

Public consultation on the ENTSO-E proposals for technical specifications for cross-border participation in capacity mechanisms

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Public Consultation

ENTSO-E proposals for technical specifications for cross-border participation in capacity mechanisms

This consultation is addressed to all interested stakeholders.

Stakeholders are invited to fill out this online survey by **9 August 2020, 23:59 hrs (CEST)**.

For questions, please contact ACER at: ACER-ELE-2020-014@acer.europa.eu

Consultation objective and background

This consultation aims to gather stakeholder views on the proposed technical specifications for cross-border participation in capacity mechanisms.

On 3 July 2020, the European Network of Transmission System Operators for Electricity (ENTSO-E) submitted to ACER their proposals for technical specifications for cross-border participation in capacity mechanisms pursuant to Article 26(11) of Regulation (EU) 2019/943, and consisting of:

- a methodology for calculating the maximum entry capacity for cross-border participation;
- a methodology for sharing the revenues;
- common rules for the carrying out of availability checks;
- common rules for determining when a non-availability payment is due;
- terms of operation of the ENTSO-E registry; and
- common rules for identifying capacity eligible to participate in the capacity mechanism.

According to Article 26(11), ACER shall approve these proposals based on the procedure set out in Article 27 of Regulation (EU) 2019/943, amending them where required. In order to inform its assessment and if required, identify areas for amendment, ACER invites all interested third parties to submit their views on the proposals by responding to this online survey during a consultation period of 4 weeks.

Following this consultation, ACER will consider stakeholder feedback and expects to take a decision on the proposals, including potential amendments, within the next three months as required by Article 27 of Regulation (EU) 2019/943, i.e. by 5 October 2020.

Related documents

- ENTSO-E, Cross-border participation in capacity mechanisms: Proposed methodologies, common rules and terms of operation in accordance with Article 26 of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), version of 3 July 2020

(https://www.acer.europa.eu/Official_documents/Public_consultations/PC_2020_E_12/200703%20Single%20document%20for%20XB%20CM%20methodologies.pdf)

- ENTSO-E proposed methodologies, common rules and terms of reference related to cross-border participation in capacity mechanisms: Explanatory document, version of 3 July 2020 (https://www.acer.europa.eu/Official_documents/Public_consultations/PC_2020_E_12/200703%20Explanatory%20document%20for%20XB%20CM%20methodologies.pdf)
- ENTSO-E, Public consultation on draft methodologies and common rules for cross-border participation in capacity mechanisms: Response to public consultation comments received during the consultation held from 31 January to 13 March 2020, version of 3 July 2020 (https://www.acer.europa.eu/Official_documents/Public_consultations/PC_2020_E_12/200703%20Response%20to%20public%20consultation%20on%20XB%20CM%20methodologies.pdf)
- Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32019R0942>)
- Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0943>)
- ACER Guidance Note on Consultations (https://www.acer.europa.eu/Official_documents/Other%20documents/Guidance%20Note%20on%20Consultations%20by%20ACER.pdf)
- ACER Rules of Procedure (AB Decision No 19/2019) (https://www.acer.europa.eu/en/The_agency/Organisation/Administrative_Board/Administrative%20Board%20Decision/Decision%20No%2019%20-%202019%20-%20Rules%20of%20Procedure%20of%20the%20Agency.pdf)

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Privacy and confidentiality

ACER will publish all non-confidential responses, including the names of the respondents, unless they should be considered as confidential, and it will process personal data of the respondents in accordance with Regulation (EU) 2018/1725 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725>) of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, taking into account that this processing is necessary for performing ACER's consultation task. For more details on how the contributions and the personal data of the respondents will be dealt with, please see ACER's Guidance Note on Consultations (https://www.acer.europa.eu/Official_documents/Other%20documents/Guidance%20Note%20on%20Consultations%20by%20ACER.pdf) and the specific privacy statement attached to this consultation.

Article 7(4) of ACER's Rules of Procedure (RoP) (<https://s-intranet/Drive/Departments/Electricity/ED%20Deliverables/Decision%20No%2019%20-%202019%20-%20Rules%20of%20Procedure%20of%20the%20Agency.pdf#search=rules%20of%20procedures>) requires that a party participating in an ACER public consultation explicitly indicates whether its submission contains confidential information.

