

**REQUEST FOR A SECOND AMENDMENT (RfA) BY
ALL REGULATORY AUTHORITIES AGREED AT THE
ENERGY REGULATORS' FORUM**

ON

**ALL TSOs' PROPOSAL FOR THE IMPLEMENTATION
FRAMEWORK FOR A EUROPEAN PLATFORM FOR THE
IMBALANCE NETTING PROCESS IN ACCORDANCE
WITH ARTICLE 22 OF COMMISSION REGULATION (EU)
2017/2195 ESTABLISHING A GUIDELINE ON
ELECTRICITY BALANCING**

11 July 2019

I. Introduction and legal context

This document elaborates an agreement of all Regulatory Authorities made at the Energy Regulators' Forum (ERF) on 11 July 2019, on the All TSOs' proposal for the implementation framework for a European platform for the imbalance netting process in accordance with Article 22 of the Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing (hereafter referred to as "EBGL") to request further amendments.

Article 22 (1) of the EBGL requires that by six months after entry into force of the EBGL all TSOs shall develop a proposal for the implementation framework for a European platform for the imbalance netting process (hereafter: IN-platform).

The all TSOs' proposal for the implementation framework for a European platform for the imbalance netting process in accordance with Article 22 of the EBGL (hereafter: the Proposal) was received by the last Regulatory Authority on 10 July 2018.

All Regulatory Authorities reached an agreement in the Energy Regulators' Forum (ERF) on 9 November 2018 to request an amendment to the all TSOs' proposal. The amended Proposal was received by the last Regulatory Authority on 19 March 2019.

This agreement of all Regulatory Authorities shall provide evidence that a decision on the amended Proposal does not need to be adopted by ACER pursuant to Article 5(7) of the EBGL. However, at the same time the amended Proposal is still not approvable by all Regulatory Authorities. Therefore, this agreement is intended to constitute the basis on which all Regulatory Authorities will each subsequently request further amendments to the Implementation framework for a European platform for the imbalance netting process pursuant to Article 6(1) of the EBGL.

The legal provisions that lie at the basis of the Proposal and this all Regulatory Authorities' agreement on requesting an amendment can be found in Articles 3, 22, 23 and 58 of the EBGL. They are quoted here for reference:

Article 3 Objectives and regulatory aspects

1. *This Regulation aims at:*

(a) fostering effective competition, non-discrimination and transparency in balancing markets;

(b) enhancing efficiency of balancing as well as efficiency of European and national balancing markets;

(c) integrating balancing markets and promoting the possibilities for exchanges of balancing services while contributing to operational security;

(d) contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union while facilitating the efficient and consistent functioning of day-ahead, intraday and balancing markets;

(e) ensuring that the procurement of balancing services is fair, objective, transparent and market-based, avoids undue barriers to entry for new entrants, fosters the liquidity of balancing markets while preventing undue distortions within the internal market in electricity;

(f) facilitating the participation of demand response including aggregation facilities and energy storage while ensuring they compete with other balancing services at a level playing field and, where necessary, act independently when serving a single demand facility;

(g) facilitating the participation of renewable energy sources and support the achievement of the European Union target for the penetration of renewable generation.

2. When applying this Regulation, Member States, relevant regulatory authorities, and system operators shall:

(a) apply the principles of proportionality and non-discrimination;

(b) ensure transparency;

(c) apply the principle of optimisation between the highest overall efficiency and lowest total costs for all parties involved;

(d) ensure that TSOs make use of market-based mechanisms, as far as possible, in order to ensure network security and stability;

(e) ensure that the development of the forward, day-ahead and intraday markets is not compromised;

(f) respect the responsibility assigned to the relevant TSO in order to ensure system security, including as required by national legislation;

(g) consult with relevant DSOs and take account of potential impacts on their system;

(h) take into consideration agreed European standards and technical specifications.

Article 22 European platform for imbalance netting process

1. *By six months after entry into force of this Regulation, all TSOs shall develop a proposal for the implementation framework for a European platform for the imbalance netting process.*

2. *The European platform for the imbalance netting process, operated by TSOs or by means of an entity the TSOs would create themselves, shall be based on common governance principles and business processes and shall consist of at least the imbalance netting process function and the TSO-TSO settlement function. The European platform shall apply a multilateral TSO-TSO model to perform the imbalance netting process.*

3. *The proposal in paragraph 1 shall include at least:*

- (a) *the high level design of the European platform;*
- (b) *the roadmap and timelines for the implementation of the European platform;*
- (c) *the definition of functions required to operate the European platform;*
- (d) *the proposed rules concerning the governance and operation of the European platform, based on the principle of non-discrimination and ensuring equitable treatment of all member TSOs and that no TSO benefits from unjustified economic advantages through the participation in the functions of the European platform;*
- (e) *the proposed designation of the entity or entities that will perform the functions defined in the proposal. Where the TSOs propose to designate more than one entity, the proposal shall demonstrate and ensure:*
 - (i) *a coherent allocation of the functions to the entities operating the European platform. The proposal shall take full account of the need to coordinate the different functions allocated to the entities operating the European platform;*
 - (ii) *that the proposed setup of the European platform and allocation of functions ensures efficient and effective governance, operation and regulatory oversight of the European platform as well as supports the objectives of this Regulation;*
 - (iii) *an effective coordination and decision making process to resolve any conflicting positions between entities operating the European platform;*
- (f) *the framework for harmonisation of the terms and conditions related to balancing set up pursuant to Article 18;*
- (g) *the detailed principles for sharing the common costs, including the detailed categorisation of common costs, in accordance with Article 23;*
- (h) *the description of the algorithm for the operation of imbalance netting process function in accordance with Article 58.*

