# Supporting document to the all TSOs' proposal for reviewed 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

9 July 2019

**Disclaimer**

This explanatory document is submitted by all Transmission System Operators (TSOs) to the Agency for the Cooperation of Energy Regulators (ACER) for information purposes only and accompanying the all TSOs' proposal for reviewed harmonised allocation rules for Long Term Transmission Rights ("HAR proposal") in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation ("FCA Regulation").

## Contents





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# 1. 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 "[t]he 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.".

Based on the above, all TSOs have elaborated on a reviewed HAR proposal which was then consulted upon between 20 May and 20 June 2019. At the end of the public consultation comments from twelve respondents were received which were then duly considered by the TSOs.

This document provides an overview of how the comments to the public consultation have been assessed and how the relevant parts of the reviewed HAR proposal were amended. The full list of comments received is also attached to this document in the form of an annex. In the framework of the public consultation, the border or regional specific annexes were also published and consulted upon. In case of interest parties are invited to contact the relevant TSOs to access the comments provided on those annexes and their assessment by the concerned TSOs. Accordingly, it is noted that this document deals only with the comments and the content of the main body of the reviewed HAR.

## Document structure

The document is structured in two parts:

- Section 1 is the executive summary describing the process in general; and
- Section 2 provides additional information on some parts of the HAR and a detailed summary of the assessment of the comments received.

The document has one Annex, i.e. the detailed comments received by ENTSO-E on the main body of the reviewed HAR during the public consultation held from 20 May until 20 June 2019.

# 2. Explanatory remarks and assessment of the comments received

The structure of this part of document follows the titles of the reviewed HAR.

## Title 1 – General Provisions

Regarding Article 2 of the reviewed HAR proposal, a respondent raised its concerns on the inclusion of FTR Obligations. Although no NRA or TSO stated that FTR Obligations may be launched on any border on the short term, the European Commission made in former discussions clear that the HAR should cover FTR Obligations, at least in the main lines. For this reason, no change has been proposed for the HAR 2019.



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Two comments were received on Article 4. One respondent stated that the possibilities for deviations from the HAR via regional or border specific annexes shall be strictly limited. Another respondent proposed to introduce specific rules to phase-out regional or border specific annexes. Both comments on the Article have been assessed. It should be noted that there has been a great deal of harmonisation in the trading arrangements between borders in recent years and the general trend is for shorter and more consistent border specific annexes. However, it was concluded that the FCA Regulation (and specifically Article 52.3) allows the possibility for regional specificities not only for a transitional period. In addition, it is worth mentioning that some specificities in regional annexes do not contradict with the FCA Regulation (e.g. technical profiles, or the treatment of HVDC transmission losses) and thus there is no reason to treat them as temporary measures. The border or regional specific annexes are subject to the approval of the relevant NRAs in accordance also with Article 4.7.d of the FCA Regulation.

The comments received on the specific Annexes were forwarded to the respective TSOs and will be taken into consideration when reviewing these Annexes.

## Title 2 – Requirements and process for participation in Auctions and Transfer

Two comments were raised on Article 7 with the request to justify the extension of the time to register for auctions on the Single Allocation Platform.

JAO S.A. might fall under the Know Your Customer (KYC)/ Anti-Money-Laundry (AML) legislation, and notably in the scope of the law of 12 November 2004 on the fight against money laundering and terrorist financing (the 2004 Law) for the following reasons:

- JAO S.A. might either fall in the scope of the 2004 Law as per article 2 (1) (7) of the 2004 Law in conjunction with the annex of activities or operations referred to in article 2 (1) (7) of the 2004 Law (the Annex) (notably (10) or (11) of the Annex; or
- · JAO might fall in the scope of the 2004 Law as per article 2 (1) (15), to the extent that payments are made in cash in an amount of EUR 15,000 or more.

