ACER Decision on the TSOs' proposal for the amendment of the harmonised allocation rules: Annex II

Evaluation of responses to the public consultation on the Agency's proposed amendments to the TSOs' proposal for amendments of the harmonised allocation rules

1 Introduction

By email of 15 July 2019, ENTSO-E submitted to the Agency 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.

In order to take an informed decision on the proposal for amendment, the Agency launched a public consultation on 23 August 2019 inviting all interested parties to express their views on potential amendments of the proposal for amendments. The closing date for comments was 17 September 2019. More specifically, the public consultation invited stakeholders to comment on the following aspects of the harmonised allocation rules:

(i) the possibility of introducing more flexible reduction periods to allow earlier auctions for long-term transmission rights ('LTTRs') with a reduction period;
(ii) clarification of the remuneration rules; and
(iii) on any other topics concerning the harmonised allocation rules.

2 Responses

By the end of the consultation period, the Agency received responses from 15 respondents.

This evaluation paper summarises all received comments and responses to them. The table below is organised according to the consultation questions and provides the respective views from the respondents, as well as a response from the Agency clarifying the extent to which their comments were taken into account.

Respondents’ views	ACER views
Question 1.1: Do you see a benefit in having earlier auctions with flexible reduction periods? (Y/N)	
11 respondents provided an answer to this question.	
5 of the respondents do see a benefit in introducing flexible reduction periods.	The Agency acknowledges the diverging views on a possible introduction of more flexible reduction periods. Since there is no obvious, strong support for a specific change, the Agency decided not to amend the HAR concerning the established rules on reduction periods. The Agency is also not supportive to flexible reduction periods, as these would contradict the very purpose of the LTTRs which is to provide hedging opportunities. Namely, flexible reduction periods would unable market participants to properly estimate the value of LTTRs as the periods in which the volumes would be reduced are not known when doing the estimation. Since there are no amendments, this issue is not addressed in the main text of the Decision.
6 of the respondent are opposed to the introduction of flexible reduction periods.	
Question 1.2: Please further clarify the reasons for your answer to Question 1.1	
15 respondents provided an answer to this question.	
5 respondents communicated their support for an introduction of flexible reduction periods and specifically mentioned the benefit of having earlier auctions of LTTRs. 1 of those respondents further elaborates that limitations to flexible reduction periods need to be provided, which would allow market participants to assess the level of risk associated with each LTTR for effectively pricing these LTTRs.	The Agency agrees that earlier auctions of LTTRs would be beneficial for providing hedging opportunities, but is of the opinion that introducing flexible reduction periods to allow earlier auctions might not provide an overall benefit to the objective of promoting effective long-term cross-zonal trade with hedging opportunities for market participants in accordance with Article 3(a) of the FCA Regulation. Therefore, the Agency invites TSOs and market participants to investigate further the possible options for having earlier auctions including their effects on the objectives of the FCA Regulation.

Respondents' views	ACER views
6 respondents communicated their rejection of the idea of having flexible reduction periods since this implies a reduction of quality of LTTRs. More specifically, the following arguments were provided: 1 respondent argues that flexible reduction periods would represent a breach of the firmness principles in the FCA guideline. 1 respondent mentions the increased volume risk if flexible reduction periods are applied. 1 respondent sees an increase of the overall system costs in case of the introduction of flexible reduction periods. 1 respondent mentions that the uncertainty of the timing of a reduction period will reduce the value of a LTTR. 1 respondent does not believe that the TSO cooperation for maintenance plans from the SO Regulation should open the door for reducing the level of firmness of LTTRs.	The Agency acknowledges the concerns of stakeholders relating to the reduced firmness of LTTRs. Since any reduction of firmness comes with a loss of quality of LTTRs as a hedging instrument, amendments impacting the firmness need to be evaluated with great care to ensure that such amendments result in a clear net benefit concerning the objectives of the FCA Regulation. While the risk of properly designed flexible reduction periods can in principle be estimated by market participants, the reduction of firmness and therefore higher risks through uncertainty may result in higher system costs and lower prices of LTTRs and these can hardly be weighted against the benefit of earlier auctions. In general, the Agency understands that risks are most efficient to be borne by the parties having the smallest impact and in case of LTTRs these are TSOs. Whenever these risks are transferred to market participants they will value them with a risk premia which will be higher than if the risks are borne by TSOs. As the overall benefits through an introduction of flexible reduction periods are therefore doubtful and not supported by the majority of stakeholders, the Agency decided not to amend the Proposal in this context.
5 respondents propose to have several sessions of auctions for a single long-term timeframe (e.g. annual LTTRs) and provided the following additional comments: 2 respondents mention that no reduction period is needed in case of early auctions with smaller shares.	The Agency agrees to the possibility of having several auctions over time for each long-term product. The Agency also recognises the reasonable reluctance of TSOs to provide a part of LTTRs in earlier auctions without knowing the needs for reduction periods as this could expose them to a relevant financial risk. However, the possibilities for splitting available capacities to have additional auctions at an earlier stage could be further investigated while keeping the risk for TSOs to an acceptable level. Especially if a foreseeable, sufficient share of cross-zonal

