

**DECISION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 06/2017**

of 13 December 2017

**ON THE PROPOSAL OF THE ELECTRICITY TRANSMISSION SYSTEM
OPERATORS OF THE SOUTH-EAST EUROPE CAPACITY CALCULATION
REGION FOR THE REGIONAL SPECIFIC ANNEX FOR THE SOUTH-EAST
EUROPE CAPACITY CALCULATION REGION TO THE HARMONISED
ALLOCATION RULES FOR LONG-TERM TRANSMISSION RIGHTS**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to the Treaty on the Functioning of the European Union,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 8(1) thereof,

HAVING REGARD to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation², and, in particular, Article 4(10) thereof,

HAVING REGARD to the outcome of the consultation with the concerned national regulatory authorities and transmission system operators,

HAVING REGARD to the favourable opinion of the Board of Regulators of 12 December 2017, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation ('FCA Regulation') laid down detailed rules on cross-zonal capacity allocation in the forward markets, i.e. the markets for the allocation of cross-zonal capacity for the long-term. These rules include specific requirements for the development of harmonised allocation rules.

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 259, 27.9.2016, p. 42.

- (2) Under Articles 4(1), (6)(d) and 51(1) of the FCA Regulation, transmission system operators ('TSOs') are required jointly to develop a proposal for harmonised allocation rules ('HAR') for long-term transmission rights (LTTRs) and submit it to the competent regulatory authorities for approval. Moreover, pursuant to Article 51(1) of the FCA Regulation, this proposal shall include regional and bidding zone border specific requirements if developed by the TSOs of each capacity calculation region pursuant to Article 52(3) of the FCA Regulation, which shall be submitted to the regulatory authorities of the concerned region for their approval according to Article 4(7)(e) of that Regulation. Then, according to Article 4(9) of the FCA Regulation, the regulatory authorities receiving the proposal on the regional specific annex to the HAR for LTTRs shall reach an agreement and take a decision on that proposal, in principle, within six months after the receipt of the proposal by the last regulatory authority. According to Article 4(10) of the FCA Regulation, if the regulatory authorities fail to reach an agreement within the six-month period, or upon their joint request, the Agency is called upon to adopt a decision concerning the TSOs' proposal.
- (3) The present Decision of the Agency follows from the request of the regulatory authorities of the capacity calculation region ('CCR') for South-east Europe ('SEE') that the Agency adopts a decision on the proposal for a regional specific annex to the HAR for LTTRs in the SEE CCR, which the TSOs of the SEE CCR had submitted to the regulatory authorities for approval and on which the regulatory authorities were not able to agree. Annex I to this Decision sets out the regional specific annex for the SEE CCR to the HAR for LTTRs, pursuant to Articles 51(1) and 52(3) of the FCA Regulation, as decided by the Agency.

2. PROCEDURE

2.1 Proceedings before regulatory authorities

- (4) On 16 January 2017, the European Network of Transmission System Operators for Electricity ('ENTSO-E') and the TSOs responsible under Article 51(1) of the FCA Regulation published an 'All TSOs' proposal for 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', together with the regional and bidding zone border specific requirements, for public consultation³. The consultation lasted from 16 January until 17 February 2017. In the context of this consultation, also a specific annex for one of the bidding zone borders in the SEE CCR, i.e. for the border Bulgaria-Greece, was consulted. The specific annex for the other bidding zone border in the SEE CCR, i.e. the border Bulgaria-Romania, was addressed through a separate public consultation, from 27 January until 3 March 2017⁴.
- (5) On 21 April 2017, all concerned TSOs submitted to their respective regulatory authority an 'All TSOs' proposal for harmonised allocation rules for long-term transmission rights in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September

³ <https://consultations.entsoe.eu/markets/fca-har/>

⁴ <https://consultations.entsoe.eu/markets/har-annex14/>

2016 establishing a Guideline on Forward Capacity Allocation' ('HAR Proposal'), with the relevant regional or border specific annexes. On 19 April 2017, all TSOs of the SEE CCR submitted to their respective regulatory authority, together with the HAR Proposal, a proposal for the 'Regional Specific Annex for CCR SEE to the Harmonised Allocation Rules for long-term transmission rights in accordance with Article 52 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation' ('SEE HAR Annex Proposal').

