

# **First amendment of Implementation framework for the European platform for the imbalance netting process**

in accordance with Article 22 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

**31 March 2022**

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| Purpose:      | <input type="checkbox"/> methodology draft            | <input type="checkbox"/> for public consultation |
|               | <input checked="" type="checkbox"/> for ACER approval | <input type="checkbox"/> for final publication   |
| Status:       | <input type="checkbox"/> draft                        | <input checked="" type="checkbox"/> final        |
| TSO approval: | <input type="checkbox"/> for approval                 | <input checked="" type="checkbox"/> approved     |

All TSOs, taking into account the following:

### **Whereas**

- (1) This proposal provides an amendment to Implementation framework for a European platform for the imbalance netting process (hereafter referred to as the “INIF”) in accordance with ACER decision 13-2020 of 24 June 2020.
- (2) European TSOs strongly support the European target model defined by the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (hereafter referred to as the “EB Regulation”) for integrated balancing energy markets, especially the implementation and go-live of the platforms for the exchange of balancing energy, and see significant advantages resulting from it.
- (3) Article 10(2) of the INIF provides that “no later than eighteen months before the deadline when the capacity management function (hereafter referred to as the “CMF”) shall be considered as a function required to operate the aFRR-Platform in accordance with Article 6(4) of the implementation framework adopted pursuant to the ACER Decision 02-20202 , all TSOs shall develop a proposal for amendment of this INIF, which shall designate the entity performing the capacity management function in accordance with Article 22(3)(e) of the EB Regulation and clarify whether the IN-Platform will be operated by a single entity or multiple entities.”
- (4) In accordance with Article 10(2) of the INIF, this amendment proposal fulfils all TSO obligations regarding the proposed designation of the entities that will perform the functions defined in the INIF and clarifies that the IN-Platform may be operated by multiple entities in accordance with Article 22(3)(e) of the EB Regulation.
- (5) For the sake of clarity, ACER decision 02-2020 of 24 January 2020 on the Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with automatic activation (hereafter referred to as the “aFRRIF”) and ACER decision 03-2020 of 24 January 2020 on the Implementation framework for the European platform for the exchange of balancing energy from frequency restoration reserves with manual activation (hereafter referred to as the “mFRRIF”), specify that all TSOs shall establish a CMF and that in case several balancing platforms have such a function, the CMF shall be the same across these platforms.
- (6) Given the requirement of ACER decision quoted above (same function across the platforms), the intention of all TSOs is to designate the same entity to perform the CMF for the mFRR-Platform, aFRR-Platform and IN-Platform, this entity being however different from the entities operating the other functions. The designated entity will operate the CMF as a cross-platform function of the concerned platforms. In order to ensure efficient and effective governance, coordination, and decision making process, all TSOs have entered for each platform into a contract with the entity that shall be in charge of operating the CMF.
- (7) TSOs duly remind ACER that this amendment is submitted for its approval in accordance with Decision No. 13/2020, it being understood however that the said Decision had been the object of an appeal introduced by one TSO (Case A-008-2020), raising the same pleas as the appellants in in Cases A-002 and 003-2020. In its letter dated February 25<sup>th</sup>, 2021 , after the Board of appeal rejected the appeal, the appellant clearly

stated that while it could not continue the procedure due to issues of resources allocation, it considered the appeal to be well founded. Today, two appeals remain pending in front of the General Court (Cases T-606/20 and T-607/20). The appellant for the INIF appeal belongs also to the group of TSOs having lodged the appeal in front of the General Court. The above mentioned pending appeals are raising the same grounds and pleas as the one that was lodged in front of the Board of Appeal for the INIF. Accordingly, if the General Court (or Court of Justice) annuls the BoA's decisions in Cases A-002 and 003-2020, all TSOs expect the measures to be taken by ACER and the BoA to comply with such judgment(s) to be applied equally to the ACER Decision for the INIF. All TSOs also reserve the right to amend the implementation framework taking into account any measures as eventually adopted by the Court of Justice.

