

ENTSO-E consultation on the methodologies and rules for cross-border participation in capacity remuneration mechanisms



EFET response – 13 March 2020

We thank ENTSO-E for the opportunity to provide our views on their draft methodologies and rules for cross-border participation in capacity remuneration mechanisms (CRMs), as well as for the organisation of a dedicated workshop on the subject on 12 February 2020.

As a preliminary statement to this consultation response, we would like to remind ENTSO-E and the TSOs of our fundamental position that establishing or maintaining a CRM should not come to the detriment of improving the design and efficiency of energy markets. This principle, now enshrined in article 20.3 Regulation 2019/943, aims to ensure that energy markets allow for optimal dispatch but are also in a position to contribute to security of supply, while CRMs are designed only to complement the energy markets.

Both the dimensioning of CRMs and cross-border contributions to these CRMs should take account of the design of energy markets in the relevant bidding zones. Where CRMs are established or maintained, the implementation of Regulation 2019/943 and related methodologies, like the ones currently under consultation, should ensure compatibility of the different schemes and, where relevant and feasible, harmonisation.

As far as cross-border participation to CRMs is concerned, we insist throughout this document on two fundamental principles, namely:

- **Effective direct participation** of foreign asset owners/operators – generation, demand-response, storage – to CRMs, with appropriate incentives and/or obligations on TSOs, where this effective participation depends on them;
- **Equal treatment of foreign and domestic capacities** contributing to a CRM, with an attention to the specific rights and obligations of capacity providers in the CRM and, where relevant, related to energy market functioning.

You will find below our detailed comments on the methodology proposal.

1. Would you have any comments related to the part specifying the General provisions?

- *Recital 2: The goal of Regulation (EU) 2019/943 is to establish rules to ensure the functioning of the internal market for electricity and ensuring security of electricity supply within the Union. As such, Recital (49) of Regulation (EU) 2019/943 specifies that “**detailed rules for facilitating effective cross-border participation in capacity mechanism should be laid down.**” This Proposal for cross-border participation in capacity mechanism fits within this objective.*
- *Recital 3: **A common approach** —through this Proposal— for Transmission System Operators (TSOs) of every Member State in facilitating the participation of interested foreign capacity providers is key to achieve this goal.*

The methodologies contained in the TSOs proposal have the **primary objective of ensuring the effective participation of asset owners/operators in CRMs across borders**, as per the requirement of article 26.1 Regulation 2019/943, **while respecting the principle of non-discrimination** – the same rights and obligations should apply to all capacity providers, irrespective of location.

According to the Electricity Regulation and the present document’s own recitals, these methodologies should set the framework – the “common approach”, the “detailed rules” – to reach this objective. However, much in these methodologies is still left to the discretion of TSOs, in particular by way of bilateral agreements.

While we acknowledge the difficulty of detailing every requirement, considering the wide variety of existing designs for CRMs, we fear that there are insufficient obligations around such bilateral agreements, so that they create insufficient incentive for TSOs to ensure effective participation of foreign capacities in CRMs. The current framework for cross-border participation indeed places a foreign TSO in front of a series of disincentives if they want to allow asset owners located in their control area to participate in the CRM of another Member State:

- complex frameworks to put in place (certification, availability checks, penalties)
- burden of the costs of the framework and management of their recovery (see art. 3)
- no certainty to share revenues from entry capacity allocation with the TSO where the CRM is located (see art. 11.1 and 11.2)

As a consequence, we believe that detailed rules should be in the present methodologies – which we present in our comments to various articles below. But most importantly, as effective cross-border participation will depend on the conclusion of bilateral agreements between TSOs, **it is vital that TSOs have an obligation to set up such agreements, with a fixed deadline to conclude them.** See our comments on article 16 for more details.

- *Recital 19: The requirement to Member States for allowing participation of Foreign capacity providers is set out in Article 26(1) of Regulation (EU) 2019/943: “Capacity mechanisms other than strategic reserves and where technically feasible, strategic reserves shall be open to direct cross-border participation of capacity providers located in another Member State, subject to the conditions laid down in this Article”, provided that “foreign capacity is capable of providing equivalent technical performance to domestic capacities” in accordance with Article 26(2) of Regulation (EU) 2019/943.*

In the proposed methodology, strategic reserves are never explicitly mentioned. According to article 26.1 of the EU Regulation 943/2019 “where technically feasible, strategic reserves shall be open to direct cross-border participation of capacity providers located in another Member State”. As a consequence, the methodology should also address cross-border participation to strategic reserve mechanisms, as the principles of ensuring participation of foreign capacities and full equivalence between foreign and domestic resources should be upheld for all kinds of CRMs.

