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# Rules for daily capacity allocation on Swiss borders



MM 2024

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## Contents

CHAPTER 1 .....	7
General provisions .....	7
<i>Article 1</i> .....	7
Subject-matter and scope .....	7
<i>Article 2</i> .....	7
Definitions and interpretation .....	7
<i>Article 3</i> .....	10
Allocation platform .....	10
<i>Article 4</i> .....	11
Effective date and application .....	11
CHAPTER 2 .....	12
Requirements and process for participation in auctions .....	12
<i>Article 5</i> .....	12
General provision .....	12
<i>Article 6</i> .....	12
Participation agreement conclusion .....	12
<i>Article 7</i> .....	13
Form and content of the participation agreement .....	13
<i>Article 8</i> .....	13
Submission of information .....	13
<i>Article 9</i> .....	15
Warranties .....	15
<i>Article 10</i> .....	15
Dedicated business account .....	15
<i>Article 11</i> .....	15
Acceptance of the information system rules .....	15
<i>Article 12</i> .....	15
Costs related to the participation agreement .....	15
<i>Article 13</i> .....	16
Refusal of application .....	16
<i>Article 14</i> .....	16
Access to the auction tool .....	16
<i>Article 15</i> .....	17
Conclusion of additional financial terms .....	17
<i>Article 16</i> .....	17
Regulatory and legal requirements .....	17

CHAPTER 3 .....	18
Collaterals .....	18
<i>Article 17</i> .....	18
General provisions .....	18
<i>Article 18</i> .....	18
Form of cash deposit .....	18
<i>Article 19</i> .....	19
Form of bank guarantee .....	19
<i>Article 20</i> .....	20
Validity and renewal of the bank guarantee .....	20
<i>Article 21</i> .....	21
Credit limit .....	21
<i>Article 22</i> .....	21
Modifications of the collaterals .....	21
<i>Article 23</i> .....	22
Collateral incident .....	22
<i>Article 24</i> .....	22
Calls on collaterals .....	22
CHAPTER 4 .....	23
Auctions .....	23
<i>Article 25</i> .....	23
General provisions for auctions .....	23
<i>Article 26</i> .....	23
Auction specification .....	23
<i>Article 27</i> .....	24
Bids submission .....	24
<i>Article 28</i> .....	25
Bid registration .....	25
<i>Article 29</i> .....	25
Default bid .....	25
<i>Article 30</i> .....	26
Default bid for fallback auction .....	26
<i>Article 31</i> .....	26
Credit limit verification .....	26
<i>Article 32</i> .....	27
Auction results determination .....	27
<i>Article 33</i> .....	29

Notification of provisional auction results .....	29
Article 34.....	29
Contestation of provisional auction results .....	29
CHAPTER 5 .....	31
Use of daily transmission rights.....	31
Article 35.....	31
General principles.....	31
Article 36.....	31
Nomination of transmission rights .....	31
Article 37.....	32
Rights document.....	32
Article 38.....	32
TSO designation .....	32
CHAPTER 6 .....	33
Fallback Procedures.....	33
Article 39.....	33
General provisions.....	33
Article 40.....	34
Fallback procedure for data exchange .....	34
Article 41.....	35
Postponement of auction .....	35
Article 42.....	35
Fallback auction .....	35
Article 43.....	36
Auction cancellation .....	36
Article 44.....	37
Fallback procedure for eligible person notification .....	37
CHAPTER 7 .....	38
Curtailement.....	38
Article 45.....	38
Triggering events and consequences of curtailment on daily transmission rights .....	38
Article 46.....	38
Process and notification of curtailment on daily transmission rights .....	38
Article 47.....	39
Compensation for curtailments to ensure operation remains within operational security limits .....	39
Article 48.....	39
Reimbursement for curtailments due to force majeure or emergency situation.....	39

CHAPTER 8 .....	40
Invoicing and Payment .....	40
<i>Article 49</i> .....	40
General principles.....	40
<i>Article 50</i> .....	40
Calculation of due amounts.....	40
<i>Article 51</i> .....	41
Tax gross-up.....	41
<i>Article 52</i> .....	41
Invoicing and payment conditions .....	41
<i>Article 53</i> .....	43
Payment disputes .....	43
<i>Article 54</i> .....	44
Late payment and payment incident.....	44
CHAPTER 9 .....	46
Miscellaneous.....	46
<i>Article 55</i> .....	46
Duration and amendment of allocation rules .....	46
<i>Article 56</i> .....	47
Liability.....	47
<i>Article 57</i> .....	48
Dispute resolution .....	48
<i>Article 58</i> .....	50
Suspension of the participation agreement .....	50
<i>Article 59</i> .....	51
Termination of the participation agreement .....	51
<i>Article 60</i> .....	53
Force majeure.....	53
<i>Article 61</i> .....	54
Notices .....	54
<i>Article 62</i> .....	55
Confidentiality .....	55
<i>Article 63</i> .....	56
Assignment and subcontracting .....	56
<i>Article 64</i> .....	57
Governing law.....	57
<i>Article 65</i> .....	57

Language.....57  
*Article 66*.....57  
Intellectual property.....57  
*Article 67*.....57  
Relationship of the parties .....57  
*Article 68*.....58  
No third party rights .....58  
*Article 69*.....58  
Waiver.....58  
*Article 70*.....58  
Entire agreement.....58  
*Article 71*.....59  
Remedies exclusive.....59  
*Article 72*.....59  
Severability .....59  
Annex 1 .....61  
Annex 2 .....62  
Annex 3 .....63

# CHAPTER 1

## General provisions

### *Article 1*

#### **Subject-matter and scope**

1. These allocation rules, including the annexes, contain the terms and conditions for the allocation of daily transmission rights on the Swiss borders as specified in Annex 1, it being understood that the registered participant will accede to these rules by the signature of the participation agreement. In particular, the allocation rules set out the rights and obligations of registered participants as well as the requirements for participation in auctions, they describe the process of auctions, including the determination of marginal price as a result of auction and the processes for curtailment of transmission rights and invoicing/payment.
2. The auctions refer to cross zonal capacity only and registered participants may invoke no other right in connection with the daily transmission rights allocated to them than the rights in accordance with the provisions of these allocation rules.
3. All rights and responsibilities of NRAs, as stated within these allocation rules, shall also apply to the equivalent authority in Switzerland.