- (8) The present amendment is without prejudice to the position recorded in all TSOs' final proposal dated 18 December 2019 (submitted to ACER as a supplement to their proposal for the INIF) that the CMF is not a required platform function and does not fall within the scope of Article 22 of the EB Regulation.
- (9) In accordance with Article 4 and Article 6(5) of the INIF, the CMF constitutes an additional functionality of the Platform and implements a centralized and coordinated process between all TSOs and the balancing platforms, and between the platforms themselves to continuously update the IN cross-zonal capacities for each of the relevant bidding zone borders or set of bidding zone borders taking into account (i) the initial cross-zonal capacities in accordance with Article 37 of the EB Regulation, (ii) the additional cross-zonal capacities allocated to the RR, mFRR and aFRR process pursuant to Article 38(1) of the EB Regulation and, (iii) the already confirmed exchanges within the balancing timeframe, inter alia, the replacement power interchange and the manual frequency restoration power interchange, (iv) the adjustments of the cross-zonal capacities pursuant to Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation (hereafter referred to as the "SO Regulation"). The main objective of the CMF is to ensure the consistency of the data exchanged between all TSOs and the European platforms related to the cross-zonal capacities. As obliged by IFs, the CMF shall be the same across all platforms, therefore it is technically logical to have a central CMF. Allocating the CMF to one platform might endanger the interchange between other platforms if the former is unavailable. By designating a different entity to develop, host and monitor the CMF, all TSOs are ensuring the workload is shared by different entities. As a consequence, the establishment of the platform functions can take place in parallel using available resources of the TSOs, and the CMF can be delivered earlier and up to adequate quality standards. Thus it is coherent to allocate the CMF as an interface process to an entity which is distinct from the entities that perform the activation optimisation function (hereafter referred to as the "AOF") or imbalance netting process function (hereafter referred to as the INP function) in case of IN-Platform and the TSO-TSO settlement function of each European platform.
- (10) The amended INIF includes the CMF function in the scope of the mFRR steering committee. All TSOs have agreed that the mFRR steering committee will be the governing body for CMF as a cross-platform function, as this is an efficient, effective governance structure that provides for coordination and oversight as all TSOs involved in the European platforms are represented in the mFRR steering committee.
- (11) The amended INIF also further specifies that the IN-Platform steering committee has the authority to create subcommittees or working groups, which may be granted

delegated authority by the steering committee. In such event, the IN-Platform steering committee determines the composition and the modalities of the functioning of such subcommittee or working group. In case the aFRR-Platform and the mFRR-Platform also create the same subcommittee or working group, they can be the same for the concerned European platforms and the steering committees jointly define their composition and their functioning.

- (12) Each Member TSO is in accordance with the legal framework, notably the Directive (EU) 2019/944 on the common rules for the internal market for electricity (hereinafter Electricity Directive) and regulations, already accountable towards its national regulatory authority (hereafter referred to as the “NRA”) in general and in particular for the execution of the cross-border activation process in accordance with EB Regulation. While the TSO-TSO model according to Article 2 (21) EB Regulation establishes a model for the exchange of balancing services where the balancing service provider provides balancing services to its connecting TSO, which then provides these balancing services to the requesting TSO, the concrete setup proposed by the TSOs ensures Regulatory Oversight as required by Article 22 (3) (e) ii) EB Regulation as follows. The Member TSOs are addressees of European Regulations such as REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on wholesale energy market integrity and transparency and COMMISSION REGULATION (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council requiring Member TSOs to provide information to NRAs and ACER. All Member TSOs are obliged to operate the platforms jointly and to that end, each Member TSO has access to the mFRR-Platform’s information directly and at all times. In order for regulators to not have to address their inquiries necessarily to individual TSOs, but rather have the possibility to address them in a centralized manner, the IN-Platform steering committee will act as a central point of contact for the IN-Platform related topics, while the mFRR-Platform steering committee will act as a central point of contact for the cross-platform CMF related topics and, to this end, gather information that is necessary for NRAs to perform regulatory oversight. To process such regulatory inquiries, relevant steering committee will utilize processes detailed in the newly added Article 8B. The TSOs’ proposal is therefore no less efficient and effective in terms of regulatory oversight than if only one entity were to operate all functions of the concerned platform. Thus, the proposed setup ensures the sufficient regulatory oversight of the IN-Platform in the conditions defined by the Electricity Directive and by Commission Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators.
- (13) The INIF was approved in ACER decision 13-2020 and therefore, the amended INIF fulfils the general principles, goals and other methodologies set in the EB Regulation, the SO Regulation, the Commission Regulation (EU) 2019/943 on the internal market for electricity (hereafter referred to as the “Electricity Regulation”) as well as the Commission Regulation (EC) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Commission Regulation (EC) No 714/2009 (hereafter referred to as the “Transparency Regulation”) for the reasons stated further and in this proposal.
- (14) The structure referred to in Whereas (10), (11) and (12) and set-out in the amended

