September 2018

RECOMMENDATIONS

of the French electricity sector

for the trilogues on the new Electricity Market Design

Union Française de l'Électricité

ELECTRICITY MARKET REGULATION

The Electricity Market Regulation aims at improving the organization of electricity markets, in particular by deepening regional cooperation and integrating short-term markets. UFE supports these objectives, but stresses the need to place two major challenges at the heart of the European climate and energy strategy: ensuring the EU's security of supply and recreating a market framework triggering the investments needed to successfully complete the European energy transition.

The integration of short-term markets should remain at minimum costs for the consumer (art 7)

- **Gate closure time (art. 7.1)**

Commission proposal	EP Plenary text	Council General Approach
	Article 7 – Trade on day-ahead and intraday markets	
1. Market operators shall allow market participants to trade energy as close to real time as possible and at least up to the intraday cross-zonal gate closure time determined in accordance with Article 59 of Regulation (EU) 2015/1222.	**AM 43.** 1. Market operators shall allow market participants to trade energy as close to real time as possible and at least up to ***15 minutes before real time across all bidding zones.***	**1. Nominated electricity** market operators shall allow market participants to trade energy as close to real time as possible and at least up to the intraday cross-zonal gate closure time determined in accordance with [ ] **the capacity allocation and congestion management guideline adopted on the basis of Article 18 of Regulation (EU) 714/2009.**
	UFE recommendation	
Council position (or Commission) **UFE supports the Council General approach and the reference to the CACM regulation.**		

The gate closure time (CGT) is the period before real time where market participants are not allowed anymore to trade electricity, for Transmission System Operators (TSOs) to properly balance the grid between the electricity available on the market and the demand of consumers. In France, this period is set at 1 hour before real time.

UFE shares the objective of allowing market participants to trade as close as possible to real time, while ensuring a safe system operation and an economically efficient balancing process.

However, **UFE does not deem appropriate to harmonise the gate closure time immediately and across the whole EU without a proper impact assessment nor taking into account the necessary adaptation time.**

UFE would be in favour of keeping the initial text of the Commission, with its reference to Regulation (EU) 2015/1222: should any further improvements prove necessary, they should indeed rather be addressed by modifying the network code.

- **Imbalance settlement period (art. 7.4)**

Commission proposal	EP Plenary text	Council General Approach
	Article 7 – Trade on day-ahead and intraday markets	
4. By 1 January 2025, the imbalance settlement period shall be 15 minutes in all control areas.	**AM 46** 4. By 1 January ***2021***, the imbalance settlement period shall be 15 minutes in all control areas.	4. By 1 January **2021**, the imbalance settlement period shall be 15 minutes in all **[ ] scheduling** areas **unless regulatory authorities have granted a derogation or an exemption in accordance with the balancing guideline adopted on the basis of Article 18 of the Regulation 714/2009.**
	UFE recommendation	
Council position (or Commission)		
On ISP, UFE supports the Council's proposal, in line with the Electricity Balancing Guideline.		

The Imbalance Settlement Period (ISP) is the frequency with which the TSO records the imbalances in real time between the energy injected into the network and the electricity withdrawn.

Though Europe is currently divided into countries with an ISP set at 1 hour, 30 minutes (including France) or 15 minutes, the Electricity Balancing Guideline adopted in 2017 foresees the harmonization to 15 minutes by the end of 2021 and grant TSOs the possibility to request an exemption until 2025.

As such a harmonization would entail significant modifications and adaptation costs for all the Member States concerned throughout the value chain (production, trade, retail, distribution), especially regarding IT infrastructures, **the timetable must therefore ensure a sufficient transition period to manage the harmonization of the ISP at European level efficiently and without additional costs.**

UFE therefore supports the possibility for exemptions and derogations, as proposed by the Council, consistently with the Guideline on Electricity Balancing.

