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**RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY  
REGULATORS No 03/2015**

**of 20 July 2015**

**ON THE NETWORK CODE ON ELECTRICITY BALANCING**

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 16 July 2015, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) On 23 December 2013, ENTSO-E submitted to the Agency the Network Code on Electricity Balancing (the ‘Network Code’), accompanied by a supporting document “Supporting Document for the Network Code on Electricity Balancing” (the “supporting document”).
- (2) On 21 March 2014 the Agency provided its opinion on the Network Code<sup>3</sup> (the ‘Opinion’). The Opinion, while acknowledging that the draft Network Code 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 was not in line with the Framework Guidelines on Electricity Balancing<sup>4</sup> (the ‘Framework Guidelines’) of 18 September 2012. Those areas concerned the deadlines for the implementation of the integrated electricity balancing market, as well as the lack of harmonisation and standardisation that would be needed to achieve such a challenging objective. The Agency invited ENTSO-E to address the specific concerns expressed in the Opinion and to resubmit an amended Network Code to the Agency.

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<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> Opinion on ENTSO-E Network Code on Electricity Balancing, ACER Opinion No. 7/2014

<sup>4</sup> FG-2012-E-009

- (3) On 16 September 2014, ENTSO-E submitted to the Agency the revised Network Code accompanied by a revised version of the supporting document.
- (4) The Agency acknowledges that the resubmitted Network Code has significantly improved in line with the comments raised by the Agency in the Opinion. The Agency, however, still has major concerns on a number of aspects of this Network Code,

HEREBY RECOMMENDS:

The adoption of the Network Code on Electricity Balancing by the European Commission after having introduced in the Network Code the amendments presented in Annex I to this Recommendation and specified in Annex II to this Recommendation.

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 20 July 2015.

For the Agency:

  
Alberto Pototschnig  
Director

**Annex I:** Explanation of the proposed amendments to the Network Code

**Annex II:** Proposed amendments to the Network Code

## **Annex I: Explanation of the proposed amendments to the Network Code**

The Agency proposes a number of changes to the Network Code on Electricity Balancing. These changes vary in substance and can be broadly grouped into three categories:

- (a) The changes needed to improve the clarity of the Network Code and to improve its enforceability. These changes are not specifically described in this Annex, as their intention is not to change the meaning of the Network Code, but rather to clarify and improve readability and enforceability of the specific legal provisions. These changes are instead included in the revised version of the Network Code presented in Annex II.
- (b) The changes needed to ensure the consistency of the Network Code with the Commission Regulation establishing a Guideline on Capacity Allocation and Congestion Management<sup>5</sup> which are presented in the first chapter of this Annex.
- (c) The changes needed to enhance specific elements of the Network Code with the objective to ensure the efficient integration and functioning of the electricity balancing market. These changes introduce new or different elements to the Network Code and are specifically addressed in the remaining chapters of this Annex.

### **I. Alignment with the Guideline on Capacity Allocation and Congestion Management**

The Agency proposes to align Articles 1 to 10, as well as Article 74 of the Network Code to the text of the Guideline on Capacity Allocation and Congestion Management. Having in mind that the European Commission might convert the Network Code into a Guideline before its adoption, the Agency replaced the term “Network Code” into “Regulation”, where possible. In the following cases the provisions of the Guideline on Capacity Allocation and Congestion Management need to be adapted to this Network Code:

- (a) In Article 6, the Agency proposes an updated list of the terms and conditions or methodologies that need regulatory approval at European, regional and national level. These updates remove some unnecessary regulatory approvals and introduce new ones that are deemed necessary according to the Agency.
- (b) The Agency has proposed an updated list of the information to be published pursuant to this Network Code. The proposed amendments in Article 9 encompass some clarifications as well as additional requirements for publication of information.
- (c) In line with the Guideline on Capacity Allocation and Congestion Management, the Agency proposes a new Article 74 on the monitoring of the implementation of the European electricity balancing market. This Article introduces two reports to be developed by ENTSO-E. The first report focuses on the integration of the European balancing market, whereas the second report focuses on the implementation of this Network Code including its effect on the harmonisation of applicable rules aimed at facilitating market integration.
- (d) The Agency proposes that the term “responsibility area” is changed into “control area” in line with the Guideline on Capacity Allocation and Congestion Management.

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<sup>5</sup> As voted during the Electricity Cross-Border Committee meeting of 5 December 2014.

