

EFET comments on the revised version of the draft recast Electricity Directive and Regulation issued by the Council of the EU on 13 December



Briefing paper for the Energy Council of 18 December 2017

The European Federation of Energy Traders (EFET) welcomes the publication by the Council of the EU of its latest versions of the draft recast Electricity Directive and Regulation. While the proposed amendments generally go in the right direction, we would like to point out a number of inconsistencies or omissions in the text of the two instruments on three key topics: **transmission capacity calculation and allocation; re-dispatch rules; and ownership, development and operation of storage facilities by TSOs and DSOs**. Our commentary below includes concrete amendment proposals and related justifications.

1. Transmission capacity calculation and allocation

We are concerned with the weakening of certain provisions in the draft recast Regulation on transmission capacity calculation on the one hand, and the little attention given to transmission capacity allocation in the forward timeframe on the other hand.

a) On transmission capacity calculation

A sturdy calculation process is needed to establish in a transparent and non-discriminatory manner the cross-border transmission capacity that is made available to the market. In its November 2016 Recommendation, ACER insisted that, within system security limits, such capacity calculation can only take account of internal congestion or loop flows if reducing capacity available to the market for these reasons is more economically efficient than taking (costly and non-costly) remedial actions instead.

We believe this approach is the right way approach capacity calculation and ensure that it brings a welfare optimum. Exactly for this reason, we believe that setting ex-ante percentage values, whether for the consideration of loop flows, or as a minimum threshold of capacity to be allocated to the market, makes little sense. Sticking to these fixed percentage values risks moving the market away from efficient allocation of resources. Performing cost-benefit analyses of restricting transmission capacity vs. taking remedial actions, on the other hand, is the way to ensure the welfare optimum.

	Council Text (13 Dec 2017)	EFET amendment proposal
Art. 14.7 Regulation	<p>Transmission system operators shall not limit the volume of interconnection capacity to be made available to market participants in order to solve congestion inside their own bidding zone or as a means of managing flows leaving and re-entering the same bidding zone without being scheduled unless otherwise provided under paragraph 7a or 7b.</p> <p>Without prejudice of the application of the derogations under paragraph 7a and 7b, this paragraph shall be considered to be complied with if the following minimum levels of available capacity for cross-zonal trade, which is calculated pursuant to the capacity allocation and congestion management guideline adopted on the basis of Article 18 of Regulation (EU) 714/2009 taking account of N-1 criterion, are reached:</p> <p>(i) For borders using a coordinated net transmission capacity approach, [X%] of the net transfer capacity pursuant to capacity allocation and congestion management guideline adopted on the basis of Article 18 of the Regulation 714/2009;</p> <p>(ii) For borders using a flow-based approach, [X%] of the remaining available margin on internal and cross border critical network elements made available for cross border flows pursuant to capacity allocation and congestion management guideline adopted on the basis of Article 18 of the</p>	<p>Transmission system operators shall not limit the volume of interconnection capacity to be made available to market participants in order to solve congestion inside their own bidding zone or as a means of managing flows leaving and re-entering the same bidding zone without being scheduled unless otherwise provided under paragraph 7a or 7b.</p> <p>Without prejudice of the application of the derogations under paragraph 7a and 7b, this paragraph shall be considered to be complied with if the following minimum levels of available capacity for cross-zonal trade, which is calculated pursuant to the capacity allocation and congestion management guideline adopted on the basis of Article 18 of Regulation (EU) 714/2009 taking account of N-1 criterion, are reached:</p> <p>(i) For borders using a coordinated net transmission capacity approach, [X%] of the net transfer capacity pursuant to capacity allocation and congestion management guideline adopted on the basis of Article 18 of the Regulation 714/2009;</p> <p>(ii) For borders using a flow-based approach, [X%] of the remaining available margin on internal and cross border critical network elements made available for cross border flows pursuant to capacity allocation and congestion management guideline adopted on the basis of Article 18 of the Regulation 714/2009.</p> <p>The derogations pursuant to Articles 7a shall not result with a value below this threshold.</p>

