

**DECISION No 17/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 15 July 2020

**on the common settlement rules applicable to all intended exchanges of
energy**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, point (b) of the second subparagraph of Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Article 5(2)(i) and Article 6(2) thereof,

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

Having regard to the outcome of the consultation with ACER's Electricity Working Group ('AEWG'),

Having regard to the favourable opinion of the Board of Regulators of 2 July 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of requirements for electricity balancing, platforms for the exchange of balancing

¹ OJ L158, 14.6.2019, p. 22.

² OJ L312, 23.11.2017, p. 6.

energy, as well as pricing and settlement of balancing energy. These requirements include the development of a proposal for common settlement rules applicable to all intended exchanges of energy as a result of one or more of the processes pursuant to Articles 146, 147 and 148 of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (the ‘SO Regulation’) (‘TSOs settlement methodology’).

- (2) Pursuant to Articles 4(1) and 5(2)(i) of the EB Regulation, all transmission system operators (‘TSOs’) are required to develop a proposal for common settlement rules in accordance with Article 50(1) of the EB Regulation and submit it to all regulatory authorities for approval. In turn, according to Article 5(6) of the EB Regulation, all regulatory authorities shall reach an agreement and take a decision on the TSOs settlement methodology within six months after the receipt of the proposal by the last regulatory authority. In addition, all regulatory authorities can require an amendment to the proposal in accordance with Article 6(1) of the EB Regulation, where all TSOs have two months to submit an amended proposal to all regulatory authorities. Then, all regulatory authorities have two months to decide on the amended proposal. When all regulatory authorities fail to reach an agreement within the two-month period after the submission of the amended proposal or upon their joint request, ACER, pursuant to Article 6(2) of the EB Regulation, shall adopt a decision concerning the TSOs’ proposal in accordance with point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision follows from the request of all regulatory authorities that ACER adopts a decision on the TSOs settlement methodology, which all TSOs submitted to all regulatory authorities for approval and on which all regulatory authorities could not agree on. Annex I to this Decision sets out the TSOs settlement methodology pursuant to Article 50(1) of the EB Regulation as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (4) Article 50(1) of the EB Regulation requires all TSOs to submit the TSOs settlement methodology by one year after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, all TSOs were required to submit the proposal for TSOs settlement methodology by 18 December 2018.
- (5) The proposal was not consulted by all TSOs, as it is not strictly required by Article 10 of the EB Regulation.
- (6) On 18 December 2018, all TSOs submitted to all regulatory authorities an ‘All TSOs’ proposal for common settlement rules applicable to all intended exchanges of energy as a result of the reserve replacement process, frequency restoration process with manual and automatic activation and the imbalance netting process pursuant to Article 50(1) of Commission Regulation (EU) 2017/2195 establishing a guideline on

electricity balancing’³. The last regulatory authority received this proposal on 11 February 2019.

- (7) All regulatory authorities jointly agreed on 23 July 2019 to request an amendment to this proposal and sent this request to all TSOs. The last regulatory authority issued the request for amendment nationally on 11 September 2019.
- (8) Pursuant to Article 6(1) of the EB Regulation, all TSOs were required to submit the amended proposal for approval to all regulatory authorities within two months.
- (9) Although the amended ‘All TSOs’ proposal for common settlement rules applicable to all intended exchanges of energy as a result of the reserve replacement process, frequency restoration process with manual and automatic activation and the imbalance netting process pursuant to Article 50(1) of Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing’⁴ (hereafter referred to as the ‘Proposal’) was submitted by most TSOs by 11 November 2019 (i.e. within two months after the requirement for an amendment) to all regulatory authorities, it was submitted by the last TSO on 14 November 2019. Therefore, the new deadline for approval by all regulatory authorities was 14 January 2020.

2.2. Proceedings before ACER

- (10) In an email⁵ dated 16 January 2020 and received by ACER on the same day, the Chair of the Energy Regulators Forum⁶, on behalf of all regulatory authorities informed ACER that they were not able to reach an agreement within the two-month deadline. Therefore, the TSOs settlement methodology can be considered referred to ACER, as of 14 January 2020, and ACER shall adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation.
- (11) In the email, it was explained that since the Proposal had been submitted after the entry into force of the Commission Regulation (EU) 2019/942 of 4 July 2019, establishing a European Union Agency for the Cooperation of Energy Regulators, some regulatory authorities considered that they were not competent to issue a decision on the Proposal. Therefore, all regulatory authorities were not able to reach an agreement within the deadline of two months and, according to Article 6(2) of the

³ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/09%20TSO%20settlement/Action%201%20-%20TSO%20settlement%20proposal.pdf>

⁴ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/09%20TSO%20settlement/Action%203%20-%20TSO%20settlement%20amended%20proposal.pdf>

⁵ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/09%20TSO%20settlement/Action%204%20-%20TSO%20settlement%20referral%20to%20ACER%20letter.pdf>

⁶ The all regulatory authorities’ platform to consult and cooperate for reaching a unanimous agreement on NEMO’s and TSO’s proposals.

