

**REQUEST FOR AMENDMENT
BY THE REGULATORY AUTHORITIES OF THE
CHANNEL CAPACITY CALCULATION REGION**

ON

**CHANNEL TSOs' PROPOSAL FOR A
METHODOLOGY FOR SPLITTING LONG-TERM
CROSS-ZONAL CAPACITY**

**IN ACCORDANCE WITH ARTICLE 16 OF THE
COMMISSION REGULATION (EU) 2016/1719 OF 26
SEPTEMBER 2016 ESTABLISHING A GUIDELINE
ON FORWARD CAPACITY ALLOCATION**

DATED 20 JANUARY 2020

29 July 2020

I. Introduction and legal context

This document elaborates an agreement of the Regulatory Authorities (CREG, OFGEM, CRE and ACM, hereafter “Channel Regulatory Authorities”) of the Channel Capacity Calculation Region (hereafter “CCR”) on the proposal of the Transmission System Operators (hereafter “TSOs”) of the Channel CCR (Elia Transmission Belgium SA/NV (hereafter “Elia”), National Grid ESO Limited (hereafter “NGESO”), Réseau de Transport d’Electricité (hereafter “RTE”) and TenneT TSO B.V. (hereafter “TenneT”)) for a methodology for splitting long-term cross-zonal capacity (hereafter “SRM”) in accordance with Article 16 of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation (hereafter “FCA Regulation”).

This agreement of all Channel Regulatory Authorities shall provide evidence that a decision on the SRM does not, at this stage, need to be adopted by the Agency for the Cooperation of Energy Regulators (hereafter “ACER”) pursuant to Article 4(10) of the FCA Regulation. It is intended to constitute the basis on which all Channel Regulatory Authorities will each subsequently request an amendment to the SRM, pursuant to Article 4(9) of the FCA Regulation.

The legal provisions relevant to the submission and approval of the SRM and this all Channel Regulatory Authorities agreed opinion on the SRM, can be found in Articles 3, 4 and 16 of the FCA Regulation. They are set out here for reference.

Article 3 of the FCA Regulation

Objectives of forward capacity allocation

This Regulation aims at:

- (a) promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants;*
- (b) optimising the calculation and allocation of long-term cross-zonal capacity;*
- (c) providing non-discriminatory access to long-term cross-zonal capacity;*
- (d) ensuring fair and non-discriminatory treatment of TSOs, the Agency, regulatory authorities and market participants;*
- (e) respecting the need for a fair and orderly forward capacity allocation and orderly price formation;*
- (f) ensuring and enhancing the transparency and reliability of information on forward capacity allocation;*
- (g) contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.*

Article 4 of the FCA Regulation

Adoption of terms and conditions or methodologies

1. TSOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO, the participating TSOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, shall regularly inform the competent regulatory authorities and the Agency about the progress of the development of these terms and conditions or methodologies.

2. (...)

3. (...)

4. If TSOs fail to submit a proposal for terms and conditions or methodologies to the national regulatory authorities within the deadlines defined in this Regulation, they shall provide the

competent regulatory authorities and the Agency with the relevant drafts of the terms and conditions or methodologies, and explain what has prevented an agreement. The Agency shall inform the Commission and shall, in cooperation with the competent regulatory authorities, at the Commission's request, investigate the reasons for the failure and inform the Commission thereof. The Commission shall take the appropriate steps to make possible the adoption of the required terms and conditions or methodologies within four months from the receipt of the Agency's information.

5. Each regulatory authority shall be responsible for approving the terms and conditions or methodologies referred to in paragraphs 6 and 7.

6. (...)

7. The proposals for the following terms and conditions or methodologies shall be subject to the approval by all regulatory authorities of the concerned region:

(a) (...)

(b) the methodology for splitting cross-zonal capacity pursuant to Article 16;

(c) (...)

(d) (...)

(e) (...)

8. The proposal for terms and conditions or methodologies shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of this Regulation. Proposals on terms and conditions or methodologies subject to the approval by several or all regulatory authorities shall be submitted to the Agency at the same time that they are submitted to regulatory authorities. Upon request by the competent regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.

9. Where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order to reach an agreement. Where applicable, the competent regulatory authorities shall take into account the opinion of the Agency. Regulatory authorities shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6 and 7, within six months following the receipt of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.

10. Where the regulatory authorities have not been able to reach an agreement within the period referred to in paragraph 9, or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.