Respondents' views	ACER views
3 respondents state that a share of capacities should be auctioned at an earlier stage without reduction period if a possible reduction period does not concern the full amount of the available capacities. One of those respondents suggest that TSOs could buy back a LTTRs in a later auction case of too much allocation at an early stage. 2 respondents further explain that if capacities for several suggested sessions would be too low, the auction frequency can be adjusted accordingly.	capacities without reduction period would be available according to first result from long-term cross-zonal capacity calculation, earlier auction for such shares could be implemented. While the details of provisions are not directly addressed in the FCA Regulation, TSOs should provide LTTRs in the best feasible way to follow the objective in Article 3(a) of the FCA Regulation. Therefore, the Agency invites TSOs to consider and further investigate the possibilities of offering LTTRs of a single time frame in more than one auction session, starting at an earlier stage, to meet the wishes of market participants and promote effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities.
10 respondents generally **support** the aim of having **earlier auctions.** Some of those provide the following additional comments in this context: 4 respondents mention that the first auction for each timeframe should be provided at a very early stage (e.g. Y-2 for yearly products) to provide sufficient hedging opportunities for market participants. 1 respondent additionally mentions that if several auctions for one timeframe are not possible, the provision of an auction for annual LTTRs in Q4 is too close to the delivery to ensure a good quality for the hedging product. 2 respondents mention that earlier auctions can provide clearer and useful price signals.	The Agency also supports the general objective to have earlier auctions of LTTRs as these better facilitate the objective to provide effective and efficient hedging opportunities. As described above the Agency invites TSOs to investigate the possibilities of providing earlier auctions for LTTRs. Furthermore, the Agency is also considering to open the discussions with regulatory authorities, TSOs and European Commission to further strengthen the firmness of LTTRs such that these would not always need to be directly linked to physically available long-term cross-zonal capacities. While this could potentially increase the financial risks for TSOs, it would be required that these risks would be comforted by regulatory authorities, if this would serve a higher interest to facilitate competition. On the other hand, such a measure would need to be limited to the volumes of cross-zonal capacities which are strictly needed for hedging purposes and proper methodology to evaluate such needs to be developed in this regard.
1 respondent notes that TSOs can **use curtailment to manage their sold LTTRs**	The Agency notes that curtailment is a last resort option that should only be used to ensure system operation remains within operational security limits or in the event of force majeure as described in Articles 53 and 55 of the FCA Regulation.