Articles 10,8 and newly added 8B, ensures efficient and effective operation of the European platforms, effective coordination and decision making process to resolve any conflicting positions between entities operating the European platforms and thus ensures that the requirements of EB Regulation are met. Namely,

- a. the proposed setup ensures a coherent allocation of functions to the entities operating the functions of the European platform, in accordance with Article 22(3)(e)(i) of EB Regulation by allocating a function in its entirety to an entity. The TSOs have analysed and clearly delineated the interfaces and interactions between the different functions of the platform, namely AOF, TSO-TSO Settlement Function and CMF. In that way, competences, responsibilities and liabilities can be clearly assigned and conflicts of responsibility can be avoided. The competences, responsibilities and liabilities are laid down in a contract between the Member TSOs. To ensure the necessary coordination between the entities, the entities are contractually obliged to cooperate. This includes, among other things, the duty of exchange of information and coordination obligations. The Member TSOs designated as the CSPs are bound by the decisions of the respective platform Steering Committee, which can be taken by qualified majority voting. In addition, the proposed setup demonstrates significantly higher operational security and stability than other possible setups. European balancing platforms are key tools in EU's future market integration with regards to energy use with operational security being an important criterion. The platforms are built within the TSOs' infrastructure utilizing a combination of multi-redundant data centers, communication assumed via the physical communication network (PCN) and TSOs' personnel involved with a high level of know-how. This will lead to an optimal state with regards to overall security. This also guarantees an efficient and effective operation of the platforms enabling the implementation and operation of the platforms with a high level of quality and maintenance along their entire life cycle resulting in a decrease of overall short-term as well as long-term costs. Furthermore, the proposed allocation of functions result in a very limited probability of a potential outage of all the platforms together. A simultaneous outage of multiple platforms would have a major negative impact on balancing energy costs and the security of supply across Europe;
- b. The SO Regulation allocates the responsibility for the operation and organisation of the cross-border balancing processes to the TSOs and foresees that the TSOs shall organise these processes via agreements in accordance with Article 122, 123 and 124 of SO Regulation, therefore all TSOs have implemented an effective and efficient contractual framework in order to govern and operate the European platforms as required in Article 22(3)(e)(ii) and Article 3(2)(c) of EB Regulation. In this contractual framework between TSOs, the European platforms underlying IT Solutions are designed, co-owned and governed by all TSOs themselves, while the development, the maintenance, the operation and the hosting of European platforms' functions are delegated to one or more TSOs. Therefore, the designated TSOs are acting for the benefit and on behalf all TSOs in accordance with the operational rules jointly defined by all TSOs and under the supervision of the steering committees established by all TSOs.

Thus, the proposed setup of the IN-Platform and allocation of functions ensures efficient and effective governance of the IN-Platform;