### *Article 2*

#### **Definitions and interpretation**

1. For the purpose of these allocation rules, the definitions in Article 2 of the FCA Regulation, Article 2 of Regulation (EU) 2015/1222, Article 2 of Regulation (EU) 2019/943, Article 2 of Regulation (EU) 2013/543 and Article 2 of Directive (EU) 2019/944 shall apply.
2. In addition, the following definitions shall apply:

**'affiliate'** means, in relation to any person, any other person that directly or indirectly controls, is controlled by or is under direct or indirect common control with that person as control is defined in the EU Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings;

**'allocation platform'** means either the responsible Transmission System Operator(s) (hereinafter "TSO(s)") at the respective bidding zone border(s) or an entity appointed and commissioned by them or nominated in accordance to national regulations to act their behalf and on its own name it being the single allocation platform or regional platform for the attribution of daily cross zonal capacity through the auctions as defined in the participation agreement;

**'allocation rules'** means the rules for daily capacity allocation applied by allocation platform(s);

**'auction tool'** means the information technology system used by the allocation platform to perform auctions and to facilitate other procedures described in these allocation rules;

**'auction'** means the process by which daily cross zonal capacity is offered and allocated to market participants who submit bid(s);

**'auction specification'** means, a list of specific characteristics of a particular auction, including the nature of offered products and relevant dates;

**'bank guarantee'** means an unconditional and irrevocable standby letter of credit or letter of guarantee issued by a bank;

**'bid'** means a pair of bid quantity and bid price offered by a registered participant participating in an auction;

**'bid price'** means the price in Euros per MWh, which a registered participant is willing to pay for one (1) MW and MTU of transmission rights;

**'bid quantity'** means the amount of transmission rights in MW requested by a Registered Participant;

**'bid value'** means the bid price multiplied with the bid quantity;

**'bidding period'** means the time period within which the registered participants wishing to participate in an auction may submit their bids;

**'bidding zone'** means the largest geographical area within which market participants are able to exchange energy without capacity allocation;

**'business account'** means a dedicated deposit account opened at the financial institution selected by the allocation platform in the name of the allocation platform or at the discretion of the allocation platform opened by the registered participant, but with the allocation platform as the beneficiary of the dedicated cash deposit, which may be used for payments by the registered participant;

**'credit limit'** means the amount of the collaterals which may be used to cover any bid submission in subsequent auctions and is not used for outstanding payment obligations;

**'daily capacity allocation'** means the attribution of daily cross zonal capacity through an auction;

**'EIC code'** means the ENTSO-E Energy Identification Coding Scheme identifying the parties in a cross-border trade;

**'fallback auction'** means the process by which the allocation platform attributes capacities to a registered participant in case the fallback mode has been triggered;

**'force majeure'** means any unforeseeable or unusual event or situation beyond the reasonable control of a party and/or the relevant TSOs, and not due to a fault of the party and/or the relevant TSOs, which cannot be avoided or overcome with reasonable foresight and diligence, which cannot be solved by measures which are from a technical, financial or economic point of view reasonably possible for the party and/or the relevant TSOs, which has actually happened and is objectively verifiable, and which makes it impossible for the party and/or the relevant TSOs to fulfil, temporarily or permanently, its obligations;

**'information system rules'** means the terms and conditions for access to and use of the auction tool by registered participants as published on the allocation platform's website;

**'marginal price'** means the price in Euros per MWh determined at particular auction to be paid by all the registered participants for each MW and MTU of acquired daily transmission right;

**MTU** means Market Time Unit;



**'national regulatory authorities'** means the Swiss regulatory authority as defined in Article 21 of the Swiss Federal Electricity Supply Act (Stromversorgungsgesetz [StromVG CC 734.7]) and the regulatory authorities referred to in Article 57 of Directive (EU) 2019/944;

**'nomination'** means the notification of the use of transmission rights by a physical transmission rights holder and, where applicable, by their counterparty, or an authorized third party, to the respective TSO(s);

**'nomination rules'** means the rules with regard to the notification of use of physical transmission rights holder and their counterparty, or an authorized third party, to the respective TSO(s);

**'oriented bidding zone border'** means a given direction of a bidding zone border;

**'participation agreement'** means, the agreement, by which the parties undertake to comply with the terms and conditions for daily capacity allocation as contained in these allocation rules;

**'party'/'parties'** means the allocation platform and/or a registered participant referred to individually as party or collectively as parties;

**'physical transmission right'** means a right entitling its holder to physically transfer a certain volume of electricity in a certain period of time between two bidding zones in a specific direction;

**'pre-bid'** means a pair of bid quantity and bid price offered by a registered participant participating in an auction before the bidding gate opens;

**'pre-bidding period'** means the time period within which the registered participants wishing to participate in an auction may submit their pre-bids;

**'product period'** means the time and date on which the right to use transmission rights commences and the time and date on which the right to use the transmission rights ends. For daily allocation the product period covers a calendar day of a period of 24 hours beginning at 00:00:00 and ending at 23:59:59. The days on which the legal time changes (daylight saving time) will be composed of either 23 hours or 25 hours;

**'registered participant'** means a market participant which has entered into a participation agreement with the allocation platform;

**'rights document'** means a document containing the information of the maximum amount of allocated transmission rights that can be nominated by a market participant per oriented bidding zone border per day and per MTU taking into account the volume of transmission rights initially acquired and any possible curtailments which occurred before the issuance of the rights document;

**'Swiss Northern borders'** means the following borders:

France – Switzerland border (CH<>FR)

Germany – Switzerland border (CH<>DE)

Austria – Switzerland border (AT<>CH);

**'transmission right'** means for the purposes of these allocation rules a physical transmission right acquired through the daily auction;

**'Use It Or Lose It' (UIOLI)** means an automatic application by which the underlying daily cross zonal capacity of the non-nominated physical transmission rights irrevocably fall back to the relevant TSO(s) and whereby transmission right holders that do not nominate to use their rights have no right to receive a pay-out;

**‘working day’** means the calendar days from Monday to Friday, with the exception of public holidays as specified on the website of the allocation platform location;

**‘working hours’** means the hours on working days specified within the participation agreement.

3. In these allocation rules, including its annexes, unless the context requires otherwise:
  - (a) Any reference to the word bidding zone border may cover all interconnectors collectively or only one or a subset of interconnector(s) at this bidding zone border as specified in Annex 1 of these allocation rules;
  - (b) the singular also includes the plural and vice versa;
  - (c) references to one gender include all other genders;
  - (d) the table of contents, headings and examples are inserted for convenience only and do not affect the interpretation of the allocation rules;
  - (e) the word “including” and its variations are to be construed without limitation;
  - (f) any reference to legislation, regulations, directive, order, instrument, code or any other enactment shall include any modification, extension or re-enactment of it then in force;
  - (g) any reference to another agreement or document, or any deed or other instrument is to be construed as a reference to that other agreement, or document, deed or other instrument as amended, varied, supplemented, substituted or novated from time to time;
  - (h) a reference to time is a reference to CET/CEST time unless otherwise specified;
  - (i) where the allocation platform is required to publish any information under these allocation rules, it shall do so by making the information or data available on its website and/or via the auction tool.

