

TSOs consultation on the EU Harmonised Allocation Rules



EFET response – 17 February 2017

The European Federation of Energy Traders (EFET) welcomes the opportunity to provide comments on the ENTSO-E consultation on draft Harmonised Allocation Rules (HAR) for forward capacity allocation. We would first like to **thank the community of TSOs for their pre-implementation effort of the EU HAR** in advance of the entry into force of the Forward Capacity Allocation Guideline (FCA GL), and ENTSO-E in particular for its coordination role throughout this process. The two earlier version of the EU HAR (pre-implementation) greatly helped speed up the redaction of this first version of the full FCA GL-compliant rules.

The EU HAR will improve the quality of services offered by TSOs and the quality of the allocated transmission rights themselves. This in turn will improve the efficiency and increase the liquidity and competitiveness of forward market across Europe. As highlighted at many occasions, **forward capacity allocation is vital for market participants to hedge their long-term positions and make sure that they are not exposed to short-term price volatility and imbalance costs**. Long-term rights also provide long-term signals to the TSOs regarding potential congestion on certain cross-border points. This gives an indication to the TSOs regarding forward market activities and could potentially help in forecasting additional revenues that TSOs receive as a congestion income.

In general, we note that **the new EU HAR are broadly in line with the FCA GL and match market participants' expectations in terms of improvement of the firmness conditions under which forward transmission rights are issued by TSOs**. Curtailment and compensation rules are now in line with the FCA GL.

While EFET welcomes that fewer borders apply specific rules for the allocation of transmission rights, there are still 22 borders where parts of the rules are not harmonised. The existence of the border-specific annexes undermines the whole process and its harmonisation goal. We urge TSOs to keep on working to reduce the number of border-specific rules. Further, **we recommend that TSOs provide appropriate justification for any deviation from the common rule, as well as an indication of the expected timeline for the phase-out of these specific rules, in a separate explanatory document at the time of submission to the NRAs**.

Comments on the main body of the HAR

Recitals: We generally welcome the explanatory function of the recitals in legislation pieces. However, we wonder about the necessity to include recitals in a document such as the EU HAR.

In terms of content, we see positive aspects highlighted in these recitals:

- Mention of the goal of harmonisation of the FCA GL in recital (3)
- Insistence on the need for liquidity, non-discriminatory access, transparency and “orderly” price formation in recitals (10), (11), (12), (13), (14)

However, we miss a mention of an objective to phase out border-specific annexes in recital (5).

Art.1: This article should include a reference to the buy-back of transmission rights. TSOs have many instruments at hand to ensure system security such as re-dispatching and counter-trading, or financial compensation and reimbursement of market participants for curtailment of cross-zonal capacity. An alternative solution consists in a buy-back regime where TSOs can purchase previously allocated rights in the secondary market. Under a market-based buyback regime, TSOs will always, by definition, be paying the market valuation of the capacity. This can then sensibly be assessed as an alternative to other firmness tools.

Art.2.2:

- Financial Transmission Rights Obligations: we understand that including FTR obligations in the EU HAR is now a requirement of the FCA GL. We nonetheless reiterate our position on the subject: we do not believe that TSOs should offer FTR obligations. TSOs get the congestion revenue in case the request for capacity (with the price > 0) is higher than the available capacity at each allocation. In case the spread is in the opposite direction we don't see the rationale for paying a negative spread to the TSOs. There is no financial risk for the TSOs in allocating capacity, and FTRs as obligation would only make sense if market participants would trade between themselves such or similar contracts and payment for the negative spread would be the consequence of risk premiums. This is however not the case when TSOs allocate capacity. Should any set of TSOs consider applying FTR obligations at one border, we insist that market participants are consulted well in advance of the possible reform.
- Reduction Period: in the definition of "Reduction Period", we recommend the deletion of the reference to "foreseen balancing problems", so that the text reads: "Reduction Period means a period of time, i.e. specific calendar days and/or hours, within the Product Period in which Cross Zonal Capacities with a reduced amount of MW are offered taking into account a foreseen specific network situation (e.g. planned maintenance, long- term outages);" It is very unclear what could be considered by the TSOs as a foreseen balancing problem. The reduction periods should strictly relate to line maintenance and outage.

