

**DECISION No 15/2019
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 30 October 2019

**on the Core CCR TSOs' proposal for the regional design of long-term
transmission rights**

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 6(10) thereof,

Having regard to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation², and, in particular, Articles 4(7)(c), (10) and (12) thereof,

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

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

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (the 'FCA Regulation') laid down rules on

¹ OJ L 158, 14.6.2019, p. 22.

² OJ L 259, 27.9.2016, p. 42.

cross-zonal capacity allocation in the forward markets. These rules include specific requirements regarding the design of long-term transmission rights ('LTTR') for each capacity calculation region ('CCR') pursuant to Article 31 of the FCA Regulation.

- (2) On 14 October 2017, the regulatory authorities of the Core CCR ('Core regulatory authorities') approved the Core transmission system operators' ('Core TSOs') proposal for the regional design of LTTR. Subsequently, on 19 July 2018, the Core regulatory authorities approved the first amendment of the regional design of LTTR.
- (3) The present Decision of the Agency follows from the joint request of the Core regulatory authorities that the Agency adopts a decision on the proposal for amendment of the regional design of LTTR, which the Core TSOs submitted to all Core regulatory authorities for approval. Annex I to this Decision sets out the amended regional design of LTTR, pursuant to Article 31 of the FCA Regulation, as decided by the Agency.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (4) On 14 October 2017, the Core regulatory authorities approved the Core TSOs' proposal for the regional design of LTTR. Subsequently, on 19 July 2018, the Core regulatory authorities approved the first amendment of the regional design of LTTR.
- (5) On 20 November 2018, the Core TSOs decided to strive for the introduction of Financial Transmission Rights Options (FTR Options) on the NL-DE/LU and the FR-DE/LU bidding zone borders as of 1 January 2020.
- (6) On 7 February 2019, ENTSO-E, on behalf of the Core TSOs, published for public consultation the draft '2nd amendment of the Core CCR TSOs' regional design of LTTR based on Article 4(12) of Commission Regulation (EU) 2016/1719'. The consultation lasted from 7 February 2019 until 7 March 2019.
- (7) On 4 April 2018, the Core TSOs submitted to the Core regulatory authorities the '2nd amendment of the Core CCR TSOs' regional design of LTTR based on Article 4(12) of Commission Regulation (EU) 2016/1719' (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 with use-it-or-sell-it conditions ('PTR'). The proposal for amendment was received by the last Core regulatory authority on 29 May 2019.

2.2. Proceedings before the Agency

- (8) In a letter received by the Agency on 3 July 2019, the Chair of the Core Energy Regulators' Regional Forum, on behalf of all Core regulatory authorities, informed the Agency that, on the same date, the Core regulatory authorities unanimously agreed to

request the Agency to adopt a decision on the proposal for amendment pursuant to Article 4(10) of the FCA Regulation.

- (9) According to that letter, the Core regulatory authorities have not been able to reach a unanimous agreement regarding the introduction of FTR Options on the bidding zone border FR-DE/LU.
- (10) More specifically, the Core regulatory authorities, in a “non-paper” received by the Agency on 10 July 2019, explained that one regulatory authority expressed reservations regarding the implementation of FTR Options on the FR-DE/LU bidding zone border, as market players would lose the ability physically to nominate their rights to hedge against certain risks in a situation when the market would not clear.
- (11) During the preparation of this Decision, the Agency closely cooperated with all Core regulatory authorities and all Core TSOs and further consulted them, through teleconferences and through exchanges of draft texts, on the possible changes to the proposal for amendment which the Agency intended to introduce in order to approve the proposed regional design of LTTR.
- (12) On 1 August 2019, the Agency launched a public consultation inviting all interested parties to express their views on potential changes to the proposal for amendment. The closing date for comments was 30 August 2019. The public consultation invited stakeholders to comment on the following aspects of the LTTR regional design: (i) the introduction of FTRs on the FR-DE/LU border as of 1 January 2020, and (ii) the introduction of FTRs 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.
- (13) The summary and evaluation of the responses received are presented in Annex II to this Decision.

