



Publishing date: 26/05/2014

Document title:

We appreciate your feedback



Please click on the icon to take a 5' online survey  
and provide your feedback about this document



Document title:

Publishing date: 26/05/2014

We appreciate your feedback



Please click on the icon to take a 5' online survey  
and provide your feedback about this document

**RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY  
REGULATORS No 02/2014**

**of 22 May 2014**

**ON THE NETWORK CODE ON FORWARD CAPACITY ALLOCATION**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>1</sup>, and, in particular, Articles 6(4) and 17(3) thereof,

HAVING REGARD to Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003<sup>2</sup>, and, in particular, Article 6(9) thereof,

HAVING REGARD to the favourable opinion of the Board of Regulators of 8 May 2014, issued pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) On 1 October 2013, ENTSO-E submitted to the Agency the Network Code on Forward Capacity Allocation (the “Network Code dated October 2013”), accompanied by a supporting document “Network Code on Forward Capacity Allocation (FCA), Explanatory Document”<sup>3</sup>.
- (2) On 20 December 2013, the Agency provided its Opinion on the Network Code dated October 2013 (the ‘Opinion’). The Opinion, while acknowledging that the draft Network Code dated October 2013 would help facilitate market integration as well as non-discrimination, effective competition and the efficient functioning of the market, concluded that in some specific areas the Network Code dated October 2013 was not in line with the Framework Guidelines on Capacity Allocation and Congestion Management (CACM) for Electricity<sup>4</sup> (the ‘Framework Guidelines’) of 29 July 2011. The following two topics in particular were of concern: the deadlines set to implement terms and conditions or methodologies, and the firmness regime. The Agency expressed concerns with regard to other, less critical issues and requested further improvements of the Network Code dated October 2013. In its Opinion, the Agency invited ENTSO-E to address the specific concerns expressed and to resubmit an amended network code to the Agency.

---

<sup>1</sup>OJ L 211, 14.8.2009, p. 1.

<sup>2</sup>OJ L 211, 14.8.2009, p. 15.

<sup>3</sup> <https://www.entsoe.eu/major-projects/network-code-development/forward-capacity-allocation>

<sup>4</sup> FG-2011-E-002

- (3) On 3 April 2014, ENTSO-E resubmitted to the Agency the Network Code on Forward Capacity Allocation (the “Network Code”), accompanied by a supporting document “Network Code on Forward Capacity Allocation, Explanatory Document of Changes in the Resubmitted Version” and a specific explanatory document on firmness called “Firmness Explanatory Document”.
- (4) The Agency acknowledges that the resubmitted Network Code has improved in line with the amendments proposed in the Opinion, in particular with regard to the remuneration of long-term transmission rights. The Agency has still major concerns on some aspects of this Network Code, especially on the deadlines set to implement the target model and the provisions related to the firmness regime,

**HEREBY RECOMMENDS:**

The adoption of the Network Code by the European Commission after having:


1. Introduced the amendments listed in the Annex to this Recommendation in the Network Code;
2. Aligned further, where relevant, this Network Code with the Network Code on Capacity Allocation and Congestion Management, currently in the Comitology process, once it is finally adopted.

This Recommendation is addressed to the European Commission.

The Network Code and the supporting documents received from ENTSO-E are attached to this Recommendation for information purposes.

Done at Ljubljana on 22 May 2014.

For the Agency:

  
Alberto Pototschnig  
Director

## **Annex: Specific amendments to the Forward Capacity Allocation Network Code**

### **1. Amendments with regard to the timelines for establishing the single allocation platform and for harmonising the type of Transmission Rights, the Allocation Rules, and the nomination rules**

The Agency proposes that the Network Code follows a more ambitious timeline when setting binding deadlines for the implementation of the main features of the European target model in the long-term timeframe. In order to enhance the full implementation of the target model in the long-term timeframe, the Network Code should define binding deadlines to implement this target model within a reasonable period of time after its entry into force. Taking into consideration the progress already achieved at the regional level and the work to be further carried out by Transmission System Operators before the entry into force of the Network Code, in line with the 2014 target, these binding deadlines in the Network Code can be significantly advanced. All deadlines proposed by the Agency in this Annex relate to the combination of such an early implementation of the target model and of an assumed date of the entry into force of the Network Code in September 2015. The deadlines should be adapted according to the actual date of the Network Code entering into force.