Respondents' views	ACER views
1 respondent complains that the **proposed idea** of flexible reduction periods is **lacking details** considering the specific design of such a proposal.	The Agency acknowledges this problem. TSOs indeed did not provide sufficient details of such flexible reduction period. This is an additional reason why such a general proposal cannot be accepted by the Agency.
1 respondent shares its **concerns** of the possibilities of the **technical implementation** of the proposed amendments by 2020 and list several concerns for an introduction of such changes at the current stage. Further, the respondent argues that an extensive impact assessment should be performed prior to such amendments. While believing in the possibility of implementing such features, sufficient time for implementation should be provided.	The Agency agrees on the importance of assessing the impact of amendments before their introduction and the provision of the required time for implementation for a new feature. The Agency invites TSOs to follow these principles when investigating possible improvements of the HAR.
1 respondent states that a yearly **auction** of LTTRs **can only be performed once** the long-term **capacity calculation process is over**. The respondent further argues that since the year ahead common grid model will be finalized beginning of September Y-1, the long-term capacity calculation cannot be conducted before the last quarter of the year.	The Agency agrees that long-term capacity allocation needs to be based on the results from the long-term capacity calculation and the results of the calculation for splitting of long-term capacities in accordance with the FCA Regulation. Nevertheless, the FCA Regulation does generally allow calculation and allocation of capacities before the last quarter of the year. Since first results from long-term capacity calculation using the scenario-based approach could be available in September, a first auction could be performed before the outcome of the outage coordination in December. Using a statistical approach for long-term capacity calculation pursuant to Article 10(4)(b) of the FCA Regulation, would even allow first auctions for the annual time frame at the beginning of the year or even sooner.
1 respondent comments that in case of an introduction, **flexible reduction periods shall be an option and not an obligation**, and the duration of reduction periods should always be firm to reduce the uncertainty for market participants.	The Agency agrees.

<table>
<tr><th>Respondents’ views</th><th>ACER views</th></tr>
<tr><td colspan="2">Question 2.1: Would you consider LTTRs with a flexible reduction period still as a relevant instrument to hedge your long-term positions?</td></tr>
<tr><td>11 respondents provided an answer to this question.</td><td></td></tr>
<tr><td>7 respondents do also consider LTTRs with a flexible reduction period as a relevant hedging instrument.</td><td rowspan="2">Since LTTRs should follow the purpose of providing cross-zonal hedging opportunities in accordance with the FCA Regulation, the Agency shares the concerns of the respondents who put into question the value of LTTRs as hedging instruments, should flexible reduction periods be introduced. Changes, which risk the purpose of LTTRs, are highly critical for following the objectives of the FCA Regulation and should be precisely assessed before their implementation. Therefore, the Agency is of the opinion that any reduction of firmness of LTTRs should be carefully assessed by TSOs and regulatory authorities and closely consulted with market participants.</td></tr>
<tr><td>4 respondents would not consider LTTRs with a flexible reduction period as relevant for hedging their long-term positions.</td></tr>
<tr><td colspan="2">Question 2.2: Please further clarify the reasons for your answer to question 2.1</td></tr>
<tr><td>8 respondents provided an individual answer addressed to this question.</td><td></td></tr>
<tr><td>5 respondents who deem the LTTRs with flexible reduction periods as a relevant hedging instrument provided the following additional arguments:
1 respondent states that as long as the auction specification indicates the maximum number of days of an outage, market participants will be able to value the product.</td><td>The Agency observes that stakeholders may have a different understanding of the proposed reduction period. To the Agency’s understanding, this proposal would mean that long-term cross-zonal capacities would be auctioned with possibly some limited information of approximate time and volume of reductions, but the exact volume and period would remain uncertain at the time of the auction. Therefore, this uncertainty would need to be evaluated by market participants and would associate a specific risk premium to this risk, which could significantly reduce the auction price. Therefore, the LTTRs would still be considered as a hedging instrument, although the value of these instruments could be severely compromised.</td></tr>
</table>

Respondents' views	ACER views
1 respondent points out that for the best value of a possible hedge, the share of capacities which are affected by maintenance should be separately allocated besides the share which can be provided without reduction period. 1 respondent explains that if market participants know the extent of possible limitations of LTTRs, they will be able to evaluate them. 1 respondent further argues that LTTRs will be even more relevant for hedging if earlier auctions will be implemented. 2 respondents state that while such LTTRs would be generally considered as hedging instruments, the solution is sub optimal because of the increased risk.	
3 respondents who would **not consider** LTTRs with flexible reduction periods as a **hedging instrument** provider the following comments: 1 respondent argues that TSOs should bear the financial risk of changing maintenance plans, not LTTR holders. 1 respondent explains that full certainty is necessary to guarantee the effectiveness of long-term hedging strategies.	The Agency generally agrees on the high importance of firmness of LTTRs to provide the best possible quality as an instrument for hedging long-term positions. The Agency agrees on that the financial risk of changing maintenance plans should in principle be covered by TSOs as they are better able to manage this risk (e.g. due to regulatory nature of their business) than individual market participants. While LTTRs should ideally be available at an earlier stage, not have any reduction periods and present a perfect hedge against the day-ahead market spread, the Agency also considers the financial risks of TSOs as highly relevant and the acceptance of those risks and associated regulatory comfort should really depend on the need for LTTRs as hedging instruments and a methodology to correctly identify such need needs to be developed.