3. THE AGENCY’S COMPETENCE TO DECIDE ON THE PROPOSAL FOR AMENDMENT

- (14) According to Article 4(12) of the FCA Regulation, a proposal for amendment to the approved terms and conditions or methodologies shall be approved in accordance with the procedure set out in Article 4 of the same Regulation.
- (15) According to Articles 4(7)(c) and (10) of the FCA Regulation, the TSOs’ proposal for the regional design of LTTR shall be subject to the approval of the regulatory authorities of the concerned region, and, where the regulatory authorities have not been able to reach an agreement on the TSOs’ proposal within six months following the receipt of the proposal, or upon the regulatory authorities’ joint request, the Agency shall adopt a decision concerning the proposal within six months, in accordance with Article 6(10) of Regulation (EU) 2019/942.

- (16) According to the letter of 3 July 2019, all Core regulatory authorities unanimously agreed to request the Agency to adopt a decision on the proposal for amendment pursuant to Article 4(10) of the FCA Regulation.
- (17) It follows from this letter that the Core regulatory authorities jointly requested the Agency to take a decision on the proposal for amendment as they could not reach an agreement on that proposal.
- (18) Therefore, under the provisions of Article 4(10) and (12) in conjunction with Article 4(7)(c) of the FCA Regulation and in accordance with point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, the Agency became responsible to adopt a decision concerning the submitted proposal for amendment by the referral of 3 July 2019.

4. SUMMARY OF THE PROPOSAL FOR AMENDMENT

- (19) The proposal for amendment consists of the following elements:
 - (a) The ‘Whereas’ section;
 - (b) Article 1, which lists the type of LTTR for the bidding zone borders of the Core CCR;
 - (c) Article 2, which determines the entry into force of the proposal for amendment.
- (20) The proposal for amendment puts forward the following amendments to the complete Core regional design of LTTR as approved by the Core regulatory authorities on 14 October 2017 and on 19 July 2018:
 - a. In Table I of the complete Core regional design of LTTR, replacement of the type of long-term transmission right with FTR Options for the borders NL-DE/LU, BE-DE/LU, FR-DE/LU, AT-CZ, AT-HU;
 - b. Amendment to Article 8 of the complete Core regional design of LTTR, to clarify the timing of the change in transmission right type at the BE-DE/LU, AT-CZ and AT-HU borders.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY THE AGENCY

5.1. Initial observations of the regulatory authorities

- (21) According to the letter of the Chair of the Core Energy Regulators’ Regional Forum received by the Agency on 3 July 2019, the Core regulatory authorities have not been able to agree on the introduction of FTR Options on the bidding zone border FR-DE/LU.

- (22) According to the Core regulatory authorities' "non-paper" received by the Agency on 10 July 2019, one regulatory authority expressed reservations regarding the implementation of FTR Options on the FR-DE/LU bidding zone border, as market players would lose the ability physically to nominate their rights to hedge against certain risks in a situation when the market would not clear.

5.2. Consultation of the Core regulatory authorities and TSOs

- (23) During the phase of close cooperation between the Agency, all Core regulatory authorities and TSOs, the Agency tried to clarify the following two aspects of the proposal for amendment:
- (a) the consequences of the decision of the Core TSOs to introduce FTR Options at the FR-DE/LU bidding zone border as of 1 January 2020; and
 - (b) the practical implementation of FTR Options at the AT-CZ and AT-HU borders for the long-term allocation in parallel to the implementation of the Net Transfer Capacity ('NTC') Interim Coupling, and in particular the appropriate timing for the introduction of those FTR Options.

5.3. Public consultation

- (24) Answers to the public consultation further shed light on stakeholders' concerns regarding the above-mentioned issues, in particular:
- (a) stakeholders generally support the introduction of FTR Options at the FR-DE/LU bidding zone border as of 1 January 2020;
 - (b) regarding the practical implementation of FTR Options on the AT-CZ and AT-HU borders, stakeholders are generally opposed to the change of the type of already allocated LTTR suggested in the proposal for amendment.