### *Article 3*

#### **Allocation platform**

1. The allocation platform shall undertake the allocation functions in accordance with these allocation rules and in accordance with relevant legislation.
2. For the purposes of these allocation rules the allocation platform shall be the party signing the participation agreement with the registered participant.
3. For the purpose of the participation agreement with the registered participant, the allocation platform shall publish a consolidated version of these allocation rules thereto as they enter into force in accordance with the applicable national regulatory regimes. In case of a conflict between the consolidated version by the allocation platform and the allocation rules including the annexes as entered into force in accordance with the applicable national regulatory regimes, the latter shall prevail.

*Article 4*

**Effective date and application**

1. These allocation rules shall enter into force in accordance with the applicable national regulatory regimes upon the approval by or, where applicable, notification to the relevant national regulatory authorities and on the date announced by the allocation platform.
2. These allocation rules apply to daily capacity allocation for the delivery period from **dd.mm.yyyy**.
3. Unless expressly stated otherwise or required by the applicable governing law, these allocation rules shall govern all rights and obligations in connection with daily transmission rights acquired before the entry into force of these allocation rules but with the delivery date after **dd.mm.yyyy**.
4. These allocation rules are subject to the legislation prevailing at the time at which they take effect. In the event that there is a change in legislation or any action by competent authorities at national or European Union level which have an effect on these allocation rules and/or their annexes then, notwithstanding any other provision of these allocation rules, the allocation rules shall be amended accordingly and pursuant to Article 55.
5. In the event of an inconsistency between the allocation rules and the nomination rules, for matters relating to the implementation of daily auctions in accordance with the allocation rules, the allocation rules shall prevail.

## **CHAPTER 2**

### **Requirements and process for participation in auctions**

#### *Article 5*

##### **General provision**

1. Market participants may acquire a transmission right only from participation in auctions.
2. The participation in auctions requires that the market participant:
  - (a) concludes a valid and effective participation agreement in accordance with Articles 6 to 16;
  - (b) has access to the auction tool in accordance with Article 14.
3. The participation in auctions requires that market participants, in addition to the conditions set forth in the previous paragraph, fulfil also the following conditions:
  - (a) complies with the requirements for provision of collaterals as specified in CHAPTER 3; and
  - (b) accepts additional financial terms where needed in accordance with Article 15; and
  - (c) Is compliant with the specific provisions per TSO border and where applicable per direction as listed in Annex 2.
4. In any case, market participants have to fulfil the obligations as specified in the relevant CHAPTERs of these allocation rules.

#### *Article 6*

##### **Participation agreement conclusion**

1. At least nine (9) working days before the first participation in an auction, any market participant may apply to be a party to a participation agreement by submitting, to the allocation platform, two (2) signed copies of the participation agreement in case of handwritten signature(s), as published on the website of the allocation platform, together with all duly completed information and documents required by Articles 7 to 16. The participation agreement shall be signed with handwritten signature(s) or qualified electronic signature(s) (QES). The allocation platform shall assess the completeness of the information submitted in accordance with Articles 7 and 11 within seven (7) working days of receipt of the completed and signed participation agreement.
2. The allocation platform shall before the expiration of the seven (7) working days deadline ask the market participant to provide any outstanding information which the market participant fails to submit with its participation agreement. On receipt of the outstanding information, the allocation platform shall within an additional seven (7) working days review the information and inform the market participant if any further information is required.

3. Once the allocation platform has received all necessary information, it shall return one copy of the participation agreement signed by it to the market participant without undue delay. Signature of the participation agreement by the allocation platform shall not itself indicate compliance with any other condition set in these allocation rules for the participation in the auctions. The participation agreement comes into force on the date of signature by the allocation platform.
4. In case a market participant is already a registered participant at the allocation platform it only has to complete the missing/extra requirements described under these allocation rules.

#### *Article 7*

#### **Form and content of the participation agreement**

1. The form of the participation agreement and the requirements for its completion shall be published by the allocation platform and may be amended from time to time by the allocation platform without changing any terms and conditions specified in these allocation rules unless otherwise stated in these allocation rules.
2. As a minimum, the participation agreement will require the market participant to:
  - (a) (a) provide all necessary information in accordance with Article 8 and Article 11; and
  - (b) (b) agree to be bound by and comply with these allocation rules.
3. Nothing in these allocation rules shall prevent the allocation platform and the registered participant from agreeing in the participation agreement additional rules, out of the scope of these allocation rules, including but not limited to the participation in long-term or intraday explicit allocation or any fallback process for day-ahead implicit allocation.
4. In the event of difficulty of interpretation, contradiction or ambiguity between these allocation rules and the participation agreement, the text of the allocation rules shall prevail.

#### *Article 8*

#### **Submission of information**

1. The market participant shall submit the following information with its completed and signed participation agreement:
  - (a) name and registered address of the market participant, including general email and telephone number of the market participant for notifications in accordance with Article 61;
  - (b) an extract of the registration of the market participant in the commercial register of the competent authority;
  - (c) details regarding the beneficial ownership as defined in the relevant legal provisions (i) of the Swiss Federal Act on Combating Money Laundering and Terrorist Financing AMLA (Geldwäschereigesetz, GwG) for all transactions involving Swiss borders and (ii) of Article 3(6) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing for all transactions;

- (d) contact details and names of persons authorized to represent the market participant and their function;
  - (e) EU VAT registration number or similar tax identification information where EU VAT is not applicable;
  - (f) Taxes and levies to be considered for invoices and collateral calculations;
  - (g) A unique Energy Identification Code (EIC) which has been registered in the Centralised European Register of Energy Market Participants (CEREMP). The uniqueness shall be verified in CEREMP;
  - (h) bank account information evidenced by a bank account identification document for all payments to the applicant to be used by the allocation platform. The applicant shall provide the bank account information of a credit institution based in the European Economic Area, Switzerland, United Kingdom, or a country in which the allocation platform performs cross border auction services. The applicant is obliged to select a financial institution which is subject to customer due diligence standards that are not less than those laid down in Directive (EU) 2015/849 as amended and which complies to them accordingly;
  - (i) financial contact person for collaterals, invoicing and payment issues, and their contact details (email and telephone number) for notifications where required in these allocation rules;
  - (j) commercial contact person and their contact details (email and telephone number) for notifications where required in these allocation rules;
  - (k) operational contact person and their contact details (email and telephone number) for notifications where required in these allocation rules;
  - (l) the list of oriented bidding zone borders in Annex 2 where the registered participant wants to participate in auctions; and
  - (m) ACER Registration Code (ACER Code) assigned by the European Agency for the Cooperation of Energy Regulators (ACER) during the market participant's registration process with its respective regulatory authority, and as reported on CEREMP.
2. A registered participant shall ensure that all data and other information that it provides to the allocation platform pursuant to these allocation rules (including information in its participation agreement) is and remains accurate and complete in all material respects and must promptly notify the allocation platform of any change.
  3. A registered participant shall notify the allocation platform if there is any change to the information, submitted in accordance with paragraph 1 of this Article, at least nine (9) working days before the change comes into effect and, where that is not possible, without delay after the registered participant becomes aware of the change.
  4. The allocation platform will confirm the registration of the change or send a refusal note of registration of the change to the registered participant, at the latest, seven (7) working days after the receipt of the relevant notification of change. The confirmation or refusal note will be sent via electronic means as specified by the allocation platform on its website. If the allocation platform refuses to register the change, the reason shall be provided in the refusal note.
  5. The change becomes valid on the day of the delivery of the confirmation to the registered participant.

