

**DECISION No 05/2023
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 22 March 2023

**on the TSOs' proposal for amendments to the requirements for the Single
Allocation Platform (SAP) and the SAP cost sharing methodology**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Regulators¹,
and, in particular, Article 5(2)(b) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 26 September 2016 establishing
a guideline on forward capacity allocation², and, in particular, Articles 4(5), 4(6)(c), 4(6)(f),
4(12), 49 and 59 thereof,

Having regard to the outcome of the consultation with the concerned regulatory authorities and
transmission system operators,

Having regard to the outcome of the consultation with ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 17 March 2023,
delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

¹ [OJ L 158, 14.6.2019, p. 22.](#)

² [OJ L 259, 27.9.2016, p. 42.](#)

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (the ‘FCA Regulation’) lays down rules on cross-zonal capacity allocation in the forward markets. These rules include requirements for the Single Allocation Platform (‘SAP’) and the SAP cost sharing methodology, hereafter collectively referred to as the ‘SAP methodology’.
- (2) Based on a proposal of all transmission system operators (‘TSOs’) for a set of requirements and for the establishment of the SAP in accordance with Article 49 of FCA Regulation and for the SAP Cost Sharing Methodology in accordance with Article 59 of FCA Regulation, the initial SAP methodology was approved for the TSOs issuing long-term transmission rights by the relevant regulatory authorities on 18 September 2017.
- (3) By Decision No 09/2022 of 18 July 2022, ACER approved an all TSOs’ amendment proposal to the SAP methodology of 18 September 2017. The amendment intended to make the SAP methodology applicable also to the Finish TSO (‘Fingrid’) and to enable the allocation of long-term transmission rights on the Finish-Estonian bidding zone border. The amendment was therefore limited to the scope of application of the SAP methodology, while otherwise not modifying its content. Accordingly, ACER assessed only the extension of the application of the SAP methodology to Fingrid but not the SAP methodology in itself.
- (4) Upon ACER’s request, on 28 September 2022, all TSOs submitted to ACER a proposal for amendment of the SAP methodology, as approved by the regulatory authorities and as amended by ACER Decision No 09/2022.
- (5) The present Decision concerns the TSOs’ amendment proposal of 28 September 2022. Annex I to this Decision sets out the SAP methodology, pursuant to Articles 49 and 59 of the FCA Regulation, as amended and approved by ACER.

2. PROCEDURE

- (6) In a letter dated 12 July 2021, ACER requested all TSOs under Article 4(12) of the FCA Regulation, to submit, as soon as possible, and no later than 1 June 2022, their proposals for amendments of the four methodologies listed in points (c), (d), (e) and (g) of Article 4(6) of the FCA Regulation for ACER’s approval. Amending the above methodologies, including the SAP methodology, was necessary to allow for a timely implementation of the long-term flow-based auctions in the Core and Nordic capacity calculation regions. The European Network of Transmission System Operators for Electricity (‘ENTSO-E’) asked ACER, on behalf of all TSOs, to postpone the submission date for the relevant proposals, to which ACER agreed in a letter dated 26 January 2022. The new submission date for the proposed amendments to the SAP methodology was 1 October 2022.
- (7) On 28 September 2022, ENTSO-E submitted, on behalf of all TSOs, an ‘All TSOs’ proposal for amendment of the establishment of a Single Allocation Platform (SAP) in accordance with Article 49 and for the cost sharing methodology in accordance with

Article 59 of Commission Regulation (EU) 2016/1719 establishing a Guideline on Forward Capacity Allocation' ('Proposal').

- (8) On 26 October 2022, ACER launched a public consultation on the Proposal, inviting all stakeholders to submit their comments by 28 November 2022. Annex II to this Decision provides a summary and evaluation of stakeholders' responses.
- (9) Between 28 September 2022 and 6 February 2023, ACER held regular discussions with the TSOs and the regulatory authorities. In particular, the following procedural steps were taken:
- 30 September 2022: discussion with the TSOs and regulatory authorities at the FCA coordination group meeting³;
 - 8 November 2022: discussion with the TSOs and regulatory authorities;
 - 9 November 2022: discussion with the regulatory authorities at the FCA task force ('TF') meeting⁴;
 - 17 November 2022: public workshop on the Proposal;
 - 22 November 2022: discussion with the regulatory authorities at ACER's Electricity Working Group ('AEWG') meeting;
 - 30 November 2022: discussion with the TSOs and regulatory authorities;
 - 2 December 2022: discussion with the TSOs and regulatory authorities;
 - 13 December 2022: discussion with the TSOs and regulatory authorities;
 - 14 December 2022: discussion with the regulatory authorities at the FCA TF meeting;
 - 11 January 2023: discussion with the regulatory authorities at the AEWG meeting;
 - 19 January 2023: discussion with the regulatory authorities at the FCA TF meeting;
 - 6 February 2023: discussion with the regulatory authorities at AEWG meeting;
- (10) On 23 December 2022, ACER shared its preliminary position on the Proposal with TSOs and regulatory authorities, inviting them to submit their written inputs by 13 January 2023, and offering a possibility to request an oral hearing.
- (11) By 13 January 2023, ACER received written observations from the concerned TSOs and regulatory authorities. ACER received no requests for an oral hearing.

³ Joint platform between ACER, TSOs, the European Commission and regulatory authorities for discussing issues connected to the FCA Regulation.

⁴ ACER's platform to discuss FCA issues with regulatory authorities.

