NON-PAPER OF ALL REGULATORY AUTHORITIES AGREED AT THE ENERGY REGULATORS' FORUM

on

All TSOs' proposal for the implementation framework for the exchange of balancing energy from frequency restoration reserves with manual activation, in accordance with Article 20 of Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing

23 July 2019

1.1. Introduction and legal context

This document elaborates an agreement of All Regulatory Authorities, agreed at the Energy Regulators' Forum on 23 July 2019, on the all TSOs' proposal for the implementation framework for the exchange of balancing energy from frequency restoration reserves with manual activation, in accordance with Article 20 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (Regulation 2017/2195) (hereafter referred to as the mFRR IF proposal).

This agreement of All Regulatory Authorities shall provide evidence that a decision on the mFRR IF proposal needs to be adopted by ACER pursuant to Article 5(7) of Regulation 2017/2197.

The legal provisions relevant to the submission and approval of the mFRR IF proposal and this All Regulatory Authority agreement, can be found in Articles 3, 5, 20, 23, 58 of Regulation 2017/2195.

Article 3 Objectives and regulatory aspects

1. This Regulation aims at:
(a) fostering effective competition, non-discrimination and transparency in balancing markets;
(b) enhancing efficiency of balancing as well as efficiency of European and national balancing markets;
(c) integrating balancing markets and promoting the possibilities for exchanges of balancing services while contributing to operational security;
(d) contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union while facilitating the efficient and consistent functioning of day-ahead, intraday and balancing markets;
(e) ensuring that the procurement of balancing services is fair, objective, transparent and market-based, avoids undue barriers to entry for new entrants, fosters the liquidity of balancing markets while preventing undue distortions within the internal market in electricity;
(f) facilitating the participation of demand response including aggregation facilities and energy storage while ensuring they compete with other balancing services at a level playing field and, where necessary, act independently when serving a single demand facility;
(g) facilitating the participation of renewable energy sources and support the achievement of the European Union target for the penetration of renewable generation.

2. When applying this Regulation, Member States, relevant regulatory authorities, and system operators shall:
(a) apply the principles of proportionality and non-discrimination;
(b) ensure transparency;
(c) apply the principle of optimisation between the highest overall efficiency and lowest total costs for all parties involved;
(d) ensure that TSOs make use of market-based mechanisms, as far as possible, in order to ensure network security and stability;
(e) ensure that the development of the forward, day-ahead and intraday markets is not compromised;
(f) respect the responsibility assigned to the relevant TSO in order to ensure system security, including as required by national legislation;

(g) consult with relevant DSOs and take account of potential impacts on their system;
(h) take into consideration agreed European standards and technical specifications.

Article 5: Approval of terms and conditions or methodologies of TSOs

1.Each relevant regulatory authority in accordance with Article 37 of Directive 2009/72/EC shall approve the terms and conditions or methodologies developed by TSOs under paragraphs 2, 3 and 4.

2.The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities:
(a) the frameworks for the establishment of the European platforms pursuant to Articles 20(1), 21(1) and 22(1);
[…]

5.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. The implementation timescale shall not be longer than 12 months after the approval by the relevant regulatory authorities, except where all relevant regulatory authorities agree to extend the implementation timescale or where different timescales are stipulated in 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 relevant regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.

6.Where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the relevant regulatory authorities shall consult and closely cooperate and coordinate with each other in order to reach an agreement. Where the Agency issues an opinion, the relevant regulatory authorities shall take that opinion into account. Regulatory authorities shall decide on the terms and conditions or methodologies submitted in accordance with paragraphs 2 and 3, within six months following the receipt of the terms and conditions or methodologies by the relevant regulatory authority or, where applicable, by the last relevant regulatory authority concerned.

7.Where the relevant regulatory authorities have not been able to reach agreement within the period referred to in paragraph 6, or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months from the day of referral, in accordance with Article 8(1) of Regulation (EC) No 713/2009.
[…]

Article 20: European platform for the exchange of balancing energy from frequency restoration reserves with manual activation

1. By one year after entry into force of this Regulation, all TSOs shall develop a proposal for the implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation.

2. The European platform for the exchange of balancing energy from frequency restoration

reserves with manual activation, operated by TSOs or by means of an entity the TSOs would create themselves, shall be based on common governance principles and business processes and shall consist of at least the activation optimisation function and the TSO-TSO settlement function. This European platform shall apply a multilateral TSO-TSO model with common merit order lists to exchange all balancing energy bids from all standard products for frequency restoration reserves with manual activation, except for unavailable bids pursuant to Article 29(14).

3. The proposal in paragraph 1 shall include at least:

(a) the high level design of the European platform;

(b) the roadmap and timelines for the implementation of the European platform;

(c) the definition of the functions required to operate the European platform;

(d) the proposed rules concerning the governance and operation of the European platform, based on the principle of non-discrimination and ensuring equitable treatment of all member TSOs and that no TSO benefits from unjustified economic advantages through the participation in the functions of the European platform;

(e) the proposed designation of the entity or entities that will perform the functions defined in the proposal. Where the TSOs propose to designate more than one entity, the proposal shall demonstrate and ensure:

(i) a coherent allocation of the functions to the entities operating the European platform. The proposal shall take full account of the need to coordinate the different functions allocated to the entities operating the European platform;

(ii) that the proposed setup of the European platform and allocation of functions ensures efficient and effective governance, operation and regulatory oversight of the European platform as well as, supports the objectives of this Regulation;

(iii) an effective coordination and decision making process to resolve any conflicting positions between entities operating the European platform;

(f) the framework for harmonisation of the terms and conditions related to balancing set up pursuant to Article 18;

(g) the detailed principles for sharing the common costs, including the detailed categorisation of common costs, in accordance with Article 23;

(h) the balancing energy gate closure time for all standard products for frequency restoration reserves with manual activation in accordance with Article 24;

(i) the definition of standard products for balancing energy from frequency restoration reserves with manual activation in accordance with Article 25;

(j) the TSO energy bid submission gate closure time in accordance with Article 29(13);

(k) the common merit order lists to be organised by the common activation optimisation function pursuant to Article 31;

(l) the description of the algorithm for the operation of the activation optimisation function for the balancing energy bids from all standard products for frequency restoration reserves with manual activation in accordance with Article 58.