EB Regulation, from 14 January 2020 the Proposal is to be considered as referred to ACER.

- (12) On 10 February 2020, ACER started the consultation phase on the Proposal, inviting the concerned parties, here all TSOs and all regulatory authorities, to send their comments on the Proposal. ACER did not launch a public consultation on the Proposal because the directly concerned stakeholders were TSOs and regulatory authorities, since the Proposal is on the common settlement rules for TSOs.
- (13) ACER cooperated closely with all regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposals suggested by ACER. In general, before each interaction, ACER shared with the regulatory authorities and TSOs a new version of the proposed amendments; in particular, the following procedural steps were taken:
- 22 and 23 January 2020: discussion with all regulatory authorities in the framework of ACER's Electricity Balancing Taskforce ('EB TF');
 - 31 January 2020: telephone conference call with all regulatory authorities and TSOs;
 - 14 February 2020: telephone conference call with all regulatory authorities and TSOs;
 - 26 and 27 February 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 28 February 2020: telephone conference call with all regulatory authorities and TSOs;
 - 17 March 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 20 March 2020: telephone conference call with all regulatory authorities and TSOs;
 - 3 April 2020: telephone conference call with all regulatory authorities and TSOs;
 - 17 April 2020: telephone conference call with all regulatory authorities and TSOs;
 - 22 April 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 23 April 2020: discussion with all regulatory authorities in the framework of AEWG;
 - 24 April 2020: telephone conference call with all regulatory authorities and TSOs;
 - 28 April 2020: telephone conference call with all regulatory authorities and TSOs;
 - 13 May 2020: discussion with all regulatory authorities in the framework of the EB TF;

- 13 May 2020: discussion with all regulatory authorities at the Board of Regulators' meeting (for information);
- 27 May 2020: discussion with all regulatory authorities in the framework of AEWG;
- 17 June 2020: discussion with all regulatory authorities at the Board of Regulators' meeting.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (14) Pursuant to Article 6(2) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement or upon their joint request, ACER shall adopt a decision concerning the submitted terms and conditions or methodologies within six months in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (15) According to the email of the Chair of the all Energy Regulators Forum dated 16 January 2020, all regulatory authorities did not reach an agreement on the Proposal and therefore ACER became competent to adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation. This email, was sent by all regulatory authorities after the expiry of the two-month deadline after receiving the Proposal (i.e. 14 January 2020).
- (16) Therefore, in accordance with Article 6(2) of the EB Regulation and Article 6(10) of Regulation (EU) 2019/942, ACER became responsible to adopt a decision concerning the Proposal by the expiry of the deadline for all regulatory authorities on 14 January 2020 and communicated to ACER on 16 January 2020.

4. SUMMARY OF THE PROPOSAL

- (17) The Proposal consists of the following elements:
- (a) the 'Whereas' section, a list of abbreviations and Articles 1 and 2, which include the subject matter and scope, as well as definitions and interpretation;
 - (b) Article 3, which covers the settlement amounts due to the exchange of balancing energy;
 - (c) Article 4, which describes the volumes of exchanges of balancing energy;
 - (d) Article 5, which describes the settlement prices of exchanges of balancing energy;
 - (e) Article 6, which covers the settlement of the exchange of balancing energy activated for system constraints purposes;
 - (f) Article 7, which describes the process and calculation of balancing congestion income;
 - (g) Article 8, which covers sharing keys for balancing congestion income distribution on the border;
 - (h) Article 9, covering settlement related to price differences in an uncongested area;

- (i) Article 10, describing settlement of the intended energy exchanges as the result of the INP; and
- (j) Articles 11, 12 and 13, which include provisions on implementation timeline, publication of the TSOs settlement methodology and language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of all regulatory authorities

- (18) According to the email of the Chair of the all Energy Regulators Forum of 16 January 2020, all regulatory authorities were not able to reach an agreement within the deadline of two months because some regulatory authorities considered that they were not competent to issue a decision. In the email, all regulatory authorities were silent about possible shortcomings of the Proposal.

5.2. Consultation of all regulatory authorities and TSOs

- (19) ACER, in close cooperation and consultation with all regulatory authorities and TSOs as detailed in Recital (13) above discussed mainly the following topics:
- a) The settlement of the exchange of energy as a result of activations for system constraint purposes; the discussion was mainly focused on the alignment with the methodology pursuant to Article 30(1) of the EB Regulation, the provisions on the negative congestion income, as well as the scope of this TSOs settlement methodology;
 - b) The settlement related to price differences in an uncongested area; the discussion involved the assessment of this case, following relevant discussions that took place in the context of ACER Decision 03/2020 on the implementation framework for the mFRR-Platform, but also the similar case related to the implementation of the RR-Platform;
 - c) The sharing of the congestion income after each optimisation run; the discussion clarified the process for the calculation and sharing of the congestion income especially for the case of the directly activated mFRR;
 - d) The alignment of the sharing of the congestion income with the congestion income distribution methodologies pursuant to the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management⁷⁷ (the ‘CACM Regulation’) and to the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation⁸⁸ (the ‘FCA Regulation’); and

⁷⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1222&from=EN>

⁸⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1719&from=EN>

- e) The implementation timeline of the TSOs settlement methodology; following ACER Decision 01/2020 pursuant to Article 30(1) of the EB Regulation and to the extent that this TSOs settlement methodology had to be aligned with it, the discussion focused on the amendments to the proposed implementation timeline with respect to changes that need to be implemented in the RR-Platform.

