

ACER Decision on the TSOs' proposal for amendment of the harmonised allocation rules: Annex II

*For information only*

## **Evaluation of responses to the public consultation on the TSOs' proposal for amendment of the Harmonised Allocation Rules**

### **1 Introduction**

On 1 March 2023, all transmission system operators ('TSOs') submitted a proposal for amendment of the harmonised allocation rules ('HAR') in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation to ACER. On 1 August 2023, the TSOs completed their submission with a proposal to amend the HAR provisions on collaterals.

In order to take an informed decision and in accordance with Article 14(1) of Regulation (EU) 2019/942, ACER launched a public consultation on 29 August 2023 inviting all market participants to provide comments on the Proposal. The closing date for comments was 26 September 2023.

### **2 Responses**

By the end of the consultation period, ACER received comments from 13 respondents (listed in section 3).

This evaluation paper summarises all of the respondents' comments and how these were considered by ACER. The table below is organised according to the consultation questions and provides the respective views from the respondents, as well as a response from ACER clarifying how their comments were taken into account in the present Decision.

Respondents' views	ACER views
<b>Question 1: Do you consider Option 1, using the average value of the market spread an acceptable solution?</b>	
13 respondents provided an answer to this question.	
Strongly agree: 1 Agree: 0 Neutral: 4 Disagree: 3 Strongly disagree: 4 No opinion: 1	ACER considers that applying a cap on collaterals to reduce the collateral requirements in the CCRs where the flow-based capacity calculation approach is applied, would be an efficient solution which can be implemented before go-live of long-term flow-based allocation in the Core CCR. However, ACER considers that using the average value of the market spread will not provide the most accurate forecast of the auction price. While Option 1 could be an acceptable solution, there are other options which may be more appropriate.
<b>Question 2: In your opinion, what is the preferred method on how to address the described issue of collateral requirements, which could still be implemented by the deadline of November 2024?</b>	
<p>7 respondents suggest using the average observed forward spread during a certain period instead of using historical spot prices. Several respondents explain this by the fact that financial transmission rights (FTR) auctions concern forward maturities (and not day-ahead) and that it's important that the reference price used to compute the cap is in line with the maturities of the FTRs.</p> <p>3 respondents think that ACER's proposal for option 2 is superior to ENTSO-E, as it includes all prices (and not only positive price spreads).</p>	<p>ACER considers that using forward prices to calculate the price cap should on average be a more accurate predictor of the auction price than historical day-ahead market spread. However, one complexity with using forward prices to calculate the price cap is how to transform spread data from obligations (bi-directional) to a market spread per bidding-zone border direction (options).</p> <p>ACER considers that including all prices and not only the positive values of the market spread will provide a more accurate price cap, as including the positive values only would lead to a highly overestimated value in cases where there are several MTUs with a negative market spread.</p>

Respondents' views	ACER views
<p>1 respondent prefers what is currently proposed by ENTSO-E as the proposed method is the most fitting for the purpose of lowering collateral requirements, while maintaining a fair level of collateral requirements.</p> <p>3 respondents state that the implementation of long-term flow-based allocation (LT FBA) needs enough time until drawbacks are addressed and that it should not be introduced by the imposed deadline of November 2024. They consider that ACER should focus on implementing the most efficient, secure and fair method to address the issue of collateral requirements rather than opting for a second-best solution only to respect the deadline.</p> <p>1 respondent suggests computing collaterals based on the final auction price, to calculate the collateral amount within the allocation based on the final auction price.</p> <p>1 respondent has no specific position on the calculation of the collateral requirements, but insists that the collateral requirements should not lead to an entry barrier for participation to the market. It also expressed that the purpose should also not be to lower the collateral requirements too much, as there is a trade-off between their cost and the reason why collaterals exist.</p>	<p>ACER considers that the conditions for the application of the long-term flow-based capacity allocation stemming from Article 10(5) and Article 10(3) of the FCA Regulation are well explained and supported with experimentation results in ACER Decision 03/2023 on the Core LT CCM. As explained there, ACER's experimentation results for the Core capacity calculation region showed that the flow-based approach increases economic efficiency (i.e. economic surplus) with the same level of system security.</p> <p>ACER considers that computing collaterals based on the final auction price could be a method that can be further explored. However, it would be a complex method to implement and is not something that would be feasible to implement by November 2024.</p> <p>ACER considers that a method where the bid filtering is based on the market results would eliminate the inefficiency of inaccurate forecast which can occur with the cap option. However, this method would be much more complex and would not be available in time to meet the deadline of November 2024 when the LT FBA in Core is expected to be implemented.</p>

