Question 1: Do you agree with the deletion of Article 59(5)? Please, substantiate your choice from (i) legal and/or (ii) economic point of view.	Question 2: Do you have any other comments on the HAR methodology?
Eurelectric agrees with ACER in the deletion of Article 59 (5). While Eurelectric agrees with ACER saying that the Article 59 (5) lacks legal basis, we also disagree with ENTSOE's proposal in terms of economics and responsibility of the stakeholders. Recently, Eurelectric and EFET had jointly shared their concerns in a letter dated 6th April 2021 to the European Commission and ACER after this idea of altering the firmness of LTTR during decoupling events was presented by ENTSO-E at the MESC of 11th March 2021. The letter has clearly described the flaws in the rationale presented by ENTSO-E to reduce the firmness of LTTR in case of decoupling. Furthermore, the letter describes a way forward and requests ENTSO-E to focus on the management of decoupling events and improving the competition in the shadow auctions. We request ACER to refer to this letter for more details on our concerns, and reiterate a few major points presented in the letter below. The proposal of ENTSO-E that the remuneration of LTTR could be capped in the case of decoupling is claimed to be introduced to ensure fairness and a level playing field both for market participants and for tariff payers. However, challenging the firmness of LTTR could not only be detrimental to the holders of LTTR for the period of the decoupling, but could even be detrimental to network tariff payers, as the risk of a revenue loss in case of decoupling event and consequently would be accounted by bidders when they auction to buy the LTTRs. In other words, TSOs would permanently get less revenues from LTTR auctions if they make LTTR a less reliable hedging solution. Moreover, we consider that the proposal is not appropriate to address the problem of limited competition in the shadow auctions, which induces a loss of congestion rents for TSOs during decoupling events. Penalizing only the LTTR holders in terms of LTTR remuneration will not solve this concern. Eurelectric supports the ambition to increase competition in shadow auctions, but consider that the facilitating measures should target all market participants and not only the LTTR holders. Finally, if a decoupling event has significant consequences in terms of congestion rents or price formation, Eurelectric considers that the economical compensation measures should rather be paid by the party that is responsible for the failure that caused the decoupling. In particular, LTTR holders could by no means be considered responsible of the past decoupling events, where the responsibility and operational performance of other stakeholders of the market coupling process were engaged. Therefore, we are strongly opposed to the idea that the remuneration of LTTR could be altered in the case of decoupling. This goes against the key principle that LTTR is a hedging product for market participants, who would then bear a risk that they have no means to mitigate. Eurelectric strongly thinks that any short-term or long-term modifications of the market design related to LTTRs should be properly assessed in relation to the consequences these modifications may have compared with the expected benefits.	
Edison agrees with ACER's proposal to delete Article 59(5) from both a legal and economic point of view. In fact, we share ACER's opinion that FCA Regulation does not enable the HAR to apply a cap on remuneration of LTTRs. Moreover, we believe that the remuneration of LTTRs should be equal to the market spread to foster the efficiency of LTTRs themselves.	

EDF fully agrees with ACER's proposal to delete the paragraph 5 to article 59 EU HAR. A cap on LTTRs remuneration is neither permitted by the FCA GL, nor economically justified. EDF would like to remind that the main objective of financial firmness of LT capacity allocation (LTTR remuneration at day ahead market spread) is to allow the market participants to hedge position across borders. By adding this article, this objective would be amended and the value that the market participants place in LTTRs would be strongly reduced which leads to affect the revenue that TSOs capture with the sale of LTTRs all year round through LT auctions. Paradoxically, while the objective of TSOs by setting up a remuneration cap in case of decoupling is to limit the impact on their revenues, in reality, this rule could lead to negatively affect their revenues. Even if EDF understands TSOs concern regarding the remuneration of LTTRs in case of decoupling (day ahead market spread VS day ahead shadow auction prices), the recent decoupling events do not corroborate this concern. Indeed, on the recent decoupling events (2019, 2020, 2021), the total amount compensated by TSOs to market participants (as LTTRs) represents a very small part of the total revenue incomes for the TSOs across the whole year (coming from the allocation of cross zonal capacity on Long Term auctions). This proposition appears arbitrary and not justified. EDF shares ACER's opinion that there is no legal basis to implement a remuneration cap in case of decoupling and a modification of EU HAR would imply a change to the FCA GL. Furthermore, the article 59 EU HAR is about the compensation scheme of LTTRs in case of curtailment (before DA firmness deadline), and not about compensation in case of day ahead decoupling. Finally, EDF would like to remind that market participants are not responsible when a decoupling occurs, it is not in market participant's hands, and they are suffering from it. While there were several decoupling cases since 2019, the focus of TSOs and NEMOs should be on the robustness of the algorithm and the whole day ahead market coupling process. Instead of changing the EU HAR, the focus has to be on the reinforcement of the testing/improvements of the SDAC process to avoid any decoupling event in the future. But in case it happens, shadow auctions should be maintained, and more and more training should be organised to improve competition on the day a decoupling will occur. By the way, communication towards market participants in case of (a risk of) decoupling should also be improved.	
With regard to the ACER Public Consultation on the harmonised allocation rules for long-term transmission rights, IFIEC Europe wants to stress that it is important to keep in mind that firmness, while indeed very important also for (industrial) consumers, is at the end paid for by consumers, through congestion rents that are otherwise applied towards alleviating costs for them (e.g. lower tariffs or investments in cross-border capacity). As such, IFIEC Europe cannot support a blanco cheque approach towards this topic, in particular in case of decoupling. For this latter case, IFIEC Europe would like to ask for caution as it is presumably the only situation where LTTRs might not be guaranteed in the day ahead timeframe while at the same time there not necessarily being a physical grid problem. In most cases, fallback procedures as well as the intraday timeframe should leave ample opportunities for market parties to ensure that demand and supply are met (as opposed to firmness issues in case of physical grid disturbances) and their positions covered. IFIEC Europe thus insists very strongly that all alternative measures, in particular fallback procedures such as shadow auctions, are completely exhausted by all individual relevant market parties in such situation before firmness is guaranteed to them at the detriment of costs for consumers. IFIEC Europe wants to stress that alternatively this could even lead to windfall profits for such market parties, as they would get a firmness pay-out and could still source themselves e.g. in the intraday market and thus reap an additional benefit at the detriment of consumers. IFIEC Europe insists that any solution in this complex matter ensures that in case of decoupling individual market parties have every incentive to participate to market based solutions. For all other situations, IFIEC Europe remains in favour of guaranteeing firmness.	
ENTSO-E, the European Network of Transmission System Operators for Electricity, is an Association whose objective is to promote the reliable operation, optimal management and sound technical evolution of the European electricity transmission system to ensure security of supply and to meet the needs of the Internal Energy Market. Given ENTSO-E's critical role in the drafting of the harmonised allocation rules ('HAR') in close cooperation with the Single Allocation Platform, ENTSO-E has given due consideration to ACER's public consultation on the HAR for long-term transmission rights. ENTSO-E welcomes ACER's positive reaction towards some of the improvements proposed by All TSOs (e.g. the introduction of electronic signatures, clarifications on the specific conditions to suspend the accounts of the single allocation platform's members, REMIT reporting and others). Nonetheless, ENTSO-E beliefs that the HAR can	