- c. the operation of such European platforms is the responsibility of all member TSOs. The implementation of the INIF fulfils the technical and security requirements to be met by the European platforms with regard to the operational security and their real-time relevance. Synergies can therefore be utilised in the use of existing TSO facilities which results in high efficiency gains. The proposed setup also enhances efficiency as it allows the use of the existing TSO knowledge, infrastructures and resources for the real-time operation of the European platforms and it does not lead to the creation of an additional structure for this purpose. Building up an additional structure would mean to create new infrastructure, transfer of know-how and spending of additional resources, also from TSOs. Thus, the proposed setup of the IN-Platform and allocation of functions ensures efficient and effective operation of the IN-Platform as required in Article 22(3)(e)(i) and Article 3(2)(c) of EB Regulation;
- d. the operation of IN-Platform is a collective responsibility of all member TSOs and each TSO is fully responsible for the operation of the IN-Platform towards its NRA and connected market participants. In accordance with EB Regulation, Member TSOs apply a TSO-TSO model, in which only TSOs will be connected to the IN-Platform directly, while Balancing Service Providers will be connected to the respective connecting national TSO, the respective NRAs will be able to continue make use of the competences granted to them by national statute effectively without any additional increase in competence required. Thus, the proposed setup of the IN-Platform and allocation of functions ensures efficient and effective regulatory oversight over the IN-Platform as required in Article 22(3)(e)(ii) of EB Regulation;
- e. the coordination and the decision-making process is ensured at the level of the steering committees of the European platforms, with a specific role assigned to the mFRR-Platform steering committee also in charge of the governance of CMF as a cross-platform function. The steering committee of the mFRR-Platform includes representation of all member TSOs of any of the European platforms for decisions related to CMF. Thereby the steering committee of the mFRR-Platform ensures a coordinated governance of the function as a cross-platform function for all the concerned European platforms. The designated entities are contractually obliged to operate the functions of the platform. Insofar as the cooperation of the entities is required for the operation or for the solution of issues, the entities are obliged to coordinate bilaterally at all times. If problems cannot be solved by the entities themselves, the steering committee may also appoint a committee of experts at short notice. If no solution can be found in the expert panel either, the steering committee shall be convened. Member TSOs shall ensure that operational problems arising at short notice can also be solved within a reasonable period of time. In order resolve disputes within a reasonable amount of time all Member TSOs are subject to a strictly timed dispute resolution process described in newly created Article 14B(3)(b) consisting of at least the amicable settlement between the disputing Member TSOs under the supervision of the steering committee of the relevant platform. The dispute resolution may include external guidance, which might facilitate

the amicable settlement procedure. In order to ensure the continuous operation of the IN-Platform disputing Member TSOs may also apply for interim or conservatory measures or any injunctive relief. Thus, an effective coordination and decision making process to resolve any conflicting positions between entities operating the IN-Platform is ensured as required in Article 22(3)(e)(iii) of EB Regulation.

- (15) Article 22(1) of the EB Regulation required all TSOs to develop the INIF. All TSOs who were responsible for the development of the proposal and for its submission to ACER are the following: APG - Austrian Power Grid AG, VÜEN-Vorarlberger Übertragungsnetz GmbH, Elia - Elia Transmission Belgium S.A., ESO – Electroenergien Systemen Operator EAD, HOPS - Croatian Transmission System Operator Ltd, ČEPS - ČEPS, a.s., Energinet - Energinet, Elering - Elering AS, Fingrid - Fingrid OyJ, Kraftnät Åland Ab, RTE - Réseau de Transport d'Electricité, S.A, Amprion - Amprion GmbH, TransnetBW -TransnetBW GmbH, TenneT GER - TenneT TSO GmbH, 50Hertz - 50Hertz Transmission GmbH, IPTO - Independent Power Transmission Operator S.A., MAVIR ZRt. - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság ZRt., EirGrid - EirGrid plc, Terna - Terna SpA, Augstsprieguma tīkls - AS Augstsprieguma tīkls, LITGRID - LITGRID AB, CREOS Luxembourg - CREOS Luxembourg S.A., TenneT TSO - TenneT TSO B.V., PSE - PSE S.A., REN - Rede Eléctrica Nacional, S.A., Tranelectrica - C.N. Tranelectrica S.A., SEPS - Slovenská elektrizačná prenosová sústava, a.s., ELES - ELES,d.o.o, REE - Red Eléctrica de España S.A.U, Svenska Kraftnät - Affärsverket Svenska Kraftnät, SONI System Operator for Northern Ireland Ltd.