Respondents' views	ACER views
<p><b>Question 3: Do you have any comments on the TSOs' proposal for the cap calculation?</b></p>	
<p>6 respondents stated that the TSOs' proposal should not be implemented and that using forward market prices would be a better option than using day-ahead prices since using past day-ahead prices for the calculation of the collaterals does not reflect the reality of bidding in the forward market.</p> <p>2 respondents have no specific position on the collateral requirements, but clarify that collateral requirements should not lead to an entry barrier for participation in the market and that timescales are also important to consider.</p> <p>1 respondents says that the TSOs proposal is the only reasonable solution, which takes into account historical volatility and price dispersion.</p> <p>2 respondents say that the topic of collateral is posed too early as LT FBA first needs to be discussed.</p>	<p>See ACERs views to Question 2</p>

Respondents' views	ACER views
<b>Question 4: Do you consider Option 2 of using forward prices as an acceptable solution?</b>	
Strongly agree: 3 Agree: 2 Neutral: 6 Disagree: 0 Strongly disagree: 1 No opinion: 1	ACER considers that using forward prices to calculate the price cap should on average be a more accurate predictor of the auction price than historical day-ahead market spread. However, one complexity with using forward prices to calculate the price cap is how to transform spread data from obligations (bi-directional) to a market spread per bidding-zone border direction (options).
<b>Question 5: If you agree, please provide a detailed description on how you consider the calculation of the price cap using forward prices can be done in the best way possible (i.e. how should the described problems be addressed most efficiently)</b>	

Respondents' views	ACER views
<p>2 respondents think that option 3 should be further explored.</p> <p>2 respondents call for an efficient methodology.. Further they elaborate that an efficient methodology needs to align with the data available from different data providers and power exchanges and that a reliable data provider of forward prices could act as a partner in this respect.</p> <p>2 respondents state that they are against bid filtering as bid filtering would reduce the efficiency of the auction.</p> <p>1 respondent considers that forward prices should be used as a benchmark for the value of FTRs, not the historical spot price. The explanation is that one could use the historical forward quotations for the relevant delivery period during a historical period and that this could be used in the money directions. For the out-of-the-money directions, the question of price cap does not seem that relevant since the value in any way is not very high.</p> <p>1 respondent states that it should be set according to forward spreads observed as close to the auction as possible. The respondent explain that if regulators were to introduce the cap, willingly accepting that related risks and costs are transferred from market participants to the grid tariff payers. This means a yearly spread for the year-ahead auction and quarterly/monthly/weekly spread for quarter/month/week-ahead auction.</p>	<p>See ACER's views to Question 2</p> <p>ACER considers that TSOs should consult stakeholders on the choice of data provider.</p>
<p><b>Question 6: If you disagree, please clarify the reasons why you consider such solution not acceptable or not feasible</b></p>	

Respondents' views	ACER views
<p>6 respondents argue for why this solution is not feasible.</p> <p>One respondent argue that forward prices are only on BZ level and comparing two BZs will give a market spread, but they question how this can be converted to a cap in each direction and also which price shall be taken at which time. They also argue that the availability of data will make this process more complex and question what if there is more than one platform offering forward/futures in a given BZ and what if there are no noted forward/futures for a given BZ? The respondent also argues that there is a risk that forwards are underestimating the cross-border products.</p> <p>Another respondent explain that this solution should not be used as it requires the TSO to implement calculations of volatility of spreads between forward contracts. The market which trades these products have a hard time valuating the volatility of one forward contract. Requiring that the TSO should do this for spreads between forward contracts places an unreasonable burden on the TSOs. Since forward contracts do not exist in all EU BZs, this solution is even more questionable.</p> <p>One respondent is opposed to the notion of bid filtering and suggest performing an analysis to estimate the impact of such filtering on the auction results. They consider that any bid-filtering would reduce the efficiency of the auction.</p> <p>Two respondents insisted that ex ante filtering is not a proper solution and referred to their answer to question 7 and 8.</p>	<p>See ACERs views to Question 2</p>
<p><b>Question 7: Do you consider that Option 3 should be further explored as a long-term solution (i.e. after the go-live of the first LTFBA auctions)</b></p>	