also contribute to mitigating the risks of TSOs' financial deficits in the case of explicit fallback allocation triggered by a decoupling of the day-ahead ('DA') market. In particular, TSOs see the need for fairer and more balanced approach ('level playing field') toward all stakeholders affected by such events to avoid the tariffs payers to support illegitimate and disproportionate remuneration of some market participants. 1. Context During the past 1½ years, three partial decoupling occurred: the 7 June 2019 mainly for the CWE borders, the 4 February 2020 for the Danish borders and the last one, on the 13 January where the Italian, Slovenian and Croatian borders were affected. To limit the negative impact on the market, the fallback procedures (shadow and local auctions)[1] were activated to ensure capacities can still be allocated. The financial impact is around 24 M€ of additional costs on society. In future, more extreme scenarios with higher financial consequences cannot be excluded. Such revenue inadequacy results from the existing regulatory framework that remunerates the holders of non-nominated long-term physical transmission rights ('PTRs') and financial transmission rights ('FTRs') based on the DA market price spread between the different bidding zones, even in case of an explicit fallback procedure where the cross-border capacity price is determined in a dedicated auction providing a reference price in the meaning of Article 44 of CACM Regulation. Hence, TSOs shall remunerate LTTRs holders in case of a decoupling event with the market spread using the explicit fallback revenues. TSOs believe that this non-correlation between the remuneration of LTTRs holders and market fundamentals is in clear contradiction with the principles governing the operation of electricity markets (see point 3 below) and should be promptly addressed. 2. Bi-annual review and ongoing discussion As part of the latest bi-annual review of the HAR in 2019, TSOs already raised the need to consider decoupling events when ACER adopted Articles 48(1)(c) and 59(1)(b) to substitute LTTRs remuneration at the price of the initial auction with the one of the DA explicit auction. The argument put forward by ACER was the existence of a market price in (at least) one of the two relevant bidding zones (result from the fallback solutions) reflecting more adequately the price situation than the marginal price of the initial LTTRs auction. As this argument equally holds for Articles 48(1)(a) and 59(1)(a) of the HAR, TSOs called for a consistent revision of the HAR compensation rules to apply market-based prices for all the cases where they exist, especially the price differentials of the local auctions defined in Article 48(1)(a) which do not reflect any market fundamental. Such an approach would make TSOs, and hence tariff payers, neutral to the financial UIOSI result. While acknowledging TSOs' opinion, ACER concluded such an arrangement would not align with the timings of the 2019 HAR review and should be raised during the following amendment round. In the aftermath, the Electricity Regulation 2019/943 entered into force which - in comparison to the 3rd energy package and the Regulation 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation ('FCA Regulation') – moves toward a new market model putting a stronger focus on how congestion income is managed in the most efficient way possible. Besides, TSOs, the European Commission, ACER and NRAs have started discussing more structural solutions culminating in an all-TSOs' official request to amend the 'Principles for long-term transmission rights remuneration' as governed under Article 35 of the FCA Regulation. This request aims to reflect a more accurate price situation in cases of explicit fallback allocation triggered by remunerating LTTRs holders with the clearing price of the auction in which the capacity sold in case of an explicit auction. TSOs justify this request by the inconsistency of the LTTRs remuneration mechanism with the objectives of the Electricity and FCA Regulations. As there is no consensus (yet) on TSOs' proposal and the option to cover decoupling events in Article 48 and 59 of the HAR seems only possible if Article 35 of the FCA Regulation is amended, TSOs propose as an improvement until a more structural solution is implemented to extend to the remuneration of LTTRs in case of decoupling events the applicability of a cap on compensation for curtailment according to Article 59 (i.e. to limit the compensation to LTTR holders in case of missing income from DA due to unexpected outages and incident out of TSOs 'domain'). Legal assessment	

[1] Article 44 of the Capacity allocation and congestion management Regulation ('CACM Regulation').