In three instances, the Agency is of the opinion that the exact provisions of the Guideline on Capacity Allocation and Congestion Management are not sufficiently clear and proposes some improvements in this Network Code:

- a) The Agency proposes that Article 5 on consultation is amended in a way that it refers to the terms and conditions or methodologies listed in Article 6 on regulatory approvals. This would provide better clarity on the terms and conditions or methodologies that need to be consulted. The specific changes in Article 5(2) also provide a distinction between the more important terms and conditions or methodologies, which would need to be consulted for at least two months, and the less important ones, for which a shorter consultation period could be envisaged.
- b) In Article 6(9), the Agency proposes a maximum deadline for the implementation of the terms and conditions or methodologies combined with the flexibility for regulatory authorities to extend this deadline if they deem it appropriate.
- c) The Agency proposes the review of the terms and conditions or methodologies to be defined in a separate Article 7. In the Agency's opinion it is important to separate the right of TSOs to review the existing terms and conditions or methodologies from the right of the regulatory authorities to require amendments to the existing terms and conditions or methodologies. This separation is proposed in first two paragraphs of Article 7.

## **II. Amendments to the general provisions of the Network Code**

The Agency proposes to amend Article 1 of the Network Code to clarify in which system states the Network Code should apply. In parallel to the elaboration of the Network Code on Emergency and Restoration, the Agency is of opinion that the Network Code should apply to all system states, except when the market activities have been suspended pursuant to the Network Code on Emergency and Restoration.

The Agency proposes the following amendments to the definitions in Article 2:

- (a) The definition of balancing capacity is amended to clarify that balancing capacity is a volume of reserve capacity which a Balance Service Provider (BSP) has agreed to hold and in respect to which the BSP has agreed to submit bids for a corresponding volume of balancing energy to the TSO for the duration of the contract;
- (b) The definition of balancing energy is amended to clarify that the origin of balancing energy can be a power generating facility or demand facility;
- (c) The definitions of central-dispatching model and self-dispatching model are amended to clarify that the dispatching model is essentially an approach to how the generation schedules and consumption schedules for dispatchable power generating facilities and demand facilities are determined;
- (d) The definition of Coordinated Balancing Area (CoBA) is amended to clarify that this is a region in which TSOs are exchanging balancing capacity, sharing reserves, exchanging balancing energy or operating the imbalance netting process;
- (e) The definition of imbalance price area is amended in order to simplify its general meaning whereas a more detailed meaning is provided in the other Articles of the Network Code;
- (f) The definition of position is amended in order to simplify its general meaning whereas a more detailed meaning is provided in the other Articles of the Network Code;



- (g) The definitions of TSO-BSP model and TSO-TSO model are amended in order to align them and provide clarity on how they differ from each other.

Apart from the amendments to ensure the alignment of provisions on delegation of tasks with the Guideline on Capacity Allocation and Congestion Management, the Agency proposes a different framework for the assignment of tasks in Article 10. The Agency proposes a general rule that any task under this Network Code can be assigned to a third party, except those tasks which have an impact on operational security and integration of the balancing markets and which require direct cooperation, joint decision making or entering into contractual relationship with TSOs from other Member States. In this respect, the Agency also provides additional requirements on the assignment process and on the assigned entity. Finally, the proposed amendments aim to clarify that the references made to TSOs under the Network Code equally apply to assigned third entities.

### **III. Amendments with respect to objectives, targets and Coordinated Balancing Areas**

The Agency's proposed changes to Chapter 2, Section 1, of the Network Code are largely motivated by the aim of limiting uncertainties and clarifying the precise requirements of the Network Code in order to achieve the European integration of balancing markets as soon as possible. These changes take into account the feedback received from the stakeholders during the Agency's public call for comments on ENTSO-E's revised Network Code on Electricity Balancing issued on 3 December 2014. In Article 11, the Agency proposes minor modifications to the general objectives, whereas in Article 12 the Agency's proposals seek to clarify the purpose of the CoBAs and provide explicit, clear requirements for the proposals to establish CoBAs. These requirements are further detailed for the Regional Implementation Models in the newly proposed Article 23.

The Agency's proposed amendments in the new Article 13 build on ENTSO-E's text and seek to encourage all TSOs to explore the possibility to exchange balancing services or to share reserves between CoBAs. Such inter-CoBA cooperation should be subject to rules and conditions developed by all TSOs no later than 18 months after the entry into force of the Network Code and approved by all regulatory authorities.

