ACER
Agency for the Cooperation of Energy Regulators

ACER Decision on Core LTTR: Annex II

Evaluation of responses to the public consultation on the amendments of the proposal for the regional design of long-term transmission rights for the Core capacity calculation region

1 Introduction

In accordance with Article 31 of the Commission Regulation (EU) 2016/1719 on forward capacity allocation (hereinafter the 'FCA Regulation'), TSOs in each Capacity Calculation Region ('CCR') where long-term transmission rights ('LTTR') exist shall submit a proposal for the regional design of long-term transmission rights ('LTTR regional design') to be issued on each bidding zone border within the CCR.

National regulatory authorities from the Core region ('Core regulatory authorities') approved an initial proposal for LTTR regional design from the Transmission System Operators from the Core region ('Core TSOs') on 14 October 2017. Subsequently, the Core regulatory authorities approved the first amendment proposal of LTTR regional design from the Core TSOs on 19 July 2018.

On 29 May 2019, the Core regulatory authorities received a second amendment proposal from the Core TSOs (the 'proposal for amendment'). The proposal for amendment aims to introduce financial transmission right options ('FTR Options') at some EU bidding-zone borders, where there is currently no LTTR, or where TSOs currently offer physical transmission rights ('PTR') with use-it-or-sell-it principle ('UIOSI').

On 3 July 2019, the Agency received a letter from the Core regulatory authorities explaining that they unanimously agreed on requesting the Agency to adopt a decision pursuant to Article 4(11) of the FCA Regulation. In order to take an informed decision, the Agency launched a public consultation on 1 August 2019 inviting all interested parties to express their views on potential amendments of the proposal for amendment. The closing date for comments was 30 August 2019.

More specifically, the public consultation invited stakeholders to comment on the following aspects of the LTTR regional design:

(i) The introduction of FTR Options on the FR-DE/LU border as of 1 January 2020;

(ii) The introduction of FTR Options on the AT-CZ and AT-HU borders, to be effective in parallel with the application of the day-ahead market coupling on the CZ-AT and the AT-HU borders.

2 Responses

By the end of the consultation period, the Agency received responses from 17 respondents.

This evaluation paper summarises all received comments and responses to them. The table below is organised according to the consultation questions and provides the respective views from the respondents, as well as a response from the Agency clarifying the extent to which their comments were taken into account.

Respondents’ views	ACER views
Questions 1 and 2: Do you support the proposal of TSOs with regard to the introduction of FTR Options on the FR-DE/LU border as of 1 January 2020? Please specify your arguments, and in particular, any objection you may have.	
12 respondents provided an answer to this question. (Amprion, CREG, E-Control, EDF, EFET, Energie AG Oberösterreich Trading GmbH, IFIEC Europe, Linz Strom Gas Wärme GmbH, Österreichs E-Wirtschaft - Association of Austrian Electricity Companies , TIWAG-Tiroler Wasserkraft AG, TransnetBW, UNIPER SE)	The Agency observes that respondents generally support the introduction of FTR Options on the FR-DE/LU border as proposed by TSOs.
9 respondents support the introduction of FTR Options on the FR-DE/LU border as of 1 January 2020. (Amprion, CREG, E-Control, EFET, Energie AG Oberösterreich Trading GmbH, IFIEC Europe, Linz Strom Gas Wärme GmbH, TransnetBW, UNIPER SE).	The Agency agrees with the majority of respondents supporting the proposal of TSOs. The Agency believes that harmonisation of LTTRs in a form of FTR Options on all EU bidding zone borders should be a higher objective, as it will maximise cross-zonal capacities in the day ahead timeframe, guarantee equal rights and obligations for market participants on different bidding zone borders and phase out the burdensome nomination process of PTRs. The Agency does not deny the fact that PTRs may, in some exceptional circumstances, provide a better hedge against the imbalance prices in case of partial clearing in the single day-ahead coupling and in case of different maximum or minimum prices in single day-ahead coupling and imbalance prices. Yet, the Agency and the vast majority of regulatory authorities are of the opinion that these arguments do not prevail over the higher objective. Other solutions should be sought to mitigate these risks.