JAO S.A. has to set up an internal control system in order to comply with the KYC/AML requirements as set out in the relevant Luxembourg laws and regulations. As per article 3 of the 2004 Law, the professionals shall apply customer due diligence measures in the cases as specified in the aforementioned article:

- As per article 4 (1) of the 2004 Law, professionals shall establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing.
- As per article 4 (2) of the 2004 Law, professionals shall take adequate and appropriate measures so that relevant employees are aware of and trained in respect to the provisions contained in this law to help employees recognise operations which may be related to money laundering or terrorist financing and to instruct them as to how to proceed in such cases. These measures shall include participation of their relevant employees in special ongoing training programmes.
- As per article 5 of the 2004 Law, professionals, their directors, officers and employees are obliged to cooperate fully with the Luxembourg authorities responsible for combating money laundering and terrorist financing.

Consequently, JAO S.A. needs to obtain details regarding the beneficial ownership subject to the Know Your Customer obligations which would require a longer deadline for processing registration



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## Title 3 – Collaterals

This chapter outlines the provisions for handling the risk of non-payment. TSOs deem that the proposed measures should be adequate for coping with such a risk.

One respondent commented on Article 24 and asked for accepting an electronic approval process for fund withdrawals. TSOs would like to highlight that the Funds Transfer Request form does not necessarily needs to be send by postal mail but rather can be signed electronically with a qualified electronic signature. For this reason no change has been proposed for the reviewed HAR.

## Title 4 – Auctions

Two comments were raised on Article 28. One respondent suggested to have also a five-year timeframe listed as standard for forward capacity allocation. TSOs have assessed the comment and concluded that the wording shall be kept as it was originally proposed since those timeframes are mentioned also in the FCA Regulation. It should be noted that Article 28.3 of the HAR stated that base products with different timeframes and forms of products being allowed. The details on the products are also part of the regional design of Long Term Transmission Rights (in accordance with Article 31 of the FCA Regulation). It was also noted that the liquidity of auctions for 5 year products might not be high, given the challenges in forecasting price differentials between markets over such a timeframe. Moreover, it is unclear to TSOs how such a product could be offered given the requirements for a Long Term Capacity Calculation Methodology. The capacity calculation can only be performed following conclusion of TSO outage planning currently completed in the year before delivery. Another respondent proposed to have a subsequent second auction if an auction does not succeed in allocating all the available capacity. TSOs decided not to accommodate the suggestion since there are already subsequent auctions in place. The remaining capacity from yearly auctions will be offered in monthly auctions and the remaining capacity from monthly auctions will be offered in the day-ahead timeframe.

## Title 6 – Transfer of Long Term Transmission Rights

With regard to the transfer of Long Term Transmission Rights, it was suggested to introduce an automatized interface for transfer requests which also handles the regulatory reporting obligations under MiFID II legislation. TSOs have assessed the comment and concluded that no change is needed. On the one hand, the notice board fulfills the task of facilitation the transfer between market participants. On the other side, the reporting cannot be done by the Single Allocation Platform, as the notice board does not record any price for transfer transactions. Furthermore, the implementation of such reporting features would require high financial and development resources.

## Title 7 – Use and remuneration of Long Term Transmission Rights

About Article 45 a comment was received stating that the reservation of cross-border capacity for balancing purposes by TSOs should be avoided while a mechanism where the market determines the price of the balancing capacity would be more flexible for market operators. Since Article 45 is in line with Electricity Balancing Guideline and also the comment says that the possibility to reserve PTRs for balancing services allows more flexibility to market participants, no change in the Article is necessary.

In view of the event on 7 July 2019, a comment on the need to consider compensation arrangements in Article 48 in the event of market decoupling. TSOs acknowledged the comment but concluded that compensation arrangements could not be modified without further consultation and engagement with market participants, which would not align with the timings of the current HAR review. TSOs further



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concluded, that market decoupling arrangements need to be considered more holistically following a lessons learned exercise on the recent market coupling event.