Respondents' views	ACER views
<p>Strongly agree: 2                      Agree: 4                      Neutral: 3                      Disagree: 1                      Strongly disagree: 2                      No opinion: 1</p>	<p>ACER considers that a method where the bid filtering is based on the market results would eliminate the inefficiency of inaccurate forecast which can occur with the cap option. However, this method would be much more complex and would not be available on time to meet the deadline of November 2024 when the LT FBA in Core is expected to be implemented. ACER considers that keeping the deadline of November 2024 is important because the implementation of LT FBA in Core will provide higher economic efficiency.</p>
<p><b>Question 8: Do you have any other comments concerning Option 3?</b></p>	
<p>7 respondents state that this option should be evaluated further or needs more time. Their arguments for this are that every possibility which could decrease the collaterals should be investigated thoroughly and it should be explored more carefully and not necessarily until after the go-live, but fully investigated before going live for the LT FBA project. Additionally, the respondents argued that the go-live date is set by an ACER decision and not prescribed in a primary regulation. Thus, it is more crucial to prioritise finding the most appropriate approach for establishing Flow Based Allocation of LTTR, rather than focusing solely on meeting this deadline.</p> <p>2 respondents argue that bid filtering of low-price bids done ex-post and based on market results would not be acceptable as market results need to be firm. Their argumentation is that bids should be rejected during the bidding period and the system should notify the bidder of which bids have been rejected because of insufficient credit limits.</p>	<p>See ACERs views on Question 7</p>



Respondents' views	ACER views
<p>1 respondent disagrees that this should be regarded as a viable long-term solution post implementation.</p>	
<p><b>Question 9: Do you have any comments on the proposed timing for publishing the cap on collaterals?</b></p>	
<p>Several respondents state that market participants should be allowed sufficient time to alter their collateral before the auction.</p> <p>4 respondents state that the cap should be published 3 working days before the auction and 4 respondents say that it should be published at least 5 working days before the auction.</p> <p>1 respondent states that it is proposed to publish the cap on collaterals in the final auction specification because information regarding return submission have to be included in the provisional auction specification, which has to be sent earlier for FB than for the ATC based borders.</p>	<p>ACER agrees that market participants should be given sufficient time to alter their collateral before the auction. With the implementation of a price cap that uses forward prices, there is however a trade-off with using a forward price settled as close to the auction as possible to have an accurate price cap and providing market participants sufficient time to alter their collaterals. ACER considers that market participants should be able to alter their collateral during the bidding period.</p>
<p><b>Question 10: Do you have any comments on strengthening the sanctioning as proposed by ACER?</b></p>	

Respondents' views	ACER views
<p>2 respondents state that a distinction should be made between obviously accidental and deliberate errors such as profit-oriented or market manipulation defaults.</p> <p>1 respondent is concerned that the sanctioning regime currently proposed might not be strict enough to avoid market manipulation. The market participants considers that it is reasonable to exclude firms from auctions, but it remains highly problematic that the respective market participant may be relieved from the payment obligation.</p> <p>1 respondent supports ACER's proposal to enforce sanctioning in case of non-payment as it should be a fundamental premise of any business conduct to pay for what you buy.</p> <p>4 respondents mentioned that in case of non-payment other market participants should not be impacted.</p> <p>1 respondent prefers the previous proposal from all TSOs as the proposal from ACER is excessively stringent and may be detrimental to the market.</p> <p>1 respondent considers that ACER's proposal does not lead to a strengthening of the regime and 1 respondent says that this solution does not cover the risk against market participants only participating in the auctions until they are not profitable.</p>	<p>ACER agrees that that no other market participants should be impacted in case of non-payment and will not propose any amendments to the HAR which would lead to other market participants being impacted in case of non-payment by another market participants.</p> <p>ACER considers that a strengthening of the sanctioning regime could reduce the risk of non-payment among market participants, but recognises that an existing sanctioning regime is already in place and that this might be sufficient without including a strengthening of the sanctioning. ACER has therefore not included any strengthening of the sanctioning regime and kept the provisions on the suspension of market participant.</p>
<p><b>Question 11: Do you support the proposal for providing the flow-based parameters in the final auction specifications?</b></p>	