2.2 Proceedings before the Agency

- (6) On 2 October 2017 the Agency, with its Decision No 03/2017, approved, subject to some amendments, the HAR Proposal ('approved HAR Proposal'), pursuant to Articles 4(6)(d) and 4(10) of the FCA Regulation.
- (7) In a letter dated 27 October 2017 and received by the Agency on the same date, the President of the Greek regulatory authority, on behalf of all regulatory authorities of the SEE CCR, informed the Agency that all regulatory authorities of the SEE CCR agreed to request the Agency to adopt a decision, pursuant to Article 4(10) of the FCA Regulation, on the SEE HAR Annex Proposal, because they were not able to reach an agreement on this proposal. According to the letter, the proposal could not ensure the application of the HAR, as not all TSOs of the SEE CCR have been able to join an auction office for the conduct of the respective auctions. In their letter, the regulatory authorities of the SEE CCR suggested, for the year 2018, to allocate LTTRs with Capacity Allocation Rules ('CAR') that are to be approved bilaterally by the two regulatory authorities on each bidding zone border of the SEE CCR.
- (8) The letter of 27 October 2017 does not indicate that the regulatory authorities requested the TSOs to amend the SEE HAR Annex Proposal. In fact, there was no such request.
- (9) By email of 7 November 2017, the Agency asked the SEE CCR TSOs to provide further clarifications on the CAR and to provide a list of deviations between these transitory allocation rules and the HAR. The TSOs have provided the required clarifications by email on 13 November 2017.
- (10) By email of 29 November 2017, the Agency consulted the concerned TSOs and regulatory authorities with regard to potential amendments of the SEE HAR Annex Proposal, inviting them to submit their comments by 30 November 2017. Those amendments concerned the proposed timescale for the implementation of the HAR in the SEE CCR, and minor wording amendments. There were no comments on the proposed amendments by the concerned TSOs and regulatory authorities.

3. THE AGENCY'S COMPETENCE TO DECIDE ON THE SEE HAR ANNEX PROPOSAL

- (11) Pursuant to Article 4(10) of the FCA Regulation, where the regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies within six months following the receipt of the proposal for such terms and conditions or methodologies by the last regulatory authority concerned, or upon the regulatory authorities' joint request, the Agency shall adopt a decision concerning the submitted proposal within six months and in line with Article 8(1) of Regulation (EC) No 713/2009.
- (12) As the SEE HAR Annex Proposal was submitted to the last regulatory authority on 19 April 2017, the regulatory authorities, according to Article 4(9) of the FCA Regulation, had to reach an agreement on this Proposal within six months, i.e. by 19 October 2017.
- (13) According to the letter of the President of the Greek regulatory authority of 27 October 2017, the regulatory authorities of the SEE CCR agreed to request the Agency to adopt a decision on the SEE HAR Annex Proposal, pursuant to Article 4(10) of the FCA Regulation, because the regulatory authorities were not able to reach an agreement on the SEE HAR Annex Proposal within the six-month time period.
- (14) It follows from this letter that the concerned regulatory authorities jointly requested the Agency to take a decision on the SEE HAR Annex Proposal and that they could not reach an agreement on that Proposal.
- (15) Therefore, under the provisions of Article 4(10) of the FCA Regulation, the Agency became responsible to adopt a decision concerning the submitted SEE HAR Annex Proposal due to the inability of the regulatory authorities of the SEE CCR to reach an agreement on that Proposal by 19 October 2017.