## Title 8 – Fallback procedures

Several comments were raised regarding the proposed provision in Article 52. TSOs have agreed to remove the point from Article 52.3c as per the comment from various market parties. The text contradicts the objectives of the FCA Regulation, as the uncertainty it creates may negatively impact market participants' view of the long-term cross-zonal hedging opportunities offered by GB interconnectors. In addition, it might also discriminate against GB interconnector TSOs, as it creates the possibility for congestion revenue to be lost without compensation. It's clear that other TSOs are in different stages in their relationship with JAO S.A. so each TSO will have a unique approach following a no deal Brexit scenario. TSOs would like to avoid any misunderstanding in case an agreement could be reached after the Brexit with regards to the yearly auction already performed.

## Title 9 – Curtailment

Three comments were received on Article 56 suggesting to delete the possibility to curtail FTR Options to ensure that operations remain within Operational Security Limits. Given that the FCA Regulation foresees in Article 53 the possibility of curtailing Long Term Transmission Rights (without any distinction) for safeguarding the secure operation if the system and in case of force majeure ahead of the DAFC, no change in the wording is necessary.

Regarding Article 57 it was suggested to have one common firmness regime for all borders and that caps shall be duly justified and periodically reviewed. As already stated under Title 1, the FCA Regulation Article 52.3 allows to have different firmness regimes in the specific annexes. This is because each interconnector is developed within the context of its own national commercial regime and regulatory framework balancing the risks and rewards between the relevant stakeholders. Without caps, interconnectors could face unlimited liabilities, which would in turn have a very serious impact on the amount of investment in interconnectors and potentially putting at risk EU objectives for overall interconnector capacity targets. Moreover, the specific annexes are reviewed periodically by TSOs (at least every two years). One respondent emphasized that curtailment shall be used as a last resort measure after having activated all other available remedial actions. TSOs would like to clarify that there are clear triggering events for curtailment which are reported to NRAs and market participants. An additional comment was raised on the monitoring of curtailments, suggesting to publish factual reasons that lead to curtailment. TSOs will further investigate if more details can be added to the reporting of curtailments. To the end no change to the Article was introduced.

Following the request to remove the formula in Article 59 in order to avoid any reference of daily and intraday to be mentioned in the HAR, it has been agreed to keep this mention given that ACER already gave in the past a clear guideline about the cap calculation and that it should include daily and intraday.

One of the respondents suggested removing the cap to compensations. It should be noted that the FCA Regulation foresees such a possibility in Article 54 with specific principles on how the cap shall be calculated. The cap should be seen as a method to limit socialization costs and provide a balanced risk distribution between trades and end-users for curtailments that can occur for many reasons and influenced by many parties. Finally, it should be reminded that the caps (when proposed) shall be approved by the relevant NRAs as outlined in Article position supported by the relevant NRAs as outlined in paragraph 2 of Article 59. Based on the above, no change is introduced in the Article.



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## Title 11 – Miscellaneous

One comment was raised regarding the official language stating that JAO S.A. 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. TSOs have assessed the suggestion and concluded that no change shall be introduced in the reviewed HAR. Accepting commercial register in other language than English would require to have a dedicated employee on shift for all supported language in order to validating a commercial register / extract. This would significantly delay the registration process. The only common language at the Single Allocation Platform is English.

Regarding Article 76, it was suggested to enhance the Article in a way that out sourced services shall be systematically checked for quality and documentation. TSOs duly took the comment into account. However, for the moment the Single Allocation Platform does not plan to outsource any services. For this reason, no change in the Article is introduced.