Flows of electricity across border should be optimized in a cost-efficient way (art 14.7)

Commission proposal	EP Plenary text	Council General Approach
Article 14 – General principles of capacity allocation and congestion management		
Countertrading and redispatch to maximise available capacities costefficiently. TSOs not to limit volume of interconnection capacity unless for operational security.	Countertrading and redispatch to maximise available capacities cost-efficiently. TSOs not to limit volume of interconnection capacity unless for operational security. Minimum threshold of 75% of cross-border trade capacity (thermal capacity)	TSO may not implement coordinated actions issued by RSC the in the coordinated capacity calculation but need to justify. Introduction of clear provisions on sharing of redispatching and countertrading costs, including a "polluter pays principle". Minimum threshold of 75% of the remaining available margin (RAM) on internal and cross border critical network elements made available for cross border flows.

UFE recommendation

Neither Parliament nor Council

A 75% minimum threshold is not the right tool to achieve the optimal welfare. We should follow the principles set in the existing CACM guidelines.

If the principle of a minimum threshold of capacity to be made available to the market is to be kept, UFE considers that the Regulation should rather stipulate that NRAs or ACER have the possibility (but not the obligation) to introduce such threshold when approving the capacity calculation methodologies, as per the CACM Guideline.

NRAs or ACER would thus be able to set the threshold level at the value which optimises the economic welfare at Union level, thereby avoiding the inefficiencies caused by an arbitrary, one-size-fits-all, 75% threshold.

Besides, the technical definition of this minimum level should not differentiate between Net Transfer Capacity (NTC) and Flow-Based capacity calculation

Improving the availability of interconnections for cross-border trading is crucial to allowing further European market integration in a cost-efficient way for the consumers. TSOs should be able to calculate and allocate cross-border capacity to the market in all timeframes, to allow efficient cross-border hedging of market participant's positions in the long term, as well as proper portfolio adjustment in spot markets, and efficient dispatch in real time.

In this respect, **relying on an arbitrary "one-size fits all" approach for all EU borders would ignore the value created by cross-border trade, the reality of the system and the specificities of regional and national markets. Evenly, a 75% minimum threshold is not the right tool to achieve the optimal welfare. UFE is asking that the decision on establishing and defining a threshold be consistent with the Capacity Allocation and Congestion Management (CACM) Guideline, which already provide capacity calculation methodology and procedures.** We rather consider that NRAs or ACER should be able to request a minimum level of interconnection capacity to be made available, through a minimum threshold that would **improve the economic welfare at Union level. At last, we believe it is key to maintain the same level of expectation regardless of the capacity calculation methodology and avoid penalising one approach against the other.**

The new market design must provide the long-term signals necessary to ensure security of supply in Europe (art 18 to 24)

Over the last ten years, wholesale electricity prices have fallen drastically and are now well below the level required for long-term financing of both conventional and renewable power plants, endangering the European security of supply. The new market design must therefore allow Member States to implement capacity mechanisms able to deliver adequate long-term price signals as complement, not alternative, to short term market reforms. The European Commission has already approved several types of capacity mechanisms in Europe, including the French one in 2017.

- **Resource adequacy assessments**

Commission proposal	EP Plenary text	Council General Approach
	Article 18 – Resource adequacy	
1. Member States shall monitor resource adequacy within their territory based on the European resource adequacy assessment pursuant to Article 19.	**AM 89** 1. Member States shall monitor resource adequacy within their territory based on the European resource adequacy assessment pursuant to Article 19 ***and shall publish a report on the results of the monitoring.***	1. Member States shall monitor resource adequacy within their territory **[ ] based on** the European resource adequacy assessment pursuant to Article 19 **and may perform in addition national resource adequacy assessment pursuant to Article 19a**
2. Where the European resource adequacy assessment identifies a resource adequacy concern Member States shall identify any regulatory distortions that caused or contributed to the emergence of the concern.	**AM 90** 2. Where the European resource adequacy assessment identifies a resource adequacy concern Member States shall identify any regulatory distortions ***and/or market failures*** that caused or contributed to the emergence of the concern.	2. Where the European **or the national** resource adequacy assessments identify a resource adequacy concern Member States shall identify any regulatory **distortions or market distortions, or system bottlenecks such as insufficient infrastructure,** that caused or contributed to the emergence of the concern.

UFE recommendation

Council position

UFE asks for the national adequacy assessment to be the prerequisite to the introduction of a capacity mechanism. Member States' decisions should be based on multiple assessments conducted at different scale (regional) by different entities, while all assessments should take into account the effect of interconnections.