4. By six months after the approval of the proposal for the implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation, all TSOs shall designate the proposed entity or entities entrusted with operating the European platform pursuant to paragraph 3(e).

5. By eighteen months after the approval of the proposal for the implementation framework for

a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation, all TSOs may develop a proposal for modification of the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation pursuant to paragraph 1. Proposed modifications shall be supported by a cost-benefit analysis performed by all TSOs pursuant to Article 61. The proposal shall be notified to the Commission.

6. By thirty months after the approval of the proposal for the implementation framework for a European platform for the exchange of balancing energy from frequency restoration reserves with manual activation, or where all TSOs submit a proposal for modification of the European platform pursuant to paragraph 5, by 12 months after the approval of the proposal for modification of the European platform, all TSOs shall implement and make operational the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation and they shall use the European platform to:

(a) submit all balancing energy bids from all standard products for frequency restoration reserves with manual activation;

(b) exchange all balancing energy bids from all standard products for frequency restoration reserves with manual activation, except for unavailable bids pursuant to Article 29(14);

(c) strive to fulfil all their needs for balancing energy from the frequency restoration reserves with manual activation.

Article 23: Cost sharing between TSOs in different Member States

1. All TSOs shall provide a yearly report to the relevant regulatory authorities in accordance with Article 37 of Directive 2009/72/EC in which the costs of establishing, amending and operating the European platforms pursuant to Articles 19, 20, 21 and 22 are explained in detail. This report shall be published by the Agency taking due account of sensitive commercial information.

2. The costs referred to in paragraph 1 shall be broken down into:

(a) common costs resulting from coordinated activities of all TSOs participating in the respective platforms;

(b) regional costs resulting from activities of several but not all TSOs participating in the respective platforms;

(c) national costs resulting from activities of the TSOs in that Member State participating in the respective platforms.

3. Common costs referred to in paragraph 2(a) shall be shared among the TSOs in the Member States and third countries participating in the European platforms. To calculate the amount to be paid by the TSOs in each Member State and, if applicable, third country, one eighth of the common cost shall be divided equally between each Member State and third country, five eighths shall be divided between each Member State and third country proportionally to their consumption, and two eighths shall be divided equally between the participating TSOs pursuant to paragraph 2(a). The Member State's share of the costs shall be borne by the TSO or TSOs operating in a territory of that Member State. In case several TSOs are operating in a Member

State, the Member State's share of the costs shall be distributed among those TSOs proportionally to the consumption in the TSOs control areas.

4. To take into account changes in the common costs or changes in the participating TSOs, the calculation of common costs shall be regularly adapted.

5. TSOs cooperating in a certain region shall jointly agree on a proposal for the sharing of regional costs in accordance with paragraph 2(b). The proposal shall then be individually approved by the relevant regulatory authorities of each of the Member States and, if applicable, third country in the region. TSOs cooperating in a certain region may alternatively use the cost sharing arrangements set out in paragraph 3.

6. The cost sharing principles shall apply to costs contributing to the establishing, amending and operating the European platforms from the approval of the proposal for the relevant implementation frameworks pursuant to Articles 19(1), 20(1), 21(1) and 22(1). In case the implementation frameworks propose that existing projects shall evolve into a European platform, all TSOs participating in the existing projects may propose that a share of the costs incurred before the approval of the proposal for the implementation frameworks directly related to the development and implementation of this project and assessed as reasonable, efficient and proportionate is considered as part of the common costs pursuant to paragraph 2(a).

Article 29: Activation of balancing energy bids from common merit order list

1. In order to maintain the system's balance in accordance with Article 127, Article 157 and Article 160 of Regulation (EU) 2017/1485, each TSO shall use cost-effective balancing energy bids available for delivery in its control area based on common merit order lists or another model as set with the proposal by all TSOs pursuant to paragraph 5 of Article 21.

2. TSOs shall not activate balancing energy bids before the corresponding balancing energy gate closure time, except in the alert state or the emergency state when such activations help alleviate the severity of these system states and except when the bids serve purposes other than balancing pursuant to paragraph 3.

3. By one year after the entry into force of this Regulation, all TSOs shall develop a proposal for a methodology for classifying the activation purposes of balancing energy bids. This methodology shall:
(a) describe all possible purposes for the activation of balancing energy bids;
(b) define classification criteria for each possible activation purpose.

4. For each balancing energy bid activated from the common merit order list, the TSO activating the bid shall define the activation purpose based on the methodology pursuant to paragraph 3. The activation purpose shall be notified and visible to all TSOs through the activation optimisation function.

5. In the event that the activation of balancing energy bids deviates from the results of the activation optimisation function, the TSO shall publish the information about the reasons for the occurrence of such deviation in a timely manner.

6. The request for activation of a balancing energy bid from the activation optimisation function shall oblige the requesting TSO and connecting TSO to accept the firm exchange of balancing energy. Each connecting TSO shall ensure the activation of the balancing energy bid selected by the activation optimisation function. The balancing energy shall be settled pursuant to Article 50 and between the connecting TSO and the balancing service provider pursuant to Chapter 2 of Title V.

