

# Position paper on FTR curtailment

TSOs disagree with ACER on its Opinion 02/2025 relating to the curtailment of financial transmission rights and interpretation of force majeure

**Key message: TSOs firmly assert that curtailing FTRs is both legally justified and operationally necessary under the current FCA Regulation.**

## Introduction

On 9 April 2025 the European Union Agency for the Cooperation of Energy Regulators (ACER) issued the Opinion No 02/2025 relating to the curtailment of financial transmission rights (FTRs) and the interpretation of force majeure, in response to a request by the regulatory authority of Estonia, Konkurentsiamet.

A key element of ACER's Opinion is its view that FTRs cannot have an impact on operational security, which could endanger the operation of the transmission grid, and therefore FTRs cannot be curtailed for the purpose of ensuring that operation remains within operational security limits prior to the day-ahead firmness deadline pursuant to Article 53 of the FCA Regulation<sup>1</sup>. In addition, ACER considers that since FTRs should not be curtailed for operational security reasons, a cap on the total compensation should not be applicable. ACER also takes the view that in order to invoke force majeure as a justification to curtail FTRs pursuant to Article 56 of the FCA Regulation TSOs would need to consider whether the event has a financial impact that makes it impossible for the TSOs to temporarily or permanently fulfil their obligations.

This position paper introduces the TSOs' legal and operational justification, including an assessment of ACER's Opinion, and concludes with recommendations by the TSOs.

## TSOs' Legal and Operational Justification

### *Cross-zonal capacity allocation and remuneration of LTTRs*

The FCA Regulation sets out detailed rules on cross-zonal capacity allocation in the forward markets. Under Article 2 of the FCA Regulation, forward capacity allocation is defined as the attribution of long-term cross-zonal capacity through an auction before the day-ahead time frame. Long-term transmission rights (LTTRs) are defined in the same Article as physical transmission rights or as FTR — options or as FTR — obligations acquired in the forward capacity allocation.

The acquisition of LTTRs, even if it does not always include the right to nominate electricity on an interconnector, is intrinsically linked to the allocation of cross-zonal capacity and, more generally, to cross-zonal trades. LTTRs are allocated in the same process as cross-zonal capacity, they provide a hedging solution for cross-zonal trades, and, as further explained below, they are remunerated on the basis of the congestion income which results from day-ahead cross-zonal trades. To host those trades requires a physical day-ahead capacity. FTRs are therefore indirectly linked to the physical transmission of electricity. Thus, LTTRs cannot be understood in isolation, ignoring the physical aspects of transmission of electricity on the relevant interconnector.

Regarding the remuneration obligation pursuant to Article 35 of the FCA Regulation, the relevant TSOs allocating transmission rights must remunerate LTTRs holders in case the price difference is positive in the direction of the long-term transmission rights. In order to fulfil this remuneration obligation, TSOs rely on the congestion income. This is described in paragraph 43 of ACER's Opinion, which explains that the remuneration of LTTRs relates to the

<sup>1</sup> Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (FCA Regulation)

day-ahead market spread on the relevant bidding zone border, which is also reflected in the day-ahead congestion income on that bidding zone border. Article 48 of the HAR<sup>2</sup> further specifies the rules on the remuneration of LTR holders for non-nominated physical transmission rights (PTRs) and FTRs. Accordingly, the obligation to remunerate LTRs is intrinsically linked to the physical daily allocation of cross-zonal capacity between two bidding zones and the spread of prices between those bidding zones. On the same basis, the curtailment of LTRs is linked to the inability to make physical use of the capacity that the LTRs represent.

ACER states that the FTRs cannot impact operational security and therefore cannot be curtailed for operational security reasons. However, it is due to the existence of operational security limits that LTRs, including FTRs, must be curtailed. Although FTRs do not themselves entail a physical right to transmit electricity, their financial consequences are related to the physical transmission, and they may therefore be curtailed where the physical transmission is affected.

This interpretation is reinforced by Article 56 of the HAR, which provides the same curtailment consequences for PTRs and FTRs in case of both force majeure events and operational security limits events, both described as triggering events. In fact, Article 56(2) of the HAR provides that *“Curtailment may be applied on allocated Long Term Transmission Rights including, where the case may be, on nominated Physical Transmission Rights”*. The emphasis of PTRs makes it even clearer that the same arrangements apply to FTRs. Article 56(4) of the HAR spells out the consequences for all types of LTRs – PTRs and both types of FTRs. As provided above, in such circumstances, *“[i]n the case of financial transmission rights, each registered participant affected by curtailment shall lose its right to transfer or return the concerned financial transmission rights or to receive remuneration in accordance with Article 48.”* ACER’s interpretation in relation to Article 53 of the FCA Regulation cannot be correct because that Article does not refer solely to PTRs. In parallel, the current wording of Article 56 of the HAR, as approved by ACER, does not exclude FTRs, but it rather refers to all LTRs.

### ***The curtailment of LTRs in the event of force majeure***

Article 56 of the FCA Regulation provides for an exception to the performance of LTRs in the event of force majeure and Article 2(2)(u) of the HAR contains definition of force majeure for the purpose of the FCA Regulation. Events of force majeure are commonly determined by reference to three cumulative criteria: they must be unforeseeable, external to parties and unavoidable.