6. If additional information is required from a registered participant as a consequence of an amendment to these allocation rules, then the registered participant shall submit the additional information to the allocation platform within twelve (12) working days after the request for such submission by the allocation platform.

*Article 9*

**Warranties**

1. By the signature of the participation agreement the market participant warrants that:
  - (a) it has not commenced any proceedings seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights;
  - (b) no insolvency, bankruptcy or other similar legal proceeding affecting creditors' rights have been commenced in relation to the applicant;
  - (c) no winding-up or liquidation proceedings have been commenced with regard to the applicant; and
  - (d) it has no overdue payment obligations towards any current, previous or future allocation platform.

*Article 10*

**Dedicated business account**

As part of the submission of the information in accordance with Article 6 and Article 8, a dedicated business account is put at the disposal of the market participant for the purposes of depositing cash collaterals and/or for the purposes of making payments on the basis described in Article 52.

*Article 11*

**Acceptance of the information system rules**

By signing the participation agreement the market participant accepts the applicable information system rules, as amended from time to time and published on the website of the allocation platform.

*Article 12*

**Costs related to the participation agreement**

All applications to become a registered participant and any subsequent participation in auctions and shall be at the registered participants' own cost, expense and risk. The allocation platform shall not be liable to any person for any cost, damages, or expense in connection with the registered participant participating in auctions unless otherwise explicitly stated in these allocation rules.

### *Article 13*

#### **Refusal of application**

The allocation platform may refuse to enter into a participation agreement with a market participant in the following circumstances:

- (a) when the applicant has not submitted a duly completed and signed participation agreement in accordance with Articles 6, 7 and 8; or
- (b) the allocation platform has previously terminated a participation agreement with the applicant as a result of a breach of the participation agreement by the registered participant in accordance with Article 59(3) and (4) and unless the circumstances leading to termination have ceased to exist or the allocation platform is reasonably satisfied that the breach will not occur again; or
- (c) if entering into a participation agreement with the applicant would cause the allocation platform to breach any condition of any mandatory legal or regulatory requirement; or
- (d) if any of the warranties of the registered participant under Article 9 are found to be not valid or false; or
- (e) if the applicant is under economic and trade sanctions which may have a significant impact to the allocation platform.

### *Article 14*

#### **Access to the auction tool**

1. The allocation platform shall grant access to the auction tool free of charge if the following requirements are satisfied:
  - (a) the registered participant has signed and delivered a completed form included in the information system rules identifying the person(s) for which the user account(s) in the auction tool shall be established; and
  - (b) the registered participant has fulfilled the requirements on authentication as set forth by the information system rules published by the allocation platform; such requirements may include technology for authentication purposes.
2. The allocation platform shall confirm the creation of the user account or may send a refusal note to the registered participant, at the latest, five (5) working days after the receipt of the relevant signed and completed form by the registered participant. The confirmation or refusal note shall be sent via electronic means as specified by the allocation platform on its website.
3. The allocation platform shall send the duly justified refusal note if the requirements listed in paragraph 1 of this Article are not fulfilled and access to the auction tool will not be granted.



*Article 15*

**Conclusion of additional financial terms**

The allocation platform may develop and publish additional standard financial terms to be accepted by the registered participants. These additional financial terms may include provisions to enable joint collaterals for processes organized by the allocation platform in accordance with the participation agreement, as long as these additional financial terms comply with these allocation rules.

*Article 16*

**Regulatory and legal requirements**

It is the responsibility of each market participant to ensure that it complies with relevant legislation, including requirements of any relevant competent authority, and obtained all necessary authorizations in connection with its participation in auctions or in the use of transmission rights and continue to maintain the said authorisation and comply with the relevant legislation throughout its participation in auctions. It is notably the responsibility of the market participant to comply with the requirements set out in Article 13.

## **CHAPTER 3**

### **Collaterals**

#### *Article 17*

#### **General provisions**

1. Registered participants shall provide collaterals in order to secure payments to the allocation platform resulting from auctions of transmission rights and, where applicable, potential other payments falling due under the additional financial terms in accordance with Article 15.
2. Only the following forms of collaterals shall be accepted:
  - (a) a bank guarantee;
  - (b) a cash deposit in a dedicated business account.
3. Collaterals may be provided in one of the forms mentioned in paragraph 2 of this Article or a combination of these forms, provided that the allocation platform is entitled as beneficiary to the full collateral.
4. Credit limit shall always be greater or equal to zero.
5. The collaterals shall be provided in Euros (€).

#### *Article 18*

#### **Form of cash deposit**

1. For collaterals that are provided in the form of a cash deposit in a dedicated business account the following conditions shall apply:
  - (a) the money shall be deposited in a dedicated business account at a financial institution selected by the allocation platform, and the registered participant shall pay all the amounts and payments to the business account from an account in its name with a credit institution based in the European Economic Area, Switzerland, United Kingdom, or a country in which the allocation platform performs cross border auction services. The registered participant is obliged to select a financial institution which is subject to customer due diligence standards that are not less than those laid down in Directive (EU) 2015/849 as amended and which complies with them accordingly;
  - (b) the dedicated business account shall be opened and used in accordance with additional financial terms to be concluded between the allocation platform, or where relevant the financial institution and the registered participant and shall only be used for auction purposes;
  - (c) until withdrawal as permitted by the following provisions of Article 24, the cash deposit in the dedicated business account belongs to the registered participant if not stated otherwise in the additional financial terms in accordance with Article 15;

- (d) withdrawals from the dedicated business account pursuant to Article 22 and Article 24 may be made solely on the instruction of the allocation platform;
- (e) the dedicated business account may be used in addition for settlement as set forth in Article 52 upon request of the allocation platform; and
- (f) interest on the amount deposited in the dedicated business account shall accrue for the benefit of the registered participant, after deduction of taxes and bank charges if any.