Respondents' views	ACER views
Supporters of the introduction of FTR Options on the FR/DE-LU border highlight that the harmonisation of LTTR by the introduction of FTR Options on all bidding zone borders is important (6 – Amprion, CREG, E-Control, Energie AG Oberösterreich Trading GmbH, Linz Strom Gas Wärme GmbH, IFIEC) as the guarantee of fair competition for scarce capacities (4 – Amprion, CREG, E-Control, IFIEC) and as FTR Options will contribute to a more efficient allocation process (3 – Amprion, E-Control, Transnet BW) as they do not require a nomination process (1 - Amprion) and will ensure that the maximum cross-border capacity is allocated to the DA market (3 - Amprion, E-Control, Transnet BW). The harmonisation of LTTR overall guarantees a higher market integration. Regarding the guarantee of fair competition, 2 respondents explain that a combination of FTR Options and PTR with UIOSI on different borders of a coupled region gives undue advantages to the holders of PTR with UIOSI. (CREG, E-Control) 2 supporters of the introduction of FTR Options on the FR/DE-LU border express the following reservations:	
• 1 supporter (Transnet BW) observes that FTR Options should always be based on available cross-border capacity coordinated among the TSOs taking into account the physical reality of the grid.	As regards the linking of available cross-border capacity to the physical reality of the grid, the Agency notes that the volume of cross-zonal capacity available for FTR Options is not within the scope of the Core regional design of LTTRs.

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• 1 respondent (EFET) conditions their support to the fulfilment of a number of requirements: 1. Proper justification of the reasons for this switch and an assessment of its benefits from a global social welfare perspective; 2. Cross-border transmission capacity allocation maximised to 100% of the available capacity at the time of calculation (system security reservations should not be tolerated for FTR Options); 3. Full financial firmness of FTR Options, and impossibility to curtail for any other reason than Force Majeure (system security justifications for curtailment should not be tolerated for FTR Options); 4. No additional exposure for the market, e.g. in case day-ahead markets do not clear; 5. Debate on maintaining the "LTA patch" in CWE day-ahead flow-based market coupling	1. As regard the justification of the reasons for switch to FTR Options and assessment of social welfare benefits, a. The Agency observes that, from a legal standpoint, PTRs pursuant to UIOSI, FTRs Options and FTRs Obligations are equally valid approaches that can be adopted without justification; b. As with any EU Regulation, the benefit of the FCA Regulation was assessed during its elaboration, as a set of policies; c. The choice for preferring FTRs is supported by the various arguments presented in this document. 2. The Agency does not see why the switch from PTR to FTRs Options should be conditional on the volume of LTTRs. The Agency finds these two questions not related. 3. The Agency also understands that in accordance with Article 53 of the FCA Regulation, TSOs can curtail LTTRs only when not doing so would violate operational security limits. Therefore the Agency expects that TSOs will not be able to justify any curtailment of FTR Options should such a curtailment be legally challenged. 4. As regards the FTR Options, the hedging features of these LTTRs is clearly defined in the FCA Regulation, namely the remuneration is based on day-ahead market spread; 5. The "LTA patch" is not within the scope of the present consultation.