Art.4: Regional specificities and border-specific annexes should be part of a specific “Transitional Arrangements” title. This is the harmonisation logic of the FCA Guideline. We don’t think that regional specificities should be an integral part of the enduring rules. The objective in the medium to long term should be full harmonisation. While we acknowledge that Art. 52.3 EU HAR does not foresee a time limit for the regional annexes, the harmonisation of the rules, and hence the disappearance of the regional annexes, should be included in this article, at least as an objective.

Art.21.3: In this article, we suggest not to limit the use of bank guarantees entered fewer than two days before the bidding period closure of an auction to subsequent auctions only. Provided that the Allocation Platform can process them in due course, Bank Guarantees delivered after the 2-working day deadline should be accepted and the Platform operator should update the credit limit of the market participant in line with such guarantee.

Art.30.1: In line with our comment on Art. 2.2, we believe that ‘foreseen balancing problems’ should not be a valid reason for reduction of capacity. Also, reasons for Reduction Periods should be outlined in the Auction Specification announcement.

Art.45.5: we recommend the deletion of this paragraph. As a matter of principle, there should be no reservation of cross-zonal capacity for balancing purposes by any party, whether by TSOs or market participants. Any outright reservation of cross-border capacity should not be allowed, as this seriously impacts the ability of market participants to self-balance their portfolios. Besides, the HAR should not introduce rules that will have an impact on the balancing market before the Balancing Guideline has been adopted.

Art.48.1.(a): we recommend the deletion of this point. Transmission rights should be remunerated at market spread without adjustments or taking account of allocation constraints/losses.

Art.56: We believe a clear distinction should be made between Physical Transmission Rights on the one side, and Financial Transmission Rights on the other side. We do not challenge the provisions of Art.56 as far as PTRs are concerned. However, we believe that TSOs should only be allowed to curtail FTRs in case of Force Majeure (such as an unforeseen and inevitable technical failure). Indeed, FTRs being only linked to the physical underlying capacity for capacity calculation purposes, no physical event linked to operational security or emergency situations may affect them. This is the approach taken at the Spanish-Portuguese border. We believe that this principle should be in the main body of the EU HAR and apply to all borders at which FTRs are issued. Hence, we propose the following amendments:

Article 56: Triggering events and consequences of curtailment on Long Term Transmission Rights

1. Long Term Transmission Rights irrespectively of the Product Period may be curtailed in the event of Force Majeure, or, **in the case of Physical Transmission Rights**, to ensure operation remains within Operational Security Limits before the Day Ahead Firmness Deadline.
2. Curtailment may be applied on allocated Long Term Transmission Rights including, where the case may be, on nominated Physical Transmission Rights.
3. Long Term Transmission Rights may be curtailed after the Day Ahead Firmness Deadline in the case of Force Majeure or, **in the case of Physical Transmission**

Rights, emergency situation in accordance with Article 72 of Commission Regulation (EU) No. 2015/1222. For the avoidance of doubt, Long Term Transmission Rights when curtailed after the Day Ahead Firmness Deadlines shall be curtailed in the same way as day-ahead and intraday capacity and compensated in accordance with the applicable legislation.

4. [unchanged]
5. [unchanged]

Art.57.3: The reason for curtailment should be included in the notification mentioned in Art. 57.2 to ensure timeliness of disclosure of the triggering events. This is currently often a problem, information on the reason for curtailment is often not disclosed unless requested by market participants.

Art.58: We welcome the modification of the rules, bringing the DAFD 60 minutes before DA GCT, compared to 30 minutes previously. This brings this provision in line with the CACM GL.

Art.59.2: We welcome the new wording of Art.59.2, which establishes that the application of a cap on the compensation for curtailment is now an exception to the rule that shall be justified by the requesting TSOs and approved by the relevant NRAs. That brings this paragraph in line with the spirit of the FCA GL.

Comments on Annex 1

We welcome the clear information provided in Annex 1 for each border, especially regarding the application of border-specific rules, and more particularly a cap on compensation for curtailment.

However, as pointed out during the workshop organised by ENTSO-E on 3 February, there are doubts as to the practicality of including this information as part of the EU HAR in the form of an annex applying to all borders, as any change – including the introduction of new borders where long-term rights are issued, the suppression of a reference to a border-specific annex, or modifications regarding the applicability of a cap – will be subject to an all-TSOs proposal and an all-NRAs approval process. Also, including the list as it stands in a binding annex without the bidding zone borders where no long-term transmission rights are issued at the moment pre-empts the – expected – requests for exemptions and possible NRA approvals according to Art.30.2 FCA GL.