The FCA Regulation provides that TSOs may curtail LTRs *“in the event of”* force majeure, which means that the curtailment of LTRs could be the consequence of force majeure. The force majeure event must therefore relate to the activities underlying the LTRs, i.e. the physical operation of the interconnector. As ACER’s opinion correctly points out in paragraph 41, the meaning of force majeure must be determined by reference to the legal context. Thus, when assessing the conditions of force majeure, they must be applied to the event/situation that impacted the transmission lines to which the LTRs relate.

In events of force majeure, the TSOs may be placed in a position where it is impossible to allocate capacity and flow electricity through the impacted interconnector, hence requiring the TSO to curtail cross-zonal capacity (see also Article 72 of <sup>3</sup>CACM<sup>3</sup>). The curtailment of cross-zonal capacity prevents the TSO from collecting the corresponding congestion income and, therefore impacts the ability to remunerate LTRs. ACER’s Opinion also correctly points this out in paragraph 43, commenting that in such revenue adequacy for remunerating LTRs with generated day-ahead congestion income can no longer be provided. ACER therefore correctly identifies the connection between an inability to transmit electricity and the suspension (or more accurately modification) of the financial right representing the physical transmission. In such circumstances, the ability to pay FTRs is just as affected as the ability to pay PTRs, as both rights are covered by the same mechanism: the congestion income.

<sup>2</sup> Harmonised allocation rules for long-term transmission rights in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation

<sup>3</sup> Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

Therefore, it is clear that curtailment under Article 56 of the FCA Regulation in an event of force majeure impacting the physical operation of an interconnector applies to both FTRs and PTRs.

Based on the flawed assumption that FTRs are completely unrelated to the physical state of the interconnector, ACER considers that the only type of event capable of fulfilling the last sub-condition of force majeure (i.e. “*makes it impossible for the party and/or the relevant TSOs to fulfil, temporarily or permanently, its obligations*” from HAR Article 2 (14)), in the case of FTRs, would be a situation where it is impossible to remunerate FTR holders. However, this is not correct for the following reasons.

Firstly, and as explained above, FTRs cannot be viewed in isolation, ignoring their strong correlation with the physical aspects of the transmission of electricity on a given interconnector. It is not whether the LTRs or FTRs themselves have a physical dimension capable of giving rise to an event of force majeure that had a physical impact on cross-zonal capacity/the transmission system. Instead, it is whether transmission/system operation was affected by an event of force majeure external to the TSO, which prevented the TSOs from allocating cross-zonal capacity and therefore from earning congestion income, and therefore from paying that income to the holders of LTRs. Requiring TSOs to demonstrate the impossibility of financially remunerating holders of FTRs would add another condition to Article 56 of the FCA Regulation. This would defeat the entire purpose of this Article, which is to allow TSOs not to pay LTRs holders the market spread, on the basis that the TSOs are prevented from earning that income as a result of the curtailment of cross-zonal capacity in an event of force majeure.

Secondly, the term “*its obligations*” contained in the HAR definition of force majeure is not limited to the obligation to remunerate LTRs. It refers to the TSOs’ obligations in general, and essentially their obligation to operate the transmission system. If this condition was to be interpreted as referring exclusively to the obligation to remunerate LTRs, it would have specified “*its obligations in accordance with Article 35 of the [FCA Regulation]*”. Furthermore, this restricted interpretation leads to a dead end: it only gives rise to hypotheses that are unlikely to satisfy the other conditions of force majeure. Indeed, in practice, the impossibility to financially remunerate FTRs suggests that the event of force majeure would be nothing else than insolvency.

## Conclusions and recommendations

TSOs do not agree with ACER on its Opinion 02/2025 related to the curtailment of financial transmission rights and ACER’s interpretation of the overall regulatory framework applicable to LTRs. If ACER’s Opinion is to be applied as such, interconnectors could face unlimited liabilities increasing TSOs’ financial risk exposure in a serious manner especially when considering the recent changes in the risk environment related to energy infrastructure (such as the Estlink2 incident). The inability to curtail FTRs could result in excessive compensation obligations that may limit the core tasks of TSOs, such as the effective operation and expansion of the transmission system. This could also impact various parties, including grid tariff payers. Indeed, a higher financial risk for TSOs may negatively affect their credit rating, making grid expansion more expensive.

TSOs recommend that the possibility of curtailing LTRs – both PTRs and FTRs without any distinction – for safeguarding the secure operation of the system and in case of force majeure pursuant is continued. Accordingly, caps on the compensation to be paid to holders whose long-term transmission rights have been curtailed before the day-ahead firmness deadline may also be applied. This is clearly justified by the FCA Regulation and highly necessary to ensure TSOs’ financial sustainability in unforeseen circumstances. If ACER’s Opinion is to be applied as such under the current regulatory framework, different financial risk mitigation measures would need to be further investigated on TSOs’ side. One possibility, for example, could be to reduce the long-term volumes offered to incorporate these added risks.