The Electricity[2] and FCA[3] Regulations ask TSOs to offer LTTRs or have equivalent measures allowing for market participants to hedge price risks across bidding zone borders to promote effective long-term cross-zonal trade. Hence, the LTTRs are hedging products commonly defined as *"the practice of offsetting an entity's exposure by taking out another opposite position, to minimise an unwanted risk".*[4] So, hedging is a technique that is meant to reduce potential loss and not maximize potential gain.

Pursuant to *"ACER Framework Guidelines on Capacity Allocation and Congestion Management for Electricity"*[5] and *"ACER Opinion No 24/2013 on ENTSO-E's network code on forward capacity allocation"*,[6] the LTTRs provide market participants with hedging opportunities "against congestion costs and the day-ahead congestion pricing". In other words, LTTRs aim to limit the exposure to the price fluctuation of the DA transmission cross-zonal capacity (i.e. congestion income) by returning to the holders the financial value of capacity, namely the market-spread between two zones in case of an implicit auction or the clearing price of the auction in which the capacity sold in case of an explicit auction.

Since the existing remuneration mechanism in case of an explicit fallback procedure does not rely on market fundamentals and the underlying price against which LTTRs are settled, the LTTRs remuneration is no longer representing the value of DA cross border capacity and cannot be considered as hedging opportunities against DA congestion pricing in the meaning of the Electricity and FCA Regulations (i.e. the financial resale value of capacity).

This non-correlation explained above usually leads to overcompensation of LTTRs holders because the revenues from the explicit fallback auction are not enough to cover the compensations due to market participants (i.e. 'missing money' issue). In such a case, LTTRs go beyond their objective as hedging product and provide a subset of market participants (i.e. those market participants having LTTRs on the borders subject to an explicit fallback auction) with unjustifiable overcompensation to the detriment of tariff payers.

In addition to maximise market participants' gain incompatible with the definition of hedging, this unjustified enrichment is unfair and disproportionate in comparison to (i) TSOs risk and remuneration with regards to the LTTRs remuneration (i.e. "not for profit" congestion income), and (ii) the objective of the measure.

Finally, this may distort the sound technical evolution of the transmission system in the Union as it provides a strong dis-incentivise the offer of LTTRs.

Considering the above, it can be argued the LTTRs remuneration mechanism is unlawful and in contradiction with the following governing principles of the operation of electricity markets:

(i) the need for an orderly price formation of transmission capacities (i.e. market rules shall encourage free price formation and shall avoid actions which prevent price formation based on demand and supply);[7]

(ii) the need to promote effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants (i.e. the definition and objective of LTTRs);[8]

(iii) the need to ensure fair treatment of TSOs and market participants (including consumers);[9] and finally;

(iv) the need to contribute to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.[10]

It must be concluded the current LTTRs remuneration mechanism in case of an explicit fallback auction is unlawful and should be amended. Increasing the participation in fallback auctions and the contractual liability of NEMOs as suggested by the European Commission and ACER is unlikely to make the mechanism more sustainable. It is to be highlighted that holders of the LTTR have no incentives to participate in the fallback capacity auction, considering that LTTR guarantees them quite generous payoffs that increase especially when the fallback mechanism performs poorly

[2] Articles 3 and 9.

[3] Articles 3 and 30.

[4] Commission Staff Working Document of 18 May 2016, SWD(2016) 157 final, p. 61.

[5] ACER Framework Guidelines on Capacity Allocation and Congestion Management for Electricity, FG-2011-E 002, 29 July 2011, p. 10.

[6] ACER Opinion No 24/2013 on ENTSO-E's network code on forward capacity allocation, 18 December 2013, p.6.

[7] Article 3(a) and (b) of the Electricity Regulation; Article 3(a) of the FCA Regulation and Article 3(h) of the CACM Regulation.

[8] Article 3(o) of the Electricity Regulation and Article 3(e) of the FCA Regulation.

[9] Article 3(d) of the FCA Regulation and Article 3(e) of the CACM Regulation.

[10] Article 3(g) of the FCA Regulation and Article 3(g) of the CACM Regulation.

