

**REQUEST FOR AMENDMENT (RfA) BY
ALL RELEVANT REGULATORY AUTHORITIES OF THE
HANSA CAPACITY CALCULATION REGION**

ON

**CCR HANSA TSOs PROPOSAL FOR A METHODOLOGY
FOR SPLITTING LONG-TERM CROSS-ZONAL
CAPACITY IN ACCORDANCE WITH ARTICLE 16 OF
COMMISSION REGULATION (EU) 2016/1719 OF
26 SEPTEMBER 2016 ESTABLISHING A GUIDELINE ON
FORWARD CAPACITY ALLOCATION**

18 December 2019

I. Introduction and legal context

This document elaborates an agreement of all relevant Capacity Calculation Region (“CCR”) Hansa Regulatory Authorities, reached on 18 December 2019, on the Hansa CCR TSOs’ proposal for a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the CCR Hansa region. Hansa CCR TSOs have developed this proposal pursuant to Article 16 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (“FCA GL”).

Article 16 of the FCA GL requires that no later than the submission of the capacity calculation methodology the TSOs of each CCR shall develop a proposal for a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the CCR (“splitting rules”).

In accordance with article 30(7) of the FCA GL, only the German TSOs, TenneT TSO GmbH and 50Hertz Transmission GmbH, the Dutch TSO, TenneT TSO NL BV, and the Danish TSO, Energinet of the CCR Hansa TSOs are obliged to submit this proposal for regulatory approval. The relevant CCR Hansa Regulatory Authorities are therefore Bundesnetzagentur, Autoriteit Consument & Markt, and Danish Utility Regulator. However, the views of Norges vassdrags- og energidirektorat, Energimarknadsinspektionen, and Urząd Regulacji Energetyki have been acknowledged in the process.

A draft proposal was consulted by the relevant Hansa CCR TSOs through ENTSO-E from 25 April 2019 until 27 May 2019. The TSOs’ proposal for the CCR Hansa splitting rules - dated 18 June 2019 - was received by the last relevant Hansa Regulatory Authority on 3 July 2019.

All relevant CCR Hansa Regulatory Authorities reached an agreement on 18 December 2019 to request an amendment to the CCR Hansa TSOs’ proposal.

This agreement of the relevant CCR Hansa Regulatory Authorities shall provide evidence that a decision on the Proposal does not need to be adopted by ACER pursuant to Article 4(10) of the FCA GL. Therefore, this agreement is intended to constitute the basis on which the relevant CCR Hansa Regulatory Authorities will each subsequently request amendments to the CCR Hansa splitting rules.

The legal provisions that lie at the basis of the Proposal and this all Regulatory Authorities’ agreement on requesting an amendment can be found in Articles 3, 4, 6, 9, 16 and 31 of the FCA GL. They are quoted here for reference:

Article 3 of FCA GL:

This Regulation aims at:

- (a) promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants;*
- (b) optimising the calculation and allocation of long-term cross-zonal capacity;*

- (c) *providing non-discriminatory access to long-term cross-zonal capacity;*
- (d) *ensuring fair and non-discriminatory treatment of TSOs, the Agency, regulatory authorities and market participants;*
- (e) *respecting the need for a fair and orderly forward capacity allocation and orderly price formation;*
- (f) *ensuring and enhancing the transparency and reliability of information on forward capacity allocation;*
- (g) *contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.*

Article 4 of FCA GL:

1. *TSOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO, the participating TSOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, shall regularly inform the competent regulatory authorities and the Agency about the progress of the development of these terms and conditions or methodologies.*
- [..]
5. *Each regulatory authority shall be responsible for approving the terms and conditions or methodologies referred to in paragraphs 6 and 7.*
- [..]
7. *The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities of the concerned region:*
- [..]
- b. *the regional design of long-term transmission rights pursuant to Article 31;*
- [..]
8. *The proposal for terms and conditions or methodologies shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of this Regulation. Proposals on terms and conditions or methodologies subject to the approval by several or all regulatory authorities shall be submitted to the Agency at the same time that they are submitted to regulatory authorities. Upon request by the competent regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.*
 9. *Where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order to reach an agreement. Where applicable, the competent regulatory authorities shall take into account the opinion of the Agency. Regulatory authorities shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6 and 7, within six months following the receipt of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.*