5.3. Hearing phase

- (20) ACER initiated a hearing phase on 30 April 2020 by providing all TSOs and all regulatory authorities with a near final draft of Annex I to this Decision, as well as the reasoning for the introduced changes to the Proposal. The hearing phase lasted until 15 May 2020. During this time, ACER received a written response from the Swedish regulatory authority, one from ENTSO-E⁹, on behalf of all TSOs, and one from the Luxembourgian regulatory authority.
- (21) The Swedish regulatory authority in its response included three comments: (a) on the new recital (5) introduced by ACER, raising concerns on the implied connection between the capacity calculation methodology developed pursuant to Article 37(3) of the EB Regulation and the flow-based approach, (b) on the redundant provision of Article 3(4) of the Proposal, following the deletion by ACER of Article 9 of the Proposal, and (c) on the inclusion of the congestion income sharing keys as an Annex to this TSOs settlement methodology, as opposed to having them published in the ENTSO-E's web page.
- (22) All TSOs' feedback was submitted together (in a single document) with their feedback in the ACER's hearing phase on the methodology pursuant to Article 29(3) of the EB Regulation (the 'activation purposes methodology'). In the first part of the document, all TSOs explain how they envisioned the interlinks between the activation purposes of balancing energy bids, their pricing (pursuant to Article 30(1) of the EB Regulation – ACER Decision 01/2020) and the resulting TSOs settlement (pursuant to Article 50(1) of the EB Regulation). Regarding the TSOs settlement methodology, all TSOs state that they welcome most of the changes made by ACER, but request ACER to reconsider the approach for classification of bids and TSOs settlement, in order to enable allocation of all costs to the requesting TSO by enabling the two-run approach. In addition, all TSOs request ACER to correct two unintentional errors with regards to the sharing keys for balancing congestion income distribution on the balancing border and the positive balancing congestion income calculation.
- (23) The Luxembourgian regulatory authority included three comments: (a) on the new recital (5) introduced by ACER, raising concerns on the implied connection between the capacity calculation methodology developed pursuant to Article 37(3) of the EB

⁹ European Network of Transmission System Operators for Electricity

Regulation and the flow-based approach, and (b) on the definition of the uncongested area, with respect to the deletion by ACER of “LFC areas”.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (24) Articles 4(1) and 5(2)(i) of the EB Regulation require all TSOs to provide the proposal for the TSOs settlement methodology in accordance with Article 50(1) of the EB Regulation. This proposal must be submitted to all regulatory authorities for their approval. Additionally, Article 6(1) of the EB Regulation requires all TSOs to submit an amended proposal for the TSOs settlement methodology for approval to all regulatory authorities, following a requirement for amendment of the initial proposal by all regulatory authorities.
- (25) Article 50(1) of the EB Regulation sets out the requirements for all TSOs to develop a proposal for common settlement rules applicable to all intended exchanges of energy as a result of one or more of the processes pursuant to Articles 146, 147 and 148 of the ‘SO Regulation’, covering a) the reserve replacement process (‘RRP’); b) the frequency restoration process with manual activation (‘mFRP’); c) the frequency restoration process with automatic activation (‘aFRP’); and d) the imbalance netting process (‘INP’).
- (26) Article 50(5) of the EB Regulation requires that the TSOs settlement methodology in accordance with Article 50(1) of the EB Regulation shall at least contain the provisions that the intended exchange of energy is calculated on the basis of the following criteria: (a) over periods agreed among relevant TSOs; (b) per direction; (c) as the integral of the calculated power interchange over the periods defined in point (a).
- (27) Article 50(6) of the EB Regulation requires that the TSOs settlement methodology of intended exchanges of energy in accordance with Article 50(1) points (a), (b) and (c) of the EB Regulation shall take into account: (a) all balancing energy prices established pursuant to Article 30(1) of the EB Regulation; (b) the methodology for pricing of cross-zonal capacity used for the exchange of balancing energy pursuant to Article 30(3) of the EB Regulation.
- (28) Article 50(7) of the EB Regulation requires that the TSOs settlement methodology of intended exchanges of energy in accordance with Article 50(1)(d) of the EB Regulation shall take into account the methodology for pricing of cross-zonal capacity used for operating the imbalance netting process pursuant to Article 30(3) of the EB Regulation.
- (29) Article 29(6) of the EB Regulation requires that the balancing energy resulting from the activation of the balancing energy bids selected by the activation optimisation function shall be settled pursuant to Article 50 of the EB Regulation and between the connecting TSO and the balancing service provider pursuant to Chapter 2 of Title V of the EB Regulation.

