

Annex II

Evaluation of responses to the NRAs and TSOs consultation on the HAR Proposal

1 Introduction

Pursuant to Article 4(6)(d) and 51(1) of Commission Regulation (EU) 2016/1719¹ (the FCA Regulation), all concerned Transmission System Operators (TSOs) submitted a common proposal regarding the harmonised allocation rules on Long-term transmission rights (the HAR Proposal) to their respective national regulatory authorities (NRAs) for approval. The date on which the last NRA received the HAR Proposal was 21 April 2017.

The NRAs were unable to reach a unanimous decision on the HAR Proposal as stated in their letter of 17 August 2017 because they were not able to agree on the provisions of Article 21(1)(h) of the HAR Proposal concerning the required credit rating for banks issuing collaterals for market participants. Therefore, in accordance with Articles 4(10) of the FCA Regulation and Article 8(1) of Regulation (EC) No 713/2009², the Agency became responsible for adopting a decision concerning the HAR Proposal as of 17 August 2017. In order to take an informed decision on the HAR Proposal, the Agency invited, on 26 August 2017, the concerned TSOs and NRAs to express in writing their views on the elements of the HAR Proposal with regard to potential amendments. Those amendments concerned some of the amendments suggested by the regulatory authorities in the annex of their letter of 17 August 2017, an amendment regarding the definition of the reduction period, suggested by stakeholders during the public consultation held by ENTSO-E from 16 January until 17 February 2017, and other minor wording amendments to ensure consistency with the FCA Regulation. In addition, the Agency invited the concerned TSOs and NRAs to submit their comments on the issue of the required credit rating for banks and on the alternative possible option.

The deadline for comments was 8 September 2017.

¹ OJ L 259, 27.9.2016, p. 42.

² OJ L 211, 14.8.2009, p. 1.

2 Responses

By the end of the consultation period, the Agency received responses from 1 NRA and ENTSO-E.

The Agency would like to take this opportunity to thank the respondents for participating to the Agency's consultation.

This evaluation paper summarises all received comments and responds to them. The table below is organised according to the proposed amendments in the consultation and provides the respective views from the respondents.

Respondent's views	ACER views
<p>Article 2: <i>“Reduction Period means a period of time, i.e. specific calendar days and/or hours, within the Product Period in which Cross Zonal Capacities with a reduced amount of MW are offered taking into account a foreseen specific network situation (e.g. planned maintenance, long-term outages, foreseen balancing problems);”</i></p>	
<p>(ENTSO-E) TSOs support keeping the reference to foreseen balancing problems. When defining the products in advance TSOs have to take into account several factors, including the ones related to balancing problems (e.g. in case of high renewable production associated with low consumption period). By deleting foreseen balancing problems for this definition, the volume of cross-border capacities offered to the market on long term timeframe would risk to not be optimized. Thus, the wording in this definition should not be modified.</p>	<p>The Agency considers this type of network situation not relevant in the long-term timeframe, as there are other instruments that TSOs could use to address these problems in the shorter timeframes.</p>
<p>Article 21(1)(h): <i>“[...] If there are industry-wide downgrades of financial institutions, the Allocation Platform may investigate what the new standards are and, if deemed necessary, decrease the required rating for a limited period of time, informing TSOs, who shall then inform the relevant NRAs.”</i></p> <p>Alternative options: (i) to maintain the default required credit rating level BBB+ even though there is an industry-wide downgrade, or (ii) to delete all provisions of credit rating and leave the decision completely to TSOs.</p>	
<p>BNetzA does not agree with the possibility of a further downgrade ,arguing that The financial risks born by bank insolvencies shall not be socialised to energy end consumers.</p> <p>BNetzA demands to delete this modality or to leave the fixation of credit rating levels completely to TSOs.</p>	<p>The Agency considers that maintaining maintaining the default required credit rating level BBB+, even in the case of an industry-wide credit rate downgrading, could result, depending on the magnitude of the downgrading, in practically preventing market participants, in particular smaller ones, from accessing</p>

Respondent's views	ACER views
	<p>the LTTRs allocation process, which could therefore be in conflict with the objective of non-discriminatory access to long-term cross-zonal capacity pursuant to Article 3(c) of the FCA Regulation.</p> <p>Moreover, deleting all provisions on credit rating and leaving the decision to the TSOs could result in different credit rating requirements across Europe, which could also run counter the objective of non-discriminatory access to long-term cross-zonal capacity pursuant to Article 3(c) of the FCA Regulation.</p> <p>The current wording of Article 21(1)(h) of the HAR Proposal, as described in paragraph (40) above, provides the required flexibility to the allocation platform to react in an extreme case, enabling uninterrupted access of registered participants into the allocation platform, respecting the new rating conditions. In that respect, the HAR provides harmonised provisions on financial requirements, as required in Article 52(2)(h), and non-discriminatory access to long-term cross-zonal capacity, promoting the objectives of FCA Regulation.</p>
<p>(ENTSO-E) TSOs prefer keeping the option for decreasing the credit ratings. It should be highlighted that such decrease should occur only in extreme cases of industry-wide downgrades of financial institutions (e.g. results of an extensive crisis). In such cases, swift almost immediate reaction is essential and thus the provisions in the Article do not include lengthy decision making processes. Any delay in the decision-making or the lack thereof might significantly increase risk of</p>	<p>The Agency agrees.</p>