- (12) The AEWG was consulted between 1 February and 8 February 2023 and provided its advice on 10 February 2023 (see Section 5.3).
- (13) On 17 March 2023, ACER's Board of Regulators issued a favourable opinion.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (14) According to Article 5(2)(b) of Regulation (EU) 2019/942, proposals for common terms and conditions or methodologies developed pursuant to network codes and guidelines adopted before 4 July 2019 which require the approval of all regulatory authorities, shall be submitted to ACER for revision and approval.
- (15) According to Articles 4(5), 4(6)(c) and 4(6)(f) of the FCA Regulation, as initially adopted, namely as a guideline before 4 July 2019, the proposal for the SAP methodology pursuant to Articles 49 and 59 of the same Regulation was subject to approval by all regulatory authorities. Following the amendment of these provisions by Commission Implementing Regulation (EU) 2021/2808, the proposal for the SAP methodology and any amendments thereof have been explicitly subjected to approval by ACER.
- (16) According to Article 4(12) of the FCA Regulation, ACER may request proposals for amendments of those terms and conditions or methodologies, where ACER is responsible for their approval, and, in addition, the TSOs responsible for developing a proposal for the SAP methodology may propose amendments thereto to ACER. Those proposals for amendments are to be approved in accordance with the procedure set out in Article 4 of the FCA Regulation.
- (17) According to Article 5(6) of Regulation (EU) 2019/942 and Article 4(5) of the FCA Regulation, ACER, before approving terms and conditions or methodologies, shall revise the proposals where necessary, after consulting the respective TSOs, in order to ensure that they are in line with the purpose of the FCA Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (18) On 28 September 2022, in response to ACER's request for amendments of 12 July 2021, ENTSO-E, on behalf of all TSOs, submitted the Proposal to ACER for approval.
- (19) Therefore, based on Article 5(2)(b) of Regulation (EU) 2019/942 as well as Articles 4(5), 4(6)(c), 4(6)(f) and 4(12) of the FCA Regulation, ACER is competent to decide on the Proposal.

4. SUMMARY OF THE PROPOSAL

- (20) The Proposal includes the following elements:
 - a) 'Whereas' section;
 - b) general provisions, including subject matter and scope of application, definitions, and implementation in Part 1;
 - c) Part 2 with governance rules and functional requirements;
 - i. general requirements on the scope and SAP council;
 - ii. provisions on SAP cooperation agreement ('SAP CA');

- iii. harmonised contractual framework with market participants;
 - iv. principles of financial settlement and risk management;
 - v. products, allocation methods and algorithms;
 - vi. operational processes;
 - vii. data interfaces; and
 - viii. technical availability and reliability of provided tasks;
- d) Part 3 with SAP cost sharing;
 - e) Annex, with requirements for the long-term flow-based allocation ('LTFBA') algorithm.
- (21) The Proposal therefore consists of a complete SAP methodology, including the following amendments to the SAP methodology as approved by the regulatory authorities and amended by ACER Decision No 09/2022:⁵
- a) In the 'Whereas' section:
 - i. addition of previous process steps in issuing the Proposal by all TSOs;
 - ii. clarification explaining that the Proposal includes the algorithmic principles for both long-term coordinated NTC ('cNTC') and flow-based allocation;
 - iii. addition of the list of TSOs responsible for the development of the Proposal;
 - b) Article 1 ('Subject matter and scope'): the exceptions of the implementation, by not considering the TSOs not generating income from capacity allocation, and bidding zone borders where regulatory authorities decided that either long-term transmission rights are not issued or other long-term cross-zonal hedging products are available by the concerned TSOs;
 - c) Article 2 ('Definitions and interpretation'): adding definitions for 'allocation constraint' and 'external constraint';
 - d) Article 13 ('Cooperation of SAP CA Parties): defining different user groups and topic-specific workshops;
 - e) Article 39 ('Allocation algorithm formulas'): a new article providing mathematical formulation of allocation algorithms for both cNTC and flow-based allocation approach;
 - f) Article 51 ('Auction cancellation'): adding incorrect offered capacity values as a potential reason for auction cancellation;

⁵ Amendments of editorial nature, i.e. not affecting the content of the methodology, are not listed here.

- g) Annex ('Common set of requirements for the long-term flow-based allocation (LTFBA) algorithm'): a new part of the document, providing the following provisions of the LTFBA algorithm:
 - i. requirements on functionalities and performance;
 - ii. requirements on algorithm output and deadlines for the delivery of results;
 - iii. requirements related to allocation constraints.

5. OBSERVATIONS RECEIVED BY ACER

5.1. Public consultation on the Proposal

(22) Responses to ACER's public consultation are summarised in Annex II to this Decision.