- (30) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

6.2.1.1. Development of the Proposal

- (31) The Proposal fulfils the requirements of Articles 4(1), 4(2) and 5(2)(i) of the EB Regulation, as all TSOs jointly developed a proposal for the TSOs settlement methodology and submitted it for approval to all regulatory authorities.
- (32) The procedure for the development of the proposal for TSOs settlement methodology did not respect the requirements of Article 50(1) of the EB Regulation, as this proposal, while submitted by most TSOs by 18 December 2018, which is within six months after entry into force of the EB Regulation, was submitted by the last TSO on 11 February 2019. This is in breach of the six month-submission deadline.
- (33) Additionally, following the requirement for an amendment of the proposal for TSOs settlement methodology by all regulatory authorities on 11 September 2019 pursuant to Article 6(1) of the EB Regulation, all TSOs were required to submit the amended proposal for approval to all regulatory authorities within two months (i.e. by 11 November 2019). Although the Proposal was submitted by most TSOs by 11 November 2019, it was submitted by the last TSO on 14 November 2019.

6.2.1.2. Proposed timescale for implementation

- (34) The Proposal partly fulfils the requirements of Article 5(5) of the EB Regulation with regard to the timescale for implementation.
- (35) Article 11 of the Proposal sets a timeline for its implementation. It is linked to the participation of each TSO in the respective European platform for the exchange of balancing energy pursuant to Articles 19 to 21 of the EB Regulation and for the imbalance netting process pursuant to Article 22 of the EB Regulation, since the input (both in terms of volumes and prices) for this TSOs settlement methodology is the output of the activation optimisation function of the respective European platform. The timeline set in Article 11 of the Proposal was consistent with the approach followed in the Proposal with respect to the settlement of the exchange of balancing energy activated for system constraints purposes in accordance with Article 6 of the Proposal. However, as described in section 6.2.7.1 below, ACER deleted Article 6 of the Proposal, following ACER Decision 1/2020, which has an impact on the implementation of the European platform pursuant to Article 19 of the EB Regulation ('RR-Platform'). The RR-Platform has already been implemented, following specific rules for the pricing of balancing energy. In accordance with ACER Decision 1/2020, pursuant to Article 30(1) of the EB Regulation, the TSOs participating in the RR-

Platform shall implement and apply the methodology for the pricing of balancing energy as a result of balancing energy bids in the context of this platform by 1st July 2022. Pursuant to Article 50(6)(a) of the EB Regulation, the Proposal should take into account the balancing energy prices established by ACER Decision 1/2020.

- (36) Therefore, ACER amended Article 11 of the Proposal to align the implementation timeline for the settlement of balancing energy from the RRP with the implementation timeline of the ACER Decision 1/2020, i.e. implementation by 1st July 2022.

6.2.1.3. Description of the expected impact on the objectives of the EB Regulation

- (37) The Proposal does not fully fulfil the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation. The recitals in the Proposal provide a description of the expected impact of the TSOs settlement methodology on the objectives of the EB Regulation. The relevant objectives set in Article 3 of the EB Regulation are addressed under recital (5) of the Proposal but only partially.

- (38) Therefore, ACER added subparagraphs (a)-(c) to address the objectives pursuant to Article 3(a)-(c) of the EB Regulation that were not addressed at all, and amended subparagraph (e) to also address the transparency requirement of the objective of Article 3(1)(e) of the EB Regulation.

6.2.2. Assessment of the requirements regarding the reserve replacement process

- (39) Pursuant to Article 50(1)(a) of the EB Regulation, the Proposal should include the common settlement rules for all intended exchanges of energy as a result of the RRP.

- (40) Articles 3(1)(a), 4(1) and 5 of the Proposal set the rules for the settlement of the exchange of balancing energy from replacement reserves. More specifically, Article 3(1)(a) of the Proposal specifies the settlement amount equal to the product of the exchanged volumes determined pursuant to Article 4 of the Proposal and the settlement prices pursuant to Article 5 of the Proposal. Article 4(1) of the Proposal explicitly describes the calculation of the exchange of balancing energy from the RRP, while Article 5 of the Proposal explicitly sets the settlement price for the intended exchanges of energy between TSOs from the RRP.

- (41) Therefore, the Proposal fulfils the requirement of Article 50(1)(a) of the EB Regulation.

6.2.3. Assessment of the requirements regarding the frequency restoration process with manual activation

- (42) Pursuant to Article 50(1)(b) of the EB Regulation, the Proposal should include the common settlement rules for all intended exchanges of energy as a result of the mFRP.

- (43) Articles 3(1)(a), 4(2), 4(3) and 5 of the Proposal set the rules for the settlement of the exchange of balancing energy from mFRP. More specifically, Article 3(1)(a) of the

Proposal specifies the settlement amount equal to the product of the exchanged volumes determined pursuant to Article 4 of the Proposal and the settlement prices pursuant to Article 5 of the Proposal. Articles 4(2) and 4(3) of the Proposal explicitly describe the calculation of the exchange of balancing energy from mFRP, while Article 5 of the Proposal explicitly sets the settlement price for the intended exchanges of energy between TSOs from mFRP.