	Regulation 714/2009. The derogations pursuant to Articles 7a shall not result with a value below this threshold.	
Art. 14.7a Regulation	Based on a proposal by all transmission system operators of a capacity calculation region, the relevant regulatory authorities by way of derogation from paragraph 7 shall approve the level of total available cross-zonal capacity at each bidding zone border, which shall be used in the capacity calculation methodology, to take account of cross-zonal unscheduled flows to the extent that could be expected without structural congestions in a bidding zone.	[Delete paragraph] Based on a proposal by all transmission system operators of a capacity calculation region, the relevant regulatory authorities by way of derogation from paragraph 7 shall approve the level of total available cross-zonal capacity at each bidding zone border, which shall be used in the capacity calculation methodology, to take account of cross-zonal unscheduled flows to the extent that could be expected without structural congestions in a bidding zone.
Art. 14.7b Regulation	Upon request by transmission system operators of a capacity calculation region and subject to the coordination procedure set out in this paragraph, the relevant regulatory authority may grant a derogation from paragraph 7 for foreseeable reasons other than the ones covered under paragraph 7a, for instance in case of grid maintenance measures. Such a derogation, which may not relate to curtailment of already allocated capacities pursuant to paragraph 5, shall be limited to two years at a time, or up to maximum four years with a significantly decreasing level of the derogation each year, strictly limited to what is necessary, and avoid discrimination between internal and cross-zonal exchanges. Before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of other Member States forming part of an affected capacity calculation region. The justification and reasons for the derogation shall be published. Where a derogation is granted, the relevant transmission system operators shall develop and publish a methodology and projects that shall provide a long-term solution to the issue that the	Upon request by transmission system operators of a capacity calculation region and subject to the coordination procedure set out in this paragraph, the relevant regulatory authority may grant a derogation from paragraph 7 for foreseeable reasons other than the ones covered under paragraph 7a , for instance in case of grid maintenance measures, and if beneficial to economic efficiency at Union level . Such a derogation, which may not relate to curtailment of already allocated capacities pursuant to paragraph 5, shall be limited to two years at a time, or up to maximum four years with a significantly decreasing level of the derogation each year, strictly limited to what is necessary, and avoid discrimination between internal and cross-zonal exchanges. Before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of other Member States forming part of an affected capacity calculation region. The justification and reasons for the derogation shall be based on a transparent cost-and-benefit analysis and published. Where a derogation is granted, the relevant transmission system operators shall develop and publish a methodology and projects that shall provide a long-term solution to the issue that the derogation shall expire when the time

	derogation seeks to address. The derogation shall expire when the time limit is reached or, once the solution is applied, whichever is earlier.	limit is reached or, once the solution is applied, whichever is earlier.
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b) On transmission capacity allocation (focus on the forward timeframe)

The growing penetration of intermittent source of baseload generation capacity, the slow emergence of demand response and the high cost of newer technologies points to increasing volatility of wholesale electricity prices close to real time. Exposure to volatile short run prices reinforces the importance to market participants of long-term hedging opportunities, both within and across bidding zone borders. Both OTC markets and organised trading venues already witness the development of short period activation products on a forward basis to help generators, retail suppliers and larger consumers cope with greater uncertainty in final price outcomes for marginal volumes closer to real time. Forward markets are also important for integration and financing of new investments, including intermittent renewables themselves: Investors in renewable projects normally outsource the market risks of their project, by means of long-term power purchase agreements (PPAs). In case of liquid forward markets, market participants can bid for such PPAs at more competitive prices.

Within bidding zones, forward and future contracts still represent over two thirds of wholesale power transaction volumes on the electricity market in Europe. Indeed in the countries and regions most open to competition and benefiting from multiple interconnections, the proportion is over 85 %. Forward contracts, which represent the vast majority of these transactions in the forward timeframe, are traded over the counter; futures contracts, traded on exchanges, represent only a fifth of these transactions at a European scale.

	Council Text (13 Dec 2017)	EFET amendment proposal
Art. 3.1 (n) Regulation	In order to allow market participants to be protected against price volatility risks on a market basis and mitigate uncertainty on future returns on investment, long-term hedging opportunities shall be tradable on exchanges in a transparent manner and long-term supply contracts shall be negotiable over the counter, subject to compliance with EU Treaty rules on competition.	In order to allow market participants to be protected against price, volume and liquidity volatility risks on a market basis and mitigate uncertainty on future returns on investment, forward and futures contracts long-term hedging opportunities shall be tradable on exchanges and over the counter in a transparent manner as far in advance as possible from real time and long-term supply contracts shall be negotiable over the counter, subject to compliance with EU Treaty rules on competition.

