
HAR Review 2021 Explanatory note

25 June 2021

Disclaimer

This explanatory document is submitted by all TSOs to the Agency for the Cooperation of Energy Regulators for information and clarification purposes only accompanying the “All TSOs’ proposal for amendment of the 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.

Contents

Contents.....	2
I. Introduction	3
II. Main changes.....	3
1 Qualified electronic signature for Participation Agreement.....	3
2 Clarification on the information so be submitted to participate in auctions and transfer	3
3 Communication channels	4
4 Business account	4
5 Refusal of application of a market participant and suspension of a registered market participant	4
6 Communication to commercial and operational contact.....	4
7 Invoicing and payment	5
8 Form of Bank Guarantees	5
III. Changes in relation to the remuneration of the Long-Term Transmission Rights: expansion of Article 59 to fallback allocation	5

I. Introduction

The Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (hereinafter “FCA Regulation”) was published in the official Journal of the European Union on 27 September 2016 and entered into force on 17 October 2016. The FCA Regulation sets out rules regarding the type of Long-Term Transmission Rights that can be allocated via explicit auction, and the way holders of transmission rights are compensated in case their right is curtailed. The overarching goal is to promote the development of liquid and competitive forward markets in a coordinated way across Europe and provide market participants with the ability to hedge their risk associated with cross-border electricity trading. In order to deliver these objectives, a number of steps are required.

One of these steps is the introduction of harmonised rules for Long Term Transmission Rights at Union level. In accordance with Article 51 of the FCA Regulation, 6 months after the entry into force of the FCA Regulation, all TSOs shall develop a proposal for the harmonised allocation rules for Long Term Transmission Rights (hereinafter “HAR”). The proposal for the HAR was submitted to all National Regulatory Authorities on 18 April 2017 and was approved by ACER on 2 October 2017.

According to Article 68(5) of HAR “the Allocation Rules and the border and/or regional specific annexes included thereto shall be periodically reviewed by the Allocation Platform and the relevant TSOs at least every two years involving the Registered Participants.”. By email of 15 July 2019, ENTSO-E submitted, ‘on behalf of all TSOs’, the amended ‘Harmonised allocation rules for Long Term Transmission Rights’ for approval pursuant to Article 5(2) of Regulation (EU) 2019/942, and it was approved by ACER on 29 October 2019.

Based on the above, following the periodical review, all TSOs have elaborated on a draft reviewed HAR where they proposed additional needs for adjustments that resulted from experience.

In parallel, TSOs are also working on the corresponding regional specific annexes. It is noted that this document deals only with the comments and the content of the main body of the reviewed HAR.

II. Main changes

1 Qualified electronic signature for Participation Agreement

In the current methodology, Article 7 on the “Participation Agreement conclusion” misses the acceptance of electronically signed agreements. Therefore, the electronic qualified signatures (QES) are introduced as valid alternative signature procedures.

2 Clarification on the information so be submitted to participate in auctions and transfer

As the current Article 9 on the “Submission of information” of the HAR, allows only for EU VAT registration number, TSOs suggested including similar tax identification information where EU VAT is not applicable.

Additionally, in the same article, TSOs suggested to include that Energy Identification Codes (EIC), need to be listed in the Centralised European Register of Energy Market Participants (CEREMP) to ensure consistency for REMIT reporting purposes.

The bank account information was also requested to be evidenced by a bank account identification document and to be used for payments to the market participant to minimize the risk of fraud.

A last suggestion is made in order to complete the article and the information that market participants shall submit, including ACER Registration code.

3 Communication channels

As part of the amendment, the term ‘email’ was replaced by ‘electronic means as specified on JAO’s website’ in several articles of the document. This has been proposed as JAO uses different electronic communications channels depending on the content. The different cases can be consulted under <http://www.jao.eu/resource-center/auction-rules> under communication guide.

4 Business account

In relation to the Article 12 on the “Dedicated Business Account”, a clarification was included so that a business account is opened for all market participants. From the business process perspective, a business account is opened for each Market Participant in order to allow the Market Participant to switch collaterals i.e. from bank guarantee collateral to cash collateral. If the Market Participant is not using the business account, no costs occur.

5 Refusal of application of a market participant and suspension of a registered market participant

TSOs reviewed Article 15 on the “Refusal of Application” where the Single Allocation Platform may refuse to enter into a Participation Agreement with a Market Participant, together with Article 71 on the “Suspension of the Participation Agreement” where the Single Allocation Platform may suspend temporarily the Registered Participant’s rights.

The mentioned articles were modified to include the possibility where the Single Allocation Platform could refuse the registration of a market participant or the trading with it, not only in case of trade or economic sanctions beyond EU scope, but whenever a sanction could have a significant impact on the Single Allocation Platform, such as limiting the possibility to receive/send payments or administering collaterals on the dedicated Business Account opened for the market participant with JAO’s banking partner. It is out of JAO’s control the freezing of a Business Account by the banking partner as the banking partner is financially regulated and supervised by the Luxembourgish financial authority named *CSSF*. A freezing of a Business Account implies that the Market Participant cannot use its cash collateral even if the credit limit allows it. Consequently, JAO must be able to suspend or refuse an application of a Market Participant in such an event. If JAO would need to continue trading with such a Market Participant, in reality JAO would not be able to remunerate the TSOs for products acquired by the Market Participant as the Business Account would be frozen and this would have a significant impact on JAO/TSOs.

6 Communication to commercial and operational contact

As part of the internal processes adaption, the “commercial and operational contact” was removed in Article 9(4), 16(2), 21(5) and 24(5).

7 Invoicing and payment

In the current methodology, TSOs complemented Article 62 on the “General principles” describing the invoicing and payment processes, to highlight that market participants need to inform the Single Allocation Platform about applicable taxes and levies in their countries of establishment if applicable. Taxes and levies are part of the billing process. If they are not correctly applied then invoices will be wrong.

8 Form of Bank Guarantees

Following the digitalization needs accelerated by the persistent Covid-19 pandemic, the addition of electronically signed Bank Guarantees is included in the Article 21 on the “Form of Bank Guarantee” and in the Article 74 on the “Notices”.

III. Changes in relation to the remuneration of the Long-Term Transmission Rights: expansion of Article 59 to fallback allocation

FCA Article 35(3) stipulates *“where the cross-zonal capacity is allocated through implicit allocation or another method resulting from a fallback situation in the day-ahead time frame, the remuneration of long-term transmission rights shall be equal to the market spread.”*

To ensure fairness and a level playing field both for market participants and for tariff payers in the case of fallback allocation (triggered by a decoupling of the day-ahead market), TSOs believe that a structural solution is to be found in an update of the FCA regulation. As there is no consensus (yet) on this amongst European stakeholders and legislators, TSOs pragmatically propose a change to the HAR as a first improvement.

Concretely, TSOs expand the application of Article 59. Current HAR Article 59 provides TSOs with possibilities to mitigate the absence of Congestion Income in case of curtailment to ensure operation remains within Operational Security Limits. The TSOs are of the belief that article 59 of the current HAR should be extended to fallback allocation, on a monthly basis.

It being understood that the remuneration of Long Term Transmission Rights holders for non-nominated Physical Transmission Rights and Financial Transmission Rights in case of fallback shall not be considered within the term “UIOSI” and “Remuneration of FTRs” in the formula specified in paragraph 3 of this Article.