(44) Therefore, the Proposal fulfils the requirement of Article 50(1)(b) of the EB Regulation.

6.2.4. Assessment of the requirements regarding the frequency restoration process with automatic activation

(45) Pursuant to Article 50(1)(c) of the EB Regulation, the Proposal should include the common settlement rules for all intended exchanges of energy as a result of the aFRP.

(46) Articles 3(1)(a), 4(4) and 5 of the Proposal set the rules for the settlement of the exchange of balancing energy from aFRP. More specifically, Article 3(1)(a) of the Proposal specifies the settlement amount equal to the product of the exchanged volumes determined pursuant to Article 4 of the Proposal and the settlement prices pursuant to Article 5 of the Proposal. Article 4(4) of the Proposal explicitly describes the calculation of the exchange of balancing energy from aFRP, while Article 5 of the Proposal explicitly sets the settlement price for the intended exchanges of energy between TSOs from aFRP.

(47) Therefore, the Proposal fulfils the requirement of Article 50(1)(c) of the EB Regulation.

6.2.5. Assessment of the requirements regarding the imbalance netting process

(48) Pursuant to Article 50(1)(d) of the EB Regulation, the Proposal should include the common settlement rules for all intended exchanges of energy as a result of the INP.

(49) Articles 3(1)(e), 4(5) and 10 of the Proposal set the rules for the settlement of the exchange of balancing energy from INP. More specifically, Article 3(1)(e) of the Proposal specifies the settlement amount equal to the product of the settlement prices and the exchanged volumes determined in accordance with Article 10 of the Proposal, while Article 4(5) of the Proposal explicitly describes the calculation of the intended exchange of energy from INP.

(50) Therefore, the Proposal fulfils the requirement of Article 50(1)(d) of the EB Regulation.

6.2.6. Assessment of the requirements regarding the criteria for the calculation of the intended exchange of energy

(51) Pursuant to Article 50(5) of the EB Regulation, the Proposal should at least contain the provisions that the intended exchange of energy is calculated on the basis of the

following criteria: (a) over periods agreed among relevant TSOs; (b) per direction; (c) as the integral of the calculated power interchange over the periods pursuant to point (a).

(52) The Proposal defines in Article 2(2)(j) the financial settlement period as the time interval for which settlement prices, volumes and amounts are calculated for the intended exchanges of energy, in accordance with the requirement of Article 50(5)(a) of the EB Regulation. Article 4 of the Proposal sets the rules for the calculation of the volumes of the intended exchange of energy as a result of each of the processes of points (a) to (d) of Article 50(1) of the EB Regulation. According to these rules the intended exchange of energy is calculated for each process per direction and per financial settlement period, as the integral of the respective power interchange over the financial settlement period, as it is calculated in the context of the respective European platform pursuant to Articles 19 to 22 of the EB Regulation respectively.

(53) Therefore, the Proposal fulfils the requirement of Article 50(5) of the EB Regulation.

6.2.7. Assessment of the requirements regarding the prices for the intended exchanges of energy from the RRP, the mFRP and the aFRP

(54) Pursuant to Article 50(6) of the EB Regulation, the Proposal should take into account: (a) all balancing energy prices established pursuant to Article 30(1) of the EB Regulation; (b) the methodology for pricing of cross-zonal capacity used for the exchange of balancing energy pursuant to Article 30(3) of the EB Regulation.

(55) Article 5 of the Proposal sets the settlement prices for the intended exchanges of energy as a result of the RRP, mFRP and aFRP equal to the respective cross-border marginal prices. The cross-border marginal price is defined in Article 2(2)(f) of the Proposal as *“the cross-border marginal price calculated in accordance with the pricing proposal”*. According to the definition of the *“pricing proposal”*, pursuant to Article 2(2)(u) of the Proposal, it should be understood as the proposal that was submitted by all TSOs to all regulatory authorities pursuant to Article 30(1) of the EB Regulation. ACER amended the definition of the cross-border marginal price in Article 2(2)(f) to refer to the *“methodology pursuant to Article 30(1) of the EB Regulation”* instead of the *“pricing proposal”*.

(56) Additionally, Article 7 of the Proposal describes the calculation of the congestion income on each balancing border, based on the difference of the cross-border marginal prices, in accordance with the methodology for pricing the cross-zonal capacity pursuant to Article 30(3) of the EB Regulation.

(57) However, the Proposal includes also two more Articles on pricing: Article 6 on the settlement of the exchange of balancing energy activated for system constraints purposes, and Article 9 on the settlement related to price differences in an uncongested area. ACER deleted these two Articles, as explained in the sections 6.2.7.1 and 6.2.7.2 below, the first one because it is not compliant with the EB Regulation and the second because it is redundant.