7. The activation of balancing energy bids shall be based on a TSO-TSO model with a common merit order list.

8. Each TSO shall submit all necessary data for the operation of the algorithm in paragraphs 1 and 2 of Article 58 to the activation optimisation function in accordance with the rules established pursuant to Article 31(1).

9. Each connecting TSO shall submit, prior to the TSO energy bid submission gate closure time, all balancing energy bids received from balancing service providers to the activation optimisation function, taking into account the requirements in Articles 26 and 27. The connecting TSOs shall not modify or withhold balancing energy bids, except for:

(a) balancing energy bids related to Articles 26 and 27;

(b) balancing energy bids that are manifestly erroneous and include an unfeasible delivery volume;

(c) balancing energy bids that are not forwarded to the European platforms in accordance with paragraph 10.

10. Each TSO applying a self-dispatching model and operating within a scheduling area with a local intraday gate closure time after the balancing energy gate closure time pursuant to Article 24 may develop a proposal to limit the amount of bids that is forwarded to the European platforms pursuant to Articles 19 to 21. The bids forwarded to the European platforms shall always be the cheapest bids. This proposal shall include:

(a) the definition of the minimum volume that shall be forwarded to the European platforms. The minimum volume of bids submitted by the TSO shall be equal to or higher than the sum of the reserve capacity requirements for its LFC block according to Articles 157 and 160 of Regulation (EU) 2017/1485 and the obligations arising from the exchange of balancing capacity or sharing of reserves;

(b) the rules to release the bids that are not submitted to the European platforms and the definition of the point in time at which the concerned balancing service providers shall be informed of the release of its bids.

11. At least once every two years after the approval of the proposal in paragraph 10 by the respective regulatory authority, all TSOs shall assess the impact of limiting the volume of bids sent to the European platforms and the functioning of the intraday market. This assessment shall include:

(a) an evaluation by the relevant TSOs on the minimum volume of bids that shall be forwarded to the European platforms pursuant to paragraph 10(a);

(b) a recommendation to the relevant TSOs limiting balancing energy bids.

Based on this assessment, all TSOs shall make a proposal to all regulatory authorities to review the minimum volume of balancing energy bids that shall be forwarded to the European platforms

pursuant to paragraph 10(a).

12. Each requesting TSO may request the activation of balancing energy bids from the common merit order lists up to the total volume of balancing energy. The total volume of balancing energy that can be activated by the requesting TSO from balancing energy bids from the common merit order lists is calculated as a sum of volumes of:

(a) balancing energy bids submitted by the requesting TSO not resulting from sharing of reserves or exchange of balancing capacity;

(b) balancing energy bids submitted by other TSOs as a result of balancing capacity procured on behalf of the requesting TSO;

(c) balancing energy bids resulting from the sharing of reserves under the condition that the other TSOs participating in the sharing of reserves have not already requested the activation of those shared volumes.

13. All TSOs may establish in the proposals for the implementation frameworks for the European platforms pursuant to Articles 19, 20 and 21 the conditions or situations in which the limits set out in paragraph 12 shall not apply. When a TSO requests balancing energy bids beyond the limit set out in paragraph 12, all other TSOs shall be informed.

14. Each TSO may declare the balancing energy bids submitted to the activation optimisation function unavailable for the activation by other TSOs because they are restricted due to internal congestion or due to operational security constraints within the connecting TSO scheduling area.

Article 31: Activation optimisation function

1. All TSOs shall establish an activation optimisation function in accordance with Article 29 and this Article for the optimisation of the activation of balancing energy bids from different common merit order lists. This function shall take into account at least:

(a) activation processes and technical constrains from different balancing energy products;

(b) operational security;

(c) all balancing energy bids included in the compatible common merit order lists;

(d) the possibility to net the counteracting activation requests from TSOs;

(e) submitted activation requests of all TSOs;

(f) available cross-zonal capacity.

2. Common merit order lists shall consist of balancing energy bids from standard products. All TSOs shall establish the necessary common merit order lists for the standard products. Upward and downward balancing energy bids shall be separated in different common merit order lists.

3. Each activation optimisation function shall use at least one common merit order list for upward balancing energy bids and one common merit order list for downward balancing energy bids.

4. TSOs shall ensure that the balancing energy bids submitted to the common merit order lists are expressed in euros and make reference to the market time unit.

5. Depending on the requirement for standard products for balancing energy, TSOs may create

more common merit order lists.

6. Each TSO shall submit its activation requests for balancing energy bids to the activation optimisation function.

7. The activation optimisation function shall select balancing energy bids and request the activation of selected balancing energy bids from the connecting TSOs where the balancing service provider, associated with the selected balancing energy bid, is connected.

8. The activation optimisation function shall submit the confirmation of the activated balancing energy bids to the TSO requesting the activation of the balancing energy bids. The activated balancing service providers shall be responsible for delivering the requested volume until the end of the delivery period.

9. All TSOs that operate the frequency restoration process and the reserve replacement process to balance their LFC area shall strive to use all balancing energy bids from relevant common merit order lists to balance the system in the most efficient way, taking into account operational security.

10. TSOs that do not use the reserve replacement process to balance their LFC area shall strive to use all balancing energy bids from relevant common merit order lists for frequency restoration reserves to balance the system in the most efficient way, taking into account operational security.

11. Except in the normal state, TSOs may decide to balance the system using only the balancing energy bids from balancing service providers in its own control area if such decision helps alleviate the severity of the current system state. The TSO shall publish a justification for such decision without undue delay.