Respondents' views	ACER views
1 Respondent (EDF) explicitly opposes the introduction of FTR Options on the FR-DE/LU border as of 1 January 2020. They oppose the introduction of FTR Options on the FR/DE-LU border, as they do not see benefit to such introduction: no full harmonisation is possible as long as PTRs remain at Swiss borders, and PTRs are in most cases not nominated, therefore in effect fully equivalent to FTR Options. In addition, this respondent sees merit in offering PTRs, as a tool to hedge against the risk of partial clearing in the Day-Ahead market. In addition, 3 respondents objected to the introduction of FTR Options. (MPP, OEWA, TIWAG) One respondent (MPP) shares concerns about increased costs induced by forcing participants to close their physical positions at the power exchanges, risks specific to partial clearing, and the request that all capacity available be allocated in forward time frames.	The Agency acknowledges the issues raised by some stakeholders, but disagrees that these concerns should prevail over the higher objectives explained above. The Agency acknowledges that as a consequence of the introduction of FTR Options in a situation where the day-ahead market would not clear in a specific bidding zone, financial risks would be higher for holders of FTR Options than for holders of PTRs as the latter would have the ability to balance their position by physically nominating their exchanges from neighbouring bidding zones with PTRs. Holders of FTR Options would be compensated at the day-ahead market spread, which is the difference between the day-ahead price of the neighbouring bidding zone and the day-ahead price of the not cleared bidding zone (currently capped at 3,000€/MWh), while being exposed to the imbalance settlement price in that zone, which can be capped at a price higher than 3,000€/MWh. Nevertheless, the Agency finds the general policy objectives of introducing FTR Options, maximising the liquidity of the single day-ahead coupling and harmonising the type of LTTR as more important than mitigating the risks highlighted by some stakeholders related to partial clearing of the day-ahead market. The Agency notes that a situation where the market would not clear in specific bidding zones has not occurred yet in the EU and therefore the Agency considers such risks to be outweighed by the benefits of maximising the liquidity of the single day-ahead coupling. It is true that in stable market conditions PTRs are rarely physically nominated and therefore they do not reduce the liquidity of the single day-ahead coupling. However, in case the expectations of scarcity would increase and partial clearing would become more likely, the PTR holders would most probably physically nominate all their PTRs and this capacity would no longer be available for the day-ahead markets. Therefore, PTRs would significantly hamper day-ahead market liquidity in case of expected scarcity, when maintaining such a liquidity is

Respondents' views	ACER views
	even more important. Providing full cross-zonal capacities to the day-ahead market becomes even more important in case of scarcity to reveal robust scarcity price and PTRs would compromise this objective. Further, the Agency notes that the origin of the risks involved with the FTR Options lies with the non-harmonised maximum and minimum prices in different timeframes and established pursuant to Commission Regulation (EU) 2015/1222 (the 'CACM Regulation')[1] and Commission Regulation (EU) 2017/2195 (the 'Balancing Regulation')[2]. Therefore, if the identified risks due to non-harmonised maximum and minimum prices persist or increase, the Agency advocates a solution by which these price limits would need to be harmonised across different time frames. Also, until these price limits are harmonised, regulatory authorities may consider other national transitory measures.
One respondent (OEWA) favours harmonisation, be it with the use of PTRs only, or FTR Options only. They point out that FTR Options in their current form do not match the needs of major industrial customers, which PTRs do. FTR products generate an additional risk position due to their baseload characteristic; their auctioning frequency does not allow major industrial customers properly to minimise the risk of price swings.	Finally, the Agency notes the concerns raised by industrial customers, but underlines that switch from PTRs to FTR Options does not in any way change the timing of the auctions, their characteristics (e.g. baseload) or other features. These features are defined in the Harmonised Allocation Rules and respective regional annexes and are therefore out of the scope of the present Decision. The FCA Regulation requires that TSOs to allocate long-term capacity in the form of either PTRs and FTRs, solely as hedging instruments. The Agency disagrees that the hedge provided by FTRs is intrinsically poorer than the one of PTRs. To the contrary, the hedge resulting from a capped pay-out is the same. The above-mentioned problem is the result of different caps set in different time frames, and not of the use of FTRs. Further, as mentioned above, financial