***Is your submission to this consultation confidential?**

- YES
 NO

Consultation questions

ACER seeks the opinion of stakeholders with respect to the following elements of the ENTSO-E proposal.

Methodology for calculating the maximum entry capacity

1. Do you agree with the proposed methodology for calculating the maximum entry capacity for cross-border participation? If not, please explain which elements of the methodology should be changed or otherwise improved.

We understand that the proposed methodology is based on Art. 26(7) of EU Regulation 2019/ 943. However, we are concerned that the maximum entry capacity is calculated not only on the basis of the expected availability of interconnection, but also on the likely concurrence of system stress in the system where the mechanism is applied and the system in which the foreign capacity is located. In our view, TSOs should concentrate on interconnection availability. It should be for the market to decide whether it can make capacity available also in periods of system stress. This is possible as capacity providers have to make non-availability payments where their capacity is not available. Apart from this more fundamental concern we would like to make the following comments, based on the assumption that the entry capacity will also be based on the likely concurrence of system stress.

The method for calculation entry capacity should not include double re-rating, i.e that availability of the interconnector is calculated twice, both in calculating foreign capacity and interconnector availability.

The proposed methodology is rather complicated and will probably not be very transparent way. In order to fully take into account both Electricity Regulation provisions as well as the purpose of capacity mechanisms and the technical limitations we propose to simplify the approach. The maximum entry capacity should be determined by multiplying the physical capacity with the outage rates to reflect the "expected availability of interconnection" and with (1-the probability of simultaneous scarcity) to reflect the "likely concurrence of system stress". The likely concurrence of system stress could be calculated using ERAA, as suggested. This approach would have the advantage of being simple and transparent. Such a simplified approach should in any case be used for HVDC interconnectors. Contrary to some situations with interconnectors part of a meshed AC grid, flows on HVDC-interconnectors can be controlled and there are no loop-flows which can - in AC grids - reduce available capacity.

2. Should the methodology allow for calculating capacity contributions from Member States with no direct network connection with the Member State applying the capacity mechanism?

As a matter of principle, we would support the extension of the methodology to capacity contributions from Member States with no direct network connection with the Member State applying the capacity mechanism. However, since CRMs are supposed to be only temporary measures (Recital 4, Articles 2(22) and 21(8) of EU Regulation 2019/ 943), perhaps such an extension is not necessary, as it may be difficult to implement in practice.

Methodology for sharing the revenues from the allocation of entry capacity

3. Do you agree with the proposed methodology for sharing the revenues from allocating entry capacity? If not, please explain which elements of the methodology should be changed or otherwise improved.

We acknowledge that Regulation 2019/943 foresees the possibility to exclude revenue sharing in case the Member State in which the capacity asset is located does not have a CRM or has a CRM which is not open to cross-border participation. However, we still believe that this concept is fundamentally wrong.

Our view regarding revenue sharing methodology on a constrained interconnector is straight forward and independent of whether the interconnector capacity is used in an energy market, with implicit auctions, or if capacity is sold for use in energy or capacity markets included for capacity mechanisms. The value the interconnector represents is the price difference between connecting market on each side of the interconnector multiplied with relevant transported energy or committed capacity. This congestion rent which is due to the interconnector should be the earning for the interconnector owners, either a network TSOs or a single interconnector company. ENTSO-E confirms that Art. 19 of the EU-regulation applies to the use of CRM-revenues, hence 50%/50% sharing of all revenues should be obvious. We do not support sharing only a part of the revenue 50/50 which is suggested. The proposal builds double derating in our view, since the probability for simultaneous scarcity is used as input in the calculation of the max entry capacity and there is a very high correlation between the max entry capacity and the factor for simultaneous scarcity. If probability for simultaneous scarcity is used in addition to determine which part of the revenue is to be shared, this is a clear double derating.