In Articles 15 to 23, the Agency has proposed illustrative dates based on an assumed entry into force of the Network Code in July 2016. The Agency expects that during the latter stages of the comitology process, the Commission will convert these dates back into the relative format, whereas in case of delayed adoption of the Network Code, the relative deadlines should be shortened respectively. Throughout the Articles related to the Regional Integration Models (RIMs) and the European Integration Models (EIMs) (Articles 15 to 22), the Agency proposes new deadlines which reflect those proposed in the Framework Guidelines. A summary of these amendments can be found in the table below.

Process	Network Code requirement	ENTSO-E proposal	ACER proposal
RR	RIM implementation go-live	2.5 years	2 years (July 2018)
	RIM Implementation framework	6 months	6 months
	EIM implementation go-live	No target	6 years (July 2022)
	Modifications to the EIM	4 years	3 years (July 2019)
	EIM Implementation framework	5 years	4 years (July 2020)
mFRR	RIM implementation go-live	4 years	4 years (July 2020)
	RIM Implementation framework	2 years	2 years
	EIM implementation go-live	No target	6 years (July 2022)
	Modifications to the EIM	4 years	3 years (July 2019)
	EIM Implementation framework	5 years	4 years (July 2020)
aFRR	RIM implementation go-live	4 years	4 years (July 2020)
	RIM Implementation framework	3 years	2 years
	EIM implementation go-live	No target	6 years (July 2022)
	Modifications to the EIM	4 years	3 years (July 2019)
	EIM Implementation framework	5 years	4 years (July 2020)

In addition to the updated deadlines, the Agency proposes the following amendments to Articles 15-22:

- (a) The Agency proposes that all TSOs should implement the RIMs and EIM for FRR with manual activation (mFRR). In the Agency's opinion all TSOs currently operate the mFRR process and therefore all TSOs should be part of the RIMs and EIM.
- (b) The RIMs and EIM for FRR with automatic activation (aFRR) should be implemented in line with the obligations stated in the Network Code on Load Frequency Control and Reserves. The Agency expects that these obligations will require that all TSOs operate the aFRR process, except for Great Britain, Ireland and Northern Ireland, where the implementation of the aFRR process is subject to a cost-benefit analysis to determine whether these TSOs should implement it<sup>6</sup>. In case the final outcome of the Network Code on Load Frequency Control and Reserves will be different than is expected at the time of drafting this Recommendation, the Agency will recommend to the European Commission amendments with respect to these provisions.
- (c) The Agency requires that all standard products and all specific products for a specific balancing process are shared in all CoBAs for that balancing process. This would ensure that CoBAs are not designed in a way that will prevent their future merger. Nevertheless, the Agency recognises that TSOs may need some transition time to shift from the use of currently non-standardised products to fully standardised products. For this reason, specific products may be introduced and, when these specific products cannot be used by other TSOs, they may be blocked for exchanges, while still submitted to CMOL and visible to all TSOs.
- (d) In Article 21, the Agency proposes that the RIM for the imbalance netting process should be composed of a single CoBA covering the whole Continental Europe synchronous area. This proposal considers that imbalance netting in other synchronous

<sup>6</sup> The Network Code on Load Frequency Control and Reserves is also currently under revision. The Agency expects the revised LFC&R Network Code to provide clarity on the separation of FRR processes with manual and automatic activation and clarity on the obligations of TSOs to implement the mFRR and aFRR processes.



areas is already implicitly implemented. The Continental-wide coverage should ensure the necessary consistency between the CoBAs proposed for aFRR and mFRR and the CoBA for imbalance netting. This proposal builds on the existing and well advanced pilot project in continental Europe.

The Agency proposes to add a new Article 23, which aims further to clarify and limit uncertainties related to the CoBAs for regional integration. It requires TSOs to develop a proposal for CoBAs for RIMs, for RR, for mFRR and for aFRR no later than six months after the entry into force of the Network Code. This proposal should also include the implementation framework for RR and imbalance netting, whereas the implementation framework for mFRR and aFRR should be developed and proposed two years after the entry into force of the Network Code.

The Agency considers that the overall number of CoBAs for regional implementation of aFRR and mFRR should be minimised as far as possible and fully justified by ENTSO-E to support their eventual merging. The Agency recommends the overall number of CoBAs not to be higher than five and that each TSO is attributed to only one CoBA for each RIM. This suggestion is driven by the objective to have large areas creating integrated and liquid balancing markets and also considers the practical aspects of the transition from RIM to EIM within the defined time periods.

