompatible with EU law must be disapplied, regardless of whether they predate or postdate EU law, without waiting for their formal removal.¹⁷ Article 351 TFEU confirms this a contrario: it provides a limited

¹³ See also Commission Staff Working Document on the decision C-17/03 of 7 June 2005 of the Court of Justice of the European Communities - Preferential Access to Transport Networks under the Electricity and Gas Internal Market Directive, SEC(2006) 547, 26.04.2006: <https://edz.bib.uni-mannheim.de/edz/pdf/sek/2006/sek-2006-0547-en.pdf>.

¹⁴ MEMO/06/481 of 12 December 2006.

¹⁵ Article 9(5) of the Electricity Directive allows a Member State to derogate from the third-party access rules where this is necessary to ensure the performance of a clearly defined public service obligation (PSO). ACER is not aware of any PSO in relation to NPP Krško.

¹⁶ Obligations under secondary EU law derive from the EU Treaties and are binding under Article 288 TFEU, therefore they participate in the same primacy framework. The primacy of EU secondary law over inter se agreements has been confirmed by the Court in case C-478/07 *Budvar* where the Court held that the EU system of protection laid down by Regulation No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs precludes the application of the equivalent system of protection laid down by inter se agreements in case of a conflict (at para 129).

¹⁷ Cases C-3/91 *Exportur*, para 8, C-469/00 *Ravil*, para 37; C-478/07 *Budvar*, para 98.

exception for pre-accession agreements with third countries, but is silent on agreements between Member States, which therefore remain fully subject to the primacy of EU law.¹⁸

- (105) Contrary to the position advanced by HERA and AGEN-RS, ACER considers that the references to pre-existing intergovernmental agreements in Recital (21) and Article 2(6) of Regulation (EU) 2024/1747, amending Article 9 of the Electricity Regulation, cannot be read as recognising or safeguarding such agreements under EU secondary law. Those provisions merely require the Commission, in the context of a future policy assessment on regional virtual hubs, to consider the implications of pre-existing intergovernmental agreements. They do not grant those agreements any specific legal status, protection or derogation under the applicable EU legal framework.
- (106) HERA and AGEN-RS also argue that the principles of security of supply, solidarity, and property ownership neutrality justify a safeguard under EU law for the physical delivery of the IGA-nominated volume. They characterise that volume not as ordinary cross-border trade, but as the exercise of an existing ownership right.
- (107) ACER does not share the view that the principles of security of supply, solidarity, or property ownership neutrality require a regulatory safeguard ensuring the physical delivery of IGA-nominated volumes. While these principles are relevant considerations under EU law, HERA has not demonstrated that they justify a derogation from the capacity calculation and allocation framework established by the Electricity Regulation, the FCA Regulation and the CACM Regulation. Furthermore, Croatia is effectively integrated into the European electricity market through its interconnections with Slovenia and Hungary, both of which provide significant cross-zonal capacity and are included in the Core CCR. In ACER's view, this level of market integration is expected to provide adequate opportunities for imports into Croatia and does not support the need for a specific regulatory safeguard for the IGA-nominated volume to secure electricity supply.
- (108) ACER does not consider that the regulatory authorities have shown how those principles justify such a safeguard under the current EU framework. In ACER's view, market-based allocation does not extinguish the underlying right under the IGA, but merely conditions its exercise in accordance with EU rules on network access. Accepting the contrary view would undermine the effectiveness of EU law, as it could enable Member States to re-label commercial arrangements as property rights in order to circumvent the principles of non-discriminatory third-party access and market-based cross-zonal capacity allocation.
- (109) Notwithstanding the above, ACER notes the concerns raised by HERA and AGEN-RS regarding the risk of potentially reduced capacity allocated to HEP on the SI–HR border

¹⁸ See also cases C-235/87 *Matteucci*, para 21, and C-478/07 *Budvar*, para 99, where the Court held that Article 351 TFEU does not apply to agreements concluded between Member States, because no third country is involved.

following the implementation of the long-term flow-based approach. Since the ATC benchmark is proposed only as a temporary corrective measure to address calculated values based on the scenario approach that appear unduly low compared to historical values, a certain degree of discretion may be exercised in setting that benchmark, provided that it remains consistent with the methodology and complies with the EU legal framework. Similar discretion is applied for the proposed benchmark values on the DE-AT border and the Polish borders, where historical values were not considered an appropriate basis.