Article 11.2 states that the sharing methodology does not need to apply if the neighbouring Member State does not apply a capacity mechanism. However, there are no convincing reasons to refrain from a proper sharing methodology in such case. On the contrary, the neighbouring TSO is co-owner of the interconnector and is making the capacity of that interconnector available. This TSO (or to be more precise, its grid users that carry the costs of that interconnector through grid tariffs) should thus also receive the proceeds of making that capacity available. Moreover the introduction of a CRM will affect power (energy) prices and in particular will result in less scarcity prices and thus lower price differences. This reduces the "normal" congestion revenues. Not sharing the revenues from the capacity allocation for the CRM would thus penalise the grid users of the neighbouring country.

Secondly, with no perspective to benefit from revenues of the sale of entry capacity, and heavy processes and potential costs to allow the direct participation of assets in the CRM of another Member State, foreign TSOs will have no incentive to enter into negotiations with the TSO of the Member State where the CRM is located. This will lead to the de facto exclusion of foreign capacities from appropriate remuneration to the added security of supply they bring to the Member State where the CRM is located and affect competition in the CRM. We believe this is in contradiction with the principle of article 26.1 in Regulation 2019/943. Unfortunately Art 26.9. seems to be in contradiction to this principle in Art 26.1. and ENTSO-Es proposal is in line with Art. 26.9. We think however, that 26.9. is fundamentally flawed in that it treats Member States with no capacity mechanism (i.e. a good level of system adequacy and a functioning market) the same as Member States with a capacity mechanism that is not open to XB participation i.e. not implementing art 26.1.. This is in our view against competition law, and the economic consequence could be that the MS with no capacity market could be incentivised to introduce one. This is against the principle that capacity markets should be a last resort measure. Therefore, we would argue that principle of art 26.1. should be applied as a rule and that art 26.9. should only be applied in the case where a XB capacity mechanism is not open to XB participation. We would therefore recommend that article 11.2 are withdrawn and article 11.1 are modified so the wording applies to all.

Common rules for the carrying out of availability checks

4. Do you agree with the proposed common rules for the carrying out of availability checks? If not, please explain which elements of the proposed rules should be changed or otherwise improved.

Delete "if possible" in the second sentence of Article 16.2. Availability checks need to be non-discriminatory and as a consequence, those applicable to foreign capacity providers must be equivalent to the ones that are applicable to domestic providers.

Article 17 mentions the possibility to establish bilateral agreements to settle the various aspects of the TSO-TSO relationship for the cross-border participation to CRMs. Though mentioned mainly in article 17, such bilateral agreements between TSOs will govern many aspects of the frameworks for cross-border participation in individual CRMs.

Ensuring that TSOs effectively conclude of such cooperation agreements is key to the effective functioning of direct cross-border participation of foreign capacities in national CRM, and appropriately remunerating foreign capacity assets. As mentioned before, there is a significant risk that foreign TSOs with no prospect of benefiting from revenues from entry capacity allocation would be reluctant to enter into these bilateral agreements.

Given the central role that bilateral agreements play in the architecture of these methodologies, it seems vital that TSOs have an obligation to set up such agreements, and a fixed deadline to conclude such agreements. We propose to apply the limit of 12 months before the maximum deadline set out in article 26.2 Regulation 2019/943: "for a maximum of four years from 4 July 2019 or two years after the date of approval of the methodologies referred to in paragraph 11, whichever is earlier."

Common rules for determining when a non-availability payment is due

5. Do you agree with the proposed common rules for determining when a non-availability payment is due? If not, please explain which elements of the proposed rules should be changed or otherwise improved.

We agree with the proposed rules. Statkraft supports the application of the principle of non-discrimination when setting common rules for determining when a non-availability payment is due. The same non-availability payment calculation should apply for cross-border and domestic capacities. Capacity providers should be incentivised to make available the amount of capacity corresponding to the sum of all their commitments, taking into account the relevant reference periods of each CRM.

Terms of the operation of the ENTSO-E registry

6. Do you agree with the proposed terms of the operation of the ENTSO-E registry? If not, please explain which elements of the proposed terms should be changed or otherwise improved.

No comments.