4. SUMMARY OF THE SEE HAR ANNEX PROPOSAL

- (16) The SEE HAR Annex Proposal, which constitutes an Annex to the HAR Proposal (see Article 51 of the FCA Regulation and paragraph (3) of the SEE HAR Annex Proposal), includes the following elements:
 - a) general provisions in Title 1, including on the entry into force, interpretations and the language;
 - b) provisions on the cap on the total compensation to be paid to all holders of curtailed LTTRs in Title 2; and
 - c) further regional or bidding zone border specific requirements in Title 3, including on the types of LTTRs applied to the SEE CCR, and border specificities regarding the

Allocation Platform, the day-ahead firmness deadline and the effective date for application of allocation rules.

5. ASSESSMENT OF THE SEE HAR ANNEX PROPOSAL

5.1 Legal framework

- (17) Articles 51 and 52 of the FCA Regulation set out specific requirements for the common proposal for the HAR for LTTRs.
- (18) According to Article 51(1), the common proposal for the regional and bidding zone border specific requirements shall be included in the HAR Proposal, which shall be subject to consultation in accordance with Article 6 of the FCA Regulation, and, if developed by the TSOs of each capacity calculation region, be pursuant to Article 52(3).
- (19) According to Article 52(3), the common proposal for the regional and bidding zone border specific requirements on HAR may contain requirements in particular for, but without limitation to, the areas set out in subparagraphs (a) to (d) of the same paragraph.
- (20) According to Article 51(2) of the FCA Regulation, once the regional requirements enter into force, they shall prevail over the general requirements defined in the HAR.
- (21) As a general requirement, Article 4(8) of the FCA Regulation demands that every proposal for terms and conditions or methodologies includes a proposed timescale for their implementation and a description of their expected impact on the objectives of the FCA Regulation.

5.2 Assessment of the SEE HAR Annex Proposal with regard to the requirements of the FCA Regulation on allocation rules

- (22) The list of the areas which may be included in the SEE HAR Annex Proposal according to Article 52(3) of the FCA Regulation is not exhaustive.
- (23) Therefore, the SEE HAR Annex Proposal can indeed also cover other HAR requirements than those listed in Article 52(3) of the FCA Regulation.
- (24) In the Agency's view, regional and border specific HAR requirements included in the SEE HAR Annex should be in compliance with the requirements set in the FCA Regulation on allocation rules.
- (25) As regards the substance of allocation rules, the SEE HAR Annex includes specific requirements in its Articles 4 to 7.

- (26) Articles 4 to 6 of the SEE HAR Annex Proposal provide for a cap on compensation for the Romania-Bulgaria and Bulgaria-Greece bidding zone borders.
- (27) Article 52(3)(d) of the FCA Regulation allows the introduction of regional specificities for the regional compensation rules defining regional firmness regimes pursuant to Article 55 of FCA Regulation. Article 55 of the FCA Regulation refers to Article 54 of the FCA Regulation providing the possibility to TSOs to propose a cap on the total compensation to be paid to all holders of curtailed LTTRs.
- (28) Therefore, the Agency deems Articles 4 to 6 of the SEE HAR Annex Proposal in line with the allocation rules requirements of the FCA Regulation.
- (29) Article 7 of the SEE HAR Annex Proposal refers to the types of LTTRs applied in the SEE CCR, as described in the SEE Proposal for the design of LTTRs in accordance with Article 31 of FCA Regulation.
- (30) Article 52(3)(a) of the FCA Regulation allows the introduction of regional specificities for the description of the type of LTTRs which are offered on each bidding zone border within the CCR pursuant to Article 31 of that Regulation. It follows from this Article 31 that it is not yet the proposal of the TSOs but rather the decision of the regulatory authorities (or if applicable of the Agency) on that proposal which establishes the applicable design of LTTRs. To ensure that this fact is properly reflected and to provide legal certainty, the Agency deems necessary to adjust the reference to the proposed design of LTTRs in Article 7 of the SEE HAR Annex Proposal by referring to the design that will be approved in accordance with Article 31 of the FCA Regulation: *“The types of Long Term Transmission Rights applied in CCR SEE are those which have been established for the CCR SEE in accordance with Article 31 of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation.”*
- (31) Subject to this necessary clarification, the Agency deems Article 7 of the SEE HAR Annex Proposal in line with the allocation rules requirements of the FCA Regulation.