To help market participants hedge their risks also across bidding zones borders, financially firm cross-border transmission rights issued by TSOs between all bidding zones in each direction and based on a transparent capacity calculation methodology are needed. They are key tools to ensure the efficiency of forward and future markets across borders. They underpin those markets, not only as instruments for price

hedging and price risk management, but in their function of guarantors of competition and providers of pools of liquidity. TSOs, as monopoly providers of transmission capacity, must, under proper regulatory supervision, grant individual market participants transparent and non-discriminatory access to networks within bidding zones. Across borders, TSOs should provide the maximum firm transmission capacity they have objectively calculated as far in advance as possible from real time, and recalculate this capacity at regular intervals (from forward to intraday).

	Council Text (13 Dec 2017)	EFET amendment proposal
Art. 8.1 Regulation	In line with Regulation (EU) 2016/1719, transmission system operators shall issue long- term transmission rights or have equivalent measures in place to allow for market participants, including owners of generation facilities using renewable energy sources, to hedge price risks across bidding zone borders, unless an assessment of the forward market performed by the competent regulatory authorities on the bidding zone borders shows sufficient hedging opportunities in the concerned bidding zones in accordance with the guideline on forward capacity allocation adopted on the basis of Article 18 of the Regulation 714.	In line with Regulation (EU) 2016/1719, transmission system operators shall calculate cross- border transmission capacity available for allocation in the forward timeframe. They shall issue long- term transmission rights or have equivalent measures in place to allow for market participants, including owners of generation facilities using renewable energy sources, to hedge price risks across bidding zone borders, unless an assessment of the forward market performed by the competent regulatory authorities on the bidding zone borders shows sufficient hedging opportunities in the concerned bidding zones in accordance with the guideline on forward capacity allocation adopted on the basis of Article 18 of the Regulation 714.
Art. 8.4 Regulation	NEW	Forward and future markets shall make no distinction between trades made within a bidding zone and across bidding zones.
Art.15.0 Regulation	NEW (before 15.1)	Transmission system operators shall calculate available cross-border capacity at least one year ahead in advance of real time. Unless approved otherwise by regulators according to Regulation (EU) 2016/1719, transmission system operators shall allocate all of the cross-zonal capacity calculated as available at each border, and in each direction by way of firm transmission rights. Market rules shall foresee the possibility for transmission system operators to buy back transmission rights in order to avoid restrictions in the allocation of cross-zonal capacity and reduce the occurrence of curtailments.

2. Re-dispatch rules

We generally support the key principle of using market-based mechanisms to determine the incidence of and payment for curtailment or re-dispatch. We also recognise that due to the local necessity to adjust the generation schedule affecting specific facilities, the establishment of actual markets for re-dispatch may be complex, and in some cases not possible.

In these cases, which must be restricted to when market-based redispatch is truly not possible, asset owners that are subject to curtailment or re-dispatch measures must be compensated in such a way that they are left financially indifferent, taking account of opportunity costs as well as actually incurred costs. This principle ensures the equal treatment of all market participants and avoids that individual market participants are discriminated as a result of local congestions.