6. ASSESSMENT OF THE PROPOSAL FOR AMENDMENT

6.1. Legal framework

- (25) Articles 4(1) and 4(7)(c) of the FCA Regulation require TSOs to provide the proposal for the regional design of LTTR in accordance with Article 31(3) of the FCA Regulation to all regulatory authorities for their approval.
- (26) Article 31 of the FCA Regulation sets general requirements regarding the development of a proposal for the regional design of LTTR and its implementation.
- (27) Article 31(1) of the FCA Regulation requires TSOs to allocate long-term cross-zonal capacity to market participants through the allocation platform in the form of physical

transmission rights pursuant to the use-it-or-sell-it ('UIOSI') principle or in the form of FTR Options or FTR Obligations.

- (28) Article 31(2) of the FCA Regulation requires all TSOs issuing LTTR to offer long-term cross-zonal capacity, through the single allocation platform, to market participants for at least annual and monthly time frames.
- (29) Article 31(3) of the FCA Regulation requires TSOs, in each CCR where LTTR exist, to submit a proposal for the regional design of LTTR to be issued on each bidding zone border within the capacity calculation region no later than six months after the entry into force of the FCA Regulation. Further, at borders where, pursuant to Article 30(2) of the FCA Regulation, competent regulatory authorities have taken the coordinated decision to introduce LTTR where such LTTR did not exist at the entry into force of the FCA Regulation, Article 31(3) requires TSOs of the concerned CCR jointly to develop a proposal for the regional design of LTTR to be issued on each bidding zone border within the concerned CCR no later than six months after the regulatory authorities have taken the decision to introduce those LTTR. Finally, Article 31(3) clarifies that regulatory authorities of Member States in which the current regional design of LTTR is part of a TSO cross-border re-dispatch arrangement for the purpose of ensuring that operation remains within operational security limits may decide to maintain physical LTTR on its bidding zone borders.
- (30) Article 31(4) of the FCA Regulation requires the proposals referred to in Article 31(3) of the FCA Regulation to include a time schedule for implementation and at least the description of the following items specified in the allocation rules: (a) type of LTTR; (b) forward capacity allocation time frames; (c) form of product (base load, peak load, off-peak load); and (d) bidding zone borders covered.
- (31) Article 31(5) of the FCA Regulation requires TSOs to subject the proposals referred to in Article 31(3) of the FCA Regulation to consultation, in accordance with Article 6 of the FCA Regulation, and duly consider the result of the consultation.
- (32) Article 31(6) of the FCA Regulation specifies that physical transmission rights cannot be allocated on the same bidding zone border where FTRs-options or FTRs-obligations exist.
- (33) Articles 31(7) to 31(10) of the FCA Regulation set conditions for the review of LTTR on a bidding zone border.
- (34) Article 31(7) of the FCA Regulation lists possible conditions triggering a review of LTTR on a bidding zone border.
- (35) Article 31(8) of the FCA Regulation requires all TSOs in each CCR to carry out the review of LTTR pursuant to Article 31(7) of the FCA Regulation.

- (36) Article 31(9) of the FCA Regulation defines the tasks to be performed by TSOs in the context of a review pursuant to Article 31(7) of the FCA Regulation.
- (37) Article 31(10) of the FCA Regulation requires TSOs of the CCR concerned by the review launched pursuant to Article 31(7) of the FCA Regulation jointly to submit a proposal to the competent regulatory authorities to maintain or amend the type of LTTR.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development of the common proposal for amendment of the regional design of long-term transmission rights

- (38) The proposal for amendment fulfils the requirements of Article 4(12) and Article 6 of the FCA Regulation, as all Core TSOs jointly developed a proposal for amendment of the regional design of LTTR before submitting it for approval to all Core regulatory authorities on 4 April 2018. The proposal for amendment was subject to consultation as described in Section 2.1.

6.2.2. Assessment of the requirements regarding the regional design of long-term transmission rights

- (39) The proposal for amendment fulfils the requirements of Articles 31(1) and 31(6) of the FCA Regulation. Table I lists LTTR on the Core bidding zone borders, which are either FTR Options or physical transmission rights pursuant to the UIOSI principle.
- (40) The Agency understands that the Core TSOs committed themselves to introduce FTR Options on the NL-DE/LU and the FR-DE/LU bidding zone borders as of 1 January 2020 for the following reasons: (i) this allows TSOs to offer to market participants the total long-term cross-zonal capacities in long-term auctions for hedging purposes and (ii) in the day-ahead timeframe, the total day-ahead cross-zonal capacities are available for market coupling as they are not being reduced by physical nominations of LTTR .
- (41) The Agency supports the reasoning that the use of FTR Options is consistent with the objective to maximise the cross-zonal capacities available for single day-ahead coupling, and in that regard is more efficient than the use of physical transmission rights.
- (42) On the other hand, 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.