Article 58: Balancing algorithms

1. In the proposals pursuant to Articles 19, 20 and 21, all TSOs shall develop algorithms to be operated by the activation optimisation functions for the activation of balancing energy bids. Those algorithms shall:
(a) respect the activation method of balancing energy bids pursuant to Article 29;
(b) respect the pricing method for balancing energy pursuant to Article 30;
(c) take into account the process descriptions for imbalance netting and cross-border activation pursuant to Part IV Title III of Regulation (EU) 2017/1485.
[…]
4. All algorithms developed in accordance with this Article shall:
(a) respect operational security constraints;
(b) take into account technical and network constraints;
(c) if applicable, take into account the available cross-zonal capacity.

1.2. The mFRR IF Proposal

All Transmission System Operators (hereafter referred to as the "**TSOs**") submitted a common mFRR IF proposal to their respective Regulatory Authorities dated 18 December 2018.

The mFRR IF proposal needs to be assessed while taking into account two additional proposals developed pursuant to Articles 30(1) and 50(1) Regulation 2017/2195: i) methodology to determine prices for the balancing energy that results from the activation of balancing energy bids for the frequency restoration process; and ii) common settlement rules

A draft mFRR IF proposal was consulted by all TSOs through ENTSO-E from 15 May 2018 to 16 July 2018 in line with Article 10 Regulation 2017/2195. Along with the draft proposal, all TSOs published an explanatory document. In the public consultation, all TSOs were seeking input from stakeholders and market participants on the draft proposal. All Regulatory Authorities closely observed, analysed and continuously provided feedback and guidance to all TSOs during various meetings and through a shadow opinion of All Regulatory Authorities (dated: 25 June 2018).

The final version of the mFRR IF proposal, dated 18 December 2018, was received by the last Regulatory Authority on 11 February 2019, together with an updated explanatory document giving background information and rationale for the all TSOs' proposal.

Article 5(6) Regulation 2017/2195 requires all Regulatory Authorities to consult and closely cooperate and coordinate with each other in order to reach an agreement, and make a decision within six months following receipt of submissions to the last Regulatory Authority. A decision was therefore required by each Regulatory Authority by 11 August 2019.

Article 5(7) Regulation 2017/2195 provides that where the relevant regulatory authorities have not been able to reach agreement within the specified period or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals.

While Regulatory Authorities agree that they cannot approve the mFRR IF proposal without further amendments they do not reach an agreement on all the amendments that they would request. Therefore, they jointly request ACER to adopt a decision concerning the mFRR IF proposal according to Article 5(7) Regulation 2017/2195.

1.3. All Regulatory Authorities position

All Regulatory Authorities have not reached an agreement on all the amendments that they would like to request. They have not identified a way forward for potential additional amendments (A), but they managed to reach agreement on a series of required amendments to the mFRR IF proposal (B).

A. Disagreements on potential amendments between Regulatory Authorities

Scheduled counter-activation (SCA)

Relates to Articles:
Art. 3 – High level design of the mFRR platform
Art. 11 – Description of the optimisation algorithm
Art. 11(4) – As TSOs propose unlimited allowance of SCA there is no constraint for SCA in that Article

Scheduled counter-activation (SCA) refers to the simultaneous activation of positive and negative balancing energy bids by the Activation Optimisation Function which thus increases mFRR economic surplus. SCA can indeed take place when there are negative balancing energy bids with higher prices than positive balancing energy bids (e.g. if some BSPs would want to pay higher prices to reduce their production or increase their demand than the prices that some other BSPs would want to receive to increase their production or decrease their demand). SCA would be the output of the Activation Optimisation Function as such an activation would result in a higher mFRR economic surplus. In addition, TSOs have noted that in certain cases, SCA may assist with meeting TSO demand at the least cost given indivisibility of bids.

Positions of Regulatory Authorities

SCA is a potential outcome of the objective of maximising "economic surplus" being applied in the platforms. However, while TSOs are able to block SCA in the aFRR platform and propose to do so, there are a number of features in the mFRR platform, in particular elastic demand, indivisibility and smart bids that make this difficult or even infeasible. TSOs also differed on their views on whether SCA should be allowed in the balancing platforms and decided to propose the blocking of SCA in the aFRR platform and allowing it in the mFRR platform.

Some Regulatory Authorities see SCA as an important efficiency enhancing feature of the platform as it would ensure a more efficient dispatch of energy and would increase the mFRR economic surplus of the platform that would otherwise be lost if SCA was not allowed. Other Regulatory Authorities believe that the loss of the mFRR economic surplus would be captured on other trading platforms to thereby avoid the loss of surplus. These Regulatory Authorities also have severe concerns that SCA could be seen as an action that goes against the purpose of the platform and the role of the TSO and that the feature would make the platform an attractive cross-border trading alternative. Regulatory Authorities extensively discussed this point among themselves and with TSOs.

Regulatory Authorities acknowledge that the SCA is a matter of interest, especially for balancing service providers in unit-based systems, where indivisible bids and linking of bids can better reflect the technical and commercial needs of those balancing service providers. Regulatory Authorities therefore acknowledge that the SCA should be allowed, at least as a starting point, so that the mFRR platform can function properly. Regulatory Authorities also acknowledge that a meaningful assessment of the impact of the SCA is not possible at this stage, as the relevant data on the frequency and the impact of SCA could only be obtained after the mFRR platform becomes operational.
Regulatory Authorities are aware that prohibiting SCA in the future could entail the necessity for far-reaching changes in the setup of the mFRR platform.

Regulatory Authorities failed to reach a compromise, through which SCA would have been allowed and monitored in the first years of the platform, as there was no agreement on the default position to adopt at the end of this initial period: either a resubmission based on the evaluation or terminate the possibility to have recourse to SCA.

