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## **APPROVAL BY RELEVANT REGULATORY AUTHORITIES**

**ON**

# **THE TSOs' PROPOSAL FOR THE ESTABLISHMENT OF COMMON AND HARMONISED RULES AND PROCESSES FOR THE EXCHANGE AND PROCUREMENT OF BALANCING CAPACITY FOR FREQUENCY CONTAINMENT RESERVES (FCR) IN ACCORDANCE WITH ARTICLE 33 AND EXEMPTION IN ACCORDANCE WITH ARTICLE 34 OF COMMISSION REGULATION 2017/2195 ESTABLISHING A GUIDELINE ON ELECTRICITY BALANCING AS AMENDED IN OCTOBER 2018**

**28 November 2018**



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## I. Introduction and legal context

This document elaborates an agreement of the relevant Regulatory Authorities, agreed by email on 28 November 2018, on the amended TSOs' proposal for the establishment of common and harmonised rules and processes for the exchange and procurement of balancing capacity for FCR, in accordance with Article 33, and on the amended request for exemption in accordance with Article 34 of the Regulation 2017/2195<sup>1</sup>.

The FCR TSOs' proposal for the establishment of common and harmonised rules and processes for the exchange and procurement of balancing capacity for FCR (**FCR proposal**) was received by the last relevant Regulatory Authority on 14 June 2018, together with a request for exemption of the obligation to allow balancing service providers to transfer their obligations to provide balancing capacity in accordance with Article 34 of Regulation 2017/2195 (**request for exemption**). In line with Article 6(1) of Regulation 2017/2195, in September 2018 the relevant Regulatory Authorities requested amendments to the FCR TSOs' proposal in accordance with Article 33 and the request for exemption in accordance with Article 34. The amended proposal and request for exemption were submitted to the relevant Regulatory Authorities on 19 October 2018.

This agreement of the relevant Regulatory Authorities shall provide evidence that a decision on the amended FCR proposal in accordance with Article 33 and the amended request for exemption in accordance with Article 34 do not, at this stage, need to be adopted by ACER pursuant to Article 6(2) of Regulation 2017/2195. This agreement is intended to constitute the basis on which the **relevant Regulatory Authorities will each subsequently adopt a decision** to the amended TSOs' proposal for the establishment of common and harmonised rules and processes for the exchange and procurement of balancing capacity for FCR and the amended TSO's request for exemption in accordance with Article 34.

The legal provisions relevant to the submission and approval of the amended FCR proposal can be found in Articles 5, 32, 33 and 34 of Regulation 2017/2195.

**Article 5(5)** of Regulation 2017/2195 specifies that the proposals shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of this Regulation.

**Article 32** lays down general procurement rules for reserve capacity, which shall be performed on a short-term basis to the extent possible and where economically efficient.

**Article 33** of Regulation 2017/2195 gives general provisions regarding the exchange of balancing capacity, which can be established by two or more TSOs mutually willing to exchange balancing capacity.

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<sup>1</sup> Commission regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing



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**Article 34** provides rules for allowing the transfer of balancing capacity in the geographical area where the procurement takes place and lays down the possibility for TSOs requesting an exemption. The condition for this exemption is a contracting period of strictly less than one week.

**In particular, Article 5(5)** specifies that: Relevant Regulatory Authorities can grant a longer implementation timescale than 12 months by common approval.

The common FCR procurement covers currently TSOs in Austria, Belgium, France, Germany, Switzerland and the Netherlands. Relevant Regulatory Authorities for the common FCR procurement are situated in Austria, Belgium, Denmark, France, Germany and the Netherlands. In the specific case of Denmark the relevant Regulatory Authority DUR will approve the amended FCR proposals together with the other participating countries but the requirements will become applicable at a later point in time which is yet to be defined.

Switzerland with the Swiss TSO Swissgrid participates in the common procurement but is not part of the approval process in accordance with Commission regulation (EU) 2017/2195 due its non-EU status. Nevertheless Swissgrid will apply the requirements in the amended FCR proposal in accordance with the TSOs' implementation plan in line with national Swiss law.

## II. The TSOs' FCR Proposal and request for exemption

The draft FCR proposal and the draft request for exemption were consulted by relevant TSOs for one month, from 15 January 2018 to 15 February 2018, in line with Article 10 of Regulation 2017/2195. Along with the draft proposals, the relevant TSOs published a consultation report from the first unofficial consultation.