10. *Where the regulatory authorities have not been able to reach an agreement within the period referred to in paragraph 9, or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.*
11. *In the event that one or several regulatory authorities request an amendment to approve the terms and conditions or methodologies submitted in accordance with paragraphs 6 and 7, the relevant TSOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the regulatory authorities. The competent regulatory authorities shall decide on the amended terms and conditions or methodologies within two months following their submission. Where the competent regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies pursuant to paragraphs 6 and 7 within the two-month deadline, or upon their joint request, the Agency shall adopt a decision concerning the amended terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009. If the relevant TSOs fail to submit a proposal for amended terms and conditions or methodologies, the procedure provided for in paragraph 4 shall apply.*
12. *TSOs responsible for developing a proposal for terms and conditions or methodologies or regulatory authorities responsible for their adoption in accordance with paragraphs 6 and 7, may request amendments of these terms and conditions or methodologies. The proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedure set out in Article 6 and approved in accordance with the procedure set out in this Article.*
13. *TSOs responsible for establishing the terms and conditions or methodologies in accordance with this Regulation shall publish them on the internet after approval by the competent regulatory authorities or, if no such approval is required, after their establishment, except where such information is considered as confidential in accordance with Article 7.*

Article 6 of FCA GL:

1. *TSOs responsible for submitting proposals for terms and conditions or methodologies or their amendments in accordance with this Regulation shall consult stakeholders, including the relevant authorities of each Member State, on the draft proposals for terms and conditions or methodologies where explicitly set out in this Regulation. The consultation shall last for a period of not less than one month.*
2. *The proposals for terms and conditions or methodologies submitted by the TSOs at Union level shall be published and submitted to consultation at Union level. Proposals submitted by the TSOs at regional level shall be submitted to consultation at least at regional level. Parties submitting proposals at bilateral or at multilateral level shall consult at least the Member States concerned.*

3. *The entities responsible for the proposal for terms and conditions or methodologies shall duly consider the views of stakeholders resulting from the consultations undertaken in accordance with paragraph 1, prior to its submission for regulatory approval if required in accordance with Article 4 or prior to publication in all other cases. In all cases, a clear and robust justification for including or not the views resulting from the consultation shall be developed and published in a timely manner before or simultaneously with the publication of the proposal for terms and conditions or methodologies.*

Article 9 of FCA GL:

1. *All TSOs in each capacity calculation region shall ensure that long-term cross-zonal capacity is calculated for each forward capacity allocation and at least on annual and monthly time frames.*

Article 16 of FCA GL:

1. *No later than the submission of the capacity calculation methodology referred to in Article 10, the TSOs of each capacity calculation region shall jointly develop a proposal for a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the respective region. The proposal shall be subject to consultation in accordance with Article 6.*
2. *The methodology for splitting long-term cross-zonal capacity shall comply with the following conditions:*
 - (a) *it shall meet the hedging needs of market participants;*
 - (b) *it shall be coherent with the capacity calculation methodology;*
 - (c) *it shall not lead to restrictions in competition, in particular for access to long-term transmission rights.*

Article 30 of FCA GL:

1. *TSOs on a bidding zone border shall issue long-term transmission rights unless the competent regulatory authorities of the bidding zone border have adopted coordinated decisions not to issue long-term transmission rights on the bidding zone border. When adopting their decisions, the competent regulatory authorities of the bidding zone border shall consult the regulatory authorities of the relevant capacity calculation region and take due account of their opinions.*
2. *Where long-term transmission rights do not exist on a bidding zone border at the entry into force of this Regulation, the competent regulatory authorities of the bidding zone border shall adopt coordinated decisions on the introduction of long-term transmission rights no later than six months after the entry into force of this Regulation.*

[..]

6. *In case the competent regulatory authorities choose to issue a request as referred to in paragraph 5(b), the relevant TSOs shall develop the necessary arrangements and submit them to the competent regulatory authorities' approval no later than six months after the request by the competent regulatory authorities. Those necessary arrangements shall be implemented no later than six months after approval by the competent regulatory authorities. The competent regulatory authorities may extend the implementation time upon request from the relevant TSOs by a period of no more than 6 months.*
7. *Where regulatory authorities decide that long-term transmission rights shall not be issued by the respective TSOs or that other long-term cross-zonal hedging products shall be made available by the respective TSOs, Articles 16, 28, 29, 31 to 57, 59 and 61 shall not apply to the TSOs of the bidding zone borders.*

Article 31 of FCA GL:

[..]