- (110) In this context, and in order to partially address the concerns of HERA and AGEN-RS, ACER proposes to increase by 100 MW the benchmark in the Slovenia-to-Croatia direction and thus changing the benchmark from 650 MW to 750 MW. This adjustment is intended to increase the cross-zonal capacity offered on all critical network elements affected by LTTR on the SI–HR border, thereby reducing the likelihood that the implementation of IGA could be impeded because HEP is unable to acquire sufficient LTTRs in competition with third parties.
- (111) However, ACER recognises that this risk cannot be entirely removed under the existing legal framework, which requires non-discriminatory and competitive third-party access. HEP must therefore compete with other market participants to acquire LTTRs on the SI–HR border. ACER notes that this risk already exists under the current framework, as HEP currently competes for PTRs in JAO auctions.
- (112) During the AEWG consultation, HERA disagreed with ACER’s statement that no evidence had been provided showing that the amendment of the Core LT CCM would increase the risk of not acquiring an adequate level of cross-zonal capacity on the SI→HR border (see recital ((49)(e)). HERA submitted that, under the current regime, long-term capacity is auctioned separately for each border direction, so competition is limited to participants bidding for that specific border, while under the coordinated flow-based regime a single auction would cover all Core internal borders in both directions, with bids competing simultaneously on the basis of their PTDF impact. According to HERA, this could dramatically increase the risk of not securing sufficient capacity on the SI–HR border, in the Slovenia to Croatia direction.
- (113) ACER notes that the risks now invoked by HERA relate to the introduction and implementation of the flow-based approach itself, which was already examined and decided in ACER Decision No 14/2021 approving the Core LT CCM, later replaced by ACER Decision 03/2023. That decision already established flow-based long-term capacity calculation as the target methodology for the Core CCR, in place of continued reliance on NTC, and set clear implementation milestones, namely the flow-based monthly auction for January 2025 and the flow-based yearly auction for 2025, with NTC to remain applicable only as an interim regime until implementation. The present amendment does not reopen that policy choice, nor does it introduce the risks now alleged; those considerations were inherent in the 2021 decision to move to flow-based capacity calculation and should have been raised in that context.

- (114) Accordingly, even accepting HERA's description of the mechanics of coordinated allocation, this would not demonstrate that the present amendment increases the relevant risk. If anything, by aligning transitional capacity outcomes more closely with historically available values by applying ATC benchmark, the amendment serves to moderate the effects of the transition rather than to intensify them.
- (115) Based on the above, ACER has revised Article 1(18) of the Proposal to provide that, for the SI–HR border direction, the yearly benchmark ATC shall be set at 100 MW above the historical ATC for 2025. ACER has therefore amended the corresponding value in Table A1 from 625 MW to 750 MW (corresponding to the values after the split: 500 MW to 600 MW).

6.4. Inclusion of the SEM - France border

- (116) ACER agrees with, and has approved, the amendments proposed by the Core TSOs to enable the inclusion of the SEM–France bidding zone border in the Core LT CCM following the commissioning of the Celtic Interconnector and once the technical conditions for long-term commercial operation are met.

6.5. Other amendments proposed by Core TSOs

- (117) ACER agrees with, and has approved, the remaining amendments proposed by the Core TSOs and described in recital (31).

6.6. ACER's amendments to remove obsolete provisions

- (118) ACER has amended Article 1(15) of the Proposal to update the provisions concerning the review and amendment of the Core LT CCM by removing provisions that have become obsolete.
- (119) ACER has also aligned the notion of allocation constraints with the Decision No 10/2026 approving the 4th amendment to the Core Day-Ahead Capacity Calculation Methodology without altering its intended meaning.

6.7. Editorial amendments

- (120) ACER has also made several changes in the Proposal to introduce editorial amendments to the Core LT CCM to improve the clarity, consistency and readability of the methodology, without altering its intended meaning. Those amendments are not discussed further in this Decision.

7. CONCLUSION

- (121) For the above reasons, ACER considers that the Proposal complies with the requirements of the FCA Regulation, provided that the amendments set out in Annex I to this Decision are integrated into it. These amendments, which have been consulted with the Core TSOs and the Core regulatory authorities, are necessary to ensure that the Proposal is in line with the purpose of the FCA Regulation and contributes to market

integration, non-discrimination, effective competition and the proper functioning of the market.

- (122) ACER therefore approves the Proposal subject to the amendments set out in Annex I to this Decision. For clarity, Annex II provides a complete consolidated version of the amended Core LT CCM,

HAS ADOPTED THIS DECISION:

Article 1

The long-term capacity calculation methodology of the Core capacity calculation region pursuant to Article 10 of Regulation (EU) 2016/1719 is amended and approved as set out in Annex I to this Decision.

Article 2

This Decision is addressed to:

Austrian Power Grid AG
Elia System Operator S.A.
ČEPS a.s.
Réseau de Transport d'Electricité
HOPS d.o.o., Hrvatski operator prijenosnog sustava
MAVIR ZRt
Creos Luxembourg S.A.
TenneT TSO B.V.
Polskie Sieci Elektroenergetyczne S.A.
C.N.T.E.E. Transelectrica S.A.
ELES, d.o.o. sistemski operater prenosnega elektroenergetskega omrežja
Slovenská elektrizačná prenosová sústava, a.s.
50Hertz Transmission GmbH
Amprion GmbH
TenneT TSO GmbH
TransnetBW GmbH

Done at Ljubljana, on 16 July 2026.

- SIGNED -

*For the Agency
The Director ad interim*

V. ZULEGER

Annexes:

Annex I	The first amendment of the long-term capacity calculation methodology of the Core capacity calculation region, as revised and approved by ACER
Annex Ia	The first amendment of the long-term capacity calculation methodology of the Core capacity calculation region, with ACER's amendments to the Core TSOs' proposal shown in track changes – for information
Annex II	Consolidated version of the long-term capacity calculation methodology of the Core capacity calculation region – for information
Annex IIa	Consolidated version of the long-term capacity calculation methodology of the Core capacity calculation region, with ACER's amendments shown in track changes towards to the consolidated version of the Core CCR coordinated long-term capacity calculation methodology as proposed by Core TSOs – for information
Annex III	Evaluation of responses to ACER's public consultation on the proposal for long-term capacity calculation methodology of the Core capacity calculation region – for information

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 ACER within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressees may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.