- *Article 1.j: A transition period is needed to implement this Proposal in a timely manner after it is approved.*

The transitory period should be limited in time and methodologies should be fully operational at least 12 months before the maximum deadline set out in article 26.2 Regulation 2019/943: “for a maximum of four years from 4 July 2019 or two years after the date of approval of the methodologies referred to in paragraph 11, whichever is earlier”.

This implementation timeline is consistent with the legal obligation to put in place a registry by 5th July 2021 as foreseen in section 5 of the proposal. Moreover, availability checks and eligibility examination criteria implementation shall include the registry for foreign capacities as foreseen in sections 4 and 6 of the proposal.

- *Article 2.j: ‘Entry Capacity’ means the capacity, expressed in MW, that can be allocated to eligible foreign capacity for participation in a capacity mechanism. Its total amount can never exceed the Maximum Entry Capacity.*

It should be clear that entry capacity as defined in article 2.j does not correspond to an actual reservation of capacity on an interconnection. Entry capacity does not correspond to a long-term transmission right.

2. Would you have any comments related to the part specifying the methodology for calculating the maximum entry capacity?

- *Article 4: The Methodology for calculating the maximum entry capacity for cross-border participation does not apply when interconnectors participate directly in the capacity mechanism in the sense of Article 26(2) of Regulation (EU) 2019/943.*

We understand that the methodology proposal only focuses on direct participation of foreign assets in national CRMs. However, given the likelihood of prolonged unavailability of bilateral agreements between TSOs allowing effective cross-border participation to CRMs, transitional rules should be designed for interconnector participation, which are otherwise left to national frameworks.

- *Article 4: Therefore, the methodology shall determine the expected contribution of imports that a country or bidding zone can rely upon in moments of stress, i.e. during which these imports are needed to ensure the adequacy of this country or bidding zone.
The methodology for calculating the maximum entry capacity for cross-border participation to capacity mechanism shall consider situations during which the country or bidding zone, after using all its available national production and market-based demand reduction measures, still requires imports to ensure adequacy of its system. In other words, the country or bidding zone depends on imports from neighboring systems to cover its demand and mitigate scarcity.*

The present methodology should be directly applicable. The use of “shall determine/consider” has us wonder whether TSOs consider applying extra layers of calculation than those detailed in articles 6 to 8. In this case, the methodology would not fulfil its purpose as laid out in article 26.11 Regulation 2019/943.

We invite the TSOs to delete all the “shall” and other aspirational wording from the proposal when it refers to the methodology itself, and include a reference to articles 6 to 8 in these two paragraphs of article 4.

- *Article 6: The maximum entry capacity for cross-border participation is hereafter referred to also as “the contribution”. The contribution shall be calculated as the average of imports during scarcity hours and shall be expressed in MW.
The contribution of each neighboring country or bidding zone to the adequacy of the considered country or bidding zone is determined as the average contribution of the exports from the neighboring bidding zone to the considered bidding zone, during all scarcity hours. This average contribution will be calculated as the average of all contributions during all different single and simultaneous scarcity hours, considering the curtailment sharing rule within the market coupling algorithm.*

We assume the TSOs expect to apply a weighted average. This should be clearly specified in the methodology. It is important that the methodology defines a period

over which the contribution of each neighbouring country is calculated. Generation capacity across MS evolves rapidly and therefore assessing scarcity over a long historical period can lead to over – or underestimate the contribution of a country or bidding zone.

- *Article 6: Beyond the average indicator, the National Resource Adequacy Assessments (NRAA) may analyse the statistical distribution of the contribution over all scarcity hours, after the recommendation of Regional Coordination Centres (RCCs) to TSOs, pertinent to Article 26(7) of Regulation (EU) 2019/943.*

The calculation of average imports during scarcity hours laid out in the first two paragraphs of article 6 is an ex-post analysis based on average imports during scarcity hours. We understand the statistical distribution (stochastic approach) referred to in the last paragraph of article 6 seems as a probability distribution of “the contribution”, ex-ante. We would welcome clarification in the methodology itself as how to combine these different elements to define the final level of entry capacity.