*Article 19*

**Form of bank guarantee**

1. Collaterals that are provided in the form of a bank guarantee shall comply with the following specifications:
  - (a) the bank guarantee shall be provided in the form of the template that is available on the website of the allocation platform and updated from time to time or in a form that substantially follows the template. Alternatively, the bank guarantee shall be provided via SWIFT (Society for Worldwide Interbank Financial Telecommunication or any successor provider of such telecommunication services) and the fees of the receiving bank shall be covered by the registered participant;
  - (b) the bank guarantee shall be written in English;
  - (c) the bank guarantee covers all auctions organized by the allocation platform subject to these allocation rules;
  - (d) the bank guarantee shall allow partial and multiple drawing by the allocation platform, up to the maximum amount guaranteed;
  - (e) the bank guarantee shall provide for payment upon first request of the allocation platform. It shall further provide that, if the allocation platform calls upon the bank guarantee, the bank shall pay automatically without any other condition than the receipt of a written demand by registered letter from the allocation platform;
  - (f) the bank guarantee shall be irrevocable, unconditional and non-transferable;
  - (g) the bank guarantee shall either include handwritten signature(s) or qualified electronic signature(s) (QES) from the issuing Bank. In the event the bank guarantee is signed with qualified electronic signature(s) (QES), all the following amendments shall be signed with a qualified electronic signature(s) (QES);
  - (h) the bank issuing the bank guarantee shall be permanently established, including via a branch in the European Economic Area, Switzerland, United Kingdom or a country in which the allocation platform performs cross border auction services;
  - (i) the bank issuing the bank guarantee or the financial group it belongs to shall have a long term credit rating of not less than BBB+ by Standard and Poor's Corporation, BBB+ by Fitch or Baa1 by Moody's Investors Service Inc. If the rating requirement is not fulfilled by the issuing bank itself but by the financial group to which it belongs, the issuing bank shall provide the allocation platform with a parental guarantee or an equivalent document issued by the financial group. If the issuing bank or the financial group, the issuing bank belongs to ceases to have the required long term credit rating, the registered participant shall within five (5) working days submit to the allocation platform a substitute bank guarantee by a bank complying with the required long term credit rating

- or replace the bank guarantee by deposit. If there are industry-wide downgrades of financial institutions, the allocation platform may investigate what the new standards are and, if deemed necessary, decrease the required rating for a limited period of time, informing TSOs, who shall then inform the relevant regulatory authorities;
- (j) the bank issuing the bank guarantee shall not be an affiliate of the registered participant for which the bank guarantee is issued.
2. A bank guarantee shall contain the following:
- (a) a maximum amount guaranteed;
  - (b) the allocation platform's identification as beneficiary, as specified on the website of the allocation platform;
  - (c) the allocation platform's bank account, as specified on the website of the allocation platform;
  - (d) the allocation platform's bank's address, as specified on the website of the allocation platform;
  - (e) the registered participant's full identification, including name, address, commercial/company register;
  - (f) full identification of the providing bank; and
  - (g) the validity time.
3. The registered participant shall submit the bank guarantee at least four (4) working days before the bidding period closure of the auction for which it shall be used as collateral or otherwise, it shall be considered for the subsequent auctions.
4. The allocation platform shall accept the bank guarantee provided by a registered participant if the bank guarantee is provided in line with the specifications set out in paragraph 1 to 2 of this Article and, in the event the bank guarantee includes handwritten signature(s), the original of the bank guarantee has been received by the allocation platform.
5. The allocation platform shall confirm the acceptance of the bank guarantee or send a refusal note to the registered participant, at the latest, four (4) working days after the receipt of the original of the bank guarantee. The confirmation or refusal note shall be sent via electronic means as specified by the allocation platform on its website. The refusal note shall include reasoning for refusal.

#### *Article 20*

#### **Validity and renewal of the bank guarantee**

1. Collaterals in the form of a bank guarantee shall be valid for the minimum period until at least thirty (30) calendar days after the end of calendar month of the product period(s).
2. The registered participant shall replace or renew the collaterals in form of a bank guarantee to fulfil the requirements of paragraph 1 of this Article at least four (4) working days before the expiry of the validity of the collaterals.

## *Article 21*

### **Credit limit**

1. The allocation platform shall calculate and continuously update the credit limit of each registered participant in respect of each subsequent auction. The credit limit shall be equal to the amount of the collaterals in place minus any outstanding payment obligations. In case of a bank guarantee such bank guarantee shall be only considered if the requirements in Article 20 related to its validity for the respective auction are fulfilled. The allocation platform shall make this information available to each registered participant individually through the auction tool.
2. Outstanding payment obligations are calculated according to Article 50 subject to additional rules in paragraph 3 to 5 of this Article and in Article 31.
3. For the purpose of the credit limit calculation, outstanding payment obligations shall be increased to include the taxes and levies in force subject to Article 51.
4. Maximum payment obligations for a registered participant resulting from its bid(s) registered at the closure of the bidding period, calculated according to Article 31, shall be considered provisionally as the outstanding payment obligations. From the publication of the provisional auction results until the moment when the auction results become final the due amount notified according to Article 33 paragraph 3(b) and (c) shall be provisionally considered as outstanding payment obligations for credit limit calculation for any concurrent auction. The credit limit shall be revised when the provisional auction results become final as described in CHAPTER 4.

## *Article 22*

### **Modifications of the collaterals**

1. A registered participant may request in written form an increase of the collaterals in form of a bank guarantee, a decrease of the collaterals in form of a bank guarantee and/or cash deposit or change of the form of the collaterals at any time in accordance to paragraphs 2 and 3 of this Article.
2. A decrease of the collaterals of a registered participant shall only be allowed if the credit limit after applying the requested decrease of the collaterals would be greater than or equal to zero.
3. The allocation platform shall accept the modification of the collaterals if the request for a modification of collaterals is compliant with the condition set out in paragraph 2 of this Article in case of a decrease or with the conditions set out in Articles 18 and 19 in case of an increase of collaterals in the form of a bank guarantee and in case of a change in the form of the collaterals from cash on deposit to bank guarantee.
4. The modification of the collaterals shall become valid and effective only when the allocation platform has made the requested modification of the collaterals of the registered participant within the auction tool.
5. The allocation platform shall assess the request for modification of collaterals and confirm the acceptance or send a refusal note to the registered participant, at the latest, four (4) working days after the receipt of the request. The confirmation or refusal note shall be sent via electronic means as specified by the allocation platform on its website. The refusal note shall include reasoning for refusal.

### *Article 23*

#### **Collateral incident**

1. A collateral incident occurs in the following cases:
  - (a) the collaterals are insufficient to secure the amount due for the transmission rights held by a registered participant on the next payment date as set forth in Article 52 considering the amount and the validity of the collaterals; or
  - (b) the collaterals are not renewed in accordance with Article 20 paragraph 2; or
  - (c) the collaterals are not restored after a payment incident in accordance with Article 24 or new collateral was provided that is not compliant with the conditions specified in Articles 17(3), 18 and 19.
2. The allocation platform shall notify the collaterals incident to the registered participant by electronic means as specified by the allocation platform on its website. The registered participant shall increase its collaterals within two (2) working days from sending of the notification if this is done during working hours or two (2) working days starting from the next working day if sent after working hours. If the collaterals provided by the registered participant remains insufficient after this period, the allocation platform may suspend or terminate the participation agreement in accordance with Articles 58 and 59.