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## 3. Annex: List of comments received

This section presents the comments received during the public consultation indicating the respective Article and the respondent's organization.

| Article | Comment | Respondent's Organisation |
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| 2 | We would like to remind some concerns on the FTR obligations. These products do not derive from an explicit need of the market, nor from an explicit request from market participants. In the case of FTR obligations, TSOs will namely collect congestion revenues if the request for capacity (with the price > 0) is higher than the available capacity at each allocation. In case the spread is in the opposite direction, we do not see the rationale for paying a negative spread to the TSOs, which do not support any financial risk in allocating cross-border capacity. FTRs as obligation would only make sense if market participants would trade between themselves such or similar contracts. In such case, payment for the negative spread would be the consequence of risk premiums. This is however not the case when TSOs allocate capacity. For the time being, we do not see any reason justifying FTRs Obligations. | Eurelectric / UFE |
| 4 | We welcome the amendment to recital (5) stating that border specific annexes shall not significantly deviate from the HAR or the FCA Regulation. Based on the history of the development of these annexes, we would even have welcomed a stronger wording. We also miss an amendment to article 4 on regional specificities that reflects the inclusion of this new wording in Recital (5), such as a strict limitation of the possibilities for deviation from the EU HAR only to the four elements listed in article 4.3. | EFET |
| 4 | We appreciate that recital 5 specifies that specific requirements shall not deviate significantly from the HAR or from the FCA. It is a small step in the right direction. Indeed, we believe it is important to limit, as much as possible, the number of annexes to having different sets of rules across European markets. We would like to emphasize that to achieve a real harmonization between all borders the objective should be to phase-out the regional annexes (in order to avoid too many specific rules). In this respect, we would welcome a stronger governance on the existence and phase out of annexes. For instance, we believe that TSOs should provide the NRAs and the market participants with a view on the timeline for the phase-out together with a justification for having specific rules at their borders. NRAs could then request TSOs to provide a justification every year for maintaining the existence of annexes. We consider that some other specific points need further clarifications and explanations, as mentioned below in further details. | Eurelectric / UFE |
| 7 | The timing to register for auctions on the Single Allocation Platform has been extended from seven to nine working days. While registration to the platform should only happen once for each market participant, it is nonetheless a form of inconvenience to see the registration process become slower, which we would expect to be duly justified by the TSOs or JAO. Without such justification we request to go back to the original text of the EU HAR. | EFET |

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| 7 | We read that the deadline for submitting a Participation Agreement has been moved from 5 days to 9 days prior to the first participation. We would like to understand the motivation for such a change. | Eurelectric / UFE |
| 24 | Fund withdrawels from the dedicated business account should be executable in a timely manner. The existing procedure sending stamped paper via post seems technologically depricated and could be more resilient against fraud. We would argue for an electronical two-sided approval process (participant & JAO, maybe directly on the bank account) with a good authentication standard. | TIWAG |
| 28 | Regarding cross-border capacity booking, we'd like to shed some light on its interaction with long term contracts for Energy Intensive Industries in particular. Article 28 of the Harmonised Allocation Rules currently foresees two "standard Forward Capacity Allocation timeframes": the monthly timeframe and the yearly timeframe. Both timeframes unfortunately do not account for the needs of market participants that require longer visibility and price stability (i.e. a duration of five years or more). Therefore, we could propose adding a third "standard Forward Capacity Allocation timeframe", encompassing a period of five years (the "five-year timeframe"). Traders would likely not consider this a very attractive product, given that it considerably limits their flexibility, which is in fact their asset. For us though, in need of large volumes of stable & affordable electricity, this could prove a valuable tool. As highlighted in the European Parliament's resolution of 16 December 2015 "on developing a sustainable European industry of base metals" (2014/2211(INI)), the competitiveness of Europe's base metal sector depends on producers' ability to conclude long-term electricity supply contracts. This is because investments in these industries tend to be highly capital intensive and therefore long-term visibility is required with regard to key cost components (electricity costs can amount to as much as 40% of overall production costs in the case of primary aluminium smelters, as highlighted in the recent report prepared for the European Commission by CEPS and Ecofys, titled "Composition and Drivers of Energy Prices and Costs: Case Studies in Selected Energy Intensive Industries – 2018"). However, it is not currently feasible for such consumers to sign a long-term cross-border contract for the supply of electricity, given the lack of suitable capacity allocation products (i.e. with a duration of at least five years). Thus, these consumers are effectively limited to purchasing electricity produced within their own country. As well as being completely at odds with the entire notion of the internal energy market, this situation is also limiting the uptake of RES across Europe. Introducing longer-term (≥ 5 years) capacity allocation products, with a requirement for the Single Allocation Platform to organize at least one relevant auction every five years, would enable consumers to sign long-term PPAs with RES units located in a different country. Enabling the signing of cross-border PPAs in this way would: (i) help energy-intensive consumers transition towards cleaner sources of energy (corporate RES sourcing), but also (ii) ensure that RES producers have the necessary degree of certainty/stability with regard to future revenues (through the signing of a long-term PPA), a factor that will become increasingly important as feed-in-tariffs and feed-in-premiums continue to be phased out (as discussed during the CEPS event a few months ago). In order to alleviate competition concerns (relating to the foreclosure of interconnector capacity), it might be necessary to introduce a maximum percentage (e.g. 20%) of an interconnector's capacity that could | MYTILINEOS SA |