4. *By six months after the approval of the proposal for the implementation framework for a European platform for the imbalance netting process, all TSOs shall designate the proposed entity or entities entrusted with operating the European platform pursuant to paragraph 3(e).*

5. *By one year after the approval of the proposal for the implementation framework for a European platform for the imbalance netting process, all TSOs performing the automatic frequency restoration process pursuant to Part IV of Regulation (EU) 2017/1485 shall implement and make operational the European platform for the imbalance netting process. They shall use the European platform to perform the imbalance netting process, at least for the Continental Europe synchronous area.*

Article 23 Cost sharing between TSOs in different Member States

1. *All TSOs shall provide a yearly report to the relevant regulatory authorities in accordance with Article 37 of Directive 2009/72/EC in which the costs of establishing, amending and operating the European platforms pursuant to Articles 19, 20, 21 and 22 are explained in detail. This report shall be published by the Agency taking due account of sensitive commercial information.*

2. *The costs referred to in paragraph 1 shall be broken down into:*

- (a) common costs resulting from coordinated activities of all TSOs participating in the respective platforms;*
- (b) regional costs resulting from activities of several but not all TSOs participating in the respective platforms;*
- (c) national costs resulting from activities of the TSOs in that Member State participating in the respective platforms.*

3. Common costs referred to in paragraph 2(a) shall be shared among the TSOs in the Member States and third countries participating in the European platforms. To calculate the amount to be paid by the TSOs in each Member State and, if applicable, third country, one eighth of the common cost shall be divided equally between each Member State and third country, five eighths shall be divided between each Member State and third country proportionally to their consumption, and two eighths shall be divided equally between the participating TSOs pursuant to paragraph 2(a). The Member State's share of the costs shall be borne by the TSO or TSOs operating in a territory of that Member State. In case several TSOs are operating in a Member State, the Member State's share of the costs shall be distributed among those TSOs proportionally to the consumption in the TSOs control areas.

4. To take into account changes in the common costs or changes in the participating TSOs, the calculation of common costs shall be regularly adapted.

5. TSOs cooperating in a certain region shall jointly agree on a proposal for the sharing of regional costs in accordance with paragraph 2(b). The proposal shall then be individually approved by the relevant regulatory authorities of each of the Member States and, if applicable, third country in the region. TSOs cooperating in a certain region may alternatively use the cost sharing arrangements set out in paragraph 3.

6. The cost sharing principles shall apply to costs contributing to the establishing, amending and operating the European platforms from the approval of the proposal for the relevant implementation frameworks pursuant to Articles 19(1), 20(1), 21(1) and 22(1). In case the implementation frameworks propose that existing projects shall evolve into a European platform, all TSOs participating in the existing projects may propose that a share of the costs incurred before the approval of the proposal for the implementation frameworks directly related to the development and implementation of this project and assessed as reasonable, efficient and proportionate is considered as part of the common costs pursuant to paragraph 2(a).

Article 58 Balancing algorithms

[...]

2. In the proposal pursuant to Article 22, all TSOs shall develop an algorithm to be operated by the imbalance netting process function. This algorithm shall minimise the counter activation of balancing resources by performing the imbalance netting process pursuant to Part IV of Regulation (EU) 2017/1485.

[...]

4. All algorithms developed in accordance with this Article shall:

- (a) respect operational security constraints;*
- (b) take into account technical and network constraints;*
- (c) if applicable, take into account the available cross-zonal capacity.*

II. All TSOs' Proposal

A draft proposal was consulted by all TSOs through ENTSO-E from 15 January 2018 to 15 March 2018 in line with Article 10 of the EBGL. Along with the draft proposal, all TSOs published an explanatory document. In the public consultation, all TSOs were seeking input from stakeholders and market participants on the draft proposal. All Regulatory Authorities closely observed, analysed and continuously provided feedback and guidance to all TSOs during various meetings and through a shadow opinion of all Regulatory Authorities (dated: 13 March 2018).

The final version of the all TSOs' proposal (Proposal), dated 18 June 2018, was received by the last Regulatory Authority on 10 July 2018, together with an updated explanatory document giving background information and rationale for the all TSOs' proposal.

Following the submission, all Regulatory Authorities reached an agreement in the ERF on 9 November 2018 to request an amendment to the all TSOs' proposal. The amended proposal was received by the last Regulatory Authority on 19 March 2019.

The Proposal covers the design, functional requirements, governance and cost sharing of the IN-platform, as well as the allocation of the functions of the IN-platform to the entities performing these functions. The IN-platform shall consist of the imbalance netting process function as well as the TSO-TSO settlement function as described in Article 22 of the EBGL.