Respondents' views	ACER views
1 respondent argues that abandoning the firmness of LTTRs trough flexible reduction periods restricts the possibility for market participants to conduct cross-zonal trade, reduces congestion rents for TSOs, hamper signals for the need of infrastructure investments and represent a breach of the firmness principles agreed upon in the FCA Regulation. The respondent further states the importance of the currently strict firmness and the principles of market spread compensation in the case of curtailment (expect force majeure) for the quality of a hedge.	
1 respondent further claims that the **ex-post definition of reduction periods would deteriorate the quality of LTTRs** without benefits for market participants. The ex-post definition of reduction periods would also suddenly change the value of the LTTR which requires carful REMIT treatment.	The Agency agrees. See also comments above. Considering REMIT, the Agency agrees on that the publication of data which might have an effect on prices requires careful treatment under REMIT. This would apply to the firm determination of reduction periods equally as to any other publication of maintenance plans from TSOs.
2 respondents fear that with flexible reduction periods, the **probability** that TSOs will **reach compensation caps** increases which affects the firmness of all LTTRs.	The Agency does not share this understanding since, pursuant to the HAR, reduction periods would neither be compensated by TSOs nor be paid for by LTTR holders. Therefore, reduction periods should not have any effect on an applied compensation cap.
Question 3: Do you agree on having the clarification of remuneration for the described case of no market spread between bidding zones but available results from explicit fallback auctions? (Y/N)	
11 respondents provided an answer to this question. All of these respondents agreed to the clarification of remuneration as presented by the Agency.	

Respondents' views	ACER views
Question 4: Please provide any further comments on the remuneration rules	
10 respondents provided an answer to this question.	
All of the respondents addressing this question communicate their support of the proposed design with some of those with the following **general comments**: 1 respondent states that explicit auctions provide a clean, market reflective and transparent estimate in the event that no market spread is available. 4 respondents repeat that the price from explicit fallback auctions better reflect the price situation than the initial marginal price of the LTTRs. 1 of those respondents further shares concerns that possible such a chaotic situation might lead to biased price formation. 1 respondent further states that fallback procedures must be clear and simple since they apply seldom and when little time is available. 1 respondent emphasises that it is key for LTTRs as a hedging product to remunerate with LTTRs with a market spread (if available).	The Agency generally agrees on the shared comments.
5 respondents provided comments related to the **decoupling event on the 7 June 2019**. More specifically:	The Agency acknowledges the concerns of the respondents but does not see any possibility to amend the Proposal due to the decoupling event on 7 June 2019. As set in Article 35 of the FCA Regulation, LTTRs applicable to borders using implicit day-ahead allocation shall be

Respondents' views	ACER views
4 respondents are of the opinion that in any case of no result from implicit allocation, the price from explicit allocations from fallback is indication for a price in such a situation since uncoupled auctions do not reflect any market fundamentals. 1 of the respondents further argues that using the allocation price from explicit DA auctions would avoid the risk of a deficit for TSOs and hence possibly higher tariffs. 4 respondents argue that TSOs are not entirely in control of the coupling process and hence should not bare the responsibility of it failing. Therefore, the TSOs' requirement to remunerate at the day-ahead spread, especially where the cause of such an event is beyond their control, should be reviewed. 1 respondent states that the remuneration of the decoupling event of this day was rightly based on the market spread, which should always be the basis for LTTR remuneration in a usually coupled region.	remunerated with the market spread which promotes effective hedging opportunities of market participants in accordance with the objective set in Article 3(a) of the FCA Regulation.
Question 5: Please provide any other comments concerning the proposed harmonised allocation rules for long-term transmission rights.	
4 respondents provided further comments besides the ones addressed in the context of the questions above. These specific comments are **listed below**.	
2 respondents further propose to **split** the calculated long-term capacities into specific, listed shares **for the different long-term timeframes.**	The rules for splitting of the calculated long-term capacities is under the scope of the methodology for splitting long-term cross-zonal capacities in accordance with Article 16 of the FCA Regulation and therefore not addressed in the HAR.