As such and until a more structural solution is implemented, TSOs believe that nothing in the legal and regulatory framework prohibits the imposition of a remuneration cap to mitigate duly justified TSOs' and consumer's risks in case of decoupling events. While a 'compensation cap' is only possible pursuant to Article 53 to 55 of the FCA Regulation in a situation in which TSOs curtail long-term transmission rights to ensure operation remains within operational security limits prior to the DA firmness deadline, those Articles do not relate to the remuneration of LTTRs and a potential 'remuneration cap' in case of decoupling. If both regimes are instances in which a normal market result is not obtained due to random or unforeseen circumstances, the introduction of a remuneration cap is not dependent on concepts like firmness, curtailment, or operational security limits but on the general principles of law and governing the operation of electricity markets. The introduction of a remuneration cap as proposed by TSOs would not only make the LTTRs remuneration more in line with the underlying price against which they are settled and the overarching principles governing the functioning of the Electricity market, it would also minimise the negative impact on the overall interplay between the wholesale electricity market, tariff setting and system development while: - still providing a hedge against congestion costs and the day-ahead congestion pricing without affecting the hedging efficiency for market participants; and - avoiding unreasonable, inefficient and disproportionate compensation payments when the LTTRs remuneration is no longer representing a justifiable value of DA cross border capacity in the meaning of the Electricity and FCA Regulations (i.e. the financial resale value of capacity). In such a way, market participants will still be able to reduce potential loss, but their potential maximisation of potential gain will be limited in compliance with the objective of hedging. Besides, the introduction of such a cap would comply with Article 35 of FCA Regulation since the remuneration mechanism of LTTRs: - will remain the same (i.e. equal to the market spread); - is not a 'revenue adequacy principle' as suggested in 2013 and according to which LTTRs pay-outs should only be linked to the collected DA congestion income; and - is based on already agreed principles (Article 59 of HAR).	
CRE supports the deletion of Art. 59(5) and the arguments brought forward by ACER. In addition, please find below our legal analysis on the topic: - FCA Art. 35(3)(a) is straightforward : the remuneration of long-term transmission rights through any method resulting from a fallback situation in the day-ahead timeframe is equal to the market spread. No exception is foreseen; - The wording of FCA Art. 35(3) clearly states this remuneration regime is an obligation ("shall comply with", "shall be equal to market spread"), which does not provide flexibility for alternatives; - FCA Art. 52(2) refers to "the remuneration principles pursuant to Article 35" as "requirements". Rather than changing the LTTR remuneration regime, TSOs should focus on improving the fallback auction process so that it reflects the actual capacity price.	
Yes. We do not see adequate justification to extend the HAR Article 59 compensation caps to LTTR remuneration during decoupling events. Decoupling events are rare. The normal valuation of an LTTR should be the price difference between the relevant bidding zones, and it is this that makes LTTRs useful as a tool to hedge against price differences in the day ahead market. We therefore do not believe remuneration during these periods amounts to unfair or unjustified compensation. Applying caps to such compensation would undermine the value of LTTRs as a hedging instrument, and essentially transfers the risk of such events to the market participant. This loss of firmness of these instruments may affect the value of the LTTR and ultimately could be reflected in lower revenues for TSOs from LTTR auctions. We also note the lack of legal basis for the proposal to introduce caps. The caps referred to in HAR Article 59 are designed to be applied in cases of compensation due to LTTR curtailment for operational security reasons, which is very different circumstances to decoupling. Applying these caps without proper reasoning would go against the LTTR design as foreseen by the FCA Regulation. Moreover, an expansion of the application of Article 59 would not be in line with the requirements in Article 35 of the FCA. Article 35 clearly requires the remuneration to be equal to the market spread (implicit auction) or the clearing price of the daily auction (explicit auction) and does not foresee the possibility of caps.	

Even if TSOs were seeking to amend other HAR articles (Article 48 EU HAR deals with remuneration of LTTR holders) we believe that the firmness of LTTRs is a fundamental market design principle, that should not be changed without adequate justification and supporting evidence. We have not yet seen published supporting analysis from the TSOs giving a transparent and balanced overview of the economic impact of this remuneration. In addition to this, a thorough assessment would be needed of the potential impacts on the value of LTTR instruments and knock-on effects to market participants and consumers.	
We agree with ACER that Article 59 (5) of HAR lacks legal basis and should be deleted. The proposal of ENTSO-E that the remuneration of LTTR could be capped in the case of decoupling is claimed to be introduced to ensure fairness and a level playing field both for market participants and for tariff payers. However, challenging the firmness of LTTR could not only be detrimental to the holders of LTTR for the period of the decoupling, but could even be detrimental to network tariff payers, as the risk of a revenue loss in case of decoupling event and consequently would be accounted by bidders when they auction to buy the LTTRs. In other words, TSOs would permanently get less revenues from LTTR auctions if they make LTTR a less reliable hedging solution. Moreover, we consider that the proposal is not appropriate to address the problem of limited competition in the shadow auctions, which induces a loss of congestion rents for TSOs during decoupling events. Penalizing only the LTTR holders in terms of LTTR remuneration will not solve this concern. Finally, if a decoupling event has significant consequences in terms of congestion rents or price formation, the economical compensation measures should rather be paid by the party that is responsible for the failure that caused the decoupling. In particular, LTTR holders could by no means be considered responsible of the past decoupling events, where the responsibility and operational performance of other stakeholders of the market coupling process were engaged. Therefore, we are strongly opposed to the idea that the remuneration of LTTR could be altered in the case of decoupling. This goes against the key principle that LTTR is a hedging product for market participants, who would then bear a risk that they have no means to mitigate. Any short-term or long-term modifications of the market design related to LTTRs should be properly assessed in relation to the consequences these modifications may have compared with the expected benefits.	
We agree with deletion of Article 59(5). We are of the opinion that a cap on LTTRs remuneration is neither permitted by the FCA GL, nor economically justified or proportionate. The full firmness of LTTRs is important in order for market participants to manage risks efficiently. Risk management through (cross-border) hedging is a key element in sourcing and providing electricity to customers competitively, as it allows market participants to avoid exposure to short-term price volatility and imbalance costs. The costs at the side of market participants that would occur if the level of firmness of LTTRs is reduced, are ignored by the TSOs. Secondly, the proposal to cap remuneration of LTTRs is not justified, as the amounts of remuneration paid out in case of decoupling events in the past, are well below the collected congestion revenues. The suggestion that such remuneration pay-outs would be at the expense of tariff payers is therefore misleading. Moreover we expect that decoupling will be an extremely rare event, and priority must be given to avoiding such decoupling to happen. Finally, we would like to underline that capping remuneration actually means that the value of LTTRs will reduce and thus also congestion revenues as collected by TSOs will decrease. Therefore, overall the proposed measure does not have the effect that the TSOs hope for. For more details, we refer to the response as submitted by EFET, that Energie-Nederland is supporting.	
RAP does not express an opinion on the legal basis for a cap on the LTTR remuneration as proposed by the TSO's. It is obviously necessary to resolve any and all legal issues. RAP would like to point out that Recitals 9 and 10 of the FCA regulations stress the importance of developing harmonised allocation rules for transmission rights across the European Union. Those harmonised allocation rules should also outline the contractual obligations to be respected by market participants. Regarding the introduction of a possible cap on LTR remuneration in case of decoupling, RAP recognizes the potential for high remunerations when a large market spread occurs. This could have a significant impact on the concerned TSO's congestion rents. In addition to of course putting everything in place to avoid the occurrence of decoupling events as much as possible, it seems that further improvements in the design of	