Respondent's views	ACER views
<p>higher negative financial consequence for the Allocation Platform, respectively TSOs. Since these costs typically pass through costs for TSOs, this means that these potentially higher costs would be borne by the end consumers.</p> <p>If a default credit rating in case of industry-wide downgrades is forced, this will possibly mean that very few market participants have the possibility of participating in the auctions, and thus the access to hedging positions for market participants will be limited, which is not an acceptable solution. In the event where it is up to the TSOs to define the ratings with different levels across the borders, the result can be an uneven playing field for the market participants, this will also lead to a lack of transparency. Moreover, there will possibly be stricter requirements for some market participants compared to others which is not acceptable, and lastly it will complicate the administration for JAO. It is important to note that it is a very rare occasion where a crisis in the financial markets has occurred. TSOs should be able limit any disruptions by having a clear and streamlined process, in line with what the original proposal represents. In conclusion, TSOs support keeping the initial wording where there is a possibility of reducing the requirements to the credit rating of the issuing bank for bank guarantees in the event of industry-wide downgrades. In such a case, the Allocation Platform shall consult on the reductions with the TSOs.</p>	

Respondent's views	ACER views
<p>Article 48(1)(a): <i>“in case of day-ahead Implicit Allocation, including in case of fallback allocation for Implicit Allocation, the price shall be the Market Spread at the concerned Bidding Zone border for the concerned hourly period only in case the price difference is positive in the direction of the Long Term Transmission Rights of the day-ahead Implicit Allocation in which that Cross Zonal Capacity was reallocated, and 0€/MWh, otherwise. If applicable this price may be adjusted, subject to the approval of the relevant NRAs, to reflect Allocation Constraints on interconnections between Bidding Zones as defined in Regulation (EU) 2015/1222, Article 23, paragraph 3(b), where these Allocation Constraints are included in the day-ahead Cross Zonal Capacity allocation process subject to the approval of the relevant NRAs.”</i></p>	
<p>(ENTSO-E) The proposed change in the place of the part “subject to the approval of the relevant NRAs” is acceptable. Nevertheless, TSOs propose not to make a reference only to point (b) of Article 23(3) of Regulation (EU) 2015/1222 but keep the initial wording that also covered point (a). It should also be noted that in the FCA Regulation there is no limitation to refer only to point (b).</p>	<p>The Agency agrees not to limit the reference to only point (b) of Article 23(3) of Regulation (EU) 2015/1222.</p> <p>Regarding the first amendment, the Agency deemed it necessary to refer to the annexes of the HAR, where this price adjustment is specified, instead of using the phrase “<i>subject to the approval of the relevant NRAs</i>”.</p>
<p>Article 59(1)(a): <i>“the Market Spread at the concerned Bidding Zone border for the concerned hourly period only in case the price difference is positive in the direction of the curtailed Long Term Transmission Rights, and 0€/MWh, otherwise. If applicable this price may be adjusted, subject to the approval of the relevant NRAs, to reflect Allocation Constraints on interconnections between Bidding Zones as defined in Article 23, paragraph 3(b) of Commission Regulation (EU) 2015/1222, where these Allocation Constraints are included in the day-ahead Cross Zonal Capacity allocation process. The direction of the curtailed Long-Term Transmission Right shall be determined by the destination and the origin Bidding Zones as defined in the Auction Specifications of the concerned Long Term Transmission Right; or”</i></p>	
<p>(ENTSO-E) TSOs propose not to make a reference only to point (b) of Article 23(3) but keep the initial wording that also covered point (a).</p>	<p>The Agency agrees (please also refer to the comment above).</p>

Respondent's views	ACER views
<p>Article 68: several wording amendments were proposed in order to align the amendment process with the one described in FCA Regulation.</p>	
<p>(ENTSO-E) TSOs agree with the proposed amendments.</p>	
<p>Article 76(3): <i>“Nothing in this Article shall prevent an Allocation Platform or Registered Participant from entering into a subcontracting agreement in relation to this Allocation Rules. Entry into a subcontracting agreement by a Registered Participant does not relieve the Registered Participant of any obligation or liability under its Participation Agreement or these Allocation Rules. Entry into a subcontracting agreement by the Allocation Platform does not relieve the Allocation Platform of any obligation or liability under these Allocation Rules.”</i></p>	
<p>(ENTSO-E) TSOs agree with the proposed addition.</p>	