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| | be offered for the five-year timeframe. This would ensure a suitable balance between: (i) preventing the foreclosure of interconnector capacity, and (ii) enabling producers and consumers to sign long-term, cross-border electricity supply contracts, and thereby allowing them to adequately hedge their future revenues/costs. | |
| 28 | If an auction does not suceed in allocating all the available capacity, a subsequent second auction should be initiated. The inititation of a second auction should be mandatory and apply to fallback shadow auctions as well. | TIWAG |
| 44 | The transfer of long term rights between participants should be facilitated to achieve more liquidity on the secondary market. The allocation platform could offer an automatized interface for transfer requests and should then handle the regulatory reporting obligations in an automatized way. The reporting obligations arise from the fact that only transmission rights that stem from the primary auction are excepted from the MiFID Rules. | TIWAG |
| 45 | We remain opposed to the reservation by TSOs (i.e. with a mechanism in which the TSOs would assess the value of the capacity) of cross-border capacity for balancing purpose. We consider that the appropriate way to reserve capacity for balancing capacity exchange is via a mechanism where the market determines the price of the capacity (ie for instance via an auction). We refer here to the answer to the relevant balancing consultation that we will submit. In that respect, the possibility to reserve PTRs for balancing services as introduced in Article 45.5 of EU HAR should be seen as a possible way to grasp effectively the economic benefits of exchanging reserves instead of energy through interconnectors, and to leave the possibility for Market Participants to make efficient trade-offs on the best way to use cross-border capacity for DA, ID or BAL. | Eurelectric / UFE |
| 48 | In view of the recent decoupling events, we would like to review the provisions for UIOSI rules in the HARs for non-nominated capacity. The compensation paid out as a result of the decoupling bore no resemblance to the explicit shadow auction revenues, nor to the exposures faced by market participants, and this therefore represents a large and unreasonable risk for TSOs to bear for non-nominated long term capacity. We would therefore like to propose that alternative arrangements are considered to better reflect the real risks faced by all parties from decoupling events, and especially those beyond TSO reasonable control. Those alternative arrangements might include UIOSI compensation based on the explicit shadow auction clearing price, which is arguably a better reflection of the value of the capacity than volatile market spreads driven by unreliable PX price generation. | NationalGrid / Nemo Link |
| 52 | We have major concerns with the proposed addition of point 'c' in Article 52.3. In a no-deal Brexit scenario, the FCA Regulation will not be applicable to the GB market. In that situation, we do not believe that JAO can unilaterally decide to cancel auctions and refund already allocated transmission rights. Instead, we consider that transmission rights should be managed in accordance with no-deal Access Rules approved by the relevant National Regulatory Authorities. Given that the FCA objectives include:<br>• Promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants<br>• Providing non-discriminatory access to long-term cross-zonal capacity…<br>• Ensuring fair and non-discriminatory treatment of TSOs, the Agency, Regulatory authorities and market | NationalGrid / ElecLink |