- *Article 7: The contribution of bidding zones within the same ‘flow-based’ Capacity Calculation Region (CCR) to the considered bidding zone for a specific scarcity hour is determined as the weighted net position for all bidding zones exporting to the considered bidding zone, and zero for all bidding zones importing from the considered bidding zone.*
- *Article 8: The contribution of a country or bidding zone connected with an NTC to the considered bidding zone at a specific hour is determined by the market exchange for that hour if positive (export from the country/bidding zone or, equivalently, import of the considered bidding zone) and zero if the considered bidding zone is exporting through the given NTC.*

The concept of ‘contribution’ (defined in the first paragraph of article 6) becomes somewhat confusing in the way it is used in articles 7 and 8. Indeed, there should be a clear distinction between the different steps of the design of capacity mechanisms, where the reliability standard is set and the CRM is dimensioned taking into account the positive but also negative contribution of adjacent bidding zones to a particular bidding zone’s security of supply (this is outside the scope of this methodology). In a second step, once the reliability standard is defined and the CRM dimensioned, we indeed need to calculate how much the bidding zone with the CRM can rely on resources in adjacent bidding zones in case of scarcity, which indeed can be zero or positive. We would rather see the term “contribution” only used in step 1 and not step 2, to avoid any confusion.

We also draw ENTSOE’s particular attention that some national regulatory decisions outside the scope of CRM regulations could seriously affect the calculations of entry capacity. In particular, we refer to provisions set out in Article 10 of Regulation 2019/943 regarding harmonised clearing and bidding price limits at European level, and how non-harmonised limits may remain in certain European markets. As a result, the scarcity indicator may be skewed because energy markets are altered/affected by price caps.

Conversely, both the energy market and the CRM price signals within Europe could be distorted if adjacent third countries do not apply comparable market rules as in the EU (e.g. Moroccan border with Spain).

- *Article 9: Regarding assumptions of transmission capacity, the calculation of the contribution shall be consistent with the assumption used in the ERAA assessment and hence incorporate the relevant grid modifications applicable to the different target time horizons considered in the assessment.*

It is important to note that the current proposal of ERAA methodology does not take into account “real network development” as stated in Art. 23.5(l) of the Electricity Regulation because the baseline data proposed will include “best estimates regarding the state of the grid in line with the TYNDP and the most recent national development plans” (see Art. 3.3(b) of the ERAA proposal). It is important that the methodology to calculate the maximum entry capacity only takes credible network development projects into account, for the horizon relevant to each CRM. Otherwise the current proposal of cross-border participation in CRMs will also be affected by questionable assumptions.

- *Article 10: Bilateral scarcity ratios, per-border between each relevant electrical neighbor, constructed from the above-mentioned simultaneous scarcity contributions, shall also be calculated.
The bilateral scarcity ratio is calculated as the cumulative contribution for the corresponding border of all single and simultaneous scarcity contributions within all scarcity hours considered.*

The concepts single/double/triple/bilateral scarcity ratios are not sufficiently defined and developed in the proposal and the explanatory note does not provide additional information. Besides, bilateral scarcity scenarios are only relevant when cross-border capacity is calculated NTC at a specific border. For borders using flow-based capacity calculation, regional scarcity scenarios would be relevant.

3. Would you have any comments related to the part specifying the methodology for sharing the revenues?

- *Article 11.1: Based on Regulation (EU) 2019/943, the following Revenue Sharing Methodology can be applied for the sharing of the Revenues where capacity mechanisms allow for direct cross-border participation by foreign capacity in two neighbouring Member States over the same Delivery Period in accordance with Article 26(9) of Regulation (EU) 2019/943;*
- *Article 11.2: This Revenue Sharing Methodology does not need to be applied for the sharing of revenues if the neighbouring Member State does not apply a capacity mechanism or applies a capacity mechanism which is not open to direct cross-border participation by foreign capacity over the same Delivery Period, in accordance with Article 26(9) of Regulation (EU) 2019/943;*

We acknowledge that Regulation 2019/943 foresees the possibility to exclude revenue sharing in case the Member State in which the capacity asset is located does not have a CRM, or has a CRM which is not open to cross-border participation. However, we still believe that this concept is fundamentally wrong.

Indeed, the application of a reciprocity clause for the sharing of rents from entry capacity allocation creates an important hurdle to the explicit cross-border participation of foreign capacities in national CRMs. With no perspective to benefit from revenues of the sale of entry capacity, and heavy processes and potential costs to allow the direct participation of assets in the CRM of another Member State, foreign TSOs will have no incentive to enter into negotiations with the TSO of the Member State where the CRM is located. It will lead to the de facto exclusion of foreign capacities from appropriate remuneration to the added security of supply they bring to the Member State where the CRM is located and affect competition in the CRM. We believe this is in contradiction with the principle of article 26.1 Regulation 2019/943.