5.2. Consultation on ACER's preliminary position

(23) ACER's preliminary position envisaged the following main changes by ACER to the Proposal, as set out in the following parts of Annex I to this Decision:

- a) Whereas:
 - i. introducing a new recital 5 to explain the exceptions regarding the application of the methodology for certain TSOs;
 - ii. improving the description of the impact of the SAP methodology towards the objectives of the FCA Regulation;
- b) Article 1 ('Subject matter and scope'): specifying the scope of application with regard to the TSOs to which the SAP methodology is applicable, thereby referring to a new Annex 1 of the SAP methodology.
- c) Article 2 ('Definitions and interpretation'):
 - i. updating the list of definitions and acronyms;
 - ii. removing the definition of 'allocation constraint';
 - iii. adding definitions of 'evolved flow-based' ('EFB'), 'external constraint' ('EC') and 'shadow price';
- d) Article 3 ('Implementation'): defining the timeline of application of long-term flow based allocation with different levels of application of evolved flow-based principles;
- e) Article 5 ('Designation of entity'):
 - i. clearly designating Joint Allocation Office ('JAO') as the SAP operator;
 - ii. replacing and further clarifying provisions regarding accountability of TSOs;
- f) Article 6 ('SAP council'): clarifying decision-making process in the SAP council;
- g) Article 7 ('Transparency, publication, monitoring and reporting'):
 - i. introducing a general requirement of transparency;

- ii. clarifying in a new paragraph 5 the possibility that ACER requests additional data and information from the SAP operator;
 - h) Article 28 ('Termination and suspension'): defining the relevant process for a decision on termination and suspension;
 - i) Article 39 ('General requirements for long-term allocation algorithms'):
 - i. amending this article by generalising it for both cNTC and FB approaches;
 - ii. clarifying the consideration of reduction periods;
 - j) Article 40 ('Long-term flow-based allocation algorithm'):
 - i. adding a particular provision on the LTFBA algorithm, including evolved flow-based approach;
 - ii. defining detailed publication requirements with regard to flow-based allocation;
 - k) Article 41 ('Mathematical formulation of the long-term allocation algorithms'): introducing cNTC and flow-based mathematical formulations.
 - l) For both Article 40 and Article 41, including the application of:
 - i. external constraints (EC) for composite borders, for both cNTC and FB approaches;
 - ii. combined CNEC constraints;
 - iii. clearing price calculation per bidding zone oriented border;
 - m) Article 59 ('Management of participants' claims'): proposing a clear sequence for the treatment of participant's claims towards the SAP operator;
 - n) Article 63 ('Cost sharing arrangements'): introducing a provision to treat multiple TSOs from one side of a bidding zone border in line with their sharing key to their long-term congestion income on the specific border;
 - o) removing the previous Annex related to long-term flow-based allocation amendments and including its relevant provisions in other existing or new articles of the Proposal;
 - p) introducing a new Annex 1, which provides a list of the TSOs which are subject to the approved SAP methodology.
- (24) The following paragraphs provide a summary of views on ACER's preliminary position received during the hearing phase between 23 December 2022 and 16 January 2023. ACER did not receive any requests for oral hearings. ACER received written comments from:
- a) Austrian regulatory authority ('E-Control');
 - b) Danish regulatory authority ('DUR');
 - c) Luxembourgish regulatory authority ('ILR');
 - d) all TSOs.
- (25) E-Control proposed to remove the TSO Vorarlberger Übertragungsnetz GmbH ('VUEN') from the list of TSOs in Annex 1, as the competent Austrian ministry has

formally designated responsibilities under Article 1(3) of the FCA-Regulation to the TSO Austrian Power Grid AG.

- (26) DUR proposed to include in recital (5)(a) criteria for exempting TSOs from the scope of application of the SAP methodology, by referring to those TSOs which do not provide long-term transmission rights at any of their bidding zone borders.
- (27) ILR proposed to replace the word “which” in recital (5)(b) by “as long as it”, in order to provide flexibility for a potential change of the application of SAP methodology to the Luxembourgish TSO (‘Creos’).
- (28) All TSOs provided the following comments and proposals to ACER’s preliminary position:
- a) General:
 - i. all TSOs highlighted that ACER requested to amend the SAP methodology to allow for a timely implementation of the long-term flow-based allocation, and not to update the full SAP methodology;
 - ii. all TSOs note that the current wording of the SAP methodology seems not including consistently the possibility of implementation of financial transmission rights (FTR) obligations.
 - b) Whereas:
 - i. all TSOs welcomed the exemption for Creos;
 - ii. all TSOs regretted that the Baltic Cable AB (‘BCAB’) has not been exempted, considering that regulatory authorities are considering to exempt BCAB;
 - iii. all TSOs also considered that the paragraphs on the exemption conditions would be better placed under Article 1 (‘Subject, matter and scope’), and not in the Whereas section.
 - c) Article 1 (‘Subject matter and scope’):
 - i. all TSOs proposed to replace the word ‘requirements’ with ‘tasks’ for alignment with Article 50 of the FCA Regulation, since the requirements are covered by Article 49 of the FCA Regulation;
 - ii. all TSOs highlighted that the approach to list in Annex 1 the TSOs subject to the methodology deviates from the recommendations from ACER Informal Guidance to ENTSO-E and TSOs on how to draft proposals for terms and conditions or methodologies. Instead, the TSOs would rather include a similar wording as in recital (5).
 - d) Article 2 (‘Definitions and interpretation’): TSOs proposed to amend the definition of EFB in its part related to alternative current (‘AC’) borders;
 - e) Article 3 (‘Implementation’):
 - i. all TSOs welcomed the stepwise approach for the implementation of flow-based allocation;