2. *All TSOs issuing long-term transmission rights shall offer long-term cross-zonal capacity, through the single allocation platform, to market participants for at least annual and monthly time frames. All TSOs in each capacity calculation region may jointly propose to offer long-term cross-zonal capacity on additional time frames.*

II. All TSOs' Proposal

The proposal describes a process for determining the Capacity Split Ratio. The Capacity Split Ratio is the 'time frame specific ratio for splitting the long-term cross-border capacity into the Capacity Split on the concerned Interconnector by the Responsible TSOs'. The proposal does not contain the Capacity Split Ratio itself.

According to Article 5 of the Proposal CCR Hansa TSOs will submit the Capacity Split Ratio to the relevant CCR Hansa Regulatory Authorities for approval each year. Article 6(1) of the Proposal describes how Hansa CCR TSOs will yearly assess whether a change of the Capacity Split Ratio is necessary, based on a public consultation.

According to Article 6(2) of the Proposal CCR Hansa TSOs shall prepare a yearly report on revenue adequacy and the relevant CCR Hansa Regulatory Authorities shall take note of the report and decide whether a future lack of revenue adequacy shall be avoided. The proposal describes revenue adequacy as a situation where the long-term transmission rights auction revenue is not systematically lower compared to the day-ahead congestion revenue.

Whereas (10) of the proposal contains a description of the expected impact of the Hansa CCR splitting rules on the objectives of the FCA GL.

Article 9 of the proposal contains a timeline for the implementation of the Hansa CCR splitting rules.

III. All relevant Hansa CCR Regulatory Authorities' Position

All Regulatory Authorities cannot approve the Proposal for the reasons that are detailed below and request all TSOs to amend the Proposal and to incorporate the following assessment of all relevant Hansa CCR Regulatory Authorities pursuant to Article 4(11) of the FCA GL.

IV. Requests for amendments to the Proposal

Article 2

Some of the definitions in Article 2 and Whereas (2) still refer to Regulation (EC) 714/2009. All relevant Hansa CCR Regulatory Authorities therefore request TSOs to refer to Regulation (EU) 2019/943 instead.

Some of the amendments requested by the relevant Hansa CCR Regulatory Authorities **might** also require changes to the definitions in Article 2. All relevant Hansa CCR Regulatory Authorities therefore request TSOs to review the definitions in Article 2 **and amend them if necessary**, for example the definition of "Capacity Split Ratio".

Article 5 and Article 6

Article 16 of the FCA GL requires a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the respective region. The proposal **includes neither the ratio of yearly product to monthly products** (which is described as "Capacity Split Ratio" in the proposal) **nor a methodology that clearly and comprehensively describes how this ratio will be calculated**. It only states that TSOs will submit the Capacity Split Ratio to Regulatory Authorities for approval each year. Each year the TSOs shall assess if the split of capacity shall be amended in accordance with changed market needs. This assessment shall be based on a public consultation and the TSOs shall consider the outcome of the consultation when amending the Capacity Split Ratio.

The relevant Hansa CCR Regulatory Authorities cannot approve this approach since it does not meet the requirements of **Article 16 of the FCA GL**. **The fact that the Explanatory Note states that in the first year 50 percent of the calculated yearly capacity will be given to yearly products is not enough**. The ratio has to be included in the methodology (the legal document) itself and can only be changed by amending the methodology.

The relevant Hansa CCR Regulatory Authorities therefore request to amend the proposal according **to the following reasoning**:

- The methodology itself should include a clear Capacity Split Ratio that describes which percentage of the calculated year-ahead capacity is given to the yearly product. For the sake of clarity, the relevant Hansa CCR Regulatory Authorities support **the decision made by TSOs after the consultation to abandon, at least for the moment, a methodology that relies on criteria rather than a Capacity Split Ratio**.
- **The Capacity Split Ratio should be the same on all Hansa CCR bidding zone borders and apply to both directions**.