[1] Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management

[2] Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

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One respondent (TIWAG) is opposed to FTR Options because of their financial nature, not adapted to the physical reality of the business. FTR Options associated to FBMC are non-transparent and provide a poor hedge.	hedging instruments offer advantages over physical hedges; mainly, FTRs in association with market coupling ensure a more efficient allocation of capacity as they are less likely to condition the physical use of capacity in real time. Finally, FTRs represent one type of hedging instrument among other available futures and forwards settled against the day-ahead price established by the Flow-based Market Coupling. Therefore, the Agency does not deem it necessary to amend the Core CCR TSOs' proposal for amendment of the regional design of LTTR regarding the introduction of FTR Options on the NL-DE/LU and the FR-DE/LU bidding zone borders as of 1 January 2020.
Question 3: Do you share the concerns of the Agency regarding the proposed conversion of PTRs into FTR Options in the middle of the year 2020?	
12 respondents provided an answer to this question. (CEZ, CREG, E-Control, EDF, EFET, Energie AG Oberösterreich Trading GmbH, Linz Strom Gas Wärme GmbH, MVM Partner Energy Trading Ltd., RWE Supply & Trading GmbH, TIWAG-Tiroler Wasserkraft AG, UNIPER SE, and 1 answer treated as confidential). 10 respondents share the concerns of the Agency (CEZ EDF, EFET, Energie AG Oberösterreich Trading GmbH, MPP, MVM Partner Energy Trading Ltd., RWE Supply & Trading GmbH, TIWAG-Tiroler Wasserkraft AG, UNIPER SE, and 1 answer treated as confidential).	The Agency observes that a majority of respondents share concerns over the change of the nature of already allocated products, from PTRs into FTR Options.

Respondents’ views	ACER views
3 respondents do not share those concerns. (CREG , E-Control, Linz Strom Gas Wärme GmbH).	
Question 4: Which of the following alternative options for implementation of FTR Options on the bidding zone borders AT-CZ and AT-HU do you support? • **Option 1: introduction of the FTR Option during the next calendar year, in parallel with the application of the day-ahead market coupling on the CZ-AT and the AT-HU borders** • **Option 2: introduction of the FTR Options at the beginning of the next calendar year (1 January 2021)** • **Option 3: introduction of monthly, then yearly FTR Options**	
12 respondents provided an answer to this question (CEZ, CREG, E-Control, EDF, EFET, Energie AG Oberösterreich Trading GmbH, Linz Strom Gas Wärme GmbH, MVM Partner Energy Trading Ltd., RWE Supply & Trading GmbH, TIWAG -Tiroler Wasserkraft AG, UNIPER SE, and 1 confidential answer). 7 respondents favour option 2 (EDF, EFET, Energie AG Oberösterreich Trading GmbH, MVM Partner Energy Trading Ltd., TIWAG-Tiroler Wasserkraft AG, UNIPER SE, and 1 confidential answer). Option 1 and option 3 are supported by respectively 3 (CREG, E-Control, Linz Strom Gas Wärme GmbH) and 2 (CEZ, RWE Supply & Trading GmbH) respondents.	The Agency agrees with the majority of respondents opposing the proposal of TSOs. Further, the Agency observes that a majority of respondents favours postponing the introduction of FTR Options on the bidding zone borders AT-CZ and AT-HU to 1 January 2021.
Question 5: Do you have any other comment regarding the shift from PTRs to FTR Options on the AT-CZ and AT-HU borders?	
9 respondents provided an answer to this question (CEZ, CREG, E-Control, EDF, EFET - European	The Agency is of the opinion that Option 1 is not legally feasible. Article 1(2) of the proposal for amendment introduces a type of LTTR that is not allowed by the FCA Regulation. Namely,