- ii. regarding the first implementation of flow-based allocation and EFB in particular, all TSOs proposed to focus in the first phase (expected by the end of 2024) on the bidding zone borders internal to a flow-based CCR (and not external);
 - iii. all TSOs provided a number of reasons to reconsider the timeline for the full implementation of integrated flow-based allocation for two flow-based CCRs and EFB between them, from 12 months after the first phase to 24 months; these include uncertainties regarding a vendor, time assessment, certain methodological aspect, correlation with other tools (JAO auction tool, congestion rent, publication), adjustments of the tools and time needed for external parallel run, testing with IT vendors, TSOs and market participants and updates of procedures and contracts.
- f) Article 7 ('Transparency, publication, monitoring and reporting'):
- i. All TSOs proposed to omit the submission of a report to regulatory authorities as it should be published;
 - ii. all TSOs proposed to include a possibility to mask possible sensitive and/or confidential information concerning the SAP cooperation agreement;
 - iii. all TSOs opposed ACER's proposal of having a possibility of an open-ended information request as provided in paragraph 5;
- g) Article 32 ('Collaterals') and 33 ('Credit limit'): all TSOs proposed a more flexible wording of the provisions related to collaterals and credit limit in the SAP methodology, assuming that collaterals and credit limit would be specified in the harmonised allocation rules ('HAR') methodology;
- h) Article 38 ('Form of products and covered bidding zone borders'): all TSOs proposed to relate the allocated products to the HAR methodology;
- i) Article 40(6) ('Long-term flow-based allocation algorithm'): all TSOs proposed to redefine flow-based allocation outputs per CNECs and bidding zone borders and asked for clarifications regarding the resulting flows and exchanges;
- j) Article 41 ('Mathematical formulation of the long-term allocation algorithms'): all TSOs proposed to reconsider the 'combined CNEC' ('CCNEC') definition by either renaming it to 'grouped network elements' ('GNEC'), or by generalising the CNEC definition to include combined CNECs;
- k) Annex 1 (the new annex added by ACER): all TSOs suggested to remove VUEN and BCAB from the list of TSOs to which the SAP methodology applies, and to rename HOPS d.d. - Croatian Transmission System Operator Plc according to their new status (joint stock company);

5.3. Consultation of the AEWG

- (29) The AEWG provided its advice on 10 February 2023 and endorsed the draft Decision.
- (30) During the AEWG's consultation period, ILR suggested minor linguistic changes to the draft Decision and provided the following comments. Firstly, ILR suggested to remove "such as currently Creos Luxembourg S.A." from Recital (5)(b) of Annex I to the draft

Decision. In ILR's view, it was not necessary to explicitly name Creos in point (b), noting that point (a) of the same Recital also doesn't name the relevant TSOs.

- (31) Secondly, ILR suggested to specify in Article 1(6) of Annex I to the draft Decision that any amendment to the SAP methodology should be submitted by all TSOs, since it is all TSOs' methodology.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (32) Articles 4(5), 4(6)(c) and 4(6)(f) in conjunction with Article 4(12) of the FCA Regulation provide that amendments to the approved requirements of the SAP and the cost sharing methodology for sharing costs of establishing, developing and operating the SAP, in accordance with Articles 49 and 59 of the same Regulation, are subject to approval by ACER.
- (33) Article 4(8) of the FCA Regulation requires the Proposal to include a proposed timescale for its implementation and a description of their expected impact on the objectives of the FCA Regulation.
- (34) Article 49 of the FCA Regulation sets out specific requirements for the SAP and refers to Article 50 for the general tasks that have to be covered by the SAP, as well as to Article 59 for sharing costs of establishing, developing and operating the SAP. These articles do not require a consultation of stakeholders on the draft proposals concerning those terms, conditions and methodology.
- (35) Article 30(7) of the FCA Regulation provides that Articles 49 and 59 of the same Regulation shall not apply to the TSOs of the bidding zone borders in the event that regulatory authorities decide that long-term transmission rights shall not be issued by the respective TSOs or that other long-term cross-zonal hedging products shall be made available by the respective TSOs.

6.2. Assessment of the legal requirements

- (36) The Proposal submitted by the TSOs includes updates of the existing SAP methodology, but consists of a complete SAP methodology. To ensure that its approval of the Proposal is in line with the legal requirements, ACER, when assessing the Proposal, considered the Proposal in its entirety.

6.2.1. Assessment of the requirements in Article 4(8) of the FCA Regulation (timeline and impact)

- (37) Article 4(8) of the FCA Regulation requires the Proposal to include a proposed timescale for its implementation. TSOs included these provisions in Article 4 of the Proposal (it has become Article 3 after ACER's amendments).
- a) In their Proposal, the TSOs did not change the timeline for SAP implementation; it was set to 12 (twelve) months after the approval of the SAP methodology, except for DC interconnectors for which it was set to 24 (twenty-four) months after the approval of the SAP methodology.