11. In the event that one or several regulatory authorities request an amendment to approve the terms and conditions or methodologies submitted in accordance with paragraphs 6 and 7, the relevant TSOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the regulatory authorities. The competent regulatory authorities shall decide on the amended terms and conditions or methodologies within two months following their submission. Where the competent regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies pursuant to paragraphs 6 and 7 within the two-month deadline, or upon their joint request, the Agency shall adopt a decision concerning the amended terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009. If the relevant TSOs fail to submit a proposal for amended terms and conditions or methodologies, the procedure provided for in paragraph 4 shall apply.

12. (...)

13. TSOs responsible for establishing the terms and conditions or methodologies in accordance with this Regulation shall publish them on the internet after approval by the competent regulatory

authorities or, if no such approval is required, after their establishment, except where such information is considered as confidential in accordance with Article 7.

Article 16 of the FCA Regulation

Methodology for splitting long-term cross-zonal capacity

1. No later than the submission of the capacity calculation methodology referred to in Article 10, the TSOs of each capacity calculation region shall jointly develop a proposal for a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the respective region. The proposal shall be subject to consultation in accordance with Article 6.

2. The methodology for splitting long-term cross-zonal capacity shall comply with the following conditions:

(a) it shall meet the hedging needs of market participants;

(b) it shall be coherent with the capacity calculation methodology;

(c) it shall not lead to restrictions in competition, in particular for access to long-term transmission rights.

II. The Channel TSOs' proposal

a) Proceedings

No later than six months after the approval of the common capacity calculation methodology under the CACM Regulation¹, the Channel TSOs were required to submit proposals for a common capacity calculation methodology for the long-term time frames (in accordance with Article 10 of the FCA Regulation, hereafter "LT CCM") and for a methodology for splitting long-term cross-zonal capacities (in accordance with Article 16 of the FCA Regulation).

By the due date for the submission of both methodologies (i.e. 27 May 2019), Channel TSOs informed the Channel Regulatory Authorities and ACER that they were unable to reach a consensus on the proposal for the LT CCM.

Despite being very close to completion at the time of writing, Channel TSOs additionally informed that due to the lack of a common position on the LT CCM, the proposal for the SRM shall be submitted once a way forward for the LT CCM has been established, in order to ensure the required coherence between both methodologies required by Article 16(2)(b) of the FCA Regulation.

Following the notification of the failure to submit both methodologies, ACER informed the European Commission in accordance with Article 4(4) of the FCA Regulation. After investigation of the reasons for the failure to submit the LT CCM and SRM², the Channel Regulatory Authorities, ACER and the European Commission representatives agreed, together with the Channel TSOs, on the high-level principles that should govern the LT CCM.

In accordance with Article 16 and Article 6 of the FCA Regulation, Channel TSOs organized a public consultation on the draft proposals for the LT CCM and the SRM. While the public consultation for the LT CCM was launched during the "escalation phase" after the failure to submit the proposal (i.e. between 13 December 2019 and 13 January 2020), the public consultation of the SRM took place before the failure to submit this methodology, between 15 March and 15 April 2019.³

On 17 February 2020, the last Channel Regulatory Authority received the proposals for the LT CCM and the SRM. This approval package contained the:

¹ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, Article 20(2).

² Accommodated by the submission by Channel TSOs' of an "Escalation Package" on 23 May 2019 and an overview of the individual Channel TSOs' positions towards a preliminary way forward on the LT CCM on 2 September 2019.

³ <https://consultations.entsoe.eu/markets/channel-splitting-rules-in-accordance-fca-art16/>.

- LT CCM Proposal;
- LT CCM Explanatory Note;
- LT CCM Consultation Report;
- SRM Proposal; and
- SRM Explanatory Note.

The SRM Consultation Report has been shared separately with Channel Regulatory Authorities on 2 February 2020. One stakeholder submitted comments to the draft SRM.

b) SRM

Through the regional design of long-term transmission rights, approved by the Channel Regulatory Authorities in February 2018, Channel TSOs propose to offer long-term capacity in accordance with Article 31 of the FCA Regulation in the form of physical transmission rights pursuant to the use-it-or-sell-it principle. These products are allocated for different time frames, being the annual, seasonal, quarterly and monthly time frames. Products for these time frames are commonly offered by the Channel TSOs. Individual TSOs may also offer products with a shorter granularity than a month (such as weekly, weekend, Easter weekend, etc.).

The focus of the LT CCM is to determine, in a coordinated manner by the Channel TSOs, the amount of capacity that will be allocated to the market participants through the aforementioned products. In order to determine the distribution of the total capacity between the various time frames, the SRM defines the Splitting Ranges (in Article 4 / Annex 1), the Capacity Split Principles (in Article 5) and the Capacity Split Assessment Process (in Article 6).

