

Mr Alberto Pototschnig,  
Director  
**ACER**

CC:  
Dr Klaus-Dieter Borchardt,  
Director  
Internal Energy Market  
DG ENER  
**European Commission**

17 August 2017

Dear Alberto,

I am writing to you on behalf of all National Regulatory Authorities (NRAs) with regard to the proposed all Transmission System Operators (TSOs) Harmonized Allocation Rules (HAR) submitted in accordance with Articles 4(6) and 51 of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation (Regulation 2016/1719). The proposal submitted by all TSOs was received by the last NRA on 21 April 2017.

On 16 August 2017, all NRAs, after having consulted and closely cooperated and coordinated with each other, agreed to request the Agency to adopt a decision on this methodology pursuant to Article 4(10) of Regulation 2016/1719. The reason for this request is that NRAs have not been able to agree on the provisions of Article 21(1)h of the proposed HAR, concerning the required credit rating for banks issuing collaterals for market participants: the current proposal, which states that, in case of an industry-wide downgrade of financial institutions, the Allocation Platform may decrease the required rating below BBB+ for a limited period of time, is opposed by at least one NRA. Alternative possibilities have been proposed by this NRA, namely: (i) maintain the default required credit rating level BBB+ even though there is an industry-wide downgrade, or (ii) delete all provisions of credit rating and leave the decision completely to TSOs; however, these alternative proposals are opposed by at least three other NRAs.

We are ready to assist the Agency to develop and adopt its decision.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lord Mogg', with a stylized flourish at the end.

Lord Mogg

Annex: additional areas that all regulators agree ACER may include and take into account when reaching a decision.

### **Additional areas that all regulators agree ACER may include and take into account when reaching a decision**

All NRAs have agreed that, although they have no concerns on the majority of the elements of the proposed HAR, the following elements of the proposal could also be addressed, if this does not hinder reaching a decision on time for legal or process related reasons:

- Article 48(1)(a): to avoid any ambiguity, the expression “*subject to the approval of the relevant NRAs*” should be placed as in Article 59(1)(a), and in both Articles the adjustment of the price to reflect Allocation Constraints should be limited to Allocation Constraints as defined in Article 23(3)(b) of the CACM Regulation;
- Article 58: the Day Ahead Firmness Deadline should remain set 30 minutes before the Day Ahead Market Gate Closure Time unless otherwise specified in accordance with the process described in Article 69 of the Commission Regulation (EU) 2015/1222, to avoid any discrepancy between firmness deadlines applicable for long-term and day-ahead capacity rights during the transition period where HAR will be in force but the Day Ahead Firmness Deadline defined pursuant to Article 69 of the Commission Regulation (EU) 2015/1222 will not yet be applicable;
- Article 68: this Article shall be amended to reflect that the amendment process of the HAR is now governed by Article 4(12) of Regulation 2016/1719;
- Article 76(3): a sentence should be added, symmetrically to the second sentence of the paragraph, to clarify that subcontracting by the Allocation Platform does not relieve it of any obligation or liability.