#### **1.1 Single allocation platform**

It is acknowledged that the Network Code should define a binding framework for the necessary steps to set up the platform. The Network Code should however also guarantee that the single allocation platform is implemented and becomes operational within an ambitious, albeit achievable deadline following the entry into force of the Network Code.

- 1.1.1 To benefit from the progress achieved in the context of the early implementation of the target model, the development of a common set of requirements and the decision with regard to the establishment of the platform should be carried out in parallel within a short period of time after the entry into force of the Network Code. National Regulatory Authorities should jointly approve the set of requirements and the decision on the establishment of the platform. Article 54(1) should be amended to read:

*No later than three months after the entry into force of this Network Code all Transmission System Operators shall submit to all National Regulatory Authorities a proposal for a common set of requirements and for the establishment of the Single Allocation Platform. The proposal for the establishment of the Single Allocation Platform shall identify options to implement the indicated common set of requirements, having regard to costs and time, with a view to implement the most appropriate option, by Transmission System Operators or third parties on behalf of them. Thereby, Transmission System Operators shall take into account the tasks of the Single Allocation Platform according to Article 53 and the requirements for cost recovery according to Article 66.*

1.1.2 Article 55(1) should be deleted and Article 55(2) should be amended to read:

*All Transmission System Operators shall ensure that the Single Allocation Platform is operational and compliant with the requirements defined pursuant to Article 54 by a date no later than twelve months after the approval of the proposal for a common set of requirements and for the decision on the establishment of the Single Allocation Platform pursuant to Article 54(1).*

1.2 Type of Transmission Rights

The Network Code should establish more ambitious deadlines for deciding on the type of Transmission Rights to be allocated on the relevant bidding zone borders. In accordance with the amendments proposed for Article 35, coordination amongst all Transmission System Operators of a given Capacity Calculation Region should be ensured.

Article 36(3) should be amended to read:

*No later than six months after the entry into force of this Network Code, all Transmission System Operators of each Capacity Calculation Region shall develop and submit to all National Regulatory Authorities of the Capacity Calculation Region a joint proposal for the Regional design of Long-Term Transmission Rights to be issued on each Bidding Zone Border within Capacity Calculation Region. This proposal shall include timelines for implementation with a deadline of maximum two months after National Regulatory Authorities' approval, and at least the description of the following characteristics to be specified in the Allocation Rules:*

- a) Type of Long-Term Transmission Rights (Physical Transmission Rights, Financial Transmission Rights Option, Financial Transmission Rights Obligation);*
- b) Forward Capacity Allocation timeframe (e.g. yearly, monthly);*
- c) Form of product (e.g. base, peak, off-peak);*
- d) The Bidding Zone Border(s) covered.*

1.3 Harmonisation of Allocation Rules

The Network Code should establish more ambitious deadlines for the application of harmonised Allocation Rules. Furthermore, it should strive for stronger harmonisation of the design of the Allocation Rules. The Network Code should thus require one single document with dedicated sections including specificities for Physical Transmission Rights and Financial Transmission Rights where needed.

1.3.1 Article 56(1) should be deleted and Article 56(2) should be amended to read:

*The harmonised Allocation Rules for Long-Term Transmission Rights shall cover Physical Transmission Rights and Financial Transmission Rights. Specificities related to the different types of products shall be considered and duly taken into*



*account. The harmonised Allocation Rules for Long-Term Transmission Rights shall contain at least:*

- a) Harmonised definitions and interpretation;*
- b) Harmonised provisions on eligibility and entitlement, suspension and renewal and costs of participation pursuant to Article 42;*
- c) A description of the Forward Capacity Allocation process including at least provisions on Auction specification, submission of bids, publication of Auction results, contestation period and fallback procedures pursuant to Article 42, Article 43, Article 44, Article 47, Article 48 and Article 49;*
- d) A description of the types of Long-Term Transmission Rights which are offered, including harmonised provisions for their remuneration pursuant to Article 40;*
- e) Harmonised provisions concerning netting policies and financial collaterals requirements specific for Financial Transmission Rights Obligations, where applicable;*
- f) Harmonised provisions for Secondary Trading pursuant to Article 49;*
- g) Harmonised provisions for the return of Long-Term Transmission Rights pursuant to Article 48;*
- h) High-level description of the applicable Nomination Rules pursuant to Article 41;*
- i) Harmonised Use-It-Or-Sell-It (UIOSI) provisions in the case of Physical Transmission Rights pursuant to Article 37;*
- j) Firmness provisions and Compensation Rules pursuant to Article 58, Article 59 and Article 61;*
- k) Harmonised provisions for financial requirements and settlement pursuant to Article 46; and*
- l) A contractual framework between the Allocation Platforms and the Market Participants including provisions on the applicable law, the applicable language as well as confidentiality, dispute resolution, liability and force majeure.*