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| | participants, …<br>• Ensuring and enhancing the transparency and reliability of information …<br><br>We think that the proposed Article 52.3 'c' drafting contradicts the objectives of the FCA Regulation, as the uncertainty it creates may negatively impact market participants' view of the long-term cross-zonal hedging opportunities offered by GB interconnectors. In addition, it might also discriminate against GB interconnector TSOs, as it creates the possibility for congestion revenue to be lost without compensation. | |
| 52 | We have major concerns with the proposed addition of point 'c' in Article 52.3. In a no-deal Brexit scenario, the FCA Regulation will not be applicable to the GB market. In that situation, we do not believe that JAO can unilaterally decide to cancel auctions and refund already allocated transmission rights. Instead, we consider that transmission rights should be managed in accordance with no-deal Access Rules approved by the relevant National Regulatory Authorities. Given that the FCA objectives include:<br>• Promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants<br>• Providing non-discriminatory access to long-term cross-zonal capacity…<br>• Ensuring fair and non-discriminatory treatment of TSOs, the Agency, Regulatory authorities and market participants, …<br>• Ensuring and enhancing the transparency and reliability of information …<br><br>We think that the proposed Article 52.3 'c' drafting contradicts the objectives of the FCA Regulation, as the uncertainty it creates may negatively impact market participants' view of the long-term cross-zonal hedging opportunities offered by GB interconnectors. In addition, it might also discriminate against GB interconnector TSOs, as it creates the possibility for congestion revenue to be lost without compensation.<br><br>We currently have Access Rules approved for used in the event on a No-Deal Brexit (a"special event"), in which allocated capacity from long-term auctions could still be used for nomination and in daily explicit auctions. We therefore provide the following alternative wording:<br><br>New sub-article in Article 41 General Provisions [of Transfer of Long Term Transmission Rights]<br>3. Long Term Transmission Rights may be transferred to a substitute allocation platform not governed by these Harmonised Allocation Rules in accordance with Article 86.<br><br>New Wording in Article 52 Auction Cancellation<br>3. An Auction cancellation may be announced in the following cases: (a) before the end of the contestation period in case the Single Allocation Platform faces technical obstacles during the Auction process like a failure | BritNed |

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| | of standard processes and fallback procedures in the event of erroneous results due to incorrect Marginal Price calculation or in the event of incorrect allocation of Long Term Transmission Rights to Registered Participants or similar reasons; and (b) after the end of the contestation period, in the event of erroneous results due to incorrect Marginal Price calculation or incorrect allocation of Long Term Transmission Rights to Registered Participants or similar reasons; (c) after the end of the contestation period, in accordance with article 86(2)<br><br>New Article – Article 86 Cessation of participation of a Bidding Zone Border<br>1. In the event that a member state on one side of a Bidding Zone Border ceases to participate in the European Union Internal Energy Market the Long Term Transmission Rights on that Bidding Zone Border shall be transferred to the allocation platform governed by the substitute allocation rules approved by the relevant NRAs on that Bidding Zone Border. 2. In the event that a member state on one side of a Bidding Zone Border ceases to participate in the European Union Internal Energy Market and no substitute allocation rules are approved by the relevant NRAs on that Bidding Zone Border then an Auction cancellation may be announced.<br>In Addition, if auctions are cancelled, how would market participants be compensated for such cancellations? | |
| 52 | We have very significant legal and commercial concerns in relation to any proposal (such as that being proposed in the Consultation) to address the consequences of a No-deal Brexit on long-term transmission rights by way of amendments to the HAR. Any proposed amendments to the HAR must have regard to the fact that a No-deal Brexit is imminent at this stage, the entitlement of holders of long-term transmission rights to reimbursement based on the initial price paid for long-term transmission rights (where a bidding zone border no longer exists) and the current position described above. In reliance on this position and their legitimate expectation, both we and other stakeholders have prudently taken steps (including issuing communications to market participants (in conjunction with the Moyle Interconnector and JAO) to address the consequences of a No-deal Brexit on long-term transmission rights. Specifically, we object to the inclusion of Article 52.3 (c), which states that an auction may be cancelled "after the end of the contestation period, in the case a special event led to a bidding zone border not being part of the Internal Energy Market anymore". We request that the proposed Article 52 (c) is removed entirely. Any proposed amendment to the HAR to incorporate rules specifically applicable to "Bidding Zone" borders outside the European Union does not seem appropriate at this stage. Any such amendment shall give rise to material legal and commercial uncertainty with respect to the current legitimate expectations of Irish and UK market participants in the event of a No-deal Brexit at the last hour and has the potential to give rise to unnecessary, ambiguous and unhelpful signals to those market participants regarding the application of European Union regulation relating to long-term transmission rights to a "Bidding Zone border" outside the European Union following a No-deal Brexit. | EIDAC |
| 52 | We disagree with the addition of Article 52(3)(c) ("An Auction cancellation may be announced […] after the end of the contestation period, in the case a special event led to a bidding zone border not being part of the Internal Energy Market anymore"). This addition seems to be related to the handling of the Brexit effects, but is | Eurelectric / UFE |