The Agency also expects that the CoBAs are defined in a consistent manner, which ensures an efficient functioning of regional balancing markets, prevents delays in implementation projects in each RIM, and facilitates the convergence and merging of CoBAs into each final EIM. In the Agency's views, having consistent CoBAs means that very large CoBAs defined for a given process may encompass a number of CoBAs defined for other processes. For instance, the single CoBA covering the whole Continental Europe synchronous area for the imbalance netting process may cover a number of smaller CoBAs defined for the aFRR process, whereas each CoBA for mFRR may encompass one or several CoBAs for aFRR or CoBAs for RR.

In December 2014, the Agency invited ENTSO-E to work on the early implementation of the Network Code, and in particular to propose a definition of CoBAs. The Agency considers that, in light of the process that has already begun, this information should be proposed by ENTSO-E by November 2015 and discussed with stakeholders no later than the first quarter of 2016. Should ENTSO-E be able to develop an acceptable proposal for CoBAs in line with the general objectives stated above (efficient functioning of regional balancing markets, preventing delays in implementation projects in each RIM; and facilitating the convergence and merging of CoBAs into each final EIM) before the comitology process starts, the Agency proposes to amend the Network Code so that it explicitly states which Member States are included in each of the CoBAs for RR, mFRR and aFRR.

The amendments in Article 24 aim to add more clarity regarding the requirements for ENTSO-E's proposal for the harmonisation of the imbalance settlement. This Article requires harmonisation of the main elements of imbalance settlement, including position, imbalance, imbalance adjustment, allocated volume, imbalance price area and imbalance price. With respect to the latter, the Agency is of the opinion that a single price for positive and negative imbalances should be implemented, with the possibility to use a dual price when a TSO

provides the justification that it meets the criteria envisaged in the proposal for harmonisation of imbalance settlement. For further clarity, the Agency proposes that ENTSO-E's proposal is submitted one year after the entry into force of the Network Code and contains an implementation deadline of three years after the entry into force of the Network Code, as requested in the Framework Guidelines.

In addition, to limit uncertainties further, the Agency proposes that the Network Code explicitly defines the length of the harmonised imbalance settlement period. Such a length would provide a clear target for all TSOs and stakeholders. Given that the need for shorter imbalance settlement period has been defined by the Framework Guidelines (i.e. no longer than 30 minutes), the Agency is of the opinion that an harmonised duration equal to 15 minutes is a natural choice for the imbalance settlement period, since 30 minutes is currently used only by 3 Member States, whereas 15 minutes is used in 8 Member States. The Agency proposes such harmonised settlement period should be applied by 1 July 2019. The Agency also welcomes the cost-benefit analysis already initiated by ENTSO-E, which is expected to be finalised in the first quarter of 2016. With this respect, the Agency's recommendation on imbalance settlement period will be subject to further scrutiny before the Network Code enters the comitology process.

#### **IV. Amendments with respect to roles and responsibilities**

The amendments proposed by the Agency to Article 25 aim to clarify that the self-dispatching model is the primary dispatching model to be applied by TSOs for determining generation and consumption schedules, whereas TSOs applying a central-dispatching model at the time of the entry into force of the Network Code may request an exemption from the competent regulatory authorities to be allowed to continue to apply a central-dispatching model for determining generation schedules and consumption schedules. The main reason of this stricter application is that the self-dispatching model is more in line with the European target model with a zonal congestion management. A second amendment to Article 25 consists in stricter rules for TSOs to provide balancing services themselves. TSOs may apply to their regulatory authorities for a derogation to be provided for a limited time period. In this Article, the Agency also proposes that TSOs are also obliged to respect the terms and conditions related to balancing.

The main amendment proposed by the Agency to Article 27 on the Role of Balancing Service Providers (BSPs) is that the price of balancing energy should not be predetermined by a contract for balancing capacity. An exemption to this rule should only be allowed when accompanied by a clear justification demonstrating higher economic efficiency, the avoidance of distortion of balancing energy prices and providing insurance that such balancing energy bids in the common merit order should reflect the real time price of energy. The main reason for the amendments to this Article is to provide a level playing field for all BSPs allowing them to set the price of balancing energy as close as possible to real time and at least until the intraday cross-zonal gate closure time.

The only significant amendment proposed by the Agency to Article 28 is that Balance Responsible Parties (BRPs) have the right to change their position before the intraday cross-zonal gate closure time without specific conditions (such conditions may only apply in case of

central-dispatching model) and, where necessary, they can be allowed to change their position after the intraday cross-zonal gate closure time subject to specific national terms and conditions related to balancing. The main reason for this change is to be clear on the possibilities to change the position for each BRP, allowing it to trade as much as possible up to real time.