1.3.2 Article 56(3) should be amended to read:

*The harmonised Allocation Rules may contain regional specificities at Capacity Calculation Region level deviating from the default principles defined according to Article 56(2) to the extent that they respect the principles for regional exemptions as described in this Network Code and referring to:*

- a) The description of the type of Long-Term Transmission Rights which are offered on each Bidding Zone Border within the Capacity Calculation Region pursuant to Article 36;*
- b) The type of Long-Term Transmission Rights remuneration regime to be applied on each Bidding Zone Border according to the situation in the Day Ahead timeframe pursuant to Article 56(2);*
- c) The implementation of alternative coordinated regional fallback solutions pursuant to Article 47(2);*
- d) The regional Compensation Rules defining regional firmness regimes pursuant to Article 61.*

1.3.3 Article 57 should be amended to read:

1. *No later than six months after the entry into force of this Network Code, all Transmission System Operators shall develop and submit to all National Regulatory Authorities a proposal for harmonised Allocation Rules for Transmission Rights pursuant to the requirements of Article 56, including timescales for the implementation of those rules, with a deadline of maximum two months after National Regulatory Authorities' approval. The principles described in the harmonised Allocation Rules pursuant to Article 56(2) shall apply by default on all bidding zone borders.*
2. *When the harmonised Allocation Rules are submitted to National Regulatory Authorities or once they have entered into force, all Transmission System Operators of each Capacity Calculation Region may develop and submit to all National Regulatory Authorities of the Capacity Calculation Region a proposal for specific regional requirements in relation to the harmonised Allocation Rules pursuant to Article 56(3).*
3. *Once they enter into force, the specific regional requirements as defined in Article 56(3) shall apply over the general principles defined in the harmonised Allocation Rules pursuant to Article 56(2). If the general principles of the harmonised Allocation Rules are amended and submitted to all National Regulatory Authorities' approval, the specific regional requirements shall also be submitted to National Regulatory Authorities of the concerned Capacity Calculation Region.*

1.3.4 To ensure consistency with the set of deadlines for the methodologies to be developed after the entry into force of the Network Code, Article 64(1) should be amended to read:

*No later than six months after the entry into force of this Network Code, all Transmission System Operators shall develop and submit to all National Regulatory Authorities a proposal for a methodology for sharing Congestion Income for Forward Capacity Allocation.*

1.3.5 Article 47 allows for Transmission System Operators to define specific fallback solutions, as an alternative to the postponement of the Forward Capacity Allocation. This option is welcomed. However, harmonisation of these specific fallback solutions should be ensured at least at Capacity Calculation Region level. Article 47(2) should thus be amended to read:

*All Transmission System Operators of a Capacity Calculation Region shall be entitled to implement alternative coordinated fallback solutions. In such cases, all Transmission System Operators of a Capacity Calculation Region shall develop and submit to all National Regulatory Authorities of the Capacity Calculation Region a coordinated proposal for reliable fallback procedures.*



#### 1.4. Harmonisation of the Nomination Rules

The Network Code should introduce a deadline to ensure that Nomination Rules are harmonised within a reasonable period of time.

Article 41(3) should be amended to read:

*No later than twenty-seven months after the entry into force of this Network Code, all Transmission System Operators shall develop and submit to all National Regulatory Authorities a proposal for harmonised Nomination Rules, including timescales for their implementation with a deadline of a maximum of two months after the National Regulatory Authorities' approval.*

#### 2. **Amendments with regard to the principles for Long-Term transmission rights remuneration**

The Agency recognises significant improvements in the resubmitted Network Code regarding the provisions related to the remuneration for Transmission Rights towards the principles set in the Framework Guidelines, and the guidance provided in its Reasoned Opinion. The Network Code now ensures that Transmission System Operators return the total financial resale value of capacity to the market participants who owned the Transmission Right, in the case of financial transmission rights and of non-nominated physical transmission rights subject to the “Use It Or Sell It” requirement. However, the Agency notes a few improvements still needed in the Network Code to that end, in relation with the remuneration for Transmission Rights in case of no capacity allocation in the Day Ahead timeframe, with the requirement for regional coordination of Transmission System Operators, and with further clarification on the allocation constraints to be taken into account.