Respondents' views	ACER views
2 respondents appreciate the added statement in Recital (5) of the Proposal but were disappointed to see no **more concrete limitations for deviations in the regional annexes** of the HAR in Article 4 of the Proposal. One of these respondents further suggests to generally phase out the existing regional annexes.	The Agency agrees on the aim of more harmonisation and a possible reduction of specific deviations to the HAR within regional annexes. Nevertheless, the Agency did not see the legal requirement to amend the Proposal in this aspect since it is not incompliant with the requirements of Article 52(3) of the FCA Regulation.
1 respondent shared concerns relating to the mentioned **FTR obligations** in Article 2 of the Proposal and explains that there is no reason justifying FTR obligations.	The Agency notes that FTR Obligations are possible pursuant to FCA Regulation, but in case TSOs would plan to introduce them, this would be proposed in the context of an amendment of the regional design of LTTRs in a CCR pursuant Article 31 of the FCA Regulation with all its legal procedures (e.g. consultation, etc.). Since FTR obligations are a legal possibility pursuant Article 31(1) of the FCA Regulation, they should be included in the HAR.
1 respondent asks for **further explanation** on the amendments made in **Article 7 of the Proposal**, more specifically, the extension of deadline for submitting a Participation Agreement.	The Agency is of the opinion that a sufficient explanation was provided in the supporting document to the Proposal issued by ENTSO-E on behalf of TSOs on 9 July 2019. This document explains that the longer deadline is needed to meet the requirements of Directive (EU) 2015/849.

Respondents' views	ACER views
2 respondents share serious concerns regarding the **rules of curtailment** under Article 56 of the Proposal, which is one of the elements of firmness of LTTRs and therefore of utmost importance for market participants. While curtailed LTTRs to ensure that operation remains within operational security limits shall be compensated with the market spread, this compensation is subject to a cap, which means a reduction of firmness. FTR options should not be curtailed to ensure that operation remains within operational security limits since they cannot be nominated which means that their allocation cannot have any physical impact. Therefore, only curtailments in case of force majeure should be applicable to FTR options.	The Agency agrees but is not of the opinion that the Proposal requires amendment in this aspect. The Agency deems the existing legislation as sufficiently clear and agrees that FTR options cannot endanger operational security limits or cause emergency situations due to the lack of their direct physical impact. While LTTRs are taken into account in the capacity calculation methodologies in some CCRs, as long as they are not nominated, they should not cause any emergency situations. LTTRs inclusion can extend the amount of available capacities in the day-ahead time frame but as long as LTTRs are not nominated no physical flows result from their allocation. If not sufficient remedial actions are available to support the LTTR inclusion, TSOs can disregard the effect of non-nominated LTTRs in the validation phase. The validation phase in a capacity calculation is foreseen step to ensure that operation remains within operational security limits. Since this step allows TSOs to disregard virtual flows form non-nominated LTTRs, such LTTRs cannot endanger operational security limits and shall therefore not be curtailed for such reasons.
1 respondent argues that **curtailments should be duly justified** and only applied as a last resort measure after taking into account all available remedial actions. Pursuant Article 53(1) of the FCA Regulation, the factual reasons that lead to the curtailments must be published.	The Agency agrees and amended the Proposal in this aspect to provide sufficient transparency on which exact operational security limit(s) that are expected to be violated in the absence of curtailment and why alternative measures are not sufficient to avoid the expected violation of operational security limit(s).

3 List of respondents

Organisation	Type
EDF SA	Energy company
EFET - European Federation of Energy Traders	Association
ElecLink	TSO
ENEL	Energy company
ENTSO-E	Association
Eurelectric	Association
Holding Slovenske elektrarne d.o.o.	Energy company
JAO	Joint Allocation Platform
Linz Strom Gas Wärme GmbH	Energy company
National Grid Interconnector Holding Ltd - NGIH (IFA, IFA2, NSL)	TSOs
Nemo Link	TSO
Österreichs E-Wirtschaft (OE) - Association of Austrian Electricity Companies	Association
TIWAG-Tiroler Wasserkraft AG	Energy company
Anonym1	Energy company
Anonym2	Energy company