5.3. Public consultation

- (32) The draft HAR Proposal, together with most of the regional and bidding zone border specific annexes, including the annex for the Bulgaria-Greece bidding zone border, was consulted with stakeholders from 16 January to 17 February 2017. The border specific annex for the Bulgaria-Romania bidding zone border was consulted upon separately from 27 January until 3 March 2017.
- (33) Therefore, the SEE HAR Annex Proposal has been subject to a public consultation in accordance with Article 6 of the FCA Regulation and complies with Article 51(1) of the FCA Regulation.

5.4 Proposed timescale for the implementation

- (34) The SEE HAR Annex Proposal provides for a differentiated implementation timescale of the HAR (and therefore of the SEE Regional Annex) for each bidding zone border. Indeed, while, according to Article 1(2) of the SEE Regional Annex Proposal, the HAR are deemed to enter into force as from 1 January 2018 for the Bulgaria-Greece bidding zone border, its Article 8(2) foresees that, for the Bulgaria-Romania bidding zone border, the HAR shall enter into force in accordance with the applicable national regulatory regime starting with the date when the Single Allocation Platform will become operational.
- (35) In their letter of 27 October 2017, the SEE CCR NRAs informed the Agency that the SEE HAR Annex Proposal could eventually not ensure the application of the HAR as from 1 January 2018 onwards on the Bulgaria-Greece bidding zone border, as the Bulgarian TSO had not been able to join the Joint Allocation Office ('JAO') on time for the conduct of the respective auctions within the HAR framework. The SEE CCR TSOs therefore requested the postponement by one year of the implementation of the HAR and of the SEE HAR Regional Annex for all the SEE bidding zone borders.
- (36) The Agency deeply regrets the absence of any cost-benefit analysis to support the SEE CCR TSOs' request to postpone by one year the implementation of both the HAR and the SEE HAR Regional Annex in the SEE CCR. In particular, the Agency considers that not being able to join JAO was not necessarily a sufficient reason for not applying the HAR and the SEE HAR Regional Annex and that the concerned TSOs could have developed their local allocation platforms to align as much as possible the regional allocation rules with the HAR and therefore minimise the negative impact of non-aligned rules on the internal electricity market. However, considering the nature of the transitory arrangements that will apply on the SEE CCR bidding zone borders in 2018, the Agency is of the view that the one-year postponement of the implementation of the HAR and the SEE HAR Regional Annex will not create significant prejudice to the functioning of the electricity market in the region.
- (37) Therefore, despite the caveats mentioned above, the Agency considers it appropriate to make the implementation of the HAR and the SEE HAR Regional Annex in the SEE CCR subject to the applicability of the Allocation Platform on the Romanian-Bulgarian and Bulgarian-Greek borders. Consequently, the Agency deems it necessary to delete Articles 8 and 9 of the SEE HAR Annex Proposal and to introduce a new Article 8 "Implementation timescale of HAR in SEE CCR", which will replace Article 5 of the HAR as follows:

"1. These Allocation Rules shall enter into force in accordance with the applicable national regulatory regimes and on the date announced by the Allocation Platform specifically for the borders Romania-Bulgaria and Bulgaria-Greece.

2. These Allocation Rules apply to Capacity Allocation for Long Term Transmission Rights with the delivery period from 1st January 2019, or earlier in accordance with paragraph 1, onwards.

3. Unless expressly stated otherwise by the regional or border specific annex(es) or otherwise required by the applicable governing law, these Allocation Rules shall govern all rights and obligations in connection with Long Term Transmission Rights acquired before the entry into force of these Allocation Rules but with the delivery period referred to.”