- 2.1 Where day-ahead capacity is allocated through a method other than implicit allocation or explicit auction in the Day Ahead timeframe, the remuneration for Transmission Rights should be equal to the market spread. Article 40(3) should thus be amended to read:

*The Long-Term Transmission Rights remuneration in paragraph 1 and 2 of this article shall respect the following principles:*

- a) *When the Cross Zonal Capacity is allocated through implicit allocation in the Day Ahead timeframe or through a method other than implicit allocation or explicit auction in the Day Ahead timeframe, the Long-Term Transmission Rights remuneration shall be equal to the market spread.*
- b) *When the Cross Zonal Capacity is allocated through explicit auction in the Day Ahead timeframe, the Long-Term Transmission Rights remuneration shall be equal to the clearing price of the daily auction.*

- 2.2 The Network Code should ensure that the principles for Long-Term Transmission Rights remuneration are not dealt with at the level of the border of each bidding zone and that they are harmonised to the maximum possible extent. Therefore, the exact

definition of the Long-Term Transmission Rights remuneration shall be provided by all Transmission System Operators in the harmonised Allocation Rules, pursuant to Article 56(2) and Article 40(4) should be deleted.

- 2.3 For the purpose of clarity, Article 40(5) should explicitly refer to transmission losses on interconnectors (where they have been included in the Day Ahead capacity Allocation process) as the only possible allocation constraints to be taken into account when remunerating the Transmission Rights' holders. Article 40(5) should thus be amended to read:

*Transmission losses on interconnections between Bidding Zones, where these losses have been included in the Day Ahead capacity Allocation process, shall be the only allocation constraints to be taken into account in the proposal for the calculation of the Long-Term Transmission Rights remuneration pursuant to paragraph 3 of this Article.*

- 2.4 The Network Code should ensure that the principles on cost sharing, related to Long-Term Transmission Rights or firmness are consistent with the principles applied for sharing of congestion income. Article 64 should be complemented with an additional paragraph (2):

*No later than six months after the entry into force of this Network Code, all Transmission System Operators shall develop and submit to all National Regulatory Authorities a proposal for a methodology for sharing costs incurred to guarantee the Long-Term Transmission Rights remuneration and to ensure firmness pursuant to Article 68. This methodology shall be consistent with the methodology for sharing Congestion Income for Forward Capacity Allocation pursuant to paragraph 1.*

### **3. Amendments with respect to firmness provisions**

The Agency recognises significant improvements in the resubmitted Network Code regarding the provisions related to the firmness regime towards the principles set in the Framework Guidelines and the guidance provided in its Opinion. However, the Network Code describes a firmness regime which is not fully in line with the Framework Guidelines and which does not sufficiently establish Transmission Rights as an efficient hedging product. After the long-term firmness deadline, transmission rights should be fully firm and uncapped. Before the long-term firmness deadline, caps on congestion income may be introduced as an exemption, if duly justified, in order to mitigate Transmission System Operators' and consumer's risk. The Agency considers that such caps should be based on the total revenues collected from capacity allocation on a yearly basis; a monthly basis may still be considered for direct current cables.

- 3.1 Article 58(2) should be amended to read:

*When Long-Term Transmission Rights are curtailed, all Transmission System Operators shall compensate the holders of curtailed Long-Term Transmission Rights according to the principles for the remuneration for Transmission Rights as defined in*

*Article 40. A capped compensation may be applied before the long-term firmness deadline pursuant to Articles 59 and 60 if duly justified and approved by National Regulatory Authorities of the concerned Capacity Calculation Region pursuant to Article 61.*