	Council Text (13 Dec 2017)	EFET amendment proposal
Art. 12.2a (d) Regulation	the current grid situation leads to congestion in such a regular and predictable way that market-based redispatch would lead to regular strategic bidding which would increase the level of internal congestion and the Member State concerned has adopted an action plan to address this congestions or ensures that minimum available capacity for cross-zonal in accordance with Article 14 (7).	[Delete sub-paragraph] the current grid situation leads to congestion in such a regular and predictable way that market-based redispatch would lead to regular strategic bidding which would increase the level of internal congestion and the Member State concerned has adopted an action plan to address this congestions or ensures that minimum available capacity for cross-zonal is at least 75% of the thermal capacity of each interconnecting line in accordance with Article 14 (7).
Art. 12.6 Regulation	Where non-market based redispatching is used, it shall be subject to financial compensation by the system operator requesting the redispatching to the operator of the redispatched generation or demand facility except in the case of generators accepting connection agreement in which firm delivery of energy is not guaranteed. Financial compensation shall at least be equal to the highest of the following elements or a combination of them if applying one of the elements would lead to an unjustifiably low or unjustifiably high compensation: (a) additional operating cost caused by the redispatching, such as additional fuel costs in case of upward redispatching, or backup heat provision in case of downward	Where non-market based redispatching is used, it shall be subject to financial compensation by the system operator requesting the redispatching to the operator of the redispatched generation or demand facility except in the case of generators accepting connection agreement in which firm delivery of energy is not guaranteed. Financial compensation shall at least be equal to the highest of the following elements or a combination of them if applying one of the elements would lead to an unjustifiably low or unjustifiably high compensation: (a) additional operating cost caused by the redispatching, such as additional fuel costs in case of upward redispatching, or backup heat provision in case of downward redispatching or curtailment of power generating facility using high-efficiency cogeneration. The total impact of the curtailment or

	<p>redispatching or curtailment of power generating facility using high-efficiency cogeneration; (b) Net revenues from the sale of electricity on the day-ahead market that the generating or demand facility would have generated without the redispatching request. Where financial support is granted to generating or demand facilities based on the electricity volume generated or consumed, lost financial support shall be deemed part of the net revenues.</p>	<p>redispatching and any financial compensation shall leave the owner of the facility financially indifferent, taking into account at least operating costs, opportunity loss, and the possible loss of financial support for installations benefiting from financial support. (b) Net revenues from the sale of electricity on the day-ahead market that the generating or demand facility would have generated without the redispatching request. Where financial support is granted to generating or demand facilities based on the electricity volume generated or consumed, lost financial support shall be deemed part of the net revenues.</p>
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3. Ownership, development and operation of storage facilities by system operators

Strict unbundling rules are the corner stone of a sustainable liberalisation process in a network- backed industry like electricity. The separation of regulated monopoly system operation from all the other competitive activities in the sector ensures that TSOs and DSOs act as neutral facilitators of the market.

We welcome the principle enshrined in the draft recast Electricity Directive that TSOs and DSOs shall not be allowed to own, manage and operate electricity storage facilities. Storage assets – in the same manner as generation assets or demand-response capacities – should never be considered as part of a network unless they can only be used for purposes other than system operation (such as, e.g., transmission lines, phase-shifters or transformers). System operators who see the need to rely on storage capacity to perform their duties should procure this capacity from market participants, who are best placed to provide cost-efficient storage solutions. Any exemptions to this rule should be restricted to fully integrated network elements (hence excluding the provisions of balancing services and congestion management according to the definition of Article 2 point 39a of the draft recast Directive) **and** be subject to strict conditions.

	Council Text (13 Dec 2017)	EFET amendment proposal
Art. 36.2 Directive	By way of derogation from paragraph 1, Member States may allow distribution system operators to own, develop, manage or operate energy storage facilities which are fully integrated network components and the regulatory authority has granted its approval or if all of the following conditions are fulfilled:	By way of derogation from paragraph 1, Member States may allow distribution system operators to own, develop, manage or operate energy storage facilities which are fully integrated network components and the regulatory authority has granted its approval or and if all of the following conditions are fulfilled:

