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EFET response to ACER consultation on ENTSO-E proposals for technical specifications for cross-border participation in capacity mechanisms

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The European Federation of Energy Traders (EFET)[1] would like to thank ACER for the opportunity to comment on the ENTSO-E proposals for technical specifications for cross-border participation in capacity mechanisms.

As a preliminary statement, we would like to remind of our fundamental position that establishing or maintaining a capacity mechanism (CM) should not come at the detriment of the design and efficiency of energy markets. This principle, now enshrined in Article 20(3) of 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 CMs are designed only to complement energy markets. Both the dimensioning of CMs and cross-border contributions to these CMs should take account of the design of energy markets in the relevant bidding zones. Where CMs 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 in CMs is concerned, we insist on two fundamental principles, namely:

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

We are pleased to see that ENTSO-E confirm that the non-discrimination principle is at the heart of their proposal.

[1] The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at www.efet.org

Methodology for calculating the maximum entry capacity

1. Do you agree with the proposed methodology for calculating the maximum entry capacity for cross-border participation? If not, please explain which elements of the methodology should be changed or otherwise improved.

• Article 5(1):

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

• Articles 7-9:

We would like to draw the attention of ACER to the fact that some national regulatory decisions outside the scope of CM 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. In the Iberian market, the national regulatory authorities (NRAs) are considering biding price limits between 0 and 300 €/MWh for both day-ahead (DA) and intraday (ID) markets, which is clearly non-compliant with the Regulation and far from the harmonised bidding limits at European level. Conversely, both the energy market and the CM 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).

We welcome the feedback that ENTSO-E are aware of this concern and that the issue has been discussed with ACER in the context of the approval of the European resource adequacy assessment (ERAA) methodology, which is expected in the coming days.

2. Should the methodology allow for calculating capacity contributions from Member States with no direct network connection with the Member State applying the capacity mechanism?

As a matter of principle, we would support the extension of the methodology to capacity contributions from Member States with no direct network connection to the Member State applying the capacity mechanism. However, since CMs are supposed to be only temporary measures (Recital 4, Articles 2(22) and 21(8) of EU Regulation 2019/943), perhaps such an extension is not necessary, as it may be difficult to implement in practice. Furthermore, in order to have a realistic and accurate estimation of maximum entry capacity, such eventual contributions should be adequately assessed, as the indirect adequacy contribution can be strongly impacted (even reduced to zero) by network constraints or other issues in the bidding zones between the Member State where the capacity contribution originates and the bidding zone implementing the capacity mechanism.

Methodology for sharing the revenues from the allocation of entry capacity

3. Do you agree with the proposed methodology for sharing the revenues from allocating entry capacity? If not, please explain which elements of the methodology should be changed or otherwise improved.

• Articles 12.1 and 12.2:

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 CM or has a CM which is not open to cross-border participation. However, we still believe that this concept is fundamentally wrong.

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 CMs. 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 CM of another Member State, foreign TSOs will have no incentive to enter into negotiations with the TSO of the Member State where the CM is located. This will lead to the *de facto* exclusion of foreign capacities from appropriate remuneration for the added security of supply they bring to the Member State where the CM is located and affect competition in the CM. We believe this is in contradiction with the principle of Article 26(1) of Regulation 2019/943.

As a consequence, and because Article 26(9) does not mandate the exclusion from revenue sharing of TSOs from a Member State that does not have a CM or has a CM which is not open to cross-border participation, we recommend withdrawing Article 12(2) and modifying the wording of article 12(1), so that it applies to all.

- Article 12.3:

We understand that the methodology proposal only focuses on direct participation of foreign assets in national CMs. However, given the likelihood of prolonged unavailability of bilateral agreements between TSOs allowing effective cross-border participation in CMs, transitional rules should be designed for interconnector participation, which are otherwise left to national frameworks. If implemented, these transitional rules should specify that the revenues obtained by interconnectors should be treated and regulated in the same way as normal congestion revenues.

• Article 12.5:

It should be made clear in article 12(7) that in case the maximum entry capacity falls below the transmission capacity available to the energy market, the scarce resource is foreign eligible capacity and not the transmission capacity, in line with article 12(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 in Article 13 does not apply. Moreover, Article 12(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 deleting Article 12(5). The identification of the scarce resource as explained above shall be clarified in Article 5.