Some Regulatory Authorities demand that the mFRR IF proposal be amended so as to:

a) allow SCA for the first five years of operation of the platform;
b) by default, prohibit SCA at the end of the first five years of operation;
c) require TSOs to issue, by three years after the approval of the mFRR IF proposal, a report assessing whether the mFRR IF needs changes in order to accommodate for the ceasing of SCA and what changes are needed;
d) allow TSOs to make the necessary changes to the mFRR platform until SCA ceases 5 years after approval of the IF. The approved IF thereby would already now allow TSOs to make those necessary changes;
e) have an option to keep the SCA by means of handing in an amended mFRR IF proposal to the relevant Regulatory Authorities before the 5 year deadline supported by an evaluation. This evaluation would have to i) prove that SCA is beneficial (the lack of negative impact would not be sufficient); ii) include an assessment of:
    a) the effects of SCA on Cross Zonal Capacity;
    b) the functioning of the mFRR platform;
    c) the influence on Intraday market;
    d) the avoidance of CO2-emissions; and
    e) other positive European economic advantages
    f) and other criteria to be developed

Other Regulatory Authorities, including those that believe scheduled counter-activation should be allowed and is beneficial to the platform, reached a compromise whereby:

i) the mFRR IF proposal would require TSOs to perform an evaluation of the impacts of SCA after 3 years, and

ii) the mFRR IF proposal would be resubmitted to Regulatory Authorities to decide, on the basis of the evaluation, whether to allow or prohibit SCA. The evaluation should also include what changes would be needed to the platform to enable a restriction of SCA.

These Regulatory Authorities also agree that they could allow SCA if the evaluation shows that SCA would not have a detrimental impact on the mFRR platform nor on the intraday market (e.g. SCA would occur only to a limited extent). These Regulatory Authorities suggest that the specific criteria of the evaluation in the mFRR IF would be developed with TSOs and Regulatory Authorities during the ACER approval process with input from stakeholders to allow a fair and balanced representation of the impact of SCA.

Guaranteed volume

Relates to Articles:
Art. 2(2)(e) – definition direct activatable bid, Art. 2(2)(x) – definition scheduled activatable bid
Art. 3(4)(a) – Demand for direct activation is always inelastic
Art. 3(10) – Concept of Guaranteed volume

Art. 7(1) – Bid characteristic
Art. 10 – Common merit order lists
Art. 11(1) and 11(2) – input for SA and DA
Art. 13 – monitoring

All Regulatory Authorities agree on a number of key changes to the mFRR IF proposal to minimise any negative impact of guaranteed volume (see section B Guaranteed volume). Regulatory Authorities did, however, not find an agreement on whether only the most expensive balancing energy bids could form part of any guaranteed volume or whether the balancing energy bids from contracted capacities that are not the most expensive balancing energy bids can also form part of any guaranteed volume. Regulatory Authorities therefore ask ACER to investigate the impacts that such arrangements would have on the mFRR platform and on the market.

B. Topics of agreement between Regulatory Authorities

Guaranteed volume

Relates to Articles:
Art. 2(2)(e) – definition direct activatable bid, Art. 2(2)(x) – definition scheduled activatable bid
Art. 3(4)(a) – Demand for direct activation is always inelastic
Art. 3(10) – Concept of Guaranteed volume
Art. 7(1) – Bid characteristic
Art. 10 – Common merit order lists
Art. 11(1) and 11(2) – input for SA and DA
Art. 13 – monitoring

The current mFRR IF proposal provides for balancing energy bids to be submitted either for scheduled activation only or for scheduled and direct activation in one common merit order list. This choice impacts other features of the mFRR platform related to the use and price of the balancing energy bids and leads to the introduction of the concept of guaranteed volume (GV). GV is an amount of balancing energy bids that can be direct activated that TSOs could mark as unavailable for activation by other TSOs under Article 29(14) due to operational security constraints.

Positions of Regulatory Authorities
Some Regulatory Authorities have concerns either with the concept of having scheduled activations as well as direct activations in one CMOL or with the concept of guaranteed volume. There are also some Regulatory Authorities that doubt if the proposed way of marking bids as unavailable for use by the connecting TSO is in line with Article 29 (14) EBGL. Nonetheless after extensive discussions with TSOs on alternatives to the proposed setup, Regulatory Authorities agreed to keep the approach of GV, while requesting significant improvements. Moreover, Regulatory Authorities believe that the current TSO proposal is not transparent enough on the rules that would govern the use of GV within the mFRR platform and how those rules will ensure that GV does not negatively distorts the mFRR market.

Regulatory Authorities consider the following amendments to the mFRR IF proposal as necessary:

a) amend Article 3(10) to clarify that it applies only to directly activated bids;
b) amend Article 3(10) to provide greater clarity and definition on the marking of a bid as unavailable for the connecting TSO (referred in the explanatory document as GV). While Regulatory Authorities are not in favour of local reservation of volumes of mFRR bids, they understand TSOs' concerns of having sufficient balancing energy to balance their systems. Regulatory Authorities consider it fundamental to ensure sufficient transparency of the amount of GV and of the balancing energy bids that are marked unavailable for guaranteeing any volume for local activation by TSOs and that the process does not negatively distort the mFRR market.
c) insert the rules necessary to determine the volume of GV. In particular, the mFRR IF proposal should contain a requirement for the TSOs intending to use GV to insert the rules in their National Terms and Conditions pursuant to Article 18 Regulation 2017/2195. The mFRR IF proposal should finally contain i) criteria or principles for the determination of the volume of GV to ensure that the volume is limited to the strictly minimum necessary for TSOs to ensure compliance with FRCE target parameters as defined in Article 128 Regulation 2017/1485 or another suitable target determined through the ACER approval process in consultation with relevant stakeholders, and ii) a cap for the volume of GV.
d) provide that the available volume of GV reduces during an Imbalance Settlement Period as TSOs use GV and the need for GV decreases.
e) introduce for instance in Article 13 a strong monitoring framework, including the monitoring objectives, the metrics monitored, the periodicity of reporting, and provisions on stakeholder involvement. In addition, it should be clear what actions TSOs would take, based on the monitoring results, to review and lower the cap on GV as TSOs gain operational knowledge of the platform.