Respondents' views	ACER views
<p>Yes: 6                      No: 2                      No opinion: 5</p>	
<p><b>Question 12: Do you have any other comments concerning the proposal on the offered capacity with flow-based?</b></p>	
<p>7 respondents support the proposal from ACER with providing the flow-based parameters. 6 respondents consider that the full list of CNEC parameters should be published, in addition to the CNEC ID.</p> <p>1 respondent thinks that TSOs should not spend more resources on data sharing and TSOs already publish this data on ENTSO-E's transparency platform in accordance with Article 10 of the FCA Regulation. The respondent is also not convinced that this data provides much value to market participants.</p> <p>3 respondents mention that market participants will need the Publication Handbook, currently available in the Core day-ahead timeframe, since access to information regarding allocated volumes, prices, and bidding constraints following the auction settlement is essential.</p> <p>1 respondent is not <i>a priori</i> against ACER's view on what should be the final offered capacity in case of flow-based, but is concerned about the size of the final auction specification file and that publication</p>	<p>ACER considers that publishing the full set of flow-based parameters would provide market participants with full transparency of network constraints and enable them to perform their own analyses of the long-term flow-based allocation. ACER does not intend to require ENTSO-E to publish duplications of data but intends to ensure that the TSOs are required to provide all data that can provide market participants with full transparency, either at JAO, or at ENTSO-E transparency platform.</p> <p>ACER considers that providing final offered capacities for the flow-based allocation, as provided in the Article 29(3)(d) of the HAR at a single place</p>

Respondents' views	ACER views
<p>requirements will be unnecessarily doubled in case when TSOs are unable to make only reference to already published data. The respondent clarifies that TSOs can make in the Auction Specification file a reference to data items that the Core CCC shall publish after each LTCC, on a dedicated online communication platform representing all Core TSOs, which would be in line with ACER's view of what the final offered capacity in case of flow-based should consist of.</p> <p>1 respondent is worried about the size of the final auction specification file and that publication requirements will be unnecessarily doubled in case when TSOs are unable to make only reference to already published data.</p> <p>1 respondent doesn't see why physical grid information is needed as this is a hedging product between BZs.</p> <p>1 respondent seeks clarity on whether the LTA patch would be maintained for day-ahead flow-based coupling.</p>	<p>(SAP) should not be too burdensome, having in mind that it takes place 13 times a year (1 yearly and 12 monthly auctions), and also having in mind the experience of the similar publication exercise with much higher granularity and shorter time, i.e. of the flow-based data at the JAO publication tool for Core day-ahead flow-based allocation, which take place each day for 24 hours.</p>
<p><b>Question 13: Do you have any comments on other amendments proposed by the TSOs?</b></p>	

Respondents' views	ACER views
<p>10 respondents express concerns on the implementation of the establishment of long-term flow-based allocation. Their argument is, among other, that the added value has not been sufficiently demonstrated and is hence not compliant with Article 10 of the FCA Regulation and that the flow-based approach is not suitable for allocating LTTRs as it fails to offer adequate and efficient hedging opportunities to market participants. Additionally, several respondents are concerned about recent simulations performed by the TSOs which show that some bidding zones will have very low or even zero capacity volumes allocated at their borders.</p> <p>4 respondents stated that the November 2024 deadline for flow-based implementation is not mandated by the FCA Regulation and consider that the FBA project should not go-live until its drawbacks are effectively addressed.</p> <p>6 respondents are strongly opposed to the idea that the remuneration of LTTRs could be altered in case of decoupling as, in their view, it goes against the key principle that LTTR is a hedging product for market participants, who would then bear a risk that they would have no means to mitigate.</p>	<p>See ACERs views on question 2 and question 7.</p> <p>ACER considers that remuneration of LTTRs in case of decoupling is not in lie with the existing legal framework for LTTRs' remuneration pursuant to the FCA Regulation.</p>

### 3 List of respondents

Organisation	Type
Oesterreichs Energie - Association of Austrian Electricity Companies	Association
IFIIEC Europe	Association

Organisation	Type
ENTSO-E	European Network of Transmission System Operators
EDF Trading	Association
European Federation of Energy Traders (EFET)	Association
Danish Energy Agency	Energy agency
Energinet	TSO
Europex	Association
CEZ	Energy company
Eurelectric	Association
UFE	Association
Shell	Energy company