The amendment proposed by the Agency to Article 29 on the functions performed in CoBAs is that each task executed in a CoBA has to be assigned to an entity that is appointed by all TSOs in a CoBA. This requirement is needed to provide clarity, to ensure efficient functioning of balancing markets and to prevent the decentralised options for operation of regional balancing markets.

The amendments proposed by the Agency to Article 30 on the terms and conditions related to Balancing are mainly related to other changes in the Network Code. The three significant changes to this article relate to:

- (a) The framework for the development of the terms and conditions related to balancing to ensure proper involvement of stakeholders, including DSOs;
- (b) The definition of balance responsibility of each connection; and
- (c) The clarification that the requirement on BSPs to offer their unused generation capacity or other Balancing resources through balancing energy bids in the balancing markets after day-ahead market gate closure time is without prejudice to the possibility of BSPs to change their balancing energy bids prior to the balancing energy gate closure time due to trading within the intraday market.

The Agency proposes to introduce a new Article 31 related to the model for the independent BSP. The Agency acknowledges that providers of demand-side response may face important entry barriers into the balancing services market and difficulties to compete on a level playing field in particular with energy suppliers. For this reason the Agency proposes that, when such problems occur, the Member States or NRAs should mitigate them by either implementing adequate measures to mitigate entry barriers and ensure demand-side response can compete at a level playing field or by enabling the provision of demand-side response independently of energy suppliers. In this respect, the Agency has defined standard and harmonised requirements for provision of demand-side response independently of energy suppliers.

The requirements for the provision of demand-side response independently of energy suppliers consist of:

- (a) The provision that a BSP can provide the demand-side response service from a demand facility without the need for consent or a contract with the energy supplier of that demand facility or its BRP;
- (b) The requirement that BSPs providing demand-side response independently of energy suppliers should be balance responsible;
- (c) The requirements for TSOs to adjust the final position and determine the allocated volume for the BRP of the BSP and for the BRP of the energy supplier; and
- (d) The requirement for TSOs to establish the financial settlement between the BRP of the BSP and BRP of the energy supplier.



The Agency believes that such harmonised requirements on provision of demand-side response independently of energy suppliers should help to facilitate greater participating of demand-side response in the balancing market.

## **V. Amendments with respect to products**

The amendments proposed in Article 32 provide additional clarity to the Network Code, without changing its meaning. The Agency made more amendments to Article 33, such that the use of the specific products covered by this Article is more limited and only allowed under strict circumstances and after approval of the respective regulatory authorities based on a proposal. This proposal should only be submitted after the list of standard products has been submitted for approval and should contain clear substantiation on the reasons for the need of these specific products, including a time limitation on the period of their use. The Agency is of the opinion that, in an integrated and liquid balancing market, the TSOs will be able to ensure operational security with standard products. A further amendment on the use of balancing energy bids from specific products envisages that – if agreed within a CoBA - these bids can only be activated by the connecting TSOs and, in this case, these products can either be declared as part of the unshared bids or be converted into standard products used in that CoBA.

In December 2014, the Agency invited ENTSO-E to start working on the first deliverables of the Network Code, in particular the definition for standard products, the pricing methodology for balancing energy and the high-level principles for balancing algorithms – amongst those the activation optimisation function. The Agency expects that the outcomes of these tasks, which are expected by the end of the first quarter of 2016 will provide further insights on the necessary requirements for those topics and feed into the Network Code before the comitology process starts.

The Agency proposes few amendments to Article 34, which defines the rules for conversion of bids in the central dispatching model. These rules require that TSOs applying the central dispatching model should convert all the latest integrated scheduling process bids into standard products for balancing energy exchanged within a CoBA. The rules for conversion, which should be defined within the terms and conditions for BSPs, should be fair, transparent and non-discriminatory, should not create barriers for exchanges of balancing services and should ensure financial neutrality of TSOs.

## **VI. Procurement, Exchange and Transfer of Balancing Capacity**

The Agency proposes to amend the Network Code to facilitate a more efficient framework for the procurement, exchange and transfer of balancing capacity.

As already expressed in its Reasoned Opinion on the Network Code, the Agency considers that significant cost savings could be achieved by assessing properly and regularly the amount of balancing capacity that TSOs need to procure, taking into account not only the total reserve capacity requirements but also the volumes of sharing of reserves and of non-contracted balancing energy bids, which are expected to be available to TSOs.