	<p>(-a) such facilities are necessary for the distribution system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the distribution system and they are not used to buy or sell electricity to the wholesale market, including balancing markets;</p> <p>(a) other parties, following an open, transparent and non-discriminatory tendering procedure, subject to review and approval by the regulatory authority have not been awarded with a right to own, develop, manage or operate such facilities. Regulatory authorities may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure; and</p> <p>(c) the regulatory authority has assessed the necessity of such derogation and has carried out an assessment of the tendering procedure, including the conditions, and has granted its approval.</p>	<p>(-a) the distribution system operators have performed a cost-benefit analysis of the various options available to solve the identified system need which has concluded that such facilities are necessary for the distribution system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the distribution system and they are not used to buy or sell electricity to the wholesale market, including balancing markets;</p> <p>(a) other parties, following an open, transparent and non-discriminatory tendering procedure, subject to review and approval by the regulatory authority have not been awarded with a right to own, develop, manage or operate such facilities. Regulatory authorities may draw up guidelines or procurement clauses to help distribution system operators ensure a fair tendering procedure; and</p> <p>(c) the regulatory authority has assessed the necessity and cost-efficiency compared to other options of such derogation and has carried out an assessment of the tendering procedure, including the conditions, and has granted its approval.</p>
Art. 36.4a Directive	Paragraph 4 does not apply for the usual depreciation period of new battery storage facilities with a final investment decision until 2020.	[Delete paragraph] Paragraph 4 does not apply for the usual depreciation period of new battery storage facilities with a final investment decision until 2020.
Art. 54.2 Directive	By way of derogation from paragraph 1, Member States may allow transmission system operators to own, develop, manage or operate energy storage facilities which are fully integrated network components and the regulatory authority has granted its approval or if all of the following conditions are fulfilled: (-a) such facilities are necessary for the transmission system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the transmission system and they are not used to provide balancing services and to buy or sell electricity to the	By way of derogation from paragraph 1, Member States may allow transmission system operators to own, develop, manage or operate energy storage facilities which are fully integrated network components and the regulatory authority has granted its approval or and if all of the following conditions are fulfilled: (-a) the transmission system operators have performed a cost-benefit analysis of the various options available to solve the identified system need which has concluded that such facilities are necessary for the transmission system operators to fulfil their obligations under this Directive for the efficient, reliable and secure operation of the transmission system and

	<p>wholesale markets, including balancing markets; (a) other parties, following an open, transparent and non-discriminatory tendering procedure, subject to review and approval by the regulatory authority have not been awarded with a right to own, develop, control, manage or operate such facilities Regulatory authorities may draw up guidelines or procurement clauses to help transmission system operators in ensuring a fair tendering procedure; and (c) the regulatory authority has assessed the necessity of such derogation, has carried out an ex-ante review of the applicability of a tendering procedure, including the conditions, and has granted its approval.</p>	<p>they are not used to provide balancing services and to buy or sell electricity to the wholesale markets, including balancing markets; (a) other parties, following an open, transparent and non-discriminatory tendering procedure, subject to review and approval by the regulatory authority have not been awarded with a right to own, develop, control, manage or operate such facilities Regulatory authorities may draw up guidelines or procurement clauses to help transmission system operators in ensuring a fair tendering procedure; and (c) the regulatory authority has assessed the necessity and cost-efficiency compared to other options of such derogation, has carried out an ex-ante review of the applicability of a tendering procedure, including the conditions, and has granted its approval.</p>
Art. 54.4 Directive	<p>Except for fully integrated network components, the regulatory authorities shall perform at regular intervals or at least every five years a public consultation for the required energy facilities in order to assess the potential interest of market parties to invest in such facilities. Where the public consultation, as assessed by the regulatory authority, indicates that third parties are able to own, develop, operate or manage such facilities in a cost-effective manner, regulatory authorities shall ensure that transmission system operators' activities in this regard are phased-out within 24 months. As part of the conditions for this procedure, regulatory authorities may allow the transmission system operators to receive reasonable compensation, in particular the residual value of the investment they made into energy storage facilities.</p>	<p>Except for fully integrated network components, the regulatory authorities shall perform at regular intervals or at least every five years a public consultation for the required energy facilities in order to assess the potential interest of market parties to invest in such facilities. Where the public consultation, as assessed by the regulatory authority, indicates that third parties are able to own, develop, operate or manage such facilities in a cost-effective manner, regulatory authorities shall ensure that transmission system operators' activities in this regard are phased-out within 24 months. As part of the conditions for this procedure, regulatory authorities may allow the transmission system operators to receive reasonable compensation, in particular the residual value of the investment they made into energy storage facilities.</p>
Art. 54.4b Directive	<p>Paragraph 4 does not apply for the usual depreciation period of new battery storage facilities with a final investment decision until 2024.</p>	<p>[Delete paragraph] Paragraph 4 does not apply for the usual depreciation period of new battery storage facilities with a final investment decision until 2024.</p>