3.2 Article 59 should be amended to read:

1. *All Transmission System Operators of each Capacity Calculation Region shall be entitled to define a Long-Term Firmness Deadline which separates the period before the Day Ahead Firmness Deadline into two sub-periods, the time before and the time after the Long-Term Firmness Deadline, for the purposes of compensation pursuant to Article 60 and Article 61.*
2. *When implementing a Long-Term Firmness deadline, Transmission System Operators shall respect the following principles:*
  - a) *In the case of Physical Transmission Rights, the Long-Term Firmness Deadline shall correspond to the nomination deadline defined in the Nomination Rules and shall be harmonised on all bidding zone borders where Physical Transmission Rights are issued within a Capacity Calculation Region.*
  - b) *In the case of Financial Transmission Rights, the Long-Term Firmness Deadline shall be placed between nineteen hours and two hours before Day-ahead Gate Closure Time and shall be harmonised on all bidding zone borders where Financial Transmission Rights are issued within a Capacity Calculation Region.*
  - c) *Once the Nomination Rules are harmonised pursuant to Article 41(3), the Long-Term Firmness Deadline, where applied, shall be equal for Physical Transmission Rights and Financial Transmission Rights.*
3. *If a Long-Term Firmness deadline pursuant to paragraph 1 is introduced, all System Operators on the concerned Bidding Zone Borders shall be entitled to develop a proposal to include caps in the compensation payments for curtailments before the Long-Term Firmness deadline pursuant to Article 60.*

3.3 Article 60 should be amended to read:

1. *Transmission System Operators may apply a cap on compensation for curtailed Transmission Rights before the Long-Term Firmness Deadline. Such cap shall be based on congestion income on a Bidding Zone border basis.*
2. *The cap based on congestion income shall limit the compensation payments for curtailments before the Long-Term Firmness Deadline to the total amount of congestion income collected by Transmission System Operators on the concerned Bidding Zone Border from Capacity Allocation in all timeframes over a specific period of time pursuant to paragraph 3, this total amount being reduced by:*

- *payments arising from remuneration of Transmission Rights pursuant to Article 40, for the period of time when the Long-Term Transmission Rights were not curtailed, and*
- *payments arising from compensation for curtailments after the Long-Term Firmness Deadline.*

3. *The total congestion income used for calculation of capped compensation pursuant to paragraph 2 shall include the total congestion income arising from all timeframes over the calendar year. In the case of Direct Current interconnectors, Transmission System Operators may propose to use total congestion arising from all timeframes, within the calendar month to calculate the capped compensation.*
4. *In the case of several interconnections operated by different Transmission System Operators on the same Bidding Zone Border and subject to different regulatory regimes overseen by National Regulatory Authorities, the total congestion income used for calculation of capped compensation pursuant to paragraph 2 may be dissociated for each interconnection.*

3.4 Article 61 should be amended to read:

1. *All Transmission System Operators of a Capacity Calculation Region may define a set of regional Compensation Rules for the curtailments of Long-Term Transmission Rights.*
2. *The regional Compensation Rules shall include, where applicable:*
  - a) *The determination of the Long-Term Firmness Deadline pursuant to Article 59; and*
  - b) *The applied cap(s) based on congestion income pursuant to Article 60.*

3.5 The Network Code should allow for reimbursement of the initial price paid at the Long-Term auction in case of Force Majeure only. Therefore, Article 63(3) should be amended to read:

*Long-Term Transmission Rights, which are subject to Force Majeure, shall be reimbursed for the period of Force Majeure by the Transmission System Operator which invoked Force Majeure. In this case, Market Participants shall be entitled to compensation equal to the value of the Long-Term Transmission Rights based on the marginal price principle pursuant to Article 45.*

3.6 Article 68(3) should be amended to read:

*The costs of ensuring firmness pursuant to Article 57 to Article 62 shall be borne by Transmission System Operators. When fixing or approving transmission tariffs or other appropriate mechanism in accordance with Article 37(1)(a) of Directive 2009/72/EC, and having regard to Article 14(1) of Regulation (EC) No. 714/2009, National Regulatory Authorities shall consider compensation payments as referred in*



*Article 57 as eligible costs provided that they are reasonable, efficient and proportionate.*

- 3.7 Article 72 shall be amended to cover the situations where Day Ahead price coupling has not been introduced yet, but where the firmness regime is already firmer than the reimbursement of the Initial Price Paid.