SUBMIT THE FOLLOWING PROPOSAL FOR AMENDMENT OF THE IMPLEMENTATION FRAMEWORK FOR THE EUROPEAN PLATFORM FOR THE EXCHANGE OF BALANCING ENERGY FROM FREQUENCY RESTORATION RESERVES WITH MANUAL ACTIVATION TO ACER

### **Article 1** **Designation of entity**

Article 10 – Designation of entity – of INIF is amended as follows:

- a) Paragraph 2 shall be amended and be read accordingly:

« In accordance with Article 22(2) of EB Regulation, the aFRR-Platform may be operated by TSOs or an entity they would create themselves. For the operation of the aFRR-Platform, TSOs shall designate:

i. one TSO for operation of the imbalance netting process function and TSO-TSO settlement function;

ii. and a different TSO for operation of the capacity management function.»

b) Paragraph 3 shall be amended and be read accordingly:

« 3. The designation of the entities will be done in accordance with Article 22(4) of the EB Regulation.»

c) Paragraph 4 shall be amended and be read accordingly:

« 4. The designated entities shall be acting as Common Service Providers (CSPs) for the benefit and on behalf of all member TSOs of the IN-Platform. The CSPs shall provide their services in accordance with the objectives of EB Regulation, this Implementation Framework, the contractual framework, relevant steering committee decisions and agreed operational procedures and rules. The services may be amended as per the voting rules stipulated in the contractual framework under the supervision of the relevant steering committee, in accordance with Article 8, Article 8B and in accordance with the operational rules approved by the relevant steering committee.»

d) Paragraph 5 shall be amended and be read accordingly:

« 5. For the avoidance of doubt, the designated entities may contract third parties for executing supporting tasks, subject to the agreement of the relevant steering committee.»

## **Article 2 Transparency and reporting**

Article 13B – Transparency and reporting – of INIF shall be added and be read accordingly:

The paragraph 1 shall be added and be read accordingly:

«1. The Member TSOs shall publish the relevant information (articles 3.10, 4.3, 4.4, 4.5 and 7.2) stemming from INIF in a commonly agreed harmonised format at least through the ENTSO-E central information transparency platform established pursuant to Article 3 of Regulation (EU) No 543/2013 and as required by Article 12 of EB Regulation.»

## **Article 3 Governance**

Article 8 – Governance– of INIF shall be amended as follows:

The paragraph 2 shall be amended and be read accordingly:

« 2. Each member TSO shall carry out the common governance principles of the IN-Platform by means of:

(a) the steering committee of the IN-Platform, which is the decision-making body of the IN-Platform with the right to make any binding decision on

any matter or question related to the IN-Platform INPF and TSO-TSO Settlement Function and not covered by the Article 14(3)(b). Thereto, each member TSO of the IN-Platform shall appoint at least one regular representative to the steering committee of the IN-Platform, which is a superior body to the expert group.

- (b) the expert group of the IN-Platform, which is the expert body of the IN-Platform and prepares background materials for the steering committee (including analyses, impact assessments, summaries) and evaluates and proposes concepts in relation to the implementation of the IN-Platform. Thereto, each member TSO shall appoint at least one regular representative to the expert group of the IN-Platform.

Any decision or dispute related to the cross-platform CMF topics shall be resolved through the processes defined in Article 8B via the mFRR-Platform steering committee. The steering committee of the IN-Platform has the authority to create subcommittees or expert groups, which may be granted delegated authority by the steering committee of the IN-Platform. In such event, the steering committee of the aIN-Platform determines the composition and the modalities of the functioning of such subcommittee or expert group. In case the aFRR-Platform and the mFRR-Platform also create the same subcommittee or expert group, they can be the same for the concerned European platforms and the steering committees jointly define their composition and their functioning.»

#### **Article 4** **Contractual framework**

Article 8B – Contractual framework - of INIF shall be added and be read accordingly:

«1. In order to ensure efficient and effective implementation and operation of the IN Platform, Member TSOs shall set up a contractual framework applicable to all Member TSOs. Under the contractual framework, each Member TSO shall adhere to at least the following high level principles:

- a) not to undertake actions which may be detrimental to the operation of the IN-Platform functions as defined in the contractual framework;
- b) to assist each other and cooperate among themselves in case of an investigation regarding the IN-Platform by a competent regulatory authority;
- c) to apply the principles of equal treatment, proportionality and non-discrimination towards the other TSOs; and to perform its obligation in compliance with laws and regulations, including the INIF.