The final version of the relevant TSOs' FCR proposal, dated 26 April 2018, was received by the last Regulatory Authority on 14 June 2018, together with a separate document providing a clear and robust justification for including or not the views resulting from the consultation. The proposal includes a proposed timescale for its implementation and a description of its expected impact on the objectives of Regulation 2017/2195, in line with Article 10(6) of Regulation 2017/2195. Next to this proposal, TSOs have also requested an exemption from the obligation to allow the transfer of balancing capacity in accordance with Article 34. Following the relevant Regulatory Authorities' request for amendment in September 2018, the amended proposal and amended request for exemption were submitted on 19 October 2018 to the relevant Regulatory Authorities.

Article 6(1) of Regulation 2017/2195 states that where one or several Regulatory Authorities have required an amendment in order to approve the terms and conditions or methodologies, the relevant TSOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the relevant Regulatory Authorities. Relevant Regulatory Authorities shall decide on the amended terms and conditions or methodologies within two months following their submission. After receiving the amended FCR proposal and request for exemption on 19 October 2018, a decision is therefore required by each relevant Regulatory Authority by 19 December 2018.



### **III. Relevant FCR Regulatory Authorities' position on amended FCR proposal in accordance with Article 33**

Relevant Regulatory Authorities acknowledge that the amended FCR proposal as submitted by TSOs meets the requirements of Regulation 2017/2195.

The request for amendments dating from 25 September, also considering stakeholders' feedback, asked for postponing the first implementation step of daily auctions (on week days only) to the 1 July 2019 to ensure sufficient implementation time for FCR providers. The postponement also aligns two implementation steps and reduces the number of intermediary changes for FCR market participants: the parallel implementation of marginal pricing and daily auctions (on week days only) makes it easier for FCR providers to adapt their bidding strategy with only one change instead of two.

Products with shorter validity periods and closer to real-time Gate Closure Times ensure compliancy with Article 32(2)b of regulation 2017/2195 which requires that the procurement process is performed on a short-term basis to the extent possible and where economically efficient. Auctions closer to real time enable FCR providers to improve their prognoses for load and/or generation, thereby reducing uncertainties.

The amended FCR proposal contributes to the integration of balancing markets for FCR in the participating countries and ensures a level playing field for FCR providers.

### **IV. Relevant FCR Regulatory Authorities' position on amended request for exemption in accordance with Article 34**

Relevant Regulatory Authorities acknowledge that the amended exemption proposal as submitted by TSOs meets the requirements of Regulation 2017/2195.

The cross-border transfer of balancing capacity in accordance with requirements in Article 34 in the FCR region is technically challenging. The establishment of harmonized and closer to real time procurement is seen as the major driver to establish a level playing field for FCR providers.

The one-year period in Article 65(2) for the direct application of Article 34 would have been relevant as long as the TSOs do not request an exemption. Since the TSOs have submitted to relevant Regulatory Authorities a request for exemption in accordance with Article 34(1), the Article 5(5) does apply by default and relevant Regulatory Authorities need to define a timescale for implementation of the alternative arrangements. This alternative timescale sets the date of implementation, for contracting periods for FCR capacity strictly less than one week, to 1 July 2019. This proposed implementation timescale is not longer than 12 months in accordance with Article 5(5)<sup>2</sup>.

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<sup>2</sup> Text can be compared with letter from European Commission to FCR TSOs dating from 8 October 2018.



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## V. Conclusion

Relevant Regulatory Authorities have assessed, consulted and closely cooperated and coordinated to reach an agreement on the amended FCR proposal in accordance with Article 33 which meets the requirements of Regulation 2017/2195.

Relevant Regulatory Authorities have also assessed, consulted and closely cooperated and coordinated to reach an agreement on the amended proposal asking for an exemption in accordance with Article 34 which also meets the requirements of Regulation 2017/2195.

Relevant Regulatory Authorities have therefore agreed to issue their national decisions, on the basis of this agreement, by 19 December 2018.

Following national decisions by relevant Regulatory Authorities, TSOs will be required to publish the amended FCR proposal and amended request for exemption on the internet in line with Article 7 of Regulation 2017/2195, and must meet the implementation deadlines required by Article 11 of the amended FCR proposal and required by Article 3 of the amended request for exemption.