The Agency deems that the Network Code should oblige TSOs to review at least once a year the dimensioning for the balancing capacity by evaluating the optimal amount of Balancing Capacity to be contracted in order to minimise the associated costs and therefore to improve the social welfare.

The Agency is also concerned about the timeframes in which the procurement of balancing capacity takes place, since they may not enable a level playing field between all BSPs. While the Framework Guidelines and the Reasoned Opinion require that TSOs procure as much balancing capacity as possible in the short term, the Network Code still allows for balancing capacity to be procured up to two years in advance (e.g. yearly contracts settled one year before the delivery starts). The Agency is convinced that the procurement in shorter timeframes will lead to lower volume requirements (due to better forecasting of needs) and more competition between BSPs and thus recommends to shorten the contracting period to one month and to state that the contracting is done for a maximum of one month in advance of the provision of the balancing capacity.

To define an appropriate framework for the common procurement and exchange of balancing capacity within a CoBA, the Agency considers that in Article 39 all TSOs of a CoBA should be required to use common and harmonised procurement rules, in line with the general principles applying to procurement within a control area according to Article 37. Indeed, defining harmonised procurement rules aims at avoiding any market distortion in case of common procurement and exchange of balancing capacity between TSOs within a CoBA.

For the sake of operational security, the Agency suggests that further details are provided on the use of the probabilistic provision of cross-zonal capacity and the related risks of unavailability of reserve capacity in the CoBAs due to unavailability of cross-zonal capacity (Article 39(6) and Article 39(7)(d) and (f)).

To ensure a level playing field between BSPs who have contracted balancing capacity and who further desire to perform the transfer of balancing capacity, the Agency proposes, in Articles 38 and 40, that the decision on the transfer is not left at the discretion of TSOs, but to request TSOs to allow such a transfer as long as conditions to guarantee Operational Security are met. These conditions are as follows:

- (a) The transfer-receiving BSP has passed a prequalification for the balancing capacity for which the transfer is performed;
- (b) The transfer of balancing capacity is not expected to endanger operational security.

In case the transfer of balancing capacity is performed within a CoBA additional requirements are:

- (a) There is sufficient cross-zonal capacity available for the transfer of balancing capacity pursuant to Article 39;
- (b) The transfer of balancing capacity does not exceed the limits according to the Network Code on Load Frequency Control and Reserves.



## VII. Activation and exchange of Balancing Energy

The Agency proposes several amendments to Article 35. The balancing energy gate closure time per CoBA should be included in the TSOs' proposal for the establishment of the CoBA. This is because a harmonised balancing energy gate closure time represents a crucial element of each CoBA. The Agency considers the possibility to update balancing energy bids after the harmonised balancing energy gate closure time to be unnecessary and hence proposes not to follow this option proposed by ENTSO-E.

Furthermore, the amendments to Article 35 aim to clarify that the balancing energy gate closure time should be as close as possible to real time in order to ensure that the balancing energy bids reflect the real time value of balancing energy to the highest possible extent. The intraday market and balancing market should not take place at the same time in order to avoid a reduction of liquidity in the intraday market - insofar as this appears possible from a technical point of view.

Only for balancing energy bids that are automatically activated, TSOs are allowed to ask for a derogation from this requirement and to propose the aFRR balancing energy gate closure time to be as close as possible to intraday cross-zonal gate closure time and in any case not to be longer than 12 hours before real time, subject to regulatory approval. The Agency understands that such a derogation may be necessary for a transition period until a technical solution is available that avoids a deterioration of frequency quality as a consequence of frequent changes of common merit order list. A further amendment to Article 35 aims at ensuring an efficient exchange of information between BSPs, connecting TSOs and connecting DSOs, in case there are unexpected unavailable volumes of balancing energy bids after the balancing energy gate closure time.

As indicated in the Agency's Reasoned Opinion, the method to price balancing energy has an important impact on the competition between BSPs and the overall efficiency of balancing markets. The Agency considers that Article 42 in the Network Code does not set an appropriate framework to harmonise the pricing methodology for all balancing energy products by the relevant deadlines for implementation.

To ensure an effective functioning of the balancing markets, the Agency recommends that all TSOs develop a proposal for a harmonised pricing method applying to all balancing energy products, instead of a proposal (potentially) consisting in a number of pricing methods differing for each standard product. The scope of the harmonised methodology should indeed include all the products activated for balancing purposes. Flexibility could be accepted only for those specific products that cannot be activated by other TSOs.