- (43) 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 to this day and therefore the Agency considers such risks to be outweighed by the benefits of maximising the liquidity of the single day-ahead coupling.
- (44) 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’)³ and Commission Regulation (EU) 2017/2195 (the ‘Electricity Balancing Regulation’)⁴. 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 timeframes. Also, until these price limits are harmonised, regulatory authorities may consider other national transitory measures.
- (45) 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.

6.2.3. Proposed timescale for implementation

- (46) The proposal for amendment fulfils the requirements of Article 4(8) of the FCA Regulation with regard to the proposed timescale for implementation of the LTTR.
- (47) Recital (4) of the proposal for amendment clarifies that FTR Options on the BE-DE/LU bidding zone border will be implemented after the go-live of the direct-current interconnector ALEGrO. Recital (5) of the proposal for amendment clarifies that on the AT-CZ and AT-HU borders, monthly FTR Options will be introduced by the first monthly auction after go-live of the NTC Interim Coupling on these borders. Further, Article 1(2) suggests that the regional design of LTTR on the BE-DE/LU bidding zone border shall be effective at the date on which the first provisional auction specification

³ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management

⁴ Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

for LTTR auction is published, and the change pursuant to the the UIOSI principle of the long-term transmission right type, i.e. from physical transmission rights to FTR Options, on the AT-CZ and AT-HU bidding zone borders shall be effective in parallel with the application of the day-ahead market coupling on the AT-CZ and AT-HU borders.

- (48) Yet, the Agency found it necessary to amend Recital (5) and Article 1(2) of the proposal for amendment, to ensure that the change of the type of the LTTR will not apply to yearly transmission rights that would have already been allocated at the time of the go-live of the NTC Interim Coupling.
- (49) Pursuant to Recital (5) of the proposal for amendment, the relevant national regulatory authorities requested the respective TSOs to implement FTR Options on the AT-CZ and AT-HU borders for the long-term allocation in parallel with the implementation of the NTC Interim Coupling⁵. Article 1(2) of the proposal for amendment clarifies that *‘[t]he change of the type of the long term transmission right shall apply also to already allocated yearly transmission rights.’*
- (50) The Agency observes that Article 1(2) of the proposal for amendment introduces a type of LTTRs that is not allowed by the FCA Regulation. Namely, 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, LTTRs can take the form of one of the three options defined in Article 31(1) of the FCA Regulation. However, that 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 (i.e. a part of the LTTR would be in the form of PTR and a part of it would be in the form of FTR Option). Such a hybrid LTTR type is not allowed in Article 31(1) of the FCA Regulation and neither 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 by stakeholders.
- (51) 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

⁵ On 21 December 2018 ANRE, BnetzA, E-Control, ERU, HEA, URSO and URE asked relevant TSOs and NEMOs to initiate the interim project for a NTC-based market coupling between DE, AT, PL and 4MMC (DE-AT-PL-4M MC Project) in order to further develop regional integration of day-ahead organized electricity markets.

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.

- (52) In order to respect the agreement among the regulatory authorities competent on the AT-CZ and AT-HU bidding zone borders, as well as the legal framework of the FCA Regulation, the Agency removed from the proposal for amendment the sentence in Article 1(2) referred to in paragraph (49) above, and clarified that the change of the type of the LTTR shall not apply to yearly LTTR that would have already been allocated at the time of the go-live of the NTC Interim Coupling. In the same article, the Agency clarified that the change of the type of LTTR on the AT-CZ and AT-HU bidding zone borders shall be effective at the date of the first provisional auction specifications for LTTR auction, following the implementation of the single day-ahead coupling on the AT-CZ and AT-HU borders. As a result, monthly and yearly FTR Options will be introduced by the first monthly and yearly auction, respectively, after the go-live of the NTC Interim Coupling on the AT-CZ and AT-HU borders.
- (53) Further, the Agency amended Recital (5) in accordance with the amendments of Article 1(2) of the proposal for amendment.