- (58) Therefore, the Proposal, as amended by ACER, fulfils the requirements of Article 50(6) of the EB Regulation.

6.2.7.1. Settlement of the exchange of balancing energy activated for system constraints purposes

- (59) Article 6 of the Proposal describes a process for the settlement of the exchange of energy activated for system constraints in the European balancing platforms. As mentioned in Recital (22) above, in their submission during the hearing phase, all TSOs explain how they envisioned the interlinks between their proposals for this activation purposes methodology, the pricing (pursuant to Article 30(1) of the EB Regulation – ACER Decision 01/2020) and the resulting TSOs settlement (pursuant to Article 50(1) of the EB Regulation). In this context, all TSOs describe the two-run approach for distinguishing balancing energy bids activated by the activation optimisation function of the European platforms for balancing and for system constraints. Article 6 of the Proposal describes the calculation of the additional costs linked to the activation of the balancing energy bids for activation purposes.
- (60) However, following the ACER decisions 1/2020 and 3/2020 issued in January 2020, the two runs approach is not part of the design of the platforms and of the pricing methodology. The implementation frameworks of the European platforms describe how the selection and activation of balancing energy bids take place. ACER, as stated in recitals (43) and (44) of its Decision 01/2020, understands that under the current design of the balancing platforms, since all the activations are decided by the activation optimisation function in one step, respecting the merit order, it is not possible to distinguish exactly which bids have been activated for which purpose. The two runs approach assumes that the cheapest bids on the merit order are activated for balancing purposes and the most expensive bids are activated for system constraints. However, this choice is completely arbitrary and without justification, since any bid activated on the merit order can serve either balancing purpose or system constraints purpose.
- (61) In the opinion of the TSOs, as stated in their submission during the hearing phase, the choice is not arbitrary, but obvious, since it is mathematically defined which bids are activated due to the “negative ATC” as they would not have been activated without them. However, ACER considers that, to the extent that mathematical clarity can be achieved, this choice should be integrated in the optimisation algorithm and the classification of the activation purpose of each balancing energy bid be the outcome of the activation optimisation function, and not an ex post, arbitrary, artificial labelling.
- (62) All TSOs in their submission during the hearing phase claim that the TSOs settlement methodology should be seen independently from the pricing methodology pursuant to Article 30 of the EB Regulation. However, in accordance with the requirement of Article 50(6)(a) of the EB Regulation, this TSOs settlement methodology should take into account all the balancing energy prices established pursuant to Article 30(1) of the EB Regulation, connecting the settlement between the balancing service providers and their connecting TSO with the settlement among TSOs.

- (63) Furthermore, all TSOs express the intention to perform the classification of bids in accordance with the originally proposed ‘two-run approach’ for analysis and for information purposes, and to monitor the effects on the imbalance settlement price. Although ACER supports in general monitoring initiatives by the TSOs, it highlights the importance of reliable monitoring and, therefore disagrees with this approach, since such simulation is based on hypothetical assumptions, leading to arbitrary results, as explained in Recital (60) above, and underlines the risk of misleading conclusions.
- (64) Finally, pursuant to Article 50(1) of the EB Regulation, the scope of this TSOs settlement methodology is limited to the settlement of all intended exchanges of energy as a result of one or more of the processes pursuant to Articles 146, 147 and 148 of the SO Regulation, namely the INP, the cross-border FRR activation process and the cross-border RR activation process. The system constraints purpose is not defined in the Proposal, but it is separated from the exchanges of energy as a result of the abovementioned processes, which are described all together in Article 4 of the Proposal. Hence, the energy exchange as a result of balancing energy bids activation for system constraints is considered to be out of the scope of this TSOs settlement methodology.
- (65) Therefore, ACER deleted Article 6 of the Proposal. Additionally, ACER also deleted Article 3(b) of the Proposal as it refers to Article 6 of the Proposal (setting as one of the components of the total settlement amount among the TSOs, also the amount calculated in accordance with Article 6 of the Proposal).

6.2.7.2. Settlement related to price differences in an uncongested area

- (66) Article 9 of the Proposal describes the settlement process in case of an uncongested area with different cross-border marginal prices, which could be the case in the European platforms pursuant to Articles 19 and 20 of the EB Regulation. Additionally, Article 3(d) of the Proposal refers to Article 9 of the Proposal, setting as one of the components of the total settlement amount among the TSOs, also the amount calculated in accordance with Article 9 of the Proposal.
- (67) During the consultation with TSOs and regulatory authorities in the context of the ACER Decision 03/2020 on the implementation framework of the mFRR-Platform pursuant to Article 20 of the EB Regulation, this case (i.e. different cross-border marginal prices within the same uncongested area) was eliminated for the mFRR-Platform. Moreover, during the discussions with TSOs and regulatory authorities in the context of this TSOs settlement methodology, the TSOs confirmed that for the RR-Platform, this case was avoided with optimisation constraints, and that the price convergence rule is enforced with high priority.
- (68) Therefore, ACER considers that Article 9 and Article 3(d) of the Proposal are not relevant anymore, and deleted them.