As a consequence, and because article 29.9 does not mandate the exclusion from revenue sharing of TSOs from a Member State that does not have a CRM or has a CRM which is not open to cross-border participation, we invite the TSOs to withdraw article 11.2 and modify the wording of article 11.1 so that it applies to all.

- *Article 11.3: This Revenue Sharing Methodology does not apply when interconnectors participate directly in the capacity mechanism in the sense of Article 26(2) of Regulation (EU) 2019/943. For a Member State organising a capacity mechanism open for direct cross-border participation, the Revenue Sharing Methodology applies separately on each border with another Member State with a capacity mechanism open for cross-border participation by foreign capacity.*

We understand that the methodology proposal only focuses on direct participation of foreign assets in national CRMs. However, given the likelihood of prolonged unavailability of bilateral agreements between TSOs allowing effective cross-border participation to CRMs, transitional rules should be designed for interconnector participation, which are otherwise left to national frameworks. If implemented, these transitional rules should include provisions in case interconnectors already benefit

from other support mechanisms (e.g. cap and floor regime in the GB market) to avoid any form of overcompensation.

- *Article 11.4: The sharing of the revenues should provide incentives for the development of transmission capacity. The sharing key should therefore ensure that:*
 - a. When transmission capacity between two Member States is deemed the scarce resource limiting the participation of eligible Foreign Capacity in the capacity mechanism, the sharing of revenues shall result in a proportionate incentive to further develop transmission capacity on the border considered.*
 - b. When transmission capacity is not deemed the scarce resource limiting the participation of foreign eligible capacity in the capacity mechanism, no additional incentives for further development of the transmission capacity on the considered border shall be provided for adequacy reasons.*

We believe this paragraph is out of scope of this revenue sharing methodology. Article 11.4 does not tackle a question of revenue sharing between the TSOs, but rather of revenue sharing between the TSOs and asset owners. If transmission capacity is not a scarce resource limiting the participation of foreign asset into a Member State's CRM, then TSOs should make no revenues from the sale of entry capacity and total revenue calculation set out article 12 and 13 does not apply. Hence there will be no revenue to share between the TSOs.

We recommend deletion of article 11.4.

- *Article 11.5: To determine to what extent the transmission capacity between two Member States is deemed the scarce resource limiting the participation of foreign eligible capacity in the capacity mechanism, the expected level of concurring system stress events between the two Member States in question shall be considered.*

It should be made clear in article 11.7 that in case the maximum entry capacity falls below the capacity available to the energy market, the scarce resource is foreign eligible capacity and not the transmission capacity, in line with article 11.6. The logical conclusion of this should be that in such a case, no congestion revenue in the capacity market is to be considered for distribution between the TSOs, and therefore total revenue calculation set out article 12 does not apply.

Moreover, article 11.5 should be part of the methodology on the calculation of entry capacity (section 1), and has nothing to do in this part of the proposal.

Therefore, we recommend deletion of article 11.5. The identification of the scarce resource as explained above shall be clarified in article 4.

- *Article 13.2: The percentage of the total revenue considered for sharing as set out in Article 12 that will be shared between the concerned TSOs is determined as follows.*

We do not agree with either option. As explained in our comment to article 11.4, the transmission capacity is either the scarce resource – in which case revenue sharing should follow the agreed sharing key, which in default is 50/50 – or it is not the scarce resource, in which case no congestion revenue is available to share between the TSOs. The re-appearance of a concurrent system stress factor would lead to double counting of such events: once in the maximum entry capacity calculation and once in the revenue sharing calculation.

We recommend deletion of article 13.2.

4. Would you have any comments related to the part specifying the common rules to carry out availability checks?

- *Article 14. 2: According to Article 26(11) (d) established common rules for the carrying out of Availability checks shall address all contracted capacity, irrespective of the nature or technology used. Nonetheless, different methods can be used to check availability regarding the diversity and the distinctive features of each participating technology.*

The first sentence should include “irrespective of location”.