- b) ACER considered the requirements of the capacity calculation methodologies of the Core and Nordic CCRs and the timeline for application of the long-term flow-based capacity allocation defined in those decisions. ACER also analysed the specific requirements of the application of the evolved flow-based (EFB) approach on the bidding zone borders internal and external to the flow-based CCRs, and discussed it with TSOs and regulatory authorities. On this basis, ACER provided the following application timeline in Article 3 of its preliminary position:
- i. the first deadline is set to enable the flow-based allocation ready for the yearly auction for 2025; this included the application of the EFB approach at both internal and external bidding zone borders of flow-based CCRs;
 - ii. the second deadline is set to enable the flow-based allocation ready for the yearly auction for 2026, with included integrated application of flow-based allocation for Core and Nordic CCRs with EFB approach between them;
 - iii. ACER also added a paragraph clarifying that any other requirements (such as the allocation of long-term transmission rights using the cNTC approach) should be applicable by the time of approval of the SAP methodology, since these should either be implemented already or can be directly applied.
 - iv. In its written hearing input, all TSOs accepted the first deadline for the flow-based allocation including the internal EFB application, but also proposed the relaxation of deadlines for other phases of the EFB application, as given in recital (28)e).
 - v. ACER considered the TSOs' reasoning as justified and accordingly proposed the following deadlines:
 1. the first phase should be completed by the time of the yearly auction for 2025; it should enable the flow-based allocation and include the application of the EFB approach at HVDC interconnectors internal to a flow-based CCR;
 2. the second phase should be completed by the time of the yearly auction for 2026; it should enable the application of the EFB approach at HVDC interconnectors external to a flow-based CCR. This involves the application of EFB at bidding zone borders between the CCRs applying flow-based allocation and the CCRs applying cNTC allocation (for HVDC interconnectors, and special cases of radial and non-meshed AC borders, as further explained in recital (55));
 3. the third phase should be completed by the time of the yearly auction for 2027; it should enable the application of single integrated flow-based allocation for the Core and Nordic CCRs, with the EFB approach between these CCRs.
- (38) Article 4(8) of the FCA Regulation also requires the Proposal to include a description of its impact on the objectives of the FCA Regulation. ACER considered that the 'Whereas'-section of the Proposal did not clearly enough assess the impact on the objectives of the FCA Regulation. ACER therefore included recitals (15) to (23) in the 'Whereas'-section

of Annex I of this Decision to ensure a consistent assessment of the SAP methodology against the objectives of the FCA Regulation.

6.2.2. Assessment of the requirements in Articles 49 and 50 of the FCA Regulation (functional requirements and general tasks)

- (39) Article 49(2) of the FCA Regulation lists the minimal set of functional requirements of the SAP platform. In the following recitals, ACER checked the Proposal against these requirements, taking into account the hearing and consultation inputs, and explained potential necessary changes made by ACER⁶.
- (40) Article 49(2)(a) of the FCA Regulation requires the inclusion of the expected bidding zone borders to be covered.
- a) The ‘Whereas’-section of the Proposal included the list of TSOs responsible for the development of the proposal, and Article 1 generally described the applicability of the SAP methodology, however without listing TSOs or bidding zone borders;
 - b) ACER considered that the list of TSOs responsible for the development of the Proposal is not relevant for the approved SAP methodology, especially in view of the necessary specification of the TSOs under the new paragraph (2) of Article 1 and the new Annex 1, and therefore deleted it;
 - c) In order to fulfil the requirements of Article 49(2)(a), ACER considered the inclusion of an explicit list of TSOs to which the SAP methodology is applicable as necessary, provided this list as a new Annex 1, and amended the ‘Whereas’-section (recital (5)) and Article 1 accordingly, as further explained in section 6.2.4. In paragraph 2 of Article 1, ACER clarified that the expected bidding zone borders to be covered by the SAP are specified through the HAR.
- (41) Article 49(2)(b) of the FCA Regulation requires the inclusion of the technical availability and reliability of provided services.
- a) TSOs provided these provisions in Articles 56 to 59 of the Proposal (title 9).
 - b) Article 59 (‘Management of participants’ claims’) did not provide full clarity of the treatment of participants’ claims. Therefore ACER included a clear sequence for the required steps to be taken by the SAP operator.
- (42) Article 49(2)(c) of the FCA Regulation requires the inclusion of the operational processes.
- a) TSOs provided these provisions in Articles 42 to 53 of the Proposal (title 7).

⁶ Unless otherwise specified, the numbering of titles and articles is in accordance with the Proposal as amended by ACER.

- b) Apart from small wording changes, ACER did not make substantial changes to these articles.
- (43) Article 49(2)(d) of the FCA Regulation requires the inclusion of offered products.
- a) TSOs provided these provisions in Article 38(2) of the Proposal.
 - b) In their written hearing input, TSOs proposed a rewording of paragraph 2 of this article, in order to establish a relation to the HAR methodology.
 - c) ACER accepted this proposal and included the proposed wording accordingly.
- (44) Article 49(2)(e) of the FCA Regulation requires the inclusion of forward capacity allocation time frames.
- a) TSOs provided these provisions in Article 38(1) of the Proposal, specifying at least yearly and monthly timeframes, unless otherwise specified by the HAR methodology.
 - b) ACER did not change this provision.
- (45) Article 49(2)(g) of the FCA Regulation requires the inclusion of principles of financial settlement and risk management of allocated products.
- a) TSOs provided these provisions in Article 32 to 36 of the Proposal (title 5).
 - b) In their written hearing input, and knowing that in parallel to the process of amending the SAP methodology the amendments of the HAR methodology are initiated, TSOs proposed to ACER to give more flexible consideration to the provisions related to collaterals and credit limit in the SAP methodology (Articles 32 and 33), assuming that they would be specified in the HAR methodology. To consider such proposed amendment, the TSOs suggested specific changes to the text of Article 33 of the Proposal.
 - c) ACER agrees with the TSOs' proposal to establish sufficient flexibility in the SAP methodology and allow the HAR methodology to further specify appropriate collateral requirements. Therefore, to offer such flexibility, ACER amended Article 32(2) and Article 33(1) of the Proposal by deleting the restriction to specifying forms of allowed collaterals. However, ACER did not adopt the specific changes to these provisions as proposed by TSOs in their hearing input, because in ACER's view these provisions leave sufficient flexibility for the HAR methodology, while ensuring that the SAP operator is in a position to fulfil these requirements regarding the processes related to collaterals if needed.
- (46) Article 49(2)(h) of the FCA Regulation requires the inclusion of a harmonised contractual framework with market participants.
- a) TSOs provided these provisions in Article 31 of the Proposal (title 4).
 - b) Apart from small wording changes, ACER did not make substantial changes to these articles.
- (47) Article 49(2)(i) of the FCA Regulation requires the inclusion of the data interfaces.
- a) TSOs provided these provisions in Articles 54 to 55 of the Proposal (title 8).

b) Apart from small wording changes, ACER did not make substantial changes to these articles.