Respondents' views	ACER views
Federation of Energy Traders, Energie AG Oberösterreich Trading GmbH, MVM Partner Energy Trading Ltd., Österreichs E-Wirtschaft - Association of Austrian Electricity Companies TIWAG-Tiroler Wasserkraft AG) Among these 9 respondents, taking into account their answers to the previous question: . **2 supporters of Option 1** clarify that (CREG, E-Control) their preference goes to this option under the understanding that it is feasible and is the fastest path to implementation of FTR Options, which is the objective. One of these respondents clarifies that they would accept Option 3 "as an alternative and in reliance on ACER's legal justification". **. 5 supporters of Option 2** (EDF, EFET - European Federation of Energy Traders, Energie AG Oberösterreich Trading GmbH, MVM Partner Energy Trading Ltd., TIWAG-Tiroler Wasserkraft AG) object to the change of the characteristics of a product after the sale of this product. 1 respondent (TIWAG-Tiroler Wasserkraft AG) observes that changes in the middle of the product period mean a revaluation of existing hedges and may put their holders into advantage or disadvantage. 1 respondent (EDF) observes that a safe interpretation of article 31(6) Of the FCA Regulation leads to favour Option 2 over Option 3, which could be interpreted as contradicting this article. 1 respondent (EFET) suggests, should "the concerned TSOs still deem it	Article 31(1) of the FCA Regulation clearly explains that *'[L]ong-term cross-zonal capacity shall be allocated to market participants by the allocation platform in the form of physical transmission rights pursuant to the UIOSI principle or in the form of FTRs - options or FTRs - obligations.'* Therefore, LTTR can take the form of one of the three options defined in Article 31(1) of the FCA Regulation. However, Article 1(2) of the proposal for amendment would allow for a single yearly LTTR to be allocated as a hybrid between PTR and FTR Option. Such a hybrid LTTR type is not allowed in Article 31(1) of the FCA Regulation and not mentioned anywhere in the same Regulation. Therefore, the Agency deems such a solution as unlawful. Further, the Agency notes that such a solution is also not supported a majority of stakeholders. On the other hand, the Agency has been informed during the present proceedings that the regulatory authorities competent on the AT-CZ and AT-HU bidding zone borders agreed to change the type of LTTR on the AT-CZ and AT-HU bidding zone borders as soon as possible after the implementation of the NTC Interim Coupling. This agreement was motivated by the maximisation of the available cross-zonal capacities for single day-ahead coupling on these two borders. The Agency does not see any reason not to respect such an agreement as long as it is legally compliant with the FCA Regulation. From this public consultation and subsequent exchanges with the Core national regulatory authorities and Core TSOs, the Agency concludes that Option 3 finds a suitable balance between the legal feasibility, interests of stakeholders and agreements made by the concerned NRAs with regard to the change the type of LTTR on the AT-CZ and AT-HU bidding zone borders as soon as possible after the implementation of the NTC Interim Coupling.

Respondents’ views	ACER views
desirable to switch from PTRs to FTR Options in the middle of a year, then the TSOs should not change the characteristics of already allocated rights: rather, they should buy them back and re-issue capacity in the form of monthly FTR Options for the rest of the running year.” . **1 supporter of Option 3** (CEZ) observes that the condition for a shift to FTR Options is that market coupling is in place. Options 2 and 3 fulfil that condition. Additionally, one respondent who did not answer the previous question (Österreichs E-Wirtschaft - Association of Austrian Electricity Companies) clarifies that their preference goes to Option 2, under the condition, that harmonisation with a shift to FTR remains the goal in the EU.	

3 List of respondents[3]

Organisation	Type
Amprion	TSO
CEZ, a.s.	Energy company
CREG	National Regulatory Authority
E-Control	National Regulatory Authority
EDF SA	Energy company
EFET - European Federation of Energy Traders	Association
Energie AG Oberösterreich Trading GmbH	Energy company
IFIEC Europe	Association
Linz Strom Gas Wärme GmbH	Energy company
Market Parties Platform	Association
MVM Partner Energy Trading Ltd.	Energy company
Österreichs E-Wirtschaft (OE) - Association of Austrian Electricity Companies	Association
RWE Supply & Trading GmbH	Energy company
TIWAG-Tiroler Wasserkraft AG	Energy company
TransnetBW	TSO
UNIPER SE	Energy company

[3] One answer was confidential and therefore the name of the respondent is not listed.