The SRM offers a limited level of harmonization across interconnectors by introducing very broad Splitting Ranges, spreading from 0% to 95% for the annual and monthly time frames and from 0% to 90% for the seasonal and quarterly time frames. A range from 0% to 90% for the non-coordinated time frames (with granularity shorter than a month) is also proposed.

To move from the general Splitting Ranges to a specific Capacity Split on each interconnector and for each direction, the SRM lists a number of high-level principles which can be taken into account by the Channel TSOs for their analysis and the assessment of which Capacity Split takes the hedging needs of the market participants and the competition requirements best into account.

These high-level principles are taken into account by the Channel TSOs during the Capacity Split Assessment Process, which defines the (intermediate) steps to define or revise the Capacity Splits. The publication of the outcome of this process is done by the Channel TSOs on the JAO Platform, together with the provisional Auction calendar for the long-term capacity allocations.

III. The Channel Regulatory Authorities' agreement

Channel Regulatory Authorities have carefully assessed the SRM and consider that the methodology lacks certain indispensable elements to meet the general requirements of the FCA Regulation. Channel Regulatory Authorities recall that Article 16 of the FCA Regulation imposes that the SRM shall (i) meet the hedging needs of market participants, (ii) be coherent with the LT CCM and (iii) not lead to restrictions in competition.

While Channel TSOs argue that the flexibility offered by the broad Splitting Ranges are necessary to properly reflect (changes in) the hedging needs of market participants and at the same time allow interconnectors to use the product mix as a competitive advantage, Channel Regulatory Authorities require transparent methodologies for regulation. The flexibility of the approach is indeed important and Channel TSOs should have the possibility to adapt to changing market conditions. Nevertheless, it is equally important to have a transparent and enforceable methodology which allows Channel Regulatory Authorities as well as other stakeholders to assess and predict the actual Capacity Split. In that sense the results of the SRM should be reproducible. The broad Splitting Ranges in combination with the vague and non-binding high-level Capacity Split Principles do not allow for this insight.

The competition aspect of the SRM is mainly focused on the avoidance of discrimination between market participants to obtain long-term capacities and not necessarily on granting different interconnector TSOs with the means to differentiate their product mix in order to attract more business. The task of providing access to cross-zonal transmission infrastructure should be regulated, regardless of whether it is granted by a certified TSO or a merchant interconnector TSO.

Article 5(2) of the SRM allows Channel TSOs to reserve a share of 10% of the interconnection capacity for the daily allocation. This provision is not supported by all Channel Regulatory Authorities⁴. The LTA inclusion mechanism in the day-ahead and intraday CCMs, in combination with the low nomination rates of the physical transmission rights with use-it-or-sell-it principle, should ensure the availability of capacity in the day-ahead and intraday timeframes. The reservation in the long-term timeframe for daily allocation seems, therefore, unnecessarily restrictive for long-term capacities.

IV. Decision

Based on the above rationale, all Channel Regulatory Authorities agree to request an amendment to the SRM. This amendment should contain either:

- (i) a clearer description of the steps taken by each Channel TSO in the Capacity Split Assessment Process and the Capacity Split Principles that will be applied in this assessment and will lead to a capacity split that is transparent, enforceable and reproducible.; and/or
- (ii) a further narrowing down of the Splitting Ranges to a more acceptable level and more specific values (if TSOs are not able to provide a clearer description that leads to results that are transparent, enforceable and reproducible). Any new proposal for narrower Splitting Ranges or a more specific Capacity Split should be accompanied by a motivation of why the new value(s) can be considered as sufficiently addressing the hedging needs of market participants.⁵

This amendment should also contain:

- an assessment of the necessity of the proposed reservation of 10% for daily allocation, in light of the LTA inclusion mechanism and the low nomination rate for the physical transmission rights with the use-it-or-sell-it principle, including an assessment of the costs and benefits associated to the reservation of day-ahead capacity in the long-term timeframe.

This document shall form the basis on which the individual Channel Authorities will, by 17 August 2020, issue the request for amendment to their TSOs. The Channel TSOs shall, within 2 months following the receipt of this request for amendment, submit a new proposal in line with these agreed modifications.

⁴ Channel Regulatory Authorities acknowledge that the reservation of long-term capacity for day-ahead allocation was explicitly foreseen in Article 2.6 of Annex I to Regulation (EU) 714/2009, and these provisions seem to be broadly transposed in Article 17(2) of Regulation 2019/943. However, there is no longer an explicit provision allowing for the reservation for day-ahead capacity retained in Article 17(2) of Regulation 2019/943.

⁵ For example by providing evidence that those new values are in line with historical fluctuations of the proportion of long-term capacity allocated to certain timeframes.