All Regulatory Authorities believe the Implementation Framework should incorporate as much as possible the features requested by Regulatory Authorities above within the platform and that they should keep this under review going forward with the objective of increasingly having these features form part of the algorithm.

Elastic demand

Relates to Articles:
Art. 2(2)(i) – Definition
Art. 3 – conditions for using elastic demand
Art. 13 – monitoring of elastic demand

Elastic demand is a TSO demand for activation of standard mFRR balancing energy product bid, depending on the price of the product. This can be used by TSOs if there is uncertainty about the expected imbalance in the future and/or if there are alternatives to the mFRR product. This is seen by TSOs as a useful feature following a proactive balancing approach. The elastic demand concept is expected to increase the mFRR demands volume submitted by TSOs to be

satisfied through the mFRR platform, since it will allow TSOs to better consider the uncertainty of the imbalance and the alternative solutions within their decision perimeter.

In accordance with Article 3(4)(a) mFRR IF proposal, elastic demand can only be submitted for scheduled activation, as demand for direct activation is always inelastic.

Positions of Regulatory Authorities

In their shadow opinion, Regulatory Authorities found the following compromise.

Regulatory Authorities recognised that TSOs have different ways of balancing and were supportive of the TSO proposal to accommodate these differences. The Regulatory Authorities asked that the high-level principles that determine how elastic TSO demands are created should be published. These principles should ensure clarity on effect of introduction of elastic demands from TSOs on consumers and BSPs, including any potential market distortion, and describe the alternatives considered to elastic demands and the reasons for their rejection. Regulatory Authorities requested that TSOs include as many of these principles as feasible in the Implementation Framework. TSOs explanations on how this proposal is consistent with the EBGL framework would be welcomed and would feed in Regulatory Authorities discussions, since some Regulatory Authorities were not convinced that the proposal is consistent with the EBGL.

Regulatory Authorities recognised that transparency is key to give the market confidence that the use of elastic demands is not preventing the mFRR platform from meeting the EBGL objectives. Given that this feature is new to market participants in some areas, Regulatory Authorities asked that further transparency is given to the market. This should take the form of a TSO commitment in the IF to report on the TSO elastic needs in the same way as all the other BE bids and to frequently monitor and report on the use of elastic needs, its impacts, and the reasons behind its use, in consultation with market participants.

For the avoidance of doubt, while Regulatory Authorities were supportive of the flexibility, they did not support the misuse of this feature to restrict access to requesting TSOs of economic mFRR bids available to the connecting TSOs, or any other practices affecting wholesale energy markets prohibited by Regulation (EU) No 1227/2011 (REMIT). If such misuse becomes apparent, all Regulatory Authorities agreed to take all measures available to them to ensure this is not the case.

Regulatory Authorities consider that their requests from the shadow opinion on including high level principles in the IF was not fulfilled. Article 3(4)(b) of the mFRR IF proposal indeed only states that such principles shall be communicated to relevant Regulatory Authorities . Therefore, Regulatory Authorities ask that as many as possible of the high level principles to be added to the mFRR IF proposal. Also, a description of the methodology of the application of elastic mFRR demand shall be included in the national terms and conditions pursuant to Article 18 Regulation 2017/2195 at the request of the regulatory authority.

Apart from the concerns that existed at the time of the shadow opinion some Regulatory Authorities see the concept of elastic demand also critical because, according to TSOs, it would hinder or make unfeasible – together with other design features – the blocking of scheduled counter activations these Regulatory Authorities would desire.

URdBs, UABs, price divergence

Relates to Articles:
Art. 6 – Functions of the platform
Art. 7 – Definition of the mFRR balancing energy product
Art. 11 – Description of the optimisation algorithm

According to the explanatory document, TSOs intended to prevent the rejection of Unforeseeably Rejected divisible Bids (URdBs) as described in section 3.3.2 of the ED to provide an incentive to balancing service providers to bid divisible bids. However, they have not committed to it in the mFRR IF proposal because they were assessing the impact of constraints on the algorithm. Regulatory Authorities have asked for disallowing the URdBs in the shadow opinion.

In a meeting on 3 April 2019, TSOs presented how they intend to ensure appropriate incentives for divisible bids while at the same time ensuring that the Activation Optimisation Function can find solutions to satisfy the demand and prevent price divergence. The main points of the TSOs' presentation were:

a) To disallow unforeseeably accepted bids (UAB)
b) To allow the occurrence of unforeseeably rejected indivisible bids (URiBs)
c) The price convergence within an uncongested area will be enforced by the algorithm
d) To penalize the occurrence of URdBs

So while complete non-allowance of URdBs as mentioned in the explanatory document and in the Regulatory Authorities Shadow Opinion is not described in the mFRR IF proposal, Regulatory Authorities are satisfied that:

a) URdBs are penalised in the algorithm;
b) incentives for divisible bids are present;
c) the solution is able to cope with situations that a simple rule of only strictly forbidding URdB could not cope with; and
d) price divergence/different marginal prices in an uncongested area should at least in the case of Article 3(2)(b)(i) of Pricing Proposal no longer occur (could be taken out of PP)

Regulatory Authorities do not object to the proposed solution, but ask that the principles of the decision to be included in the mFRR IF proposal. This would most likely require some input from TSOs on the appropriate wording of the general principles to be included in the mFRR IF proposal.