III. Agreed all Regulatory Authorities' Position

All Regulatory Authorities cannot approve the Proposal for the reasons that are detailed below and request all TSOs to further amend the amended Proposal and to incorporate the following all Regulatory Authorities' assessment pursuant to Article 6(1) of the EBGL.

III. 1. Requests for changes to the Proposal

Article 1

The reference to Article 145(4) SOGL in the second sentence in Article 1(2) of the IN IF is not correct. All Regulatory Authorities therefore request all TSOs to change the reference to Article 143(4) SOGL. The Article 1 (2) would read:

“All TSOs performing the automatic frequency restoration process according to Article 145(4) of SOGL shall implement and make operational the IN-Platform. For the avoidance of doubt, where an LFC area consists of more than one monitoring area, only the TSO appointed in the LFC area operational agreement as responsible for the implementation and operation of the automatic frequency restoration process according to Article 143(4) of the SOGL shall use the IN-Platform.”

Article 9

All Regulatory Authorities are not in favor of the proposal by all TSOs for entity or entities elaborated in Article 9 of the amended Proposal.

All Regulatory Authorities therefore request to amend the amended proposal according to the following reasoning:

Firstly, there are two options in Article 22(2) of the EBGL, namely the operation ‘by TSOs’ and the operation ‘by means of an entity created by the TSOs’.

If all TSOs want to propose that the platform is operated by an entity created by the TSOs, this entity needs to be legally distinct from the TSOs and enjoy full legal capacity.

A consortium does not typically possess full legal capacity as it is not a legal person, and as such cannot be considered as an entity legally distinct from the TSOs. However, the operation of the platform by the TSOs together in a consortium remains possible on the grounds that such operation will be, from a legal point of view, carried out by the TSOs as foreseen by Article 22(2) of the EBGL. As TSOs remain in any case fully responsible for the operation of the platform this can be achieved by proposing a designation of one or more TSOs as the entity or entities that will perform the functions defined in the proposal, provided that the requirements of Article 22(3)(e) are fully met and that the proposal makes it clear how the functions are allocated to the entity/entities.

Therefore, Regulatory Authorities request TSOs to rephrase Article 9 of the Proposal and unambiguously specify which of the two options is proposed, i.e. whether the platform will be operated (i) by an entity with full legal capacity created by the TSOs or (ii) by the TSOs themselves acting, as the case may be, in a consortium. In the latter case, the requirements set in Article 22(3)(e) of the EB GL shall be met.

Secondly, Article 22(3)(e) points (i)-(iii) of EBGL explicitly require that the proposal itself demonstrate and ensure all the objectives listed. The proposal must not remain silent or vague on how these objectives will be ensured and therefore it must contain a sufficient amount of detail as regards the operational rules ensuring the fulfilment of these objectives. The operational handbook of the platform can only be considered supplementary to the proposal and cannot replace it for the purpose of establishing whether the requirements of paragraph 3(e) are met. Nonetheless, the TSOs are of course free to reiterate, in the operational handbook, any operational rules stipulated in the methodology, and/or to set out additional practical arrangements, details and specifications. As long as such more detailed rules are in line with the approved methodology they need not be submitted for approval.

Finally, the expression 'perform the functions' in Article 22(3)(e) EBGL should be interpreted in such a way that when all the functions are performed by one or several entities, the relevant platform is operated. Paragraph 3(c) of Article 22 EBGL requires the functions that are necessary for the operation of the platform to be 'defined in the proposal'. It is therefore up to the TSOs to define the scope of the tasks the performance of which enables the operation of the platform. Keeping in mind that TSOs remain responsible for the implementation and operation of the platforms, TSOs are best placed to propose a delineation of the various technical functions required to operate the platform. The proposal for entity or entities should then clearly allocate those functions to the respective entity or entities, bearing in mind the aforementioned.

New article

According to Article 28 EBGL "each TSO shall ensure that fall-back solutions are in place". Paragraph (2) specifies that "where the procurement of balancing services fails, the concerned TSOs shall repeat the procurement process. TSOs shall inform market participants that fall-back procedures will be used as soon as possible." Regulatory Authorities read "procurement of balancing services" in a broad sense that also includes the IN process. Therefore, Regulatory Authorities request all TSOs to add a new article to the IN IF on the fall-back procedure that will especially address the information requirement of Article 28(2) EBGL.

IV. Conclusion

All Regulatory Authorities have assessed, consulted, closely cooperated and coordinated to reach the agreement that the amended Proposal according to Article 22 of the EBGL cannot be approved by all Regulatory Authorities.

According to Article 6(1) of the EBGL, all Regulatory Authorities hereby request an amendment to the amended Proposal, which shall take into account the all Regulatory Authorities' assessment stated above and shall be submitted by all TSOs no later than two months after receiving the last Regulatory Authorities request for amendment in accordance with Article 6(1) of the EBGL.

All Regulatory Authorities have agreed to issue their national decision to request an amendment to the amended Proposal on the basis of this agreement by 19 July 2019.