- The relevant Hansa CCR Regulatory Authorities consider that allocating 50 percent of the calculated year-ahead capacity to the yearly product, as suggested in the Explanatory document, **is indeed a minimum**. However, market parties in the consultation asked TSOs to give as much capacity as early as possible to the market. Given that at the moment the yearly product is sold much earlier than monthly products, the relevant Hansa CCR Regulatory Authorities would expect TSOs to auction more than half of the calculated year-ahead capacity as a yearly product. At the same time some capacity has to be left for the monthly products.
- If possible, **the methodology should be able to take possible future products into account, by defining how the Capacity Split Ratio would change given “x” different new products sold (e.g. quarterly or weekly)**. The relevant Regulatory Authorities invite Hansa TSOs to discuss with them whether and how this could be included into the methodology.
- The relevant Hansa CCR Regulatory Authorities consider that there is no legal basis for considering revenue adequacy as described in Article 6(2) of the proposal when deciding on the splitting rules.

Based on these considerations the relevant Hansa CCR Regulatory Authorities request TSOs to add the following provision:

- The proposal shall contain a Capacity Split Ratio that defines which percentage of the calculated yearly capacity is given to the yearly product on each Hansa CCR bidding zone border. This percentage should at least be 50 percent and the relevant Hansa CCR Regulatory Authorities would **advise a percentage of (at least) 60 percent**.
- The calculated monthly capacity, reduced by the capacity already allocated to the yearly timeframe and increased by returned capacity from the yearly timeframe, is offered to the relevant monthly product.

The relevant Hansa CCR Regulatory Authorities also request TSOs to remove the following provisions from the proposal:

- There should be no obligation for TSOs to yearly submit proposals for a Capacity Split Ratio (Article 5(1));
- Not only the process and timeline but also the Capacity Split Ratio shall be identical for all interconnectors, for both directions (Article 5(2));
- There shall be no obligation for a yearly assessment and possible amendment of the Capacity Split Ratio (Article 6(1));
- There shall be no obligation to prepare and submit a yearly report on the degree of revenue adequacy and no obligation for CCR Hansa Regulatory authorities to act on it (Article 6(2)).

Article 9

According to Article 9(2) of the proposal the methodology will be implemented after the long-term capacity calculation methodology has been implemented. The relevant Hansa CCR regulatory authorities consider that this link is not necessary and that it would lead to an unnecessary delay in the implementation of the Hansa CCR splitting rules, as long-term transmission rights are already sold today on the relevant bidding zone borders. The FCA GL requires coherence with the capacity

calculation methodology but this does not necessarily mean that the splitting rules cannot be implemented earlier.

The relevant Hansa CCR Regulatory Authorities thus request the Hansa CCR TSOs to amend Article 9 as follows:

- The methodology shall be implemented for the first auction of yearly products after the methodology has been approved. (This will most probably be the auctions of yearly products for 2021.) The Regulatory Authorities invite TSOs to discuss how the period until full implementation of the Hansa CCM can be dealt with (e.g. in Article 2 on the definitions).

New article to be added

The splitting rules will change the market conditions on at least a part of the Hansa CCR bidding zone borders.

The relevant Hansa CCR Regulatory Authorities therefore request TSOs to add the following provision:

- The proposal shall include an obligation to evaluate the working of this methodology three years after implementation at the latest. The evaluation shall at least include an analysis of whether the splitting rules meet market participants' hedging needs.
- TSOs shall share the evaluation results at the latest three years after implementation with the relevant Hansa CCR Regulatory Authorities.
- If TSOs conclude that changes are necessary or desirable, they shall submit a proposal to amend the methodology to the relevant Hansa CCR Regulatory Authorities.
- Articles 7 and 8 of the proposal contain reporting provisions on technical and statistical information. TSOs shall review articles 7 and 8 and consider whether they should be amended in order to deal with information used for the evaluation of the methodology and the other changes requested.

III. Conclusion

The relevant Hansa CCR Regulatory Authorities have assessed, consulted, closely cooperated and coordinated to reach the agreement that they cannot approve the Proposal according to Article 16 of the FCA GL.

According to Article 4(11) of the FCA GL, the relevant Hansa CCR Regulatory Authorities hereby request an amendment to the Proposal, which shall take into account the assessment stated above and shall be submitted by the relevant Hansa CCR TSOs no later than two months after receiving the last relevant Hansa CCR Regulatory Authority's request for amendment.

The relevant Hansa CCR Regulatory Authorities have agreed to issue their national decision to request an amendment to the amended Proposal on the basis of this agreement by 3 January 2020.