(48) Article 49(1) of the FCA Regulation requires that the proposal for the set of requirements and for the establishment of the SAP identifies different options for the establishment and governance of the SAP. As the SAP has already been established, the following legal assessment focuses only on the governance provisions.

a) TSOs provided these provisions in Articles 5 to 6 of the Proposal (title 2), as well as Articles 8 to 30 (title 3 on SAP cooperation agreement).

b) TSO included the designation of entity operating the SAP, namely the Joint Allocation Office (JAO), as well as the reasons for this designation in the ‘Whereas_’-section. For ensuring sufficient clarity, ACER specified, in agreement with all TSOs, this designation of JAO in Article 5 of the Proposal.

c) ACER also included in Article 5(2) of the Proposal provisions which ensure the TSOs’ accountability and the possibility of regulatory oversight also in a case of delegation of tasks by the SAP operator to third parties.

d) Article 6 of the Proposal includes provisions related to the SAP council. In paragraph 6 of this article, ACER added the SAP task of deciding on the reporting and publication of information, as provided in Article 7.

e) ACER added Article 7 to the Proposal (‘Transparency, publication, monitoring and reporting’) to summarise all monitoring, publication and reporting requirements under one article and ensure sufficient transparency. In their written hearing input, TSOs provided a number of comments to this article:

i. TSOs proposed to omit the submission of a report to regulatory authorities as it shall be published. ACER accepted this proposal.

ii. TSOs proposed to include a possibility not to publish possibly sensitive and/or confidential information concerning the SAP cooperation agreement. ACER accepted this proposal and adjusted the wording of Article 7 of the Proposal.

iii. TSOs opposed ACER’s proposal to have a possibility of an open-ended information request as provided in paragraph 5. While ACER considers this provision as reasonable since it was limited to information concerning the allocation of cross-zonal capacity and SAP tasks, ACER agrees to follow the process in accordance with Article 63(4) of the FCA Regulation, once a need for such request occurs. Therefore, ACER accepted the TSOs proposal and deleted this paragraph.

f) In Articles 8 to 30 of the Proposal, related to the SAP cooperation agreement, ACER provided further small wording amendments, clarifications and corrections. Besides the changes for improving the wording and structure and adding relevant references to the provisions in these Articles, ACER introduced the following further amendments for clarifications:

i. in Article 8 of the Proposal, ACER added a provision ensuring that arrangements allowed outside the scope of the SAP CA are consistent with the SAP methodology;

- ii. ACER specified the provision of Article 9(k) of the Proposal in accordance with the feedback received by TSOs;
- iii. ACER complemented Article 13 of the Proposal with the reference to publication and publication requirements;
- iv. in Article 14 of the Proposal, ACER added a new paragraph to be more explicit about the SAP operator's obligation to allow for auditing by TSOs;
- v. in Article 15(2) of the Proposal, ACER further specified what should be considered as 'agreed level of performance';
- vi. ACER clarified in Articles 16 and 28 of the Proposal which entities should be considered where the articles previously referred to 'Party' without further specifying the term 'Party';
- vii. in Article 28 of the Proposal, ACER specified the process of termination of the SAP CA. More specifically, ACER clarified:
 1. in paragraph 1, that the default option of termination of the SAP CA is limited to TSOs which are no longer required to issue long-term transmission rights (e.g. following a new derogation in accordance with Article 30(7) of the FCA Regulation);
 2. in paragraph 2, that the SAP operator is not part of the decision process because it cannot be considered in such process which is subject to qualified majority principles (decisions based on qualified majority principles in accordance with Article 4(2) of the FCA Regulation may not include any other parties than TSOs); and
 3. in paragraph 5, the SAP operator's right to suspend the provision of SAP tasks. ACER deleted parts of this paragraph since potential changes of increasing risk or liabilities should in general not lead to a discontinuation of operations of the SAP which could result in serious negative impacts on the functioning of the European forward electricity markets. Further, while ACER does agree that the SAP operator should not be required to do the impossible, ACER does not deem it necessary to address provisions of the HAR methodology which are not possible to fulfil, since such provisions are subject to an amendment process of the HAR methodology and should not be proposed or approved if considered impossible.
- viii. in Article 29 of the Proposal, ACER revised provisions on force majeure, since force majeure is already defined under Article 2(45) of the CACM Regulation and therefore also applicable to the SAP methodology in accordance with its Article 2 of the Proposal.

6.2.2.1. Assessment of the allocation methods and algorithms

- (49) Article 49(2)(f) of the FCA Regulation requires the inclusion of the allocation methods and algorithms.