### *Article 24*

#### **Calls on collaterals**

1. The allocation platform is entitled to call upon collaterals of a registered participant in the event of a registered payment incident in accordance with Article 54.
2. The registered participant shall restore its collaterals after a payment incident or collaterals incident by following the conditions as set forth in Articles 17(3), 18 and 19 unless the participation agreement is suspended or terminated in accordance with Articles 58 and 59.

## **CHAPTER 4**

### **Auctions**

#### *Article 25*

##### **General provisions for auctions**

1. The allocation platform shall allocate transmission rights to registered participants by way of explicit allocation. Prior to the auction, the allocation platform shall publish auction specifications on its website.
2. The auctions shall be organized via the auction tool. Each registered participant fulfilling the requirements for participating in the auction may place bids in the auction tool until the relevant deadline for placing bids in the specific auction expires according to the respective auction specification.
3. After the relevant deadline for placing bids in the specific auction has expired, the allocation platform shall evaluate the bids including against the respective credit limits of the registered participants. The results of the auction will be notified to registered participants via the auction tool. pre-bidding is possible as soon as the auction is created in the auction tool.

#### *Article 26*

##### **Auction specification**

1. The allocation platform shall publish the auction specification as set forth in paragraphs 2 to 3 of this Article no later than:
  - (a) For AT<>CH, CH<>DE and CH<>FR: 09:00 in D-1;
  - (b) for CH<>IT: 09:30 in D-1.
2. The auction specification shall state in particular:
  - (a) the code identifying the auction in the auction tool;
  - (b) an identification of the oriented bidding zone border(s) or a subset of the interconnectors on the oriented bidding zone border covered;
  - (c) the product period;
  - (d) the bidding period which in case of regular operational conditions starts with auction Specification publication and ends at
    - (i) CH<>IT: 10:00 in D-1;
    - (ii) AT-CH / CH<>DE: 09:30 in D-1;
    - (iii) CH-FR 09:45 in D-1;
  - (e) the deadline for the publication of the provisional auction results;
  - (f) the contestation period in accordance with Article 34;
  - (g) the offered capacity which shall include cross zonal capacity released in accordance with Articles 58 and 59;
  - (h) any other relevant information or terms applicable to the product or the auction.

*Article 27*  
**Bids submission**

1. The registered participant shall submit a bid or set of bids to the allocation platform in accordance with following requirements:
  - (a) it shall be submitted electronically using the auction tool and during the pre-bidding period or bidding period as specified in the auction specification; it shall identify the auction via an identification code as specified in Article 26 paragraph 2 (a);
  - (b) it shall identify the registered participant submitting the bid through its EIC code;
  - (c) it shall identify the oriented bidding zone border for which the bid is submitted;
  - (d) it shall state the bid price, which shall be different for each bid of the same registered participant, exclusive of taxes and levies, in Euros per MWh for one MTU of the product period, i.e. EUR/MWh per MTU, expressed to a maximum of two (2) decimal places, and equal to or greater than zero;
  - (e) it shall state the bid quantity in full MW which must be expressed without decimals.
2. The registered participant may modify its previously registered bid or set of bids at any time during the pre-bidding and/or bidding period including its cancellation. In case the bid has been modified only the last valid modification of the bid or set of bids shall be taken into account for the provisional auction results determination.
3. If a bid quantity, or a quantity calculated as a sum of the bid quantity for several bids submitted for the same auction, by a registered participant exceeds the offered capacity announced in the final auction specification, this bid or these bids shall be completely rejected. Where a modification of previously submitted bids results in exceeding the offered capacity, the modification shall be rejected and the previously registered bids will stand. During the pre-bidding period, Participants may submit bids (i.e. pre-bids) but the following checks will not be performed until the bidding gate opens:
  - Sum of bid volumes are not checked against offered capacity as offered capacity may still change during the pre-bidding phase;
  - Credit limit verification.
4. If a bid quantity or a quantity calculated as a sum of the bid quantity for several bids submitted for the same auction by a registered participant exceeds the relevant offered capacity announced after the bids submission, in case of bids submitted during pre-bidding period, the bids with the lowest bid value will be rejected one (1) by one (1) until the total allowed bid quantity is lower than or equal to the offered capacity at closure of the pre-bidding period. At the opening of a relevant bidding period, such bid(s) shall be considered as bid(s) submitted by the registered participant for the relevant auction.

The above mentioned process shall apply to all forms of an auction product



## *Article 28*

### **Bid registration**

1. The allocation platform shall not register a bid that:
  - (a) does not comply with the requirements of Article 27; or
  - (b) is submitted by a registered participant who is suspended in accordance with Article 58.
2. Provided that a bid or a set of bids fulfils the requirements set forth in Article 27, the allocation platform shall confirm to the registered participant that such bid(s) have been correctly registered by an acknowledgment of receipt via the auction tool. If the allocation platform does not issue an acknowledgment of receipt for a bid, such bid shall be deemed not to have been registered.
3. The allocation platform shall notify a registered participant whose bid is rejected as invalid and the reason for this rejection, without undue delay after the bid is rejected.
4. The allocation platform shall maintain a record of all valid bids received.
5. Each valid bid registered at closure of the bidding period shall constitute an unconditional and irrevocable offer by the registered participant to buy transmission rights up to the bid quantity and at prices up to the bid price and under the terms and conditions of these allocation rules and the relevant auction specification.

## *Article 29*

### **Default bid**

1. The registered participant has the option to place default bids for auctions.
2. A default bid, once identified as such by the registered participant, shall apply automatically to each subsequent relevant auction as defined by the registered participant when placing the default bid. At the opening of a relevant bidding period, the registered default bid shall be considered as a bid submitted by the registered participant for the relevant auction. This bid shall be considered as a delivered bid when the allocation platform sends an acknowledgment of receipt to the registered participant.
3. If a default bid quantity or a quantity calculated as a sum of the bid quantity for several default bids submitted for the same auction by a registered participant exceeds the final offered capacity, the bids with the lowest bid value shall be rejected one (1) by one (1) until the total allowed bid quantity is lower than or equal to the offered capacity.
4. A registered participant who wants to modify a default bid for a future auction shall change the bid quantity and the bid price of its default bids before the applicable auction bidding period opening.

5. A registered participant not wishing to submit the default bid on the auction tool for future auctions can cancel its default bids before the subsequent auction bidding period opening.

#### *Article 30*

##### **Default bid for fallback auction**

1. In case an auction cannot take place, a fallback auction will be triggered by using default bids.
2. A default bid shall apply automatically in simulation of an auction as set forth in Article 42. The registered default bid shall be considered as a bid submitted by the registered participant for the relevant fallback auction. This bid shall be considered as delivered when the allocation platform sends an acknowledgment of receipt to the registered participant.
3. If a default bid quantity or a quantity calculated as a sum of the bid quantity for several default bids submitted for the fallback auction by a registered participant exceeds the offered capacity used for auction simulation as set forth in Article 42, the bids with the lowest bid value shall be rejected one by one until the total allowed bid quantity is reached.
4. A registered participant who wants to modify a default bid for a fallback auction shall change the bid quantity and the bid price of its default bids.
5. A registered participant not wishing to submit the default bid for fallback auction can cancel its default bids.