Other topics (by Article)

Article 2 – Definitions and interpretations

The following amendments should be made to the proposal aligning between aFRR IF mFRR IF, IN IF, and RR IF where applicable:

a) Economic surplus: the definition should be aligned with the definition proposed in the aFRR IF referral paper

b) Article 2(2)(c): amend the definition to align with the definition proposed in the redone proposal IN IF.
c) Article 2(2)(e) and (x): amend the wording of the definition as the current wording seems circular.
d) Article (2)(2)(g): amend the definition to clarify that economic linking can only occur for the same balancing service provider.
e) Article 2(2)(h) : amend the definition so that it recognises that inelastic demand is priced at the technical IT limit.
f) Article 2(2)(u) or Article 7(2)(a) : amend the definition or the provision to have similar wording, as definition is currently not used.
g) Article 2(2)(bb): amend the definition to specify that linking can only occur for the same balancing service provider.
h) Insert two new definitions for: a) technical IT limitation, and b) mFRR power balance equation.

Article 3 – High-level design of the mFRR-Platform

In Article 3(4)(a) the term “scheduled auction” should be exchanged by “scheduled activation”.

Regulatory Authorities also see the necessity that the mFRR IF proposal includes a more explicit description of how the system constraint purpose activation is inputted into the algorithm in paragraph 5(f), i.e. as intended by TSOs as a desired flow at the border. This also relates to a request under Article 11 for similar clarity in the description of the algorithm.

Regulatory Authorities also ask for greater clarity to be included in the mFRR IF proposal on how the usage of system constraints purposes is requested and coordinated between TSOs, in the context of the coordinated security analysis methodology (CSAM) under the Regulation (EU) No 2017/1485 (SOGL).

Paragraph 9(a) should also be amended to include that an output of the platform is the bids that need to be activated by each TSO.

Paragraphs 16(a) and 17 should be amended to correct their cross references within the mFRR IF proposal to currently non-existing Articles (Article 4(a) and Article 5(5) respectively). Regulatory Authorities believe that TSOs intended to refer to Article 4 and Article 5(4)(e), respectively.

Article 4 - Calculation of the mFRR cross-border capacity limits as input to the optimisation algorithm

All Regulatory Authorities are mindful that the sequential allocation of cross-zonal capacity across different balancing energy processes as described in Article 4(2) will, if used in the preceding balancing process reduce the availability of cross-zonal capacity for TSOs in a particular direction for the subsequent process. Areas that structurally rely on aFRR activations for their balancing needs may be particularly affected, and that this may in turn lessen the efficiency of the aFRR platform itself given that the aFRR-platform is the last process after the intraday market.

All Regulatory Authorities therefore agree that TSOs should coordinate the steps for the determination of available cross-zonal capacity in Article 4 of the mFRR IF proposal with the other platforms. All Regulatory Authorities believe that the mFRR IF proposal should include a

provision that, when interchanges resulting from other European platform(s) physically impact borders that are not part of that platform to the extent that it endangers operational security, TSOs shall resolve the issue in a coordinated manner and jointly propose measures to avoid or mitigate the occurrence of similar issues in the future.

All Regulatory Authorities question the efficiency of the TSO choice that the remaining cross-zonal capacity is sent back to TSOs and resubmitted to each platform consecutively. This could mean that different values on each side of the border are submitted whereas the value remaining after IDCZGCT is already coordinated and the same. Instead, all Regulatory Authorities would invite TSOs to explore an alternative where the CZC remaining after IDCZGCT is directly sent to the platforms, with TSOs amending this value pursuant to the rights as proposed in Article 4 of this IF or as allowed within the broader context of SOGL and EBGL. Therefore, all Regulatory Authorities therefore suggest to replace the wording “each TSO” in article 4.2 with “All TSO shall continuously update and provide …” in order to reflect this centralization.

In the proposal the term cross-border capacity is used instead of cross-zonal capacity, which would be consistent with Regulation 2017/2195. It would be important to clarify if there are differences between the two concepts and, if so, to clearly explain them in the mFRR IF proposal.

Regulatory Authorities also ask that paragraph 2(a)(ii) is amended to include the publishing of the technical IT limit.

Article 5 – The roadmap and timeline for the implementation of the mFRR-Platform

Regulatory Authorities ask that paragraph 4(a) be amended to include a reference to Article 20(4) Regulation 2017/2195.

Regulatory Authorities also ask i) for clarity in paragraph 4(d) on when the platform will be operational; ii) that the paragraph is clearer on the timetable for the accession roadmap; iii) for the deletion of paragraph 4(e) as it only duplicates requirements from Regulation 2017/2195.

Article 5(1) should be implemented with a minimum period following the approval of the mFRR platform, in order to allow balancing service providers and balance responsible parties sufficient time to prepare for the requirements of the mFRR IF proposal. Article 5(1) could be amended to read: “By thirty months, but no less than twelve months after the approval of this mFRR IF, the mFRR platform shall fulfill every requirement defined in this mFRR IF and further requirements according to Article 30 and 50 Regulation 2017/2195.

Article 6 – Functions of the mFRR platform

The optional introduction of a Cross Zonal Capacity (CZC) function (“a CZC calculation function may be added”) within the current mFRR IF proposal should be removed. While Regulatory Authorities are not necessarily opposed to this function existing, the approval of a new function should follow the amendment process as prescribed in Regulation 2017/2195. In a proposal for

a CZC function, TSOs need to make it clear how it provides an efficient and robust solution.