*Until the introduction of price coupling in the Day Ahead timeframe, alternative Compensation Rules shall apply as a transitional firmness measure. These transitional arrangements shall be fair, transparent and non-discriminatory. Compensation for curtailment of Long-Term Transmission Rights on Bidding Zone Border(s) where Day Ahead price coupling has not been introduced yet shall be at least equal to the Initial Price Paid or based on market spread, possibly capped.*

- 3.8 Recitals 18 and 19 should be amended accordingly to read:

*(18) The NC CACM establishes a Day Ahead firmness deadline and a related compensation regime for the compensation of the holders of Long-Term Transmission Rights for curtailments of Long-Term Transmission Rights after such a deadline. Where before the Day Ahead Firmness Deadline, Transmission System Operators curtail Long-Term Transmission Rights, they have to reimburse or compensate the Long-Term Transmission Rights holders whose Long-Term Transmission Rights have been curtailed.*

*(19) Caps on the compensation to be paid to Market Participants for curtailing Long-Term Transmission Rights may be introduced before Long-Term Firmness Deadline, taking into account the liquidity of the relevant markets and the possibility for transmission system users to adjust their cross-border positions as well as in the case of curtailments of long duration.*

#### **4. Amendments with respect to the decision on cross zonal risk hedging opportunities**

Article 35 of the Network Code describes a process of utmost importance to National Regulatory Authorities: it gives them the possibility of granting an exemption from issuing Long-Term Transmission Rights and thus, to derogate from the relevant articles of this Network Code. Following the decision made by National Regulatory Authorities, National Regulatory Authorities and Transmission System Operators will either implement terms and conditions or methodologies described in this Network Code or be exempted from all provisions related to allocation of Long-Term Transmission Rights. Due to the important impact of this decision on the application of this Network Code, the Agency recommends this article to become part of a dedicated section of this Network Code. The Agency would also like to highlight that this major decision has important consequences not only for the bidding zones in question, but also for the neighbouring ones. As a consequence, Article 35 must provide for a common National Regulatory Authorities' position agreed upon within each Capacity Calculation Region. Furthermore, Article 35 should specify the scope of the evaluation to support the assessment which the decision will be based on.



Besides the public consultation to be held, a quantitative analysis of the hedging opportunities and their efficiency should be carried out.

4.1 Article 35 should be covered under a dedicated new title at the beginning of the Network Code and be amended to read:

1. *Transmission System Operators on a Bidding Zone Border shall issue Long-Term Transmission Rights unless all National Regulatory Authorities of the concerned Capacity Calculation Region have issued a decision not to issue Long-Term Transmission Rights on some Bidding Zone Border(s) of the Capacity Calculation Region. In deciding on such an issue, all National Regulatory Authorities of the Capacity Calculation Region shall seek a mutual agreement before formally adopting their position at national level.*
2. *Where Long-Term Transmission Rights do not exist on a Bidding Zone Border at the entry into force of this Network Code, all National Regulatory Authorities of the concerned Capacity Calculation Region shall issue a decision on the implementation of Long-Term Transmission Rights no later than two months after the entry into force of this Network Code. Such a decision shall be based on an assessment pursuant to paragraph 4 of this article which shall not be older than eighteen months.*
3. *Upon a joint request of all Transmission System Operators of a Capacity Calculation Region, or at their own initiative, and at least every five years, all National Regulatory Authorities of each Capacity Calculation Region shall perform, in cooperation with the Agency, a reassessment of their hedging systems performed in a regional coordinated manner and containing at least the elements described in paragraph 4 of this article. Following such a reassessment, National Regulatory Authorities of the Capacity Calculation Region shall decide whether the respective Transmission System Operators shall not issue Long-Term Transmission Rights on some Bidding Zone Border(s). In such a case, a decision shall not be issued more than six months after the reassessment has been completed.*
4. *The decisions in paragraphs 2 and 3 of this article shall be based on an assessment, which shall include at least:*
  - a) *A consultation with Market Participants about their needs for cross zonal risk hedging opportunities on the concerned Bidding Zone Border(s); and*
  - b) *An evaluation pursuant to paragraph 5.*
5. *The evaluation referred to in paragraph 4(b) shall investigate the functioning of financial electricity markets and be based on transparent criteria which include at least:*
  - a) *An analysis of whether there exists a set of products or combination of products offered on forward markets that represent a hedge against the volatility of the Day Ahead price of the concerned Bidding Zone. Such product*