The Agency deems that the Network Code currently leaves too much flexibility to TSOs to deviate from a harmonised pricing method by using a different pricing method before the implementation of the regional and European integration models, although this may hamper the integration of balancing markets. To provide adequate incentives to BSPs in this context, the harmonised pricing method should be applied by all TSOs at the latest at the time of the implementation of the regional integration models. To take specific concerns related to imperfect markets into account, the Agency suggests a smooth transition, by allowing all TSOs of a CoBA the use pricing methods different from the harmonised one before the

implementation of the European integration model and subject to approval by the competent regulatory authorities. These stringent conditions (time limitation and regulatory scrutiny) represent a fair trade-off between the overall objective to apply the harmonised pricing method to provide BSPs with the right incentives and the need for a careful and stepwise approach to implement such a method.

The Agency also recommends not defining any cap for balancing energy prices, so that they are able to reflect the real-time value of energy. If the need for caps would be identified by TSOs, they may develop a proposal for harmonised minimum and maximum balancing energy prices, while taking into account the minimum and maximum clearing prices for other short timeframes pursuant to the Guideline on Capacity Allocation and Congestion Management.

The Agency proposes a few improvements to the provisions related to the activation of balancing energy in Article 43. The Network Code should set a clear distinction between the activations done for balancing purposes (i.e. to maintain the system frequency) and the activations for any other purpose. The Network Code requires TSOs to develop a proposal for a classification methodology for these activation purposes, and the use of this classification when activating bids through the activation optimisation function. The Agency also clarifies that balancing energy bids should be activated through the common merit order list, whereas any deviation should be subject to the publication by the TSOs of information about the reason for this occurrence.

To ensure fair competition between BSPs, TSOs should not activate bids before the corresponding balancing energy gate closure time. Only two exceptions are allowed: (i) in alert state or emergency state, when such activations help alleviating the severity of these system states, and (ii) when the bids serve for purposes other than Balancing according to the classification to be developed by TSOs. In this latter case, the price of these activated balancing energy bids should determine neither the balancing energy price (in case marginal pricing is applied), nor the imbalance price to prevent any market distortion.

The Agency is of the opinion that sharing the highest possible amount of balancing energy bids between TSOs within a CoBA is essential to enable the integrated balancing markets to deliver their full benefits. To meet this objective, the Agency proposes the following requirements on unshared bids in Article 44:

- (a) The unshared bids may only consist of balancing energy bids with the highest prices and balancing energy bids from Specific products, which cannot be activated by other TSOs. This will oblige TSOs to share a large amount of competitive balancing energy bids and avoid fragmentation of the markets.
- (b) The volume of unshared bids kept by individual TSO should not exceed the amount of balancing capacity. The Network Code previously allowed TSOs to hold up to the reserve capacity, i.e. the minimum amount of balancing energy (available through contracts or not) that must be available to TSOs. Allowing TSOs to retain an amount of bids up to their own total needs (reserve capacity) would be detrimental to the exchanges of bids and may hamper the integration of balancing markets. Only the contracted part (balancing capacity) of the reserve capacity may be preserved by individual TSOs.

- (c) TSOs should aim at always limiting to the maximum extent possible the use of unshared bids and eventually removing it at least once the European integration model is implemented. Thus, the conditions to declare unshared bids should be subject to a strict methodology, accompanied by the requirement to regularly and at least once a year review the volumes allowed for unshared bids for each process.
- (d) After the deadlines for the implementation of the European integration model, TSOs may develop a proposal to continue using specific products which cannot be activated by other TSOs and declare them as unshared bids. This proposal should be approved by regulatory authorities and accompanied by the demonstration of higher economic efficiency.

In Article 45, the Agency highlights that the activation optimisation function should take into account the possibility to net the counteracting activation requests from TSOs. Indeed, also for manual reserves that can be activated simultaneously by TSOs (and not only for imbalance netting or aFRR), it is more efficient to avoid, whenever possible, activating upward and downward regulations simultaneously for different TSOs within the same CoBA. Netting the counteracting activation requests from TSOs should therefore be part of the activation mechanism for balancing energy.

### **VIII. Cross-zonal capacity for balancing services**

In Article 46(8), the Agency introduces the requirement that two years after the methodology for co-optimised capacity allocation for both explicit and implicit auctions has been developed and implemented, this methodology should replace the methodologies based on economic efficiency analysis and market based reservation for timeframes longer than one month. This requirement would be subject to the approval and implementation of cross-zonal capacity allocation mechanisms for the forward timeframes according to the Network Code on Forward Capacity Allocation. The Agency's reasoning behind this requirement is that the methodology for co-optimised capacity allocation is expected to be more efficient than the other reservation methodologies.