and participation in fallback options needs to be the priority. Before deciding on a possible cap, more information is needed about the extent to which in the case of decoupling events of very short duration shadow auctions and participation in the intraday market are sufficient for participants to cover their positions. This would ensure that demand and supply are met, while possibly avoiding undue windfall profits. If deemed useful, several cap designs could be investigated apart from the one proposed by the TSO's. The contractual obligations referred to above should also clearly lay out the responsibilities, including financial responsibilities, of market parties in case of decoupling events. It could for example be interesting to investigate a VoLL based cap, which could include a circuit breaker in case of extended decoupling events.	
We agree with ACER's proposal to delete Article 59(5) from both a legal and economic point of view. In fact, we share ACER's opinion that FCA Regulation does not enable the HAR to apply a cap on remuneration of LTTRs. Moreover, we believe that the remuneration of LTTRs should be equal to the market spread to foster the efficiency of LTTRs themselves.	

Question 1: Do you agree with the deletion of Article 59(5)? Please, substantiate your choice from (i) legal and/or (ii) economic point of view.	**Question 2: Do you have any other comments on the HAR methodology?**
We absolutely agree with deletion of Article 59(5). We trust that a cap on LTTRs remuneration is neither permitted by the FCA GL, nor economically justified or proportionate. *Legal viewpoint* Art. 59 EU HAR, which the TSOs seek to amend, deals with compensation for curtailments to ensure operation remains within Operational Security Limits before the DA firmness deadline (11:30 CET). The matter that the TSOs seek to address in their proposed paragraph 5 is out of scope of art. 59 EU HAR, in so far as: - it concerns the remuneration of LTTRs – and not compensation for curtailments - it applies to events happening after the DA firmness deadline – and not before The remuneration of LTTRs, including in cases of decoupling, is tackled in art. 48 EU HAR. Art. 48.1(a) EU HAR foresees that LTTRs are remunerated at the DA market spread when DA market coupling is in place at a given bidding zone border, whether the allocation actually occurred implicitly or via a fallback process. Should the TSOs want to include a cap on the remuneration of LTTRs in case of decoupling (explicit allocation as fallback of DA market coupling), then a modification of art. 48.1 EU HAR would be in order, rather than art. 59. Further, a modification of the EU HAR to allow caps on the remuneration of LTTRs in case of decoupling would require amendments to the FCA GL, which forms the legislative basis of the EU HAR. Like art. 48 EU HAR, art. 35 FCA GL foresees that LTTRs are remunerated at the DA market spread when DA market coupling is in place at a given border, whether the allocation actually occurred implicitly or via a fallback process. This principle does not suffer any exception in the FCA GL. Art. 54 FCA GL, which foresees the possibility for TSOs to established caps on compensation, only applies to curtailed LTTRs and can therefore not be used to amend art. 59 EU HAR in the direction pursued by the TSOs. In summary, we see that the TSOs seek to amend the wrong article in the EU HAR, without a legal basis to do so in the FCA GL. *Economic viewpoint* For such a significant departure from the well-established principle of financial firmness of LTTRs, we would expect the TSOs to properly assess and demonstrate:	As explained above, we do not believe there is an intrinsic problem in the remuneration rules for LTTRs in case of decoupling. They have been long negotiated between market participants, TSOs and NRAs back in the mid 2010s, and approved as part of the FCA GL. Ensuring full financial firmness of LTTRs is vital for market participants to conduct their operations. And this full firmness also guarantees a certain level of revenue for the TSOs from the sale of LTTRs. We acknowledge the concerns of the TSOs with regard to what happened on the decoupling days of 2019, 2020 and 2021, and we do not disregard the financial consequences these days have had for a few individual TSOs. The low participation in shadow auctions that we have seen especially on the decoupling event of 07/06/2019 has triggered concerns on all sides. However, market participants are not responsible for decoupling events, nor have any way to control their occurrence. Hence, rather than seeking a change of the EU HAR and putting the financial burden of decoupling events on market participants, we invite