6.2.8. Assessment of the requirements regarding the prices for the intended exchanges of energy from the INP

- (69) Pursuant to Article 50(7) of the EB Regulation, the Proposal should take into account the methodology for pricing of cross-zonal capacity used for operating the INP pursuant Article 30(3) of the EB Regulation.
- (70) Article 8(4) of the methodology pursuant to Article 30(3) sets the price for the cross-zonal capacity used for operating the INP performed by the imbalance netting process function of the IN-Platform equal to 0 €/MWh.
- (71) Article 10 of the Proposal specifies the rules for the settlement of the intended energy exchanges as the result of the INP performed within the IN-Platform, and sets as basis for the calculation of the settlement prices “*the prices of the balancing energy from aFRR which would have been activated by each participating TSO without the INP*”. In the second step, a netting energy volume weighted average price is calculated, which assumes a zero price for the cross-zonal capacity used for operating the INP, and serves as input to the third step, where, the price from the second step is compared to the prices of the avoided activations, and the settlement amounts are adjusted so that no TSO pays a higher price to other TSOs than the price of avoided activation.
- (72) This TSOs settlement methodology, therefore, applies zero price for the cross-zonal capacity for the settlement of the intended energy exchanges as the result of the INP, in accordance with the methodology pursuant to Article 30(3) of the EB Regulation. This is reflected in the calculation of a single price, based on all the values of avoided aFRR activation, without considering any additional components (or costs) for the value of the cross-zonal capacity. The same zero cross-zonal capacity price is taken into account in the third step, when the settlements amounts are adjusted.
- (73) Therefore, the Proposal fulfils the requirement of Article 50(7) of the EB Regulation.
- 6.2.9. Assessment of the requirements regarding the settlement of the energy resulted from the activation of balancing energy bids by the activation optimisation function
- (74) Pursuant to Article 29(6) of the EB Regulation, the balancing energy resulting from the activation of balancing energy bids selected by the activation optimisation function of each platform should be settled pursuant to Article 50 of the EB Regulation and between the connecting TSO and the balancing service provider pursuant to Chapter 2 of Title V of the EB Regulation.
- (75) As mentioned in paragraph (52), the intended exchange of energy is calculated for each process per direction and per financial settlement period, as the integral of the respective power interchange over the financial settlement period, as it is calculated in the context of the respective European platform pursuant to Articles 19 to 22 of the EB Regulation respectively.
- (76) Therefore, the Proposal fulfils the requirement of Article 29(6) of the EB Regulation.
- 6.2.10. Amendments necessary to ensure legal clarity and consistency with existing legal provisions

6.2.10.1. Provisions for the allocation of negative congestion income

- (77) Article 7 of the Proposal includes the provisions for the calculation of the congestion income. However, as explicitly mentioned in Article 7(1) of the Proposal, “*negative congestion income related to non-intuitive flows*” is excluded from the calculation. This is in line with the proposed approach by the TSOs, as the handling of negative congestion income is included in Article 6 of the Proposal, which describes the settlement for the energy exchange as a result of activations for system constraints purposes.
- (78) As explained above, in section 6.2.7.1, Article 6 of the Proposal has been deleted by ACER. However, negative congestion income can still result from the exchange of balancing energy in the European platforms, due to cross-zonal capacity adjustments requested by TSOs; hence provisions for its calculation and collection should be included in this TSOs settlement methodology. During the consultation with TSOs and regulatory authorities, the calculation and allocation of the negative congestion income was discussed and it was agreed to specify in the TSOs settlement methodology that the TSO(s), who requested the cross-zonal capacity adjustment leading to the non-intuitive flow, should pay for the negative congestion income.
- (79) Therefore, ACER amended paragraph 1 in Article 8 of the Proposal, to specify the allocation of the negative congestion income.

6.2.10.2. Sharing of the congestion income generated from the directly activated mFRR

- (80) Article 7 of the Proposal describes the process for the calculation and collection of the congestion income, while Article 8 of the submitted proposal describes its sharing among TSOs. Pursuant to the requirements of Article 50(5)(a) of the EB Regulation, the TSOs have agreed over the periods of settlement, introducing the term “financial settlement period” and setting it equal to the market time unit of each platform. However, for the mFRR-Platform, although the market time unit is set to 15 minutes, following ACER Decision 03/2020 (aligned with the optimisation run of the activation optimisation function for the scheduled activated mFRR), there could be consecutive optimisation runs for the directly activated mFRR.
- (81) During the consultation with TSOs and regulatory authorities for this TSOs settlement methodology, the TSOs proposed the calculation and sharing of the congestion income to take place after each optimisation run, using the cross-border marginal prices resulting from the methodology pursuant to Article 30 of the EB Regulation (i.e. ACER Decision 01/2020). This would only affect the distribution in the context of the mFRR-Platform, and in particular the sharing of the congestion income among TSOs for the case of the directly activated mFRR, without affecting the total amount of the calculated congestion income. Moreover, as stated in Recital (22) above, in their submission in the hearing, all TSOs requested ACER to correct two unintentional errors with regards to the sharing keys for balancing congestion income distribution on the balancing border and the positive balancing congestion income calculation.