- *Article 15.2: Availability checks for Foreign capacity contracted in the capacity mechanism should be carried out as equivalently as possible as for Domestic capacity, according to the rules of the capacity mechanism to which it participates. In order to satisfy this condition, if possible, Availability checks for Domestic and Foreign capacity should be carried out using the same: [...]*

Delete “if possible” in the second sentence. Availability checks need to be non-discriminatory, and as a consequence those applicable to foreign capacity providers must be equivalent to the ones that are applicable to domestic providers.

- *Article 16.3: The TSO where the Foreign contracted capacity is located should perform Availability checks and communicate results to the CM Operator within the time deadline agreed (e.g. in the bilateral technical agreement) in order to allow the settlement process and the calculation of Non-availability payments.*
- *Article 16.4: In case of multiple commitments, bilateral agreements should provide CM Operators and all TSOs involved the amount of capacity contracted in each capacity mechanism for each CMU.*

Article 16 mentions the possibility to establish bilateral agreements to settle the various aspects of the TSO-TSO relationship for the cross-border participation to CRMs. Though mentioned mainly in article 16, such bilateral agreements between TSOs will govern many aspects of the frameworks for cross-border participation in individual CRMs.

Ensuring that TSOs effectively conclude of such cooperation agreements is key to the effective functioning of direct cross-border participation of foreign capacities in national CRM, and appropriately remunerating foreign capacity assets. As mentioned in our comments to article 11.1 and 11.2, there is a significant risk that foreign TSOs with no prospect of benefiting from revenues from entry capacity allocation would be reluctant to enter into these bilateral agreements.

The example of foreign participation to the French CRM is quite telling in this sense: despite a legal obligation on the French TSO to seek bilateral agreements with neighbouring TSOs, no such agreement has been approved since the relating Ministerial Decree and the regulator's decision of December 2018. According to information provided by the French TSO, the most advanced negotiations seem to be with the German TSOs, where a draft agreement was "initiated". In the meantime, foreign capacity asset participation in the French CRM is still inexistent, despite commitments to the European Commission's DG Competition to ensure such effective participation by 2019.

Given the central role that bilateral agreements play in the architecture of these methodologies, it seems vital that TSOs have an obligation to set up such agreements, and a fixed deadline to conclude such agreements. We propose to apply the limit of 12 months before the maximum deadline set out in article 26.2 Regulation 2019/943: "for a maximum of four years from 4 July 2019 or two years after the date of approval of the methodologies referred to in paragraph 11, whichever is earlier".

5. Would you have any comments related to the part specifying the common rules for determining when a non-availability payment is due?

EFET supports the application of the principle of non-discrimination when setting common rules for determining when a non-availability payment is due. The same non-availability payment calculation should apply for cross-border and domestic capacities. Capacity providers should be incentivised to make available the amount of capacity corresponding to the sum of all their commitments taking into account the relevant reference periods of each CRM.

6. Would you have any comments related to the part specifying the terms of operation of the Registry?

The interactions between the Registry and existing databases such as REMIT and the national capacity registries should be clarified. In no case should the Registry lead to the obligation for market participants to submit the same data to different registries, as it will lead to additional yet redundant administrative burdens with the associated costs, and may lead to risks related to inconsistencies between data in the different databases.

7. Would you have any comments related to the part specifying the common rules for identifying capacity eligible to participate in the capacity mechanism?

No comment.

8. What is your general feedback on the proposal and would there be anything you would like to add?

The entire methodology lacks a clear procedure in case of dispute – both between TSOs and between a TSO and market participants – regarding the processes put in place. Admission to the Registry, availability obligations and checks, penalties, as well as revenue sharing may produce results that are contested by the parties involved. In case of such disagreements, an instance (or different instances depending on the parties involved) in charge of resolving the issue should be designated.

The proposed methodology should not only refer to cross-border participation from EU Member States, but also foresee the possibility for capacities located in interconnected third countries to participate in European CRMs, as long as they can provide a comparable contribution to security of supply.

Finally, we remind TSOs that the aim of CRMs is to ensure security of supply by giving long-term price signals to drive investment in new capacity and ensure the availability of existing generation, demand response and storage assets for this purpose. Cross-border participation in CRMs should contribute to the achievement of this objective. Complex and cumbersome systems for cross-border participation entail a high risk of leading to market foreclosure – or have already done so. We invite TSOs to ensure simplicity in the system(s) they put in place to ensure effective, not just theoretical, cross-border participation of foreign capacities in CRMs, and avoid excessive administrative and financial burden for TSOs and/or market participants alike, in order to achieve security of supply cost-efficiently.