(a) ***the necessity of the proposed measure***: i.e. that the existing remuneration rules put an unsustainable financial burden on the TSOs even with a few rare days of decoupling; (b) ***the proportionality of the proposed measure***: i.e. that a modification of the remuneration rules does not have a detrimental impact on the allocation of LTTRs and their value, and eventually improves social welfare. Regarding point (a) on the necessity of the measure, the TSOs present the remuneration of LTTR at the DA market spread in case of decoupling as an "overcompensation". They base their claim on a comparison between, on the one hand, the average daily TSO revenue of LTTR auctions (which corresponds to the average value of yearly and monthly LTTRs over the entire period covered by these products extrapolated for the individual days of decoupling) and, on the other hand, the revenues captured by the TSOs with the shadow auctions organised on three individual decoupling days in 2019, 2020 and 2021. These values are then compared to the remuneration of LTTRs to market participants for those three decoupling days. We believe this approach is misleading. To get a fair representation of whether the TSOs have actually incurred an unbearable burden from the remuneration of LTTRs on days of decoupling, the TSOs should compare all benefits from the sale and expenditures from the remuneration of LTTRs over the same period of time, i.e. all the remuneration paid out to LTTRs holders, including during days of decoupling, compared to the total revenues from the allocation of cross-zonal capacity at different timeframes. We also believe that this analysis should be performed on an annual basis, at the very least for AC lines, as is the case for the calculation of the cap on compensation in case of LTTR curtailments. As we are lacking information on TSOs congestion rent (either aggregated or per border) as well as on payouts to LTTR holders, the only numbers that we had at hand to perform some type of analysis – despite repeated requests – are those presented by the TSOs at the MESC and Florence Forum meetings of the spring of 2021. When reverse-engineering these numbers, we can observe that the LTTR payout on the decoupling event represented: - on 07/06/2019: 2,8% of aggregated 2019 EU congestion rent (forward allocation only) - on 04/02/2020: 0,9% of aggregated 2020 EU congestion rent (forward allocation only) - on 13/01/2021: 2% of aggregated 2021 EU congestion rent (annual LTTRs allocation only) The data presented by the TSOs shows that LTTR remuneration during days of decoupling was far from reaching the congestion rent they collect in each concerned year, even if looking only at forward allocation revenues (i.e. not taking account of additional transmission revenues from DA, ID or balancing). Of course, as we highlighted above, a thorough assessment should look for each year at all the payouts of TSOs to LTTR holders (including outside of decoupling days) compared to all the congestion rent collected in all timeframes for the whole year. The TSOs did not provide this full picture, but we consider it unlikely to fundamentally change the orders of magnitude presented above. Regarding point (b) on the proportionality of the measure, we miss an assessment by the TSOs of the effect that their proposed measure may have on the allocation of LTTRs and their value, as well as on social welfare in general. The wording used by the TSOs that firmness "would be reduced in case of decoupling" is once again misleading: indeed, changing the rules of LTTR remuneration in case of decoupling effectively diminishes the firmness of all LTTRs at the time of allocation, whether or not they are redeemed on a day of decoupling at a later stage. Any change in the LTTR remuneration rules will be accounted for by market participants when they bid in long-term auctions. Hence, any reduction of firmness, in particular for events such as decoupling that market participants are unable to forecast or mitigate, will	the TSOs (and NEMOs, where relevant) to focus on the management of decoupling events, and investigate, in particular, the following directions: a) avoid decoupling events by reinforced testing/improvements of the SDAC process, including the algorithm and all communication processes. b) improve communication towards market participants in case of (a risk of) decoupling to reduce the level of uncertainty ahead of the shadow auctions. c) Improve competition in the shadow auctions, with: • intensifying training towards market participants to incentivise their participation in shadow auctions in case of decoupling. • exploring the possibility to provide more time to prepare competitive capacity bids with full information, ahead of the shadow auctions. • streamlining the shadow auction tool to facilitate participation in the auctions, notably for those market participants active on multiple borders. These improvements will allow the valuation of day-ahead cross-border capacity allocated under a shadow auction process to better reflect the spread between the energy auction prices in each bidding zones.