#### *Article 31*

##### **Credit limit verification**

1. Upon submission by a registered participant of a bid or a set of bids to the auction tool the allocation platform shall check whether the maximum payment obligations connected with that registered participant's registered bid(s) calculated according to paragraphs 3 and 4 of this Article at the time of bid(s) submission exceed the credit limit. If the maximum payment obligation connected with such registered bids exceeds the credit limit, the allocation platform shall issue automatically via the auction tool a warning to the registered participant to modify the credit limit. Bids shall not be rejected automatically if the maximum payment obligation attributed to registered bids exceeds the credit limit at bid submission but only after the process described in paragraph 2 of this Article.
2. At closure of the bidding period the allocation platform shall check again whether the maximum payment obligations connected with registered bids calculated according to paragraph 4 of this Article exceed the credit limit. If the maximum payment obligations connected with these bids exceed the credit limit, these bids, starting with the bid with the lowest bid value, shall be one (1) by one (1) excluded, until the maximum payment obligations are less than or equal to the credit limit.

3. The allocation platform shall indicate insufficient collaterals as the reason for the bid exclusion in the auction results notification to the registered participant.
4. The allocation platform shall continuously assess all the bids irrespectively to which auction and with regard to which oriented bidding zone border they are submitted. In case of bids connected with various and overlapping auctions the allocation platform shall consider all calculated maximum payment obligations as outstanding payment obligations according to Article 21.
5. For the calculation of the maximum payment obligations related to each oriented bidding zone border the allocation platform shall sort the registered bids of a registered participant by bid value in descending order (merit-order). Bid 1 shall be the bid with the highest bid value and bid  $n$  shall be the bid with the lowest bid value. The allocation platform shall calculate the maximum payment obligations according to the following equation:

$$MPO = \sum_{MTU} \text{Max} \left[ \begin{aligned} & \text{Bid Price}(1) * \text{Bid Quantity}(1); \text{Bid Price}(2) \\ & * \sum_{i=1}^2 \text{Bid Quantity}(i); \dots; \text{Bid Price}(n-1) \\ & * \sum_{i=1}^{n-1} \text{Bid Quantity}(i); \text{Bid Price}(n) * \sum_{i=1}^n \text{Bid Quantity}(i) \end{aligned} \right]$$

6. When calculating the maximum payment obligations according to paragraph 4 of this Article, the allocation platform shall also take into account the increase of the maximum payment obligations with applicable taxes and levies in force.

#### *Article 32*

#### **Auction results determination**

1. After the expiration of the bidding period for an auction and the credit limit verification pursuant to Article 31, the allocation platform shall determine the auction results and allocate the transmission rights in accordance with this Article.
2. The auction results determination shall include the following:
  - (a) determination of the total quantity of the allocated transmission rights per oriented bidding zone border;
  - (b) identification of winning bids to be fully or partially satisfied; and
  - (c) determination of the marginal price per oriented bidding zone border.

3. The allocation platform shall determine the auction results using an optimization function aiming at maximization of the sum of the registered participants' surplus and the Congestion Income generated by the winning bids while respecting the constraints of the optimization function in form of relevant offered capacities. The allocation platform shall publish additional explanatory information on the optimization function of the algorithm on its website.
4. The allocation platform shall determine the marginal price at each oriented bidding zone border based on the following criteria:
  - (a) if the total quantity of cross zonal capacity for which valid bids have been submitted is lower than or equal to the relevant offered capacity for the relevant auction, then the marginal price shall be zero;
  - (b) if the total quantity of cross zonal capacity for which valid bids have been submitted exceeds the relevant offered capacity for the relevant auction, the marginal price shall be set at the lowest bid(s) price(s) allocated in full or in part using the respective offered capacities.
5. If two (2) or more registered participants have submitted for one oriented bidding zone border valid bids with the same bid price, that cannot be accepted in full for the total requested quantity of transmission rights, the allocation platform shall determine the winning bids and the quantity of the allocated transmission rights per registered participant as follows:
  - (a) the cross zonal capacity available for the bids which set the marginal price shall be divided equally between the number of the registered participants which submitted these bids;
  - (b) in case the quantity of transmission rights requested by a registered participant at marginal price is lower than or equal to the share calculated according to item (a) above, the request of this registered participant shall be fully satisfied;
  - (c) in case the requested quantity of transmission rights by a registered participant at marginal price exceeds the share calculated according to item (a) above, the request of this registered participant shall be satisfied up to the amount of the share as calculated according to item (a) above;
  - (d) any remaining cross zonal capacity after the allocation according to items (b) and (c) shall be divided by the number of the registered participants whose requests have not been fully satisfied and allocated to them applying the process described in items (a), (b) and (c) above.
6. Whenever the calculation set forth in paragraphs 3 to 5 of this Article does not result in a whole MW amount in accordance with Article 27 paragraph 1(e), the transmission rights shall be rounded down to the nearest full MW. The case when the transmission rights allocated to individual registered participants are equal to zero after rounding shall not impact the marginal price determination.

7. The transmission rights are deemed to have been allocated to a registered participant from the moment the registered participant has been informed of the results and the contestation period is closed in accordance with Article 34. In the event that the auction was not successfully performed, the fallback procedures as set forth in CHAPTER 6 shall apply.

#### *Article 33*

#### **Notification of provisional auction results**

1. The allocation platform shall publish on its website the provisional auction results as soon as possible but not later than specified in the auction specification.
2. The publication of the provisional auction results for each oriented bidding zone border included in the auction shall comprise at least the following data:
  - (a) total requested transmission rights in MW;
  - (b) total allocated transmission rights in MW;
  - (c) marginal price in EUR/MWh;
  - (d) number of registered participants participating in the auction;
  - (e) number of registered participants who placed at least one winning bid in the auction;
  - (f) list of registered bids without identification of the registered participants (bid curve);  
and
  - (g) Congestion Income.
3. No later than 30 minutes after the publication of the provisional auction results the allocation platform shall make available via the auction tool and notify to each registered participant who submitted a bid to a specific auction for each oriented bidding zone border included in the auction at least the following data:
  - (a) allocated transmission rights for each MTU of the product period in MW;
  - (b) marginal price in EUR/MWh; and
  - (c) due amount for allocated transmission rights in Euros, rounded to two decimal places.
4. In the event that the auction tool is unavailable, the allocation platform shall inform the registered participants of the provisional auction results in accordance with CHAPTER 6.