• Article 14.2:

We do not agree with either option. The transmission capacity is either the scarce resource – in which case revenue sharing should follow the agreed sharing key, which is established by

NRAs – 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 14(2).

Regarding the calculation of the total revenue from the allocation entry capacity, Art.13(3) seems to assume uniform clearing of the capacity market under consideration, which most of the time is not the case (decentralised markets, strategic reserves, pay-as-bid, etc.). The methodology should cover all types of capacity market clearing schemes to allow for the correct determination of the revenue from the allocation of entry capacity.

Common rules for the carrying out of availability checks

4. Do you agree with the proposed common rules for the carrying out of availability checks? If not, please explain which elements of the proposed rules should be changed or otherwise improved.

• Article 16.2:

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 17.3 and 17.4:

Article 17 mentions the possibility to establish bilateral agreements to settle the various aspects of the TSO-TSO relationship for the cross-border participation in CMs. Though mentioned mainly in Article 17, such bilateral agreements between TSOs will govern many aspects of the frameworks for cross-border participation in individual CMs.

Ensuring that TSOs successfully conclude such cooperation agreements is key to the effective functioning of direct cross-border participation of foreign capacities in national CMs and to remunerating appropriately foreign capacity assets. As mentioned in our comments to Articles 12(1) and 12(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 in the French CM 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 respective 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 assets still do not participate in the French CM, despite commitments made 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 that a fixed deadline to conclude such agreements is set. 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.”

Common rules for determining when a non-availability payment is due

5. Do you agree with the proposed common rules for determining when a non-availability payment is due? If not, please explain which elements of the proposed rules should be changed or otherwise improved.

We agree with the proposed rules. 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 CM.

- Art. 21(2):

We recommend replacing “as equivalently as possible” with “equivalent.”

Terms of the operation of the ENTSO-E registry

6. Do you agree with the proposed terms of the operation of the ENTSO-E registry? If not, please explain which elements of the proposed terms should be changed or otherwise improved.

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.

Common rules for identifying capacity eligible to participate in the capacity mechanism

7. Do you agree with the proposed common rules for identifying capacity eligible to participate in the capacity mechanism? If not, please explain which elements of the proposed rules should be changed or otherwise improved.

EFET insists on the need to harmonise the eligibility criteria between foreign and domestic capacity to ensure that the non-discrimination principle provided in Article 26 of the Electricity Regulation 2019/943 is upheld.

General provisions and other comments

8. Do you agree with the general provisions of the ENTSO-E proposals (Title 1)? If not, please specify which provisions should be changed or otherwise improved, and explain why.

Yes, we agree with the general provisions. However, the visibility provided by Art.4 on the expected timeline for enabling cross-border participation is not clear enough. We recommend that ACER should define a clear entry into force date for the current proposal, with a clear timeline and concrete milestones communicated to all stakeholder.

9. Do you have any other comments on the ENTSO-E proposals that we should take into account in our assessment?

The methodologies contained in the TSOs' proposal have the primary objective to ensure the effective participation of asset owners/operators in CMs across borders, as per Article 26(1) of 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 proposal's own recitals (Recitals 2 and 3), 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 CMs, and take note of ENTSO-E's comment that this is outside the scope of the current proposal, we fear that there are insufficient obligations around such bilateral agreements to ensure that they create sufficient incentives for TSOs to guarantee effective participation of foreign capacities in CMs. The current framework for cross-border participation, indeed, places foreign TSOs in front of a series of disincentives if they want to allow asset owners located in their control area to participate in the CM 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 of the proposal)
- No certainty to share revenues from entry capacity allocation with the TSO where the CM is located (see Art. 12(1) and 12(2))

As a consequence, we believe that more detailed rules should be included in the present methodologies – which we present in our comments to the respective articles above. 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 17 for more details.

Furthermore, the methodology lacks a clear procedure in case of disputes – both between TSOs and between a TSO and a market participant – regarding the processes put in place (such provisions should also be included in the bilateral agreements between TSOs). 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 CMs, as long as they can provide a comparable contribution to security of supply.

Finally, the aim of CMs is to ensure security of supply by providing 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 CMs 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 ACER and TSOs to ensure simplicity in the system(s) that are put in place to ensure effective, not just theoretical, cross-border participation of foreign capacities in CMs,

and avoid excessive administrative and financial burdens for TSOs and/or market participants alike, in order to achieve security of supply cost-efficiently.