*or combination of products shall be considered as a hedging opportunity against the volatility of the Day Ahead price of the concerned Bidding Zone if there is a high statistical correlation such as defined in EC 1126/2008 IAS39 between the Day Ahead price of the concerned Bidding Zone and the underlying price against which the product or combination of products are settled.*

- b) *An analysis of whether hedging products or combination of hedging products that represent a hedging opportunity against the volatility of the Day Ahead price of the concerned Bidding Zone are well developed and efficient. For this purpose, the following indicators shall be assessed for these products or combination of hedging products:*
  - i. *Trading horizon;*
  - ii. *The bid-ask spread of hedging products or combination of hedging products compared to the implicit measure of the effective bid-ask spread computed based by an official method.*

- 6. *Where National Regulatory Authorities decide that Long-Term Transmission Rights shall not be issued by the respective Transmission System Operators pursuant to paragraph 2 and 3 of this article, Section 4 of Chapter 1, Chapter 3 to Chapter 7, Article 66, Article 68 and Articles 69 to 74 shall not apply to Transmission System Operators of the Bidding Zone Border(s) subject to the National Regulatory Authorities' decision.*

## **5 Amendments with respect to other issues**

### **5.1 Legal robustness**

The Agency proposes a list of other minor amendments in order to improve the clarity of the wording in the Network Code and to ensure consistency with the Network Code on Capacity Allocation and Congestion Management.

- 5.1.1 Paragraph (2)(i) of Article 5 refers to Article 69 as the “establishment” of Regional Platforms, while paragraph (4)(c) of Article 8 states the “designation” of Regional Platforms. For the sake of consistency, the Agency recommends to align the wording with Article 69 and amend Article 5(2)(i) to deal with the designation of Regional Platforms.
- 5.1.2 Article 9 describes the review of terms and conditions or methodologies and represents a welcome simplification compared to the previous version. The Agency notes that Article 9(3) refers to amendments that should be consulted on and approved. However, the current wording could imply that the already implemented amendments are to be consulted on or approved. To clarify this point, Article 9(3) should be amended to read:

*The proposed amendments to the terms and conditions or methodologies shall be consulted on following the procedure pursuant to Article 5 and approved following the procedure pursuant to Article 8.*

- 5.1.3 Article 10 goes against the approach taken in the Network Code on Capacity Allocation and Congestion Management where a similar article (Article 9 in ENTSO-E's Network Code on Capacity Allocation and Congestion version of 27 September 2012) has been deleted in pre-comitology (see in particular the CACM NC version published by the European Commission on 14 January 2014<sup>5</sup>) to have all obligations applying to all Transmission System Operators in general, and the possibility left to Member States to assign the relevant functions amongst the concerned Transmission System Operators at the national level (multiple Transmission System Operators clause). Since this clause is already provided in Article 1(3) of this Network Code, for consistency of approaches, Article 10 should be deleted from this Network Code.
- 5.1.4 Article 17(2) states that "Allocation Constraints for Forward Capacity Allocation, where applied, shall contain only constraints related to transmission losses on the connections between Bidding Zones." While the Agency recognises the need to consider Operational Security Limits and Contingencies for Long-Term capacity calculation (Article 17(1)) the Agency considers that the reference to allocation constraints related to transmission losses should be deleted in this Network Code. Indeed, in the case of Physical Transmission Rights with "Use It", the nomination deals with losses costs, whereas in the case of Physical Transmission Rights with "Sell It" or Financial Transmission Rights, the provisions on remuneration for Transmission Rights pursuant to Article 40 deal with transmission losses. Therefore, no additional allocation constraints are needed in Long-Term allocation, and Article 17(2) should be deleted.
- 5.1.5 For consistency purposes, Article 29(5) and paragraph (b) of Article 34(1) should be deleted.
- 5.1.6 Paragraphs 2(a) and 3 of Article 70 refer to two approval processes. Article 70(2)(a) mentions the approval of the deviation of specific regional requirements in relation to the Single Allocation Platform from the set of requirements defined according to Article 54, while Article 70(3) refers to the approval of prolongation of operation of Regional Platforms. The process here is not clearly defined. The Network Code should specify that both aspects should be subject to the same approval process and the same timeline. Article 70(2) and (3) should be amended to read:
- 2. Notwithstanding paragraph 1 of this article, within the twelve months period set in Article 55(2) after the approval of the requirements defined pursuant to Article 54 and before the establishment of the Single Allocation Platform pursuant to Article 55(2), Transmission System Operators may define specific regional requirements for their regional platform(s), which deviate from the set of requirements for the Single Allocation Platform defined according to Article 54, and submit these requirements and a request for a single prolongation period of operation of Regional Platforms up to twelve months to their National Regulatory Authorities.*
- 3. National Regulatory Authorities on the Bidding Zone Border(s) covered by Regional Platforms may approve the specific regional requirements pursuant to*