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| | in our view not acceptable, since it would lead to an ex-post cancelling of already allocated rights, without any compensation for their owners. | |
| 56 | As stated at numerous occasions, we remind the TSOs that we have serious concerns regarding article 56.3 of EU HAR for the case of FTR options. Article 56.3 lays down the rules for curtailment of allocated rights, i.e. one of the elements of the firmness of long-term transmission rights, which is of course of utmost important for market participants. We do not agree with the possibility for TSOs to curtail allocated FTR options to ensure that operation remains within Operational Security Limits: since FTR options cannot be nominated, their allocation cannot have any impact on the state of the system, hence TSOs bear no physical risk. Therefore, we do not see any reason to apply a curtailment for system security reasons to FTR options. Only curtailments in case of Force Majeure should be applicable for FTR options. While FTRs curtailed to ensure that operation remains within Operational Security Limits shall be compensated to market participants at the market spread, this compensation is subject to a cap. Hence, article 56.3 creates a risk of curtailment and incomplete compensation for cases that are not justifiable in practice. We therefore request that TSOs take the responsibility to review this article, especially given the increasing number of borders that will use FTR options going forward. | EFET |
| 56 | Additionally, we consider that FTRs should not be curtailed for "Operational Security Limits". FTR Options can't be nominated (by definition). We therefore see no reason to apply a curtailment for system security reason. We acknowledge that curtailed FTRs for operational security limits are compensated at the day-ahead spread, but the compensation is subject to a cap. This therefore create a financial risk for market participants. Given the current willingness to increase the number of borders on which FTRs are applied, we recommend TSOs to review articles 56 and 57 accordingly. | Eurelectric / UFE |
| 56 | Furthermore, we think that FTR should not be curtailed for "Operational Security Limits". FTR options can't be nominated, consequently there is no reason to curtail for system security reason. Besides, setting a cap on compensations creates a financial risk for market participants. Since the number of borders on which FTRs are applied is expected to increase, we ask TSOs to review articles 56 and 57 accordingly. | Enel |
| 57 | We would like to remind concerns on the firmness regime, since no modification of the EU HAR has been proposed compared to previous version. We consider that the regime of firmness should not, in any border, derogate from the main body of HAR rules, and is therefore opposed to different firmness regime in border specific annexes. If caps were to be applied, they should be duly justified and periodically reviewed. This is a good example to illustrate the importance of phasing out the annexes as soon as possible to offer the same level of firmness across Europe (i.e. the application of a cap on the compensation for curtailment is to be considered as an exception and should be duly justified). Apart from the progressive evolution of EU HAR to align with FCA firmness regime, we would like to recall that one of the TSOs tasks should be to optimize the available capacity on forward timeframes. In this respect, TSOs should use curtailment as a last resort measure after having activated all other available remedial actions (such as re-dispatching and countertrading) and regulators | Eurelectric / UFE |