Hence, we recommend that Annex 1 is taken out of the document and included in a non-binding explanatory document accompanying the TSOs' submission of the rules to the NRAs. This will have the consequence that all bidding zones borders applying a cap on curtailment compensation should issue a border-specific annex.

Comments on the border-specific annexes

- ***Annex 2: France-Switzerland***

Art.3: we recommend the deletion of this article.

We believe that market spread – in case of market coupling – or the marginal price of the daily auction – in case of explicit capacity allocation – should be the standard for the remuneration of non-nominated transmission rights or the compensation of curtailed transmission rights – unless in case of Force Majeure before the DAFD, or in case of Emergency Situation or Force Majeure after the DAFD. We do not see a rationale for the 110% compensation scheme proposed by RTE and Swissgrid.

Art.4: we recommend the deletion of this article.

Reimbursement of curtailed transmission rights at the initial price paid should only be considered:

- in cases of Force Majeure, before and after the DAFD
- in cases of Emergency Situation, after the DAFD

TSOs should not be able to claim curtailments before the DAFD on the basis of Emergency Situation, as stipulated in Art.4.3 of Annex 2. Curtailments before the DAFD that are not a Force Majeure should be qualified as curtailment to ensure operations remain within operational security limits, and hence be compensated at market spread or the marginal price of the daily auction in case of explicit capacity allocation.

- ***Annex 3: Austria-Switzerland***

Art.3: we recommend the deletion of this article.

We believe that market spread – in case of market coupling – or the marginal price of the daily auction – in case of explicit capacity allocation – should be the standard for the remuneration of non-nominated transmission rights or the compensation of curtailed transmission rights – unless in case of Force Majeure before the DAFD, or in case of Emergency Situation or Force Majeure after the DAFD. We do not see a rationale for the original price paid scheme proposed by APG and Swissgrid. Such a rule is a strong deterrent for market participants to purchase forward transmission rights, as these rights become void of any hedging value.

Further, the cap applied on compensation for curtailment of transmission rights shall be determined as the total amount of congestion income collected by the concerned TSOs on the relevant bidding zone border in the relevant calendar year. The cap should not be monthly, as proposed in Annex 3, nor be solely calculated on the congestion income from the forward timeframe. Art.59.2 of the EU HAR is a sustainable compromise reached between the TSOs, the regulators and market participants, any deviation from which we would consider as a serious breach of confidence by the TSOs.

Art.4: we recommend the deletion of this article.

Reimbursement of curtailed transmission rights at the initial price paid should only be considered:

- in cases of Force Majeure, before and after the DAFD
- in cases of Emergency Situation, after the DAFD

TSOs should not be able to claim curtailments before the DAFD on the basis of Emergency Situation, as stipulated in Art.4.2 of Annex 3. Curtailments before the DAFD that are not a Force Majeure should be qualified as curtailment to ensure operations remain within operational security limits, and hence be compensated at market spread or the marginal price of the daily auction in case of explicit capacity allocation.

• ***Annex 4: Germany-Switzerland***

Art.3: we recommend the deletion of this article.

We believe that market spread – in case of market coupling – or the marginal price of the daily auction – in case of explicit capacity allocation – should be the standard for the remuneration of non-nominated transmission rights or the compensation of curtailed transmission rights – unless in case of Force Majeure before the DAFD, or in case of Emergency Situation or Force Majeure after the DAFD. We do not see a rationale for the 110% compensation scheme proposed by the Swissgrid and its German counterparts.

Further, the cap applied on compensation for curtailment of transmission rights shall be determined as the total amount of congestion income collected by the concerned TSOs on the relevant bidding zone border in the relevant calendar year. The cap should not be monthly, as proposed in Annex 4, nor be solely calculated on the congestion income from the forward timeframe. Art.59.2 of the EU HAR is a sustainable compromise reached between the TSOs, the regulators and market participants, any deviation from which we would consider as a serious breach of confidence by the TSOs.

Art.4: we recommend the deletion of this article.