---

<sup>5</sup> [http://ec.europa.eu/energy/gas\\_electricity/electricity/doc/20140114\\_cacm.pdf](http://ec.europa.eu/energy/gas_electricity/electricity/doc/20140114_cacm.pdf)

*paragraph 2 provided that the conditions set in Article 69(2) are met and allow for the single prolongation of operation of Regional Platforms up to twelve months after the start in operation of the Single Allocation Platform.*

## 5.2 Regulatory Approvals

The Network Code lists several decisions to be taken by National Regulatory Authorities. The Network Code should provide further clarity with regard to the list of approvals and the accurate level of coordination.

5.2.1 Articles 8(2), 8(3) and 8(4) list the decisions to be taken by National Regulatory Authorities. These lists are updated in line with the amendments on the Network Code. The level at which National Regulatory Authorities must approve the different deliverables is also updated to match the coordination required from Transmissions System Operators when submitting a proposal. Articles 8(2), 8(3) and 8(4) should be amended to read:

2. *The following shall be subject to approval by all National Regulatory Authorities:*
  - a) *The Generation and Load Data provision methodology and amendments pursuant to Article 21;*
  - b) *The Common Grid Model methodology and amendments pursuant to Article 22;*
  - c) *Congestion Income distribution arrangements pursuant to Article 64;*
  - d) *The requirements for the Single Allocation Platform and the decision on its establishment pursuant to Article 54;*
  - e) *The harmonised Allocation Rules pursuant to Article 57(1); and*
  - f) *The harmonised Nomination Rules pursuant to Article 41.*
3. *The following shall be subject to approval by each National Regulatory Authority of the concerned Capacity Calculation Region:*
  - a) *The Capacity Calculation Methodology and amendments pursuant to Article 15;*
  - b) *The methodology for splitting Cross Zonal Capacity pursuant to Article 25;*
  - c) *The decision on cross-zonal risk hedging opportunities as defined in Article 35 and on the regional design of Long-Term Transmission Rights pursuant to Article 36;*
  - d) *The regional specific requirements pursuant to Article 57(2), including the regional Compensation Rules pursuant to Article 61;*
4. *The following shall be subject to approval by each National Regulatory Authority of the concerned Member States, as determined on a case-by-case basis:*
  - a) *The designation of Regional Platforms for Allocation and Secondary Trading pursuant to Article 69;*



- b) The deviation of specific regional requirements from the set of requirements defined for the Single Allocation Platform and the decision on prolongation of operation of Regional Platforms pursuant to Article 70;*
- c) The Regional Allocation Rules pursuant to Article 71;*
- d) The transitional Compensation Rules pursuant to Article 72; and*
- e) The control area based Forward capacity calculation and allocation pursuant to Article 73.*

5.2.2 Article 8(5) lacks consistency with the Network Code on Capacity Allocation and Congestion Management (see in particular the CACM NC version published by the European Commission on 14 January 2014) where the terms and conditions or methodologies are to be submitted at the latest at the deadline prescribed in the Network Codes. Article 8(5) should thus be amended to read:

*5. For each of the approvals specified in paragraphs 2 to 4, each Transmission System Operator shall, at the latest by the deadlines provided in this Network Code for the development of the terms and conditions or methodologies, submit those terms and conditions or methodologies, to the competent National Regulatory Authority for approval. All submissions shall include a proposed timescale for implementation and a description of the expected impact of the proposal.*





Document title:

Publishing date: 26/05/2014

We appreciate your feedback



Please click on the icon to take a 5' online survey  
and provide your feedback about this document



Publishing date: 26/05/2014

Document title:

We appreciate your feedback



Please click on the icon to take a 5' online survey  
and provide your feedback about this document