- (38) The deletion of Article 8(3) and Article 9 on a proposed differentiated Day Ahead Firmness Deadline ('DAFD') is deemed necessary since the new timescale for implementation sets the entry into force of the Allocation Rules after the determination of the DAFD in accordance with the process described in Article 69 of Commission Regulation (EU) 2015/1222. Therefore a differentiated definition for DAFD is not possible.

5.5 Expected impact on the objectives of the FCA Regulation.

- (39) The SEE HAR Annex Proposal does not present a specific description of its expected impact on the objectives of the FCA Regulation.
- (40) However, the HAR Proposal, to which SEE HAR Annex Proposal constitutes an annex, describes the expected impact of the HAR on the objectives listed in Article 3 of the FCA Regulation. In the Agency's view, this description of the HAR Proposal applies also to the SEE HAR Annex Proposal
- (41) Therefore, the SEE HAR Annex Proposal is deemed to comply with the requirement of the impact description in Article 4(8) of the FCA Regulation.
- (42) As regards the substance of the described impact, the Agency agrees with the description in the HAR Proposal.

5.6 Transitory regime until the HAR and the SEE HAR Regional Annex apply

- (43) Responding to the Agency's request, as mentioned in Recital (9), the SEE CCR TSOs sent further clarifications regarding the transitory CAR they intend to implement for the forward capacity allocation of 2018.
- (44) Given the tight timeline until the yearly capacity allocation for 2018, the Agency was not able fully to assess the transitory CAR, with respect to their compliance with the FCA Regulation, and considers the respective regulatory authorities responsible for the approval of the transitory CAR. However, the Agency expects that the deviations from the HAR of the allocation rules implemented for 2018 will only relate to platform-related provisions, associated with the fact that the TSOs were able neither to join JAO on time, nor to make the appropriate modifications on their platforms. Moreover, the Agency encourages the region to avoid any deviations from the FCA Regulation, especially on provisions regarding the return and transfer of LTTRs.

5.7 Other amendments

- (45) In addition to the amendments introduced in Recitals (37) and (37), the Agency introduced minor corrections in references to the FCA Regulation and editorial amendments (mainly in the 'Whereas' section).

5.8 Conclusion

- (46) The Agency considers the SEE HAR Annex Proposal in line with the requirements of the FCA Regulation and Regulation (EC) No 714/2009. However, in order to reflect the actual implementation timescale and to ensure overall coherence with the regulatory framework, the amendments described in Recitals (36), (45) and (45) above are integrated into the Proposal.
- (47) Therefore, the Agency approves the SEE HAR Annex Proposal subject to the necessary amendments of Articles 7, 8 and 9 and to necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the SEE HAR Annex Proposal as approved, including the above amendments,

HAS ADOPTED THIS DECISION:

Article 1

The regional specific annex for the Capacity Calculation Region South-east Europe to the Harmonised Allocation Rules for long-term transmission rights pursuant to Articles 51 and 52(3) of Regulation (EU) 2016/1719 shall be adopted as set out in Annex I of this Decision.

Article 2

This Decision is addressed to Electroenergien Sistemen Operator EAD, Independent Power Transmission Operator S.A., Compania Nationala de Transport al Energiei Electrice "TRANSELECTRICA" S.A..

Done at Ljubljana on 13 December 2017.

For the Agency:


Alberto Pototschnig
Director

Annexes:

Annex I – Regional specific annex for the Capacity Calculation Region South-east Europe to the Harmonised Allocation Rules for long-term transmission rights in accordance with Articles 51 and 52(3) of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation

Annex Ia - Regional specific annex for the Capacity Calculation Region South-east Europe to the Harmonised Allocation Rules for long-term transmission rights in accordance with Articles 51 and 52(31) of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation in track change mode compared to the Proposal for a Regional specific annex for the CCR SEE to the HAR (for information only)