Reimbursement of curtailed transmission rights at the initial price paid should only be considered:

- in cases of Force Majeure, before and after the DAFD
- in cases of Emergency Situation, after the DAFD

TSOs should not be able to claim curtailments before the DAFD on the basis of Emergency Situation, as stipulated in Art.4.2 of Annex 4. Curtailments before the DAFD that are not a Force Majeure should be qualified as curtailment to ensure operations remain within operational security limits, and hence be compensated at market spread or the marginal price of the daily auction in case of explicit capacity allocation.

- **Annex 5: France-Spain**

Art.3: we recommend the deletion of this article.

We welcome the clarification that Art.3 of Annex 5 will not be applicable once intraday capacity at this bidding zone border will be allocated through XBID. However, we do not understand why congestion income from the intraday timeframe cannot already be considered in the calculation of the income cap. Art.59.2 of the EU HAR is a sustainable compromise reached between the TSOs, the regulators and market participants, any deviation from which we would consider as a serious breach of confidence by the TSOs.

- **Annex 6: Italian borders**

Art.3: we recommend the deletion of this article.

The wording of Art.3 is confusing: we do not consider that transmission rights can be “reduced” either before or after the DAFD if they have already been allocated. In this case, they should be considered as curtailed, and the remuneration and/or compensation rules of Art. 48/59 EU HAR should apply.

Art.4.1: we recommend the deletion of this paragraph.

We believe that market spread – in case of market coupling – or the marginal price of the daily auction – in case of explicit capacity allocation – should be the standard for the compensation of curtailed transmission rights – unless in case of Force Majeure before the DAFD, or in case of Emergency Situation or Force Majeure after the DAFD. We do not see a rationale for the original price paid scheme proposed by Terna and its counterparts. Such a rule is a strong deterrent for market participants to purchase forward transmission rights, as these rights become void of any hedging value.

Further, the cap applied on compensation for curtailment of transmission rights shall be determined as the total amount of congestion income collected by the concerned TSOs on the relevant bidding zone border in the relevant calendar year. The cap should not be monthly, as proposed in Annex 6, nor be solely calculated on the congestion income from the forward timeframe. Art.59.2 of the EU HAR is a sustainable compromise reached between the TSOs, the regulators and market participants, any deviation from which we would consider as a serious breach of confidence by the TSOs.

Art.5: we recommend the deletion of this article.

We do not understand how this article departs from the rules of the main body of the EU HAR, unless it grants the possibility for the concerned TSOs to curtail transmission rights before the DAFD on the basis of Emergency Situation. As a reminder, reimbursement of curtailed transmission rights at the initial price paid should only be considered:

- in cases of Force Majeure, before and after the DAFD
- in cases of Emergency Situation, after the DAFD

TSOs should not be able to claim curtailments before the DAFD on the basis of Emergency Situation. Curtailments before the DAFD that are not a Force Majeure should be qualified as curtailment to ensure operations remain within operational security limits, and hence be compensated at market spread or the marginal price of the daily auction in case of explicit capacity allocation.

Art.7: we recommend the deletion of this article.

We believe that market spread – in case of market coupling – or the marginal price of the daily auction – in case of explicit capacity allocation – should be the standard for the remuneration of the non-nominated transmission rights. We do not see a rationale for the original price paid scheme proposed by Terna and its counterparts. Such a rule is a strong deterrent for market participants to purchase forward transmission rights, as these rights become void of any hedging value.

- **Annex 7: SEM-Great Britain**

Art.2.3: we recommend amending this paragraph.

We question the legal soundness of this paragraph, where the regime of Force Majeure is applied to curtailments of transmission rights in case the single market for the whole island of Ireland does not go-live as planned on 23 May 2018. We consider that the postponing of the go-live of the I-SEM would not qualified as a Force Majeure event (unexpected and unforeseen), meaning that the transmission rights curtailed until the go-live of I-SEM should be compensated at the relevant market spread or at the marginal price of the relevant explicit daily auction.

Art.2.10: we recommend the deletion of this paragraph.

For DC interconnectors, the cap applied on compensation for curtailment of transmission rights shall be determined as the total amount of congestion income collected by the concerned TSOs on the relevant bidding zone border in the relevant month. The cap should not be further limited to the 95th percentile value of market spread, as proposed in Annex 7. Art.59.3 of the EU HAR is a sustainable compromise reached between the DC cable operators, the regulators and market participants, any deviation from which we would consider as a serious breach of confidence by the DC cable operators.