The Agency proposes to amend Article 50 to that the methodology based on economic efficiency analysis should first be developed by either all TSOs of the capacity calculation region of the bidding zone border, or by the two TSOs on each side of the bidding zone border in case the bidding zone border includes only DC interconnectors, and then be approved by the competent regulatory authorities. The Agency also proposes to clarify that the maximum volume of reserved cross-zonal capacity should be included in the proposed methodology.

The Agency proposes to restructure and simplify Article 51. First, the Agency proposes that the use of cross-zonal capacity by a BSP for the purpose of the exchange of balancing capacity is allowed only when:

- (a) BSP is a holder of a physical transmission right allocated in forward capacity allocation;
- (b) BSP has a contract for balancing capacity in the form of TSO-BSP model.



Second, when these two conditions are met, the BSP should nominate physical transmission right to the concerned TSOs on a bidding zone border for the purpose of exchange of balancing capacity in a similar way as nomination of exchange of energy.

## **IX. Settlement**

The main amendment proposed by the Agency in Article 55 on general settlement principles is an additional requirement to the settlement principles. These requirements should ensure that imbalances are settled at a price that reflects the real-time value of energy and that the settlement incentivises BRPs to strive to be balanced or help the system to restore its balance. The reason for this amendment is that the settlement should be designed in such a way that imbalance prices reflect the real-time price of energy, so that BRPs are incentivised to be in balance during real time and, if allowed within the terms and conditions related to balancing, to respond adequately to the information close to real-time on the system imbalance and imbalance price.

The Agency also proposes that paragraph 3 of Article 55 is amended so as to clarify that the imbalance settlement price should not include any other costs of balancing such as procurement costs of reserve capacity, administrative costs and other costs related to Balancing. Such provision should enable harmonisation and convergence of imbalance prices across Europe in the absence of congestions. Nevertheless, the Agency recognises the right of TSOs and NRAs to develop separate settlement mechanisms to recover other costs related to balancing from BRPs in order to ensure cost reflectivity.

The main amendments proposed to Article 63 on imbalance calculation are motivated by the intention to clarify the definition of a position. Three different approaches for the definition of a position are described in paragraph 3 and the definition in Article 2 was generalised to the declared energy volume of a BRP for the calculation of its imbalances.

## **X. Algorithms, reporting, cost-benefit analysis and transition period**

The amendments proposed by the Agency to Article 69 aim to clarify the basic principles of the balancing algorithms to be developed by TSOs. The development of these algorithms is designed in two stages. In the first stage, all TSOs should develop the principles for balancing algorithms no later than one year after the entry into force of the Network Code. Once these principles are approved by all regulatory authorities, the TSOs should develop detailed balancing algorithms within the proposal for establishment of CoBAs, which is also subject to regulatory approval.

The Agency proposes amendments to the reporting obligations of TSOs and ENTSO-E in Articles 70 and 71. To ensure sufficient reporting details without overly burdensome requirements on TSOs, the Agency proposes two layers of reporting. The top layer is represented by a European report, which focuses on integration and implementation issues of European interest. The bottom layer of reporting focuses on the efficiency of each national balancing market.

In Article 70, the requirements for a European report, as well as the requirements on performance indicators are clarified and enhanced. These enhancements serve the purpose of better monitoring the implementation and integration process, as well as to provide better transparency and leverage to the Agency and regulatory authorities on the content and structure of the European report.

The newly introduced Article 71 provides requirements for the TSOs' report on balancing efficiency. This report aims to provide the monitoring and overview of the efficiency and cost effectiveness of balancing performed by TSOs in each control area, as well as transparency to the market participants and network users in each market on the origins of the imbalance costs, as well as network tariffs related to balancing.

The Agency proposes to simplify to some degree the requirements on cost-benefit analysis. In order to limit the number of coordinated approvals by regulatory authorities, a lighter approach to regulatory scrutiny of criteria and methodology for cost-benefit analysis is proposed in Article 72. The Agency also proposes to involve the affected stakeholders as much as possible in the estimation of costs and benefits.

The Agency proposes one amendment to the Network Code with regard to the transition period in Article 75. In the Agency's opinion, the lengthy process for the elaboration and adoption of the Network Code provides sufficient justification to shorten the transition period from two years, as proposed by ENTSO-E, to one year.





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