UFE supports an adequacy assessment made by ENTSO-E, the European association of TSOs, as **an important tool to ensure consistency of the adequacy assessments performed across Europe.** However, we consider that it should not be a prerequisite for Member States to introduce capacity mechanisms. Indeed, **adequacy assessments performed by Member States – which should also take into account neighbouring countries – can be more detailed than the assessment performed by ENTSO-E.** Greater granularity makes it possible to better identify the actions each State needs to take.

Furthermore, **as long as Member States are the ones ultimately responsible for ensuring that there is adequate supply for all citizens, we do not think it would be consistent to give decision-making powers to ENTSO-E and the European Commission**. A decision to implement a capacity mechanism cannot be dissociated from the political responsibility to guarantee security of supply.

UFE is therefore asking for complementary adequacy assessments – which should all take into account the effects of interconnections - to be performed at different levels, stressing the need to ensure cooperation amongst Member States when developing methodologies, so as to ensure similar standards. States' decisions would thus be based on multiple adequacy assessments carried out by different organisations (ENTSO-E but also national TSOs). If the results of the adequacy assessment conducted by a Member States differ substantially from those of ENTSO-E's assessment, Member States should justify these differences in a report submitted to the European Commission.

- **Capacity contracts (art. 23.1)**

Commission proposal	EP Plenary text	Council General Approach
	Article 23 – Design principles for capacity mechanisms	
1. To address residual concerns that cannot be eliminated by the measures pursuant to Article 18(3), Member States may introduce capacity mechanisms, subject to the provisions of this Article and to the Union State aid rules.	**AM 112** 1. ***Any capacity mechanism shall:*** (a) not create undue market distortions and not limit cross-border trade; (b) not go beyond what is necessary to address the adequacy concern; (c) select capacity providers by means of a transparent, non-discriminatory and market-based process; (d) be technology neutral; (e) provide incentives for capacity providers to be available in times of expected system stress; (f) ensure that the remuneration is determined through a market-based process; (g) set out the required technical conditions for the participation of capacity providers in advance of the selection process; (h) be open to participation of all resources, including storage and demand side management that are capable of providing the required technical performance; (i) apply appropriate penalties to capacity providers when not available in the event of system stress; (j) ensure that capacity contracts for existing installations are rewarded for a maximum length of 1 year.	1. To address residual concerns that cannot be eliminated by the measures pursuant to Article 18(3), Member States may introduce capacity mechanisms, subject to the provisions of this Article and to the Union State aid rules.
	UFE recommendation	
Council position **UFE opposes the Parliament's amendment limiting the duration of capacity contracts to one year.**		

UFE considers capacity mechanisms as a crucial tool to ensure security of supply, provided they fulfil the necessary criteria: being market-based, market-wide, technology-neutral, open to existing and new assets, and taking into account cross-border capacities.

However, UFE opposes the Parliament's proposal to limit capacity contracts to one year. The aim of capacity mechanisms is to give a long-term price signal to investors. For instance, DG COMP asked France to put into place multiyear contracts for new capacity to attract new entrants to the market. Consequently, the French capacity mechanism calls for **contracts to be signed for three years or up to seven years for new entrants.** Notwithstanding the issue of consistency and stability of the overall European regulatory framework, reducing contract terms **would create a visibility issue for investors and call into question the market-based principle underlying the mechanism.**

• **Administrative phase-out (art. 23.5)**

Commission proposal	EP Plenary text	Council General Approach
Article 18 to 23 – Design principles for capacity mechanisms		
5. Where the European resource adequacy assessment has not identified a resource adequacy concern, Member States shall not apply capacity mechanisms.	**(Art. 18a)** **6. Capacity mechanisms shall be temporary. They shall be approved by the Commission for no longer than five years. They shall be phased out or the amount of the committed capacities shall be reduced based on the implementation plan pursuant to Article 18(3). Member States shall continue the application of the implementation plan after the introduction of the capacity mechanism.**	**(Art. 23) 3.** Capacity mechanisms shall: [...] b. **be temporary**, but are permitted, in accordance with state aid rules, as long as the relevant resource adequacy assessment identifies a resource adequacy concern; [...] **5a. When designing capacity mechanisms, Member States shall include a provision allowing for efficient phase-out of a capacity mechanism within 4 years in case the resource adequacy concern is no longer present. This phase-out can be an administrative cessation of the mechanism, with a reasonable advance notice, or provisions in the design of the mechanism which would lead to the suspension of associated economic incentives when there is no adequacy concern.**