Common rules for identifying capacity eligible to participate in the capacity mechanism

7. Do you agree with the proposed common rules for identifying capacity eligible to participate in the capacity mechanism? If not, please explain which elements of the proposed rules should be changed or otherwise improved.

No comments.

General provisions and other comments

8. Do you agree with the general provisions of the ENTSO-E proposals (Title 1)? If not, please specify which provisions should be changed or otherwise improved, and explain why.

No comments.

9. Do you have any other comments on the ENTSO-E proposals that we should take into account in our assessment?

The general approach in the EU market regulation, expressed through relevant network codes, EU-regulation 2019/944 and other regulation is gradually harmonisation of markets. The same guiding principles must be enforced regarding cross-border participation in capacity markets. We recognize that ENTSO-E is obliged to develop a methodology for calculating the maximum entry capacity for cross-border participation. The guiding principle regarding calculation of maximum entry-capacity should be to treat XB-capacity and national capacity on equal terms. Too low entry capacity for XB-capacity is a discrimination of foreign capacity. This is unacceptable and not in line with the EU market regulation.

The proposed methodology suggests that XB- capacity will be calculated in a rather complicated and probably not in a not very transparent way. In addition, the proposed methodology entails a totally different approach towards transmission capacity within a country or bidding zone, where a copper plate is assumed, this results in unacceptable discrimination.

The methodologies contained in the TSOs proposal have the primary objective of ensuring the effective participation of asset owners/operators in CRMs across borders, as per the requirement of Article 26.1 of Regulation 2019/943, while respecting the principle of non-discrimination - the same rights and obligations should apply to all capacity providers, irrespective of location. According to the Electricity Regulation and the present document's own recitals (Recitals 2 and 3), these methodologies should set the framework - the "common approach," the "detailed rules" - to reach this objective. However, much in these methodologies is still left to the discretion of TSOs, in particular by way of bilateral agreements.

While we acknowledge the difficulty of detailing every requirement, considering the wide variety of existing designs for CRMs, and take note of ENTSO-E's comment that this is outside the scope of the current proposal, we fear that there are insufficient obligations around such bilateral agreements, so that they create insufficient incentive for TSOs to ensure effective participation of foreign capacities in CRMs. The current framework for cross-border participation indeed places a foreign TSO in front of a series of disincentives if they want to allow asset owners located in their control area to participate in the CRM of another Member State:

- complex frameworks to put in place (certification, availability checks, penalties)
- burden of the costs of the framework and management of their recovery (see Art. 3)
- no certainty to share revenues from entry capacity allocation with the TSO where the CRM is located (see Art. 12.1 and 12.2)

As a consequence, we believe that detailed rules should be in the present methodologies. But most importantly, as effective cross-border participation will depend on the conclusion of bilateral agreements between TSOs, it is vital that TSOs have an obligation to set up such agreements, with a fixed deadline to conclude them. See our comments on Article 17 for more details.

Furthermore, the methodology lacks a clear procedure in case of dispute - both between TSOs and between a TSO and market participants - regarding the processes put in place. Admission to the Registry, availability obligations and checks, penalties, as well as revenue sharing may produce results that are contested by the parties involved. In case of such disagreements, an instance (or different instances depending on the parties involved) in charge of resolving the issue should be designated. The proposed methodology should not only refer to cross-border participation from EU Member States, but also foresee the possibility for capacities located in interconnected third countries to participate in European CRMs, as long as they can provide a comparable contribution to security of supply.

Finally, the aim of CRMs is to ensure security of supply by giving price signals

to drive investment in new capacity and ensure the availability of existing generation, demand response and storage assets for this purpose. Cross-border participation in CRMs should contribute to the achievement of this objective. Complex and cumbersome systems for cross-border participation entail a high risk of leading to market foreclosure - or have already done so. We invite ACER and TSOs to ensure simplicity in the system(s) that are put in place to ensure effective, not just theoretical, cross-border participation of foreign capacities in CRMs, and avoid excessive administrative and financial burden for TSOs and/or market participants alike, in order to achieve security of supply cost-efficiently.

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