reduce the overall value they place in LTTRs, and are willing to pay for. This could significantly affect the revenues that TSOs capture from the sale of LTTRs all year round. In addition, lower firmness of LTTRs will translate into less ideal hedging opportunities for market participants. All things equal, a lower risk coverage would translate into directly higher costs to hedge a specific risk on the market, costs which will ultimately be passed on to consumers. The TSOs failed to assess the magnitude of both their loss of revenue from the allocation of diminished LTTRs for all delivery periods and the increase in the cost of hedging for the market. Whether these side-effects could counteract the objective of the TSOs to reduce payouts to LTTR holders during days of decoupling should have been properly analysed by the TSOs as part of their proportionality assessment. In conclusion, and in the absence of a demonstration otherwise by the TSOs, we believe that the TSOs proposal is neither justified, nor proportionate to their aim.	
We absolutely agree with deletion of Article 59(5). We trust that a cap on LTTRs remuneration is neither permitted by the FCA GL, nor economically justified or proportionate. Legal viewpoint Art. 59 EU HAR, which the TSOs seek to amend, deals with compensation for curtailments to ensure operation remains within Operational Security Limits before the DA firmness deadline (11:30 CET). The matter that the TSOs seek to address in their proposed paragraph 5 is out of scope of art. 59 EU HAR, in so far as: - it concerns the remuneration of LTTRs – and not compensation for curtailments - it applies to events happening after the DA firmness deadline – and not before Should the TSOs want to include a cap on the remuneration of LTTRs in case of decoupling (explicit allocation as fallback of DA market coupling), then a modification of art. 48.1 EU HAR would be in order, rather than art. 59, as art. 48.1(a) EU HAR foresees that LTTRs are remunerated at the DA market spread when DA market coupling is in place at a given bidding zone border, whether the allocation actually occurred implicitly or via a fallback process. This rule stems directly from art. 35 FCA GL and suffers no exception in the FCA GL. Art. 54 FCA GL, which foresees the possibility for TSOs to established caps on compensation, only applies to curtailed LTTRs and can therefore not be used to amend art. 59 EU HAR in the direction pursued by the TSOs. In summary, we see that the TSOs seek to amend the wrong article in the EU HAR, without a legal basis to do so in the FCA GL. Economic viewpoint For such a significant departure from the well-established principle of financial firmness of LTTRs, we would expect the TSOs to properly assess and demonstrate: (a) the necessity of the proposed measure: i.e. that the existing remuneration rules put an unsustainable financial burden on the TSOs even with a few rare days of decoupling; (b) the proportionality of the proposed measure: i.e. that a modification of the remuneration rules does not have a detrimental impact on the allocation of LTTRs and their value, and eventually improves social welfare. Regarding point (a) on the necessity of the measure, the TSOs present the remuneration of LTTR at the DA market spread in case of decoupling as an “overcompensation”. We disagree with this and present in the longer version of our response how LTTR remuneration during days of decoupling was far from reaching the congestion rent they collect in each concerned year (1 to 3% maximum for the 2019/2021 events), even if looking only at forward allocation revenues (i.e. not taking account of additional transmission revenues from DA, ID or balancing). Of course, a thorough assessment should look for each year at all the payouts of	As explained above, we do not believe there is an intrinsic problem in the remuneration rules for LTTRs in case of decoupling. They have been long negotiated between market participants, TSOs and NRAs back in the mid 2010s, and approved as part of the FCA GL. Ensuring full financial firmness of LTTRs is vital for market participants to conduct their operations. And this full firmness also guarantees a certain level of revenue for the TSOs from the sale of LTTRs. We acknowledge the concerns of the TSOs with regard to what happened on the decoupling days of 2019, 2020 and 2021, and we do not disregard the financial consequences these days have had for a few individual TSOs. The low participation in shadow auctions that we have seen especially on the decoupling event of 07/06/2019 has triggered concerns on all sides. However, market participants are not responsible for decoupling events, nor have any way to control their occurrence. Hence, rather than seeking a change of the EU HAR and putting the financial burden of decoupling events on market participants, we invite the TSOs (and NEMOs, where relevant) to focus on the management of decoupling events, and investigate, in particular, the following directions:

TSOs to LTTR holders (including outside of decoupling days) compared to all the congestion rent collected in all timeframes for the whole year. The TSOs did not provide this full picture, but we consider it unlikely to fundamentally change the orders of magnitude presented in the full version of our response. Regarding point (b) on the proportionality of the measure, we miss an assessment by the TSOs of the effect that their proposed measure may have on the allocation of LTTRs and their value, as well as on social welfare in general. The wording used by the TSOs that firmness "would be reduced in case of decoupling" is once again misleading: indeed, changing the rules of LTTR remuneration in case of decoupling effectively diminishes the firmness of all LTTRs at the time of allocation, whether or not they are redeemed on a day of decoupling at a later stage. Any change in the LTTR remuneration rules will be accounted for by market participants when they bid in long-term auctions. Hence, any reduction of firmness, in particular for events such as decoupling that market participants are unable to forecast or mitigate, will reduce the overall value they place in LTTRs, and are willing to pay for. This could significantly affect the revenues that TSOs capture from the sale of LTTRs all year round. In addition, lower firmness of LTTRs will translate into less ideal hedging opportunities for market participants. All things equal, a lower risk coverage would translate into directly higher costs to hedge risks on the market, costs which will ultimately be passed on to consumers. The TSOs failed to assess the magnitude of both their loss of revenue from the allocation of diminished LTTRs for all delivery periods and the increase in the cost of hedging for the market. Whether these side-effects could counteract the objective of the TSOs to reduce payouts to LTTR holders during days of decoupling should have been properly analysed by the TSOs as part of their proportionality assessment. In conclusion, and in the absence of a demonstration otherwise by the TSOs, we believe that the TSOs proposal is neither justified, nor proportionate to their aim.	a) avoid decoupling events by reinforced testing/improvements of the SDAC process, including the algorithm and all communication processes. b) improve communication towards market participants in case of (a risk of) decoupling to reduce the level of uncertainty ahead of the shadow auctions. c) Improve competition in the shadow auctions, with: • intensifying training towards market participants to incentivise their participation in shadow auctions in case of decoupling. • exploring the possibility to provide more time to prepare competitive capacity bids with full information, ahead of the shadow auctions. • streamlining the shadow auction tool to facilitate participation in the auctions, notably for those market participants active on multiple borders. These improvements will allow the valuation of day-ahead cross-border capacity allocated under a shadow auction process to better reflect the spread between the energy auction prices in each bidding zones.

Question 1: Do you agree with the deletion of Article 59(5)? Please, substantiate your choice from (i) legal and/or (ii) economic point of view.	**Question 2: Do you have any other comments on the HAR methodology?**
We agree with the deletion of HAR Article 59(5). The FCA regulation (EU) 2016/1719 aims at "promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market partici-pants". The remuneration cap in case of fallback allocation would further downgrade the quality of these instruments.	Article 9 Submission of information: The Single Allocation Platform should accept documents concerning the approval process e.g. commercial register excerpts at least in all official languages of Luxembourg or in all official languages of the EU. Article 24 Modifications of Collaterals: 2) Fund withdrawals from the dedicated business account take too much time. The procedure requires sending a stamped paper and seems not to be very resilient against fraud, since paper and signatures are not fraud-proof. Also, the process takes up to 3 weeks to transfer money from the dedicated business account back to the participant's own bank. We argue for an electronical two-sided approval process (participant & JAO, maybe directly wired to the bank account) with a good authentication standard. Article 41-43 Transfer of Long Term Transmission Rights: The transfer of transmission rights between participants should be facilitated. A secondary market for transmission rights with frequent trading and price indications could increase the quality of FTRs as hedging instruments, in line with Article 3 of (EU) 2016/1719. But this cannot be achieved, unless FTRs are clearly exempted from financial instruments' regulation. It might be beyond the scope of the HARs, but nonetheless we ask to clarify the status of FTRs with respect to financial instruments regulation and reporting obligations.