UFE recommendation

Whilst the Council's approach is more balanced, UFE is still concerned about the proposal stating that capacity mechanisms should be temporary and that MS should include a provision to phase out CMs within 4 years (Art.23.5.a), which tends to a stop-and-go approach.

In accordance with European law (guidelines on State aid for energy and environmental protection), the **European Commission already requires that States demonstrate the necessity, proportionality and non-distortive nature of capacity mechanisms before they are introduced** and have other measures in place to address supply-demand imbalances. Should a **phase out clause be maintained, UFE would favour the Council's approach stating that this phase out can be "an administrative cessation with a reasonable advance of notice, or the suspension of the economic incentives".**

• **Level playing field among the different types of capacity mechanisms (art. 21.1)**

Commission proposal	EP Plenary text	Council General Approach
Article 21 – Cross-border participation in capacity mechanism		
1. Mechanisms other than strategic reserves shall be open to direct participation of capacity providers located in another Member State provided there is a network connection between that Member State and the bidding zone applying the mechanism.	**Idem Commission.**	1. 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 [] **pursuant to the provisions of this Article.**

UFE recommendation

Council position

UFE opposes the Parliament's position and asks for a level playing field for all types of capacity mechanisms.

Cross border participation should apply to all types of mechanisms aimed at ensuring security of supply, including strategic reserves.

Preventing a too prescriptive framework for the new EU DSO Entity

Commission proposal	EP Plenary text	Council General Approach
	Article 49 to 51 – EU DSO Entity	
/	New Art (50a) called ' Principal rules and procedures for the EU DSO entity for electricity'	New Art (50a) called ' Principal rules and procedures for the EU DSO entity for electricity'
	UFE recommendation	
Commission: **UFE opposes the Parliament's position and asks for a level playing field for all types of capacity mechanisms.**		

While we welcome that the participation of different sized DSOs and a geographical representation from different countries is promoted both by the European Parliament and the Council, UFE does not support to prescribe the detailed governance structure and voting rights in the regulation that will require the amending of EU law if changes are necessary at a later stage. Corresponding details should be carefully analysed and deployed in the statutes under the scrutiny of ACER and the Commission.

ELECTRICITY MARKET DIRECTIVE

The Electricity Directive aims at empowering consumers and putting them at the center of the electricity market, in particular by giving them the means to manage their consumption.

Setting the right framework to develop demand-response (art. 17)

Commission proposal	EP Plenary text	Council General Approach
Article 17 – Demand Response through aggregation		
3. (d) aggregators shall not be required to pay compensation to suppliers or generators; **4. In order to ensure that balancing costs and benefits induced by aggregators are fairly assigned to market participants, MS may exceptionally allow compensation payments between aggregators and BRP. This must be limited to situations where one market participant induces imbalances to another market participant resulting in a financial cost. Such exceptional compensation payment shall be subject to approval by the national regulatory authorities and monitored by the Agency**	**3.d deleted** (da) market participants engaged in aggregation shall be financially responsible for the imbalances they cause in the electricity system as defined in accordance with Article 4 of Regulation (EU) (db) non-discriminatory and transparent rules and procedures to compensate market participants for the energy they deliver during the demand response period in a proportionate manner, under the supervision of the NRA, without creating a barrier for market entry of aggregators or a barrier for flexibility. Compensation shall be strictly limited to cover the resulting costs. The calculation method may take account of the benefits induced by the independent aggregators to other market participants and subject to approval by the regulatory authority.	(da) market participants engaged in aggregation shall be financially responsible for the imbalances they cause in the electricity system. To this extent they shall be BRPs or shall delegate their balance responsibility in accordance with Art 4 of the electricity Regulation. (db) MS may require undertakings, including independent aggregators to pay compensation to other market participants or their balancing responsible party if they directly induce imbalances to these market participants including situations where a perimeter correction is introduced without creating a barrier for market entry of aggregators or a barrier for flexibility. In such cases the compensation payment shall be strictly limited to cover the resulting costs. The calculation method for such compensation may take account of the benefits induced by the independent aggregators to other market participants and be subject to approval by the regulatory authority;

UFE recommendation

Parliament:

UFE supports the Parliament's approach which allows compensation from aggregators to suppliers for the bulk energy injected.