- (50) In Articles 37 and 39 of the Proposal and in the Annex of the TSOs' Proposal, the TSOs provided amendments for the application of the long-term flow-based allocation approach (besides the already implemented cNTC allocation approach), as well as for the clarification of the algorithms and mathematical formulations for both the cNTC-based and the flow-based approach. The TSOs also envisaged the application of the EFB approach, referring thereto in a footnote in Article 39.
- (51) ACER considered that it is necessary to improve the structure of those provisions by removing the Annex and including its provisions in other articles. Therefore, ACER reorganised those provisions in a way that:
- a) Article 39 'General requirements for long-term allocation algorithms' covers common provisions for both the cNTC and the flow-based approach, pointing to their differences where necessary;
 - b) Article 40 'Long-term flow-based allocation algorithm' sets out the provisions solely related to the flow-based approach.
 - c) In order to align the mathematical formulation of the cNTC and flow-based allocation approaches, ACER introduced a new Article 41, providing this mathematical formulation for both approaches in parallel columns of a table.
- (52) ACER largely agreed with the amendments proposed by the TSOs in relation to long-term flow-based capacity allocation. However, ACER considered it necessary to provide further clarity and distinction of the particular provisions for the cNTC-based and flow-based approaches, and applied them in Articles 39 to 41, and consequently in Article 2 ('Definitions').
- (53) In Article 2, ACER removed the definition of 'allocation constraint', initially proposed by the TSOs, to deal with border-wise constraints for the cNTC approach. The term 'allocation constraint' as defined in Article 2(6) of the CACM Regulation has a wider meaning, not only related to the composite capacity constraint on a group of bidding zone borders. Moreover, such a composite constraint is applicable not only for the cNTC-based approach but for the flow-based approach as well. Therefore, ACER defined such a constraint in the SAP methodology, as 'external constraint' (EC), applicable for both the cNTC approach and the flow-based approach. Through a footnote in Article 40, ACER clarified that, if applied for all borders of a bidding zone, such an EC becomes export/import limit, as a special case of EC.
- (54) In Article 2, ACER also provided a definition of 'evolved flow-based' ('EFB') approach, as an approach to consider HVDC interconnectors (as well as special cases of radial non-meshed AC bidding zone borders) in flow-based capacity calculation and allocation, at bidding zone borders internal or external to a flow-based CCR. ACER is aware that these allocation principles are similar to the Advanced Hybrid Coupling ('AHC') approach as defined in the Core Day Ahead Capacity Calculation methodology (for the application at the bidding zone borders external to Core CCR), and that the same methodology uses the term ('EFB') for the consideration of only internal HVDC interconnectors in the Core CCR. ACER considers that using the term 'AHC' is not suitable for the long-term allocation, as it refers to (price) coupling, which is applied only for day-ahead and intraday time horizons. Therefore ACER found it appropriate to use the term 'EFB' for both internal and external bidding zone borders of a flow-based CCR.

- (55) In their written hearing input, the TSOs proposed to amend the EFB definition in its part related to AC bidding zone borders, by specifying that, when the EFB is applied at the non-meshed alternative current ('AC') borders, it considers only borders between the CCRs applying the flow-based approach. ACER did not accept this proposal as it would practically limit the implementation of the EFB only to the HVDC interconnectors, and the AC bidding zone border Germany/Luxembourg-Denmark 1. This would prevent a potential application of the EFB on the bidding zone border Poland-Lithuania, expecting the synchronisation of the Baltic CCR with the Continental Europe synchronous area. This border would then comply with the conditions to apply the EFB, having the AC connection of a flow-based CCR (Core) and cNTC-based CCR (Baltic), and being radial and non-meshed (expecting to have one DC and one AC link). There is no reason to limit the application of the EFB only to the AC bidding zone borders between the flow-based regions, as long as these AC borders comply with the definition of the EFB provided in the Proposal as amended by ACER.
- (56) ACER amended Article 39 of the Proposal by generalising it for both the cNTC and the FB approach, or by adding specific notions for flow-based allocation, such as the calculation of marginal clearing price and shadow price.
- (57) In the same Article 39, ACER confirmed the consideration of reduction periods as proposed by the TSOs. ACER considers reduction periods as applicable only for the bidding zone borders applying the cNTC-based allocation approach. Furthermore, although reduction periods may exist for the bidding zone borders applying the cNTC-based approach, it is acceptable that the allocation algorithm does not consider them, since they would not impact the result of an auction.
- (58) In Articles 40 and 41, ACER provided the provisions on:
- a) the application of the EFB approach;
 - b) the application of external constraints for composite borders for both cNTC and FB approaches
 - c) combined (grouped) CNEC constraints, as required by the Nordic long-term capacity calculation methodology; and
 - d) clearing price calculation for bidding zone oriented borders.
- (59) In paragraph 6 of Article 40, ACER provided detailed requirements for the publication of information with regard to flow-based allocation outputs.
- (60) In their written hearing input, the TSOs noted that the current wording of the SAP methodology seems not to include consistently the possibility of implementing FTR-obligations. ACER is aware of this fact and moreover considers that FTR-obligations were not considered in the TSOs' Proposal. However, ACER takes into account that there is currently no application of FTR-obligations, nor has it been announced by any TSO for any of the bidding zone borders. Also, introducing FTR-obligations would require a revision of not only the SAP methodology but also other methodologies, such as the HAR methodology. Therefore, ACER included in Article 1 ('Subject matter and scope') a provision which requires all TSOs responsible for developing this methodology to propose an amendment to the SAP methodology before introducing FTR-obligations at any of the bidding zone borders. In that regard, ACER took account of ILR's comment

(see recital (31) of this Decision). ACER also deleted paragraph (e) in Article 9 of the Proposal, which referred to FTR obligations.