	Article 32 Bid registration: The bid registration process should be reconsidered. The bids should be registered right after the participant issues them on the allocation platform. Then the participant should receive a positive or negative confirmation, whether the issued bid is effectively placed in the auction system and technically able to participate in the auction. This is not to be mixed up with the credit / collateral check that could possibly block some/all bids from the auction, in the case that the credit / collateral does not cover the bids at the time of the auction. Article 57 Process and notification of curtailment: All responsible balance groups in a bidding zone (not only the transmission rights holders) should be informed adequately, if capacity is curtailed, since this may severely change the prices in the Day-Ahead auctions. Article 59 2. The cap-formula: We suggest to replace "Return ******" with "Return of FTRs" in "Cap for compensation for network security=([…] (UIOSI+Remuneration of FTRs+Return ******+Compensation for curtailment […])" if that meaning was intended by the author. The same applies to the DC-Formula in Article 59 3. Article 59 2. The cap in case of curtailments to ensure operation remains within operational security limits before the DA firmness deadline: The cap stands in contrast to the aim of the FCA regulation (EU) 2016/1719, that is "promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants". The remuneration cap is a downgrade for the quality of these FTRs. Article 76 Assignment and subcontracting: Outsourcing of e.g. certain IT-infrastructure is certainly important for the operational efficiency of the Single Allocation Platform. However, outsourcing must not be the outsourcing of responsibility and liability. Subcontractors or parties that provide services for the Single Allocation Platform must have quality management systems in place, such that the participants receive the same system quality as otherwise offered by the allocation platform itself. The Single Allocation Platform should keep records of the certificates of the quality systems that the respective service providers have put in place.
Agreement: In our view, the proposed HAR Article 59(5) is not in line with the regulation. From a legal point of view, the FCA regulation (EU) 2016/1719 aims at "promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants". From an economic point of view, the remuneration cap in case of fallback allocation would further downgrade the quality of these instruments as hedging instruments.	Article 9 Submission of information: The Single Allocation Platform should accept documents concerning the approval process e.g. commercial register excerpts at least in all official languages of Luxemburg or in all offi-cial languages of the EU. Article 24 Modifications of Collaterals: 2) Fund withdrawals from the dedicated business account take too much time. The procedure requires sending a stamped paper and seems not to be very resilient against fraud, since paper and signatures are not fraud-proof. Also, the process takes up to 3 weeks to transfer money from the dedicated business account back to the participant's own bank. We argue for an electronical two-sided approval process (participant & JAO, maybe directly wired to the bank account) with a good authentication standard. Article 41-43 Transfer of Long Term Transmission Rights: The transfer of transmission rights between partici-pants should be facilitated. A secondary market for transmission rights with frequent trading and price indica-tions could increase the quality of FTRs as hedging instruments, in line with Article 3 of (EU) 2016/1719. But this cannot be achieved, unless FTRs are clearly exempted from financial instruments' regulation. It might be beyond the scope of the HARs, but nonetheless we ask to clarify the status of FTRs with respect to financial instruments regulation and reporting obligations. Article 32 Bid registration: The bid registration process should be reconsidered. The bids should be registered right after the participant issues them on the allocation platform. Then the participant should receive a positive or negative confirmation, whether the issued bid is effectively placed in the auction system and technically able to participate in the auction. This should be understood separately from and not to be mixed up with the credit / collateral check that could possibly block some/all bids from the auction, in the case that the credit / collateral does not cover the bids at the time of the auction. Article 57 Process and notification of curtailment: The JAO web-service already offers systemised disclosure of information for market parties. However, the HAR do not address this. The HAR restrict the distribution of im-portant information to the "JAO /

	capacity user group". Ideally, all balance group responsibles in a bidding zone (not only the transmission rights holders) should have access to the most recent information, if capacity is cur-tailed, since this may severely change the prices in the Day-Ahead auctions. That especially applies to small bidding zones with large interconnector capacity. Article 59 2. The cap-formula: We suggest to replace "Return ******" with "Return of FTRs" in "Cap for compensation for network security=([…] (UIOSI+Remuneration of FTRs+Return ******+Compensation for curtailment […])" if that meaning was intended by the author. The same applies to the DC-Formula in Article 59 3. Article 59 2. The cap in case of curtailments to ensure operation remains within operational security limits be-fore the DA firmness deadline: The cap stands in contrast to the aim of the FCA regulation (EU) 2016/1719, that is "promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants". The remuneration cap is a downgrade for the quality of these FTRs. Article 76 Assignment and subcontracting: Outsourcing of e.g. certain IT-infrastructure is certainly important for the operational efficiency of the Single Allocation Platform. However, outsourcing must not affect the responsi-bility and liability. Subcontractors or parties that provide services for the Single Allocation Platform must have quality management systems in place, such that the participants receive the same system quality as otherwise offered by the allocation platform on its own. The Single Allocation Platform should keep records of the certifi-cates of the quality systems that the respective service provider have put in place.