However, UFE opposes the proposal by the Parliament (db) to take into account net benefits in the calculation methods, considering the vagueness of such concept in economic terms.

In order to be sold by the third-party aggregator, the electricity related to the demand response action has to be sourced by the supplier of the activated customer. Therefore, this electricity has to be paid for. **The re-routing of electricity through a demand response action and its subsequent sale on the electricity markets by aggregators should not be confused with a simple decrease of electricity consumption.**

Not allowing aggregators to pay the supplier or the generator for the transacted electricity would introduce legal uncertainty likely to slow down the development of these new services and hinder the proper functioning of the internal energy market. **This principle of payment has already been discussed in depth in France: all market operators, including aggregators, have pushed for such a payment system to be included in the French regulatory framework,** in order to avoid the effects of cross-subsidies between supply and demand response activities, which is harmful to the proper functioning of the markets. **UFE therefore calls for compensation for the bulk energy injected to be set as the rule by default.**

- **Suppliers should have the choice to offer dynamic pricing offers (art. 11)**

Commission proposal	EP Plenary text	Council General Approach
	Article 11 – Entitlement to a dynamic electricity price contract	
1. Member States shall ensure that every final customer is entitled, on request, to a dynamic electricity price contract by his supplier.	**Idem Commission.**	1. **Member States shall ensure that the national regulatory framework enables electricity suppliers to offer a dynamic electricity price contract.** Member States shall ensure that [] final customers **who have a smart meter installed can** [] request to **conclude** a dynamic electricity price contract from **at least one** [] supplier.

UFE recommendation
Council position
UFE supports the Council's position.

Dynamic pricing offers are a good way to enhance flexibility and encourage consumption management. **UFE believes that Member States should remove any barriers that would prevent suppliers to offer dynamic electricity price contracts**. But imposing an obligation on some or all retail offerings could be detrimental to competition and innovation, as it could create entry barriers for small suppliers. Coherence with the broader framework that advocates for market liberalization should be ensured and freedom of contract respected. In addition, dynamic electricity price contracts are linked to the ownership of a smart meter.

- **Further clarity is needed regarding Local Energy Communities**

Commission proposal	EP Plenary text	Council General Approach
	Articles 2 and 16 - Local Energy Communities	
MS shall ensure that LEC: (c) benefit from a non-discriminatory treatment with regard to their activities, rights and obligations as final customers, generators, DSO or aggregators.	1. (a) [...] as long as the concession system of the MS is respected; 1.(ba) shall be subject to balance responsibility in accordance with Art.4 of Regulation (EU); (c) benefit from a non-discriminatory treatment with regard to their activities, rights and obligations as final customers, generators, distribution system operators, suppliers or aggregators; (ca) adequately contribute to the costs of the electricity system to which they remain connected; (cb) operate on the market on a level playing field without distorting competition.	1. MS shall provide an enabling regulatory framework for energy communities ensuring that: (c) shareholders shall not lose their rights and obligations as household or active customers; (f) energy communities are subject to non-discriminatory fair, proportionate and transparent procedure, including registration and licensing, and transparent and non-discriminatory and cost reflective network charges ensuring they contribute in an adequate and balanced way to the overall cost sharing of the system.
	UFE recommendation	

UFE considers that LEC should be subject to the same rights and obligations as other actors, notably DSOs.

The Council's approach is rather positive: it is not only requesting LECs to fairly contribute to network costs, but is also providing more clarity in terms of ownership structure, rights and obligations of LECs. Further clarification on the scope of these communities is nonetheless necessary.

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