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| | should have a monitoring role in this respect. To ensure the monitoring of curtailment's events, we should ensure that "the factual reasons that lead to the curtailments" are published in due time and reported to the respective regulatory authorities, as imposed by Article 53(1) of FCA Regulation, to avoid any preventive curtailment and ensure that curtailment is really the last resort measure. We therefore recommend to explicitly | |
| 59 | We would like to raise that the formula for the CAP as described in article 59.3 should be updated as demonstrated below, calculating one installment for quarterly product. Indeed, quarterly product is made of 3 month and not 4. It should therefore be divided by 3 and not by 4.<br><br>((Yearly income)/12+(Seasonal income)/6+(Quarterly income)/( 3) + Any other long term income + Daily income + Intraday income) - (UIOSI+Resale+Compensation for curtailment for emergency situation +Compensation for curtailment for force majeure) < Compensation for curtailment for network security => CAP is reached | JAO |
| 59 | Lastly, under article 59(3) the cap on compensation included Day-Ahead and Intraday income. We believe that the inclusion of Day-Ahead and Intraday income in the calculation of the cap on compensation oversteps the scope of the HAR. The HAR is derived from the Regulation (EU) 2016/1719 establishing a guideline on Forward Capacity Allocation. Day-Ahead and Intraday income is not in the scope of this regulation, rather it is in the scope of the Regulation (EU) 2015/1222 establishing a guideline on Capacity Allocation and Congestion Management (CACM). The HAR is out of scope of CACM. We request that Day-Ahead and Intraday income be removed from the calculation for the cap for compensation. We fear that the inclusion would create a precedent that a methodology of FCA then also applies to the CACM scope. | BritNed |
| 59 | As for the other proposed HAR changes, we think there is a typo in the proposed formula in Art 59.3 for the compensation cap. The Quarterly income should be divided by 3 to get the monthly figure not by 4 as it currently shows. | NationalGrid / ElecLink |
| 59 | We welcome the clarification in article 59.2 and 59.3 that the calculation of possible compensation caps for curtailed transmission rights includes congestion income from all timeframes. | EFET |
| 59 | The new version of the HAR still allows TSOs to apply caps on curtailment compensations. For this reason it still does not provide an effective hedging tool to market participants. We request TSOs to review HAR rules to delete references to caps and, if not, to include a new paragraph stating that: (i) TSOs should provide a duly justification before the introduction of caps; (ii) every year the need for compensation caps should be re-evaluated and the rationale shared with market participants. If we take, for example, the case of the Spanish-Portuguese and Spanish-French bidding zone borders, in particular the South West Europe TSOs Proposal for a methodology for splitting long-term cross-zonal capacity (SWE splitting Proposal) which was under consultation until 30th April 2019, it is difficult to justify the need to introduce a cap on compensation curtailments. According to the SWE splitting proposal, TSOs will not allocate 100% of the cross-zonal capacity calculated year ahead in the long term timeframes; instead, TSOs will offer to the market an optimized share of | Enel |

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| | the cross-zonal capacity in each timeframe, which we consider a good balance approach:<br>• the percentage of long term offered capacity with respect to the calculated long term capacity average for Portuguese – Spanish biding zone border is set at 60%; 20% will be allocated in the annual timeframe, 20% in the quarterly and 20% in the monthly;<br>• the percentage of long term offered capacity with respect to the calculated long term capacity average for French – Spanish biding zone border is set at 66%; 33% will be allocated in the annual timeframe and 33% in the monthly. | |
| 74 | JAO should accept documents concerning the approval process e.g. commercial register excerpts at least in all offical languages of Luxemburg or in all offical languages of the EU. | TIWAG |
| 76 | Article 76 (Assignment and subcontracting) should be enhanced in the following way: In case that services of the allocation platform are sourced out or subcontracted, the subcontracted party should be bound to systematic checks & proofs of quality, and documentation such that the participants receive the same system quality as otherwise offered by the allocation platform on its own. For reasons of transparency the subcontracted parties should be published explicitely with their respective services. | TIWAG |