- **Annex 8: Hungary-Romania**

No comment.

- **Annex 9: Estonia-Latvia**

Art.2: we recommend the amendment of this article.

By excluding the application of Chapters 4 and 5 EU HAR, this article precludes the development of a secondary market for forward transmission rights issued for this border without justification.

Art.3.2 and Art.3.11: we recommend a review of the definition of the PTR-Limited and of the relating remuneration rules.

As the definition stands, the PTR-Limited issued at the Estonia-Latvia border have the remuneration characteristics of an FTR obligation and cannot be nominated. We do not believe that TSOs should offer PTRs with such characteristics. TSOs get the congestion revenue in case the request for capacity (with the price > 0) is higher than the available capacity at each allocation. In case the spread is in the opposite direction we don't see the rationale for paying a negative spread to the TSOs. There is no financial risk for the TSOs in allocating capacity, and PTRs with the characteristics of FTR obligations would only make sense if market participants would trade between themselves such or similar contracts and payment for the negative spread would be the consequence of risk premiums. This is however not the case when TSOs allocate capacity.

- ***Annex 10: Czech Republic-Germany-Poland-Slovakia***

No comment.

- ***Annex 11: Portugal-Spain***

Art.2.4: we recommend the deletion of this paragraph.

The paragraph is outdated as the FCA GL has entered into force already. Further, it was noted during the workshop organised by ENTSO-E on 3 February 2017 that OMIP only organises yearly auctions at the moment. We remind REE and REN that it is their responsibility, under the supervision of their respective regulators, to ensure that the platform chosen to allocate forward capacity at this border fully applies the FCA GL and effectively allocates monthly transmission capacity at this border.

- ***Annex 12: Britned***

Sec.3.1: we recommend the deletion of this paragraph.

No rationale has been provided to exclude cash deposits as collateral, which offer a high level of financial security.

Sec.3.3: we recommend the deletion of this paragraph.

No rationale has been provided to require higher credit ratings for the issuer of a bank guarantee in order to qualify as collateral. The credit ratings agreed upon in Art.21(h) EU HAR already offer a high level of financial security.

Sec.7: we recommend the deletion of this section.

Reserve prices have never been part of the negotiation or the debate on the EU HAR. Including a reserve price provision as part of a border-specific annex would constitute a serious breach of confidence by the DC cable operators.

Sec.8 and 9: we recommend the deletion of these sections.

These sections de facto preclude the development of a secondary market for forward transmission rights issued for the DC cable without justification.

Sec.16.4: we recommend the deletion of this paragraph.

For DC interconnectors, the cap applied on compensation for curtailment of transmission rights shall be determined as the total amount of congestion income collected by the concerned TSOs on the relevant bidding zone border in the relevant month. The cap should not be further limited to the 80th percentile value of market spread, as proposed in Annex 12. Art.59.3 of the EU HAR is a sustainable compromise reached between the DC cable operators, the regulators and market participants, any deviation from which we would consider as a serious breach of confidence by the DC cable operators.

- **Annex 13: IFA**

Sec.4.1: we recommend the deletion of this paragraph.

No rationale has been provided to exclude cash deposits as collateral, which offer a high level of financial security.

Sec.4.3: we recommend the deletion of this paragraph.

No rationale has been provided to require higher credit ratings for the issuer of a bank guarantee in order to qualify as collateral. The credit ratings agreed upon in Art.21(h) EU HAR already offer a high level of financial security.

Sec.7 and 8: we recommend the deletion of these sections.

These sections de facto preclude the development of a secondary market for forward transmission rights issued for the DC cable without justification.

Sec.18: we recommend the deletion of this paragraph.

For DC interconnectors, the cap applied on compensation for curtailment of transmission rights shall be determined as the total amount of congestion income collected by the concerned TSOs on the relevant bidding zone border in the relevant month. The cap should not be further limited to the 95th percentile value of market spread, as proposed in Annex 13. Art.59.3 of the EU HAR is a sustainable compromise reached between the DC cable operators, the regulators and market participants, any deviation from which we would consider as a serious breach of confidence by the DC cable operators.

- ***Annex 14: Bulgaria-Romania***

No comment.

- ***Annex 15: Bulgaria-Greece***

No comment.