Article 7 – Definition of mFRR balancing energy product

Regulatory Authorities consider the following points for improvement:

- Remove “at least” from paragraph 2 as nationally defined parameters are discussed in paragraph 3.
- Ensure that the description of the validity period in paragraph 1 gives clarity to the balancing service providers on the period where its bid can be activated in line with Article 2(33) Regulation 2017/2195, i.e. include a start and end time. Information on delivery period should be clarified in its own subpoint.
- Ensure that the definitions of economic linking in paragraph 2(a) are in line with Article 2.

Article 9 – TSO energy bid submission gate closure

Paragraph 1 needs to be amended to reflect that all bids need to be submitted to the platform, and not only the available bids. This includes bids marked as unavailable in accordance with Article 9(2) of the mFRR. As a result, the bids marked as unavailable could be included in the common merit order list if the connecting TSOs change their status to available at a later point in time.

All Regulatory Authorities express concerns about the influence TSOs have to affect market results and about the lack of transparency provided in Article 9(2) of the mFRR IF proposal about the conditions under which TSOs are able to invoke Article 29(9) and 29(14) Regulation 2017/2195. Therefore, all Regulatory Authorities request that the detailed definitions and methodologies behind Article 29(9) and 29(14) should be included in the national terms and conditions, as well as the process behind Article 24(4) and its impact on settlement.

Article 10 – Common merit order lists to be organised by the Activation Optimisation Function

Further clarity is needed in line with Regulatory Authorities agreement on GV and how this feature is applied in the common merit order list. This needs to be reflected in the text of Article 10. Unavailable bids are part of the merit order, also see above comment on Article 9.

Article 11 – description of the Activation Optimisation Function

Regulatory Authorities consider the following points for improvement:

a) 11(4)(a): The term “power balance equation” could be defined in the definitions part or described in 11(4)(a) itself.
b) 11(4)(b): It should be LFC areas instead of LFC area.

The description of the constraints on paragraph 4(e) should more clearly reflect TSOs intentions regarding activation for system constraints purposes, i.e. as a desired flow range at the border. This request is related to a similar one in Article 3 on the inputs to the algorithm.

Some Regulatory Authorities want to include in this Article the description of how bids that are activated for system constraint purposes are identified is included in the mFRR IF. This is currently included in Article 3(5) of the Activation Purposes proposal.

Article 12 – proposal of entity

All Regulatory Authorities are not in favour of the proposal by all TSOs for entity or entities elaborated in Article 12 of the IF. Therefore, Regulatory Authorities believe that the proposal of entity needs to be amended in line with the respective request stated in the request for amendment for the proposal for the IN IF.

Article 13 – Governance

Regulatory Authorities see the need for clarifications and improvements on the monitoring Article 13(3) of the proposal foresees as it is not defined to whom TSOs shall report. Regulatory Authorities are of the opinion that TSOs shall report to them and that the monitoring reports shall also be published. TSOs shall create common monitoring reports. Regulatory Authorities refer to the need for having an extensive monitoring on guaranteed volumes (see above).

Also the following points should be monitored: availability of CZC for the different products on the balancing platforms, and the use of system constraints purpose on the platform. In addition, it should be clear in the mFRR IF proposal what actions TSOs would take based on the monitoring results.

Article 14 – Decision-making process

Regulatory Authorities believe that the mFRR IF proposal needs to be amended to remove duplication with Regulation 2017/2195 voting principles and only refer to it in paragraph 6. Regulatory Authorities are not concerned that TSOs aim for unanimity in their decisions in the first instance.

Article 15 – Categorisation of costs and detailed principles for sharing the common and regional costs

Regulatory Authorities believe that this Article has wrongly numbered paragraphs: (9), (10), (11), (10), (12).

Article 16 – Framework for harmonisation of terms and conditions

Regulatory Authorities believe that the mFRR IF proposal needs to be clearer on the steps that the TSOs must take to review the harmonisation of terms and conditions following the annual monitoring process so that it is clear when there is a harmonisation at European level and then implementation at national level.

New article – Fallback procedures

According to Article 28 Regulation 2017/2195 “each TSO shall ensure that fall-back solutions are in place”. Paragraph (2) specifies that “where the procurement of balancing services fails, the concerned TSOs shall repeat the procurement process. TSOs shall inform market participants that fall-back procedures will be used as soon as possible.” Paragraph (3) further sets out that “where the coordinated activation of balancing energy fails, each TSO may deviate from the common merit order list activation and shall inform market participants as soon as possible.” Therefore, Regulatory Authorities believe that a new Article in the mFRR IF on the fall-back procedure should be added that will especially address the information requirement of Article 28(2) and 28(3) Regulation 2017/2195.

1.4. Actions

All Regulatory Authorities have assessed, consulted, closely cooperated and coordinated in order to reach an agreement. All Regulatory Authorities have not been able to reach an agreement within the period of six months following the receipt of the Proposal according to Article 20(1) Regulation 2017/2195.

According to Article 5(7) of the EBGL, All Regulatory Authorities hereby jointly request the Agency to adopt a decision concerning the Proposal according to Article 20(1) Regulation 2017/2195. The decision shall take into account All Regulatory Authorities' assessment in the topics of agreement stated above. Besides these considerations, All Regulatory Authorities inform the Agency on the topics of disagreement which prevented an agreement to be reached among All Regulatory Authorities. The Agency shall adopt its decision by no later than six months after the day of referral, in accordance with Article 5(7) of Regulation 2017/2195.