- (82) Therefore, ACER made the changes in Articles 7 and 8 of the Proposal to reflect the calculation, collection and sharing of the congestion income after each optimisation run of the activation optimisation function of each platform.

6.2.10.3. Alignment with the congestion income distribution methodology

- (83) Article 8 of the Proposal describes the process for sharing the collected congestion income, based on the same principles applied in the respective congestion income distribution methodologies pursuant to Article 73(1) of the CACM Regulation and Article 57 of the FCA Regulation, that being the 50%-50% sharing key.
- (84) ACER agrees with this approach, but understands that the cases where there could be a deviation from this general rule should be specified, in line with the provisions of the congestion income distribution methodologies pursuant to the CACM and the FCA Regulations.
- (85) Therefore, ACER amended the paragraph 3 of Article 8 of the Proposal introducing the respective provisions from the congestion income distribution methodology pursuant to Article 57 of the FCA Regulation.

6.2.10.4. Other amendments for consistency

- (86) ACER deemed necessary to remove parts of the definitions of financial settlement period under Article 2(2)(j), in order to include them in the specific Articles of the TSOs settlement methodology, where they were used, by inserting a new paragraph 1 in Article 4 of the Proposal and a new paragraph 2 in Article 10 of the Proposal.
- (87) Moreover, ACER aligned the definitions under the following points of Article 2(2) of the Proposal with the ones in ACER Decisions 01/2020, 02/2020, 03/2020: (g), (h), (l), (p), (s), (v), (w), (x), (y) and (aa).
- (88) Additionally, ACER deleted several provisions in the Proposal which were deemed out of scope or not necessary and while not improving the quality of the methodology. The amendments in the definitions under the following points of Article 2(2) of the Proposal, which were not explicitly described elsewhere in this decision fall under this category: (b), (e), (k), (q), (t) and (u).

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

6.2.11.1. Publication and transparency

- (89) Article 7 of the EB Regulation requires the TSOs, in general, to publish the terms and conditions or methodologies, following their approval.
- (90) Article 12 of the Proposal specifies that TSOs shall publish the TSOs settlement methodology without undue delay once it is approved by ACER.

(91) Therefore, the Proposal fulfils the requirements on publication pursuant to Article 7 of the EB Regulation

7. CONCLUSION

(92) For all the above reasons, ACER considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.

(93) Therefore ACER approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The TSOs settlement rules applicable to all intended exchanges of energy in accordance with Article 50(1) of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to all TSOs

50Hertz - 50Hertz Transmission GmbH
Amprion - Amprion GmbH
APG - Austrian Power Grid AG
Augstsprieguma tīkls - AS Augstsprieguma tīkls
Britned - BritNed Development Limited
BritNed - BritNed Development Limited
ČEPS - ČEPS a.s.
CREOS Luxembourg - Creos Luxembourg S.A.
EirGrid - EirGrid plc
Eirgrid Interconnector - Eirgrid Interconnector DAC
ElecLink - ElecLink Ltd
Elering - Elering AS
ELES - ELES, d.o.o.
Elia - Elia Transmission Belgium SA/NV
Energinet - Energinet
ESO - Electroenergien Systemen Operator EAD
Fingrid - Fingrid Oyj
HOPS - Croatian Transmission System Operator Ltd
IPTO - Independent Power Transmission Operator S.A.
Kraftnät Åland - Kraftnät Åland Ab
LITGRID - Litgrid AB

MAVIR ZRt. - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság ZRt.
Moyle Interconnector - Moyle Interconnector Ltd
National Grid ESO
National Grid Interconnectors - National Grid Interconnectors Ltd
PSE - Polskie Sieci Elektroenergetyczne S.A.
REE - Red Eléctrica de España S.A.
REN - Rede Eléctrica Nacional, S.A.
RTE - Réseau de Transport d'Electricité, S.A
SEPS - Slovenská elektrizačná prenosová sústava, a.s.
SONI - System Operator for Northern Ireland Ltd;
Svenska Kraftnät - Affärsverket svenska kraftnät
TenneT GER - TenneT TSO GmbH
TenneT TSO - TenneT TSO B.V.
Terna - Terna Rete Elettrica Nazionale S.p.A.
Transelectrica - National Power Grid Company Transelectrica S.A.
TransnetBW -TransnetBW GmbH
VÜEN - Vorarlberger Übertragungsnetz GmbH

Done at Ljubljana, on 15 July 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Methodology for TSOs settlement rules applicable to all intended exchanges of energy pursuant to Article 50(1) of the Electricity Balancing Regulation

Annex Ia (for information only) – Methodology for TSOs settlement rules applicable to all intended exchanges of energy pursuant to Article 50(1) of the Electricity Balancing Regulation – with track changes

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

In accordance with Article 29 of Regulation (EU) 2019/942, the addressee may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.