- (61) The TSOs also proposed to reconsider the definition of ‘combined CNEC’ (‘CCNEC’) as proposed by ACER. Accordingly, ACER renamed it to ‘grouped network elements with contingencies’ (‘GNEC’);
- (62) Finally, the TSOs proposed redefinitions of flow-based allocation outputs provided in Article 40(6) of the Proposal. They also asked for clarifications regarding the resulting flows and exchanges. Accordingly, ACER amended and extended the definitions of expected outputs to provide additional clarity.

6.2.3. Assessment of the requirements in Article 59 of the FCA Regulation (SAP cost sharing)

- (63) Article 59 of the FCA Regulation requires that all TSOs issuing long-term transmission rights on the SAP shall jointly bear the costs related to its establishment and operation. TSOs provided these provisions in Articles 60 to 68 of Annex I to this Decision.
- (64) However, the Proposal did not properly consider situations with multiple TSOs from one side of a bidding zone border in Article 64 (‘Cost sharing arrangements’), and therefore ACER introduced provisions which treat such situations in line with the TSOs’ sharing key for the long-term congestion income.

6.2.4. Assessment of other points of the Proposal (application to TSOs and editorial changes)

- (65) ACER found it necessary to add in the Proposal a new paragraph 2 in Article 1, referring to a new Annex 1, which describes the personal scope of application of the SAP methodology and lists the TSOs to which the SAP methodology applies. The new recital (5) explains the categories of TSOs for which the non-application of the SAP methodology is legally justified.
- (66) In that regard, ACER fully considered the input received from E-Control, DUR and ILR and detailed in recitals (25), (26), (27) and (30) of this Decision. As far as the input from all TSOs, described in points b) and c) of recital (28)b) of this Decision, is concerned, ACER disagrees with exempting BCAB from the scope of application of the SAP methodology and with including the reasons for which the SAP methodology is not applicable to certain TSOs in Article 1. First, no valid legal ground justifying the exemption of BCAB has been invoked or identified. As BCAB has not been exempted under Article 30(7) of the FCA Regulation, and is commercializing its transmission capacity on the single day-ahead market, Articles 49 and 59 of the FCA Regulation apply to it. Second, since Article 1(2) in conjunction with Annex 1 defines the personal scope of application of the SAP methodology positively, by listing all the TSOs covered, it is neither necessary nor appropriate to include additional criteria to explain why TSOs are not listed. Those criteria are only of secondary relevance and explanatory nature, and are therefore better placed in the corresponding recital (5).
- (67) Finally, ACER introduced some necessary editorial changes to improve the readability and the form of the SAP methodology. This includes removal of the previous Annex 1

of the Proposal dealing with flow-based allocation principles, and including the related provisions in other articles of the SAP methodology.

7. CONCLUSION

- (68) For all the above reasons, ACER considers the Proposal in line with the requirements of the FCA Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I to this Decision. The amendments, which have been consulted with the TSOs and regulatory authorities, are necessary to ensure that the Proposal is in line with the purpose of the FCA Regulation and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (69) Therefore, ACER approves the Proposal subject to the necessary amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The SAP methodology pursuant to Articles 49 and 59 of Regulation (EU) 2016/1719 is amended and approved as set out in Annex I to this Decision.

Article 2

This Decision is addressed to:

1. 50Hertz - 50Hertz Transmission GmbH
2. Amprion - Amprion GmbH
3. APG - Austrian Power Grid AG
4. Augstsprieguma tīkls - AS Augstsprieguma tīkls
5. BCAB - Baltic Cable AB
6. ČEPS - ČEPS a.s.
7. CREOS Luxembourg - CREOS Luxembourg S.A.
8. EirGrid - EirGrid plc
9. Elering - Elering AS
10. ELES - ELES, d.o.o.
11. Elia - Elia Transmission Belgium S.A.

12. Energinet - Energinet
13. ESO – Electroenergien Systemen Operator EAD
14. Fingrid - Fingrid OyJ
15. HOPS d.d. - Croatian Transmission System Operator Plc
16. IPTO - Independent Power Transmission Operator S.A.
17. Kraftnät Åland - Kraftnät Åland Ab
18. LITGRID - LITGRID AB
19. MAVIR ZRt. - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság ZRt.
20. PSE - Polskie Sieci Elektroenergetyczne S.A.
21. REE - Red Eléctrica de España S.A.
22. REN - Rede Eléctrica Nacional, S.A.
23. RTE - Réseau de Transport d'Electricité S.A.
24. SEPS - Slovenská elektrizačná prenosová sústava, a.s.
25. SONI - System Operator for Northern Ireland Ltd
26. Svenska Kraftnät - Affärsverket Svenska Kraftnät
27. TenneT GER - TenneT TSO GmbH
28. TenneT TSO - TenneT TSO B.V.
29. Terna - Terna S.p.A.
30. Transelectrica - Compania Nationala de Transport al Energiei Electrice S.A.
31. TransnetBW - TransnetBW GmbH

Done at Ljubljana, on 22 March 2023.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Amendment to the SAP methodology according to Articles 49 and 59 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation Regulation

Annex Ia – Amendment to the SAP methodology according to Articles 49 and 59 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation Regulation, in track change compared to the Proposal (for information only)

Annex II - Evaluation of responses to the consultation of regulatory authorities, TSOs and other market participants on the Proposal (for information only)

In accordance with Article 28 of Regulation (EU) 2019/942, the addressee(s) may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of ACER within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressee(s) may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.