2. In their contractual framework, all Member TSOs shall clearly allocate the roles and responsibilities of the Member TSOs, notably the obligations of reporting and exchange of information.

3. The contractual framework shall further specify and entail at least the following principles and processes:

a) The IN-Platform steering committee shall issue decisions and monitor both the implementation and operation of the aFRR-Platform by all Member TSOs. The decisions shall be taken in accordance with the decision making rules set out in Article 9 of the INIF. Each decision shall be implemented in line with the timeline agreed in the respective decision.

b) In the event of a dispute, the dispute shall be submitted in written to the respective steering committee. The dispute notice shall include at least a description of the dispute, the involved Member TSOs, the claims raised and their legal grounds and a proposal for settlement if available. The settlement process may be as follows: The relevant steering committee shall appoint amongst its members a person responsible for the amicable settlement procedure without undue delay. Should no amicable settlement be reached within one month or within a reasonable time agreed upon between the disputing Member TSOs, disputing Member TSOs after agreement by the relevant steering committee may ask the relevant regulatory authorities and/or ACER for guidance, should the dispute directly concern regulatory issues if it is in compliance with their competences under the law, which an amicable settlement may take into account, or refer the dispute to mediation.

In case any of the above did not lead to the settlement of the dispute, the dispute shall be settled either by arbitration or by court. The settlement outcome of any of the above shall be binding upon the disputing Member TSOs. The dispute resolution process shall not preclude the Member TSOs from applying for interim or conservatory measures or any injunctive relief. The contractual framework may further detail the dispute resolution process set out in this paragraph.

c) In case a request from a NRA or NRAs is received by one or several Member TSOs, these parties shall immediately inform all Member TSOs via the respective steering committee of the content of such request. Each Member TSO shall cooperate to respond adequately, consistently and promptly to a request for information received in relation to fulfillment of the obligations of the INIF.

d) The contractual framework shall define the necessary day-to-day operational procedures including at least the incident resolution, fallback and backup procedures, data processing and validation, as well how all Member TSOs coordinate to that end.

e) The liability regime shall be defined in the contractual framework and shall be applicable for all Member TSOs.

f) The IT solution of the IN-Platform functions shall be owned and governed by all Member TSOs.

4. In addition to the above, the contractual framework shall contain further obligations for Member TSOs designated as CSPs, such as:

- a) making the IN-Platform's information available to the Member TSOs at all times to allow all Member TSOs to fulfil the transparency and reporting obligations;
- b) keeping of records in order to be able to provide an accurate, complete, up-to-date and accessible record of all activities performed by the CSP in case of audits by a Member TSO or Member TSOs;
- c) coordination obligations, namely the duty to coordinate with all Member TSOs and the other CSPs, notably in the case of dispute resolution;
- d) the conditions for renewal and termination the contract; and
- e) in case of termination, the hand over obligations by each CSP to ensure a smooth transition and continuity of the function or functions, as the case may be.

#### **Article 5 Implementation Timeline**

All TSOs shall implement this amendment to the INIF within 15 days after the publication of the decision by the Agency for the Cooperation of Energy Regulators.

#### **Article 6 Publication of the Amendment**

All TSOs shall publish this amendment to the INIF without undue delay pursuant to Article 7 of EB Regulation after a decision has been taken by the Agency for the Cooperation of Energy Regulators in accordance with Articles 5(2)(a), of the EB Regulation and Article 5(2) Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators

#### **Article 7 Language**

1. The reference language for this amendment to the INIF shall be English.
2. For the avoidance of doubt, where TSOs need to translate this amendment to the INIF into their national language(s), in the event of inconsistencies between the English version published by the all TSOs in accordance with Article 7 of the EB Regulation and any version in another language, the relevant TSOs shall be obliged to dispel any inconsistencies by providing a revised translation of this amendment to the Implementation Framework to their relevant national regulatory authorities.