6.2.4. Description of the expected impact on the objectives of the FCA Regulation

- (54) The proposal for amendment fulfils the requirements set by Article 4(8) of the FCA Regulation. The proposal for amendment does not include any description of the expected impact on the objectives of the FCA Regulation. However, given the limited scope of the modifications to existing arrangements introduced by the proposal for amendment, those modifications do not affect the description of the expected impact on the objectives of the FCA Regulation provided in the complete Core regional design of LTTR as approved on 14 October 2017 and on 19 July 2018. Therefore, this description can be considered as still valid also for the proposal for amendment.

6.2.5. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.5.1. *Consultation and involvement of stakeholders*

- (55) When drafting the proposal for amendment, the Core TSOs fulfilled the requirements of Articles 4(12) and 6 of the FCA Regulation, as indicated in paragraph (6) above, since stakeholders were consulted on the draft proposal for the 2nd amendment of the Core TSO's regional design of LTTR, pursuant to Article 6(1) of the FCA Regulation, during a public consultation which ran between 7 February and 7 March 2019. In addition, the Core regulatory authorities were regularly informed and consulted, pursuant to Articles 6(1) and (2) of the FCA Regulation. The justifications regarding the consideration given to the views expressed by stakeholders during the public

consultation in the further drafting of the proposal for amendment were provided in a consultation report published on 1 April 2019⁶.

6.2.5.2. Transparency and publication of information

- (56) Article 1(2) of the proposal for amendment provides obligations on the publication of information regarding the date of the change of the type of auctioned LTTR at the CZ-AT and AT-HU borders to be announced before auctions of the yearly product. Due to the changes described in paragraph (52), the Agency removed this provision as it is no longer necessary. The Agency deems no other amendments are needed in the proposal for amendment to address the objective of ensuring and enhancing the transparency and reliability of information as defined by Article 3(f) of the FCA Regulation.

7. CONCLUSION

- (57) For all the above reasons, the Agency considers the proposal for amendment in line with the requirements of the FCA Regulation, provided that the amendments described in this Decision are integrated in the proposal for amendment, as presented in Annex I to this Decision.
- (58) Therefore, the Agency approves the proposal for amendment subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the proposal for amendment as amended and as approved by the Agency,

HAS ADOPTED THIS DECISION:

Article 1

The common regional design of LTTR in the Core capacity calculation region, developed pursuant to Article 31 of Regulation (EU) 2016/1719, is amended and approved as set out in Annex I to this Decision.

⁶ https://docstore.entsoe.eu/Documents/nc-tasks/EBGL/FCA_A31_201903_Core%20LTTR%20design%20second%20amendment_Consultation%20Report.pdf

Article 2

This Decision is addressed to:

50Hertz Transmission GmbH,
Amprion GmbH,
Austrian Power Grid AG,
C.N.T.E.E. Transelectrica S.A.,
ČEPS, a.s.,
Creos Luxembourg S.A.,
ELES, d.o.o. sistemski operater prenosnega elektroenergetskega omrežja,
Elia System Operator S.A.,
HOPS d.o.o., Hrvatski operater prijenosnog sustava,
MAVIR ZRt,
Polskie Sieci Elektroenergetyczne S.A.,
Réseau de Transport d'Electricité,
Slovenská elektrizačná prenosová sústava, a.s.,
TenneT TSO B.V.,
TenneT TSO GmbH and
TransnetBW GmbH.

Done at Ljubljana on 30 October 2019.

- SIGNED -

For the Agency
Director ad interim
Alberto POTOTSCHNIG

Annexes:

Annex I – Second amendment of the Core CCR TSOs’ regional design of long-term transmission rights based on Article 4(12) of Commission Regulation (EU) 2016/1719

Annex Ia – Second amendment of the Core CCR TSOs’ regional design of long-term transmission rights based on Article 4(12) of Commission Regulation (EU) 2016/1719 (track-change version, for information only)

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 (for information only)

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