#### *Article 34*

#### **Contestation of provisional auction results**

1. Registered participants shall check the provisional auction results and, where reasonably appropriate, may contest the provisional auction results within the contestation period set out in paragraph 2 of this Article. The allocation platform shall only consider a contestation where the registered participant is able to demonstrate an error by the allocation platform in the provisional auction results.

2. The registered participant may contest the provisional auction results within the deadline set out in the relevant auction specification but no later than 30 minutes after the provisional auction results have been notified to the registered participant.
3. The contestation shall be notified to the allocation platform and headed as “contestation”.
4. Any contestation shall contain the following:
  - (a) Date of contestation;
  - (b) identification of contested auction;
  - (c) identification of the registered participant;
  - (d) name, e-mail address and telephone number of the registered participant;
  - (e) detailed description of the facts and the reason for contestation; and
  - (f) evidence of erroneous auction results.
5. The allocation platform shall notify its decision on the contestation to the registered participant no later than 1 hour and 30 minutes after the provisional auction results have been notified to the registered participant.
6. 1 hour and 30 minutes after the provisional auction results have been notified to the registered participant and unless an auction is cancelled due to erroneous results, the provisional auction results shall be considered as final and binding with no further notification.

## **CHAPTER 5**

### **Use of daily transmission rights**

#### *Article 35*

#### **General principles**

1. Transmission rights allocated in an auction, shall be subject to the Use It Or Lose It principle with no financial compensation
2. The holder of allocated transmission rights may nominate the transmission rights for its physical use in accordance with Article 36.

#### *Article 36*

#### **Nomination of transmission rights**

1. Persons eligible to nominate transmission rights shall fulfil the requirement described in applicable nomination rules and according to Annex 3. Eligible persons may be the following:
  - (a) the transmission rights' holder; or
  - (b) the person notified by the transmission rights' holder during the nomination process to the respective TSOs in line with the relevant nomination rules;
2. The nomination shall be done in compliance with the rights document.
3. The allocation platform shall publish a list with the relevant nomination rules for the bidding zone borders on its website.
4. The nomination deadlines for respective bidding zone borders are set forth in the relevant nomination rules. The allocation platform shall publish information on its website on the nomination deadlines per bidding zone border. In case of any discrepancy between the deadlines published by the allocation platform and those of the valid and legally binding relevant nomination rules, the latter shall prevail and the allocation platform shall not be held liable for any damages due to such a discrepancy.

*Article 37*

**Rights document**

1. The rights document shall contain the information about the volume in MW that eligible persons are entitled to nominate at specific oriented bidding zone borders or subsets of interconnectors of oriented bidding zone borders per MTU.
2. The allocation platform shall send it daily and no later than 15 minutes after the provisional results are sent. The rights documents shall be considered provisional until the end of the contestation period.

*Article 38*

**TSO designation**

1. On the border Germany-Switzerland, transmission rights shall be attributed to one (1) of the respective TSO borders.
2. When signing the participation agreement, registered participants shall determine to which TSO border transmission rights shall be attributed according to the following the process:
  - (a) the initial TSO designation is defined, by the registered participant when signing the participation agreement;
  - (b) this designation may however be modified in accordance with the form published on the website of the allocation platform; and
  - (c) the notification of the modification of the TSO designation must be made to the allocation platform no later than seven (7) working days before the start of the delivery period.



## **CHAPTER 6**

### **Fallback Procedures**

#### *Article 39*

#### **General provisions**

1. The allocation platform shall, to the extent reasonably practicable organize a fallback procedure in the following cases of failure of a standard process:
  - (a) if it is technically not possible to hold an auction following the process set forth in CHAPTER 4;
  - (b) if it is technically not possible to use the standard data exchange procedure following the process as set forth in CHAPTER 5.
  
2. The allocation platform may use one or all of the following fallback procedures:
  - (a) introduction of a fallback procedure for data exchange according to Article 40;
  - (b) postponement of the auction to a later time;
  - (c) introduction of a fallback auction according to Article 42;
  - (d) another ad hoc fallback procedure if considered appropriate by the allocation platform to overcome any technical obstacles.
  
3. The allocation platform shall, to the extent practicable and without undue delay, inform registered participants of possible deviations from the standard processes and the application of a fallback procedure via electronic means as specified by the allocation platform on its website and/or the allocation platform's website and/or using the auction tool.
  
4. Registered participants shall immediately inform the allocation platform of any observed problems with the use of the auction tool and all potential consequences via electronic means as specified by the allocation platform on its website. In case of an urgent problem, which shall be solved immediately and which is identified during working hours, the registered participant shall immediately contact the allocation platform by phone at the telephone number indicated on the website of the allocation platform for this type of problems.

*Article 40*

**Fallback procedure for data exchange**

1. In case of a failure at the site of the allocation platform of the standard processes for data exchange via the auction tool as described in these allocation rules, the allocation platform may inform registered participants that a fallback procedure for data exchange may be used as follows:
  - (a) by the applicable deadlines unless otherwise announced by the allocation platform the registered participant shall request the allocation platform by electronic means as specified by the allocation platform on its website to enter the relevant data into the auction tool by using this fallback procedure for data exchange;
  - (b) with the request the registered participant shall provide to the allocation platform in the format specified in the information system rules the relevant data to be entered in the auction tool;
  - (c) the allocation platform shall enter the submitted data into the auction tool;
  - (d) the allocation platform may set in information system rules an identification process for the registered participant at the moment when the registered participant submits the relevant operational or commercial data and requests the allocation platform to enter this data into the auction tool on its behalf by means of the fallback procedure. If the registered participant or the person authorized by the registered participant for this purpose does not clearly identify itself, the allocation platform shall be entitled not to perform the data entry;
  - (e) the registered participant shall provide the allocation platform with a telephone number, which can be used in case of a necessary communication;
  - (f) once the allocation platform has entered the provided data into the auction tool on behalf of the registered participant, the allocation platform shall, without undue delay, by telephone and/or via electronic means as specified by the allocation platform on its website inform the registered participant of the entry; and
  - (g) the allocation platform shall under no circumstances be held responsible if it fails to reach the registered participant through the means of communication above or if it fails to enter the data correctly via the fallback procedure.
2. In case of application of the fallback procedure for data exchange , all necessary information which is made available via the auction tool during the standard processes may be distributed to the registered participants by the allocation platform, by electronic means as specified by the allocation platform on its website or where appropriate published on the website of the allocation platform.

*Article 41*

**Postponement of auction**

1. The postponement of the auction shall be the default fallback procedure for auctions.
2. The allocation platform shall:
  - (a) where reasonably practicable postpone an auction by notifying the registered participants of the revised time of the new auction; or
  - (b) cancel the initial auction according to Article 43 and organize a new auction for the same product period.
3. If the postponement of the auction is announced after the bidding period has opened, the allocation platform may also cancel the initial auction according to Article 43 and organize a new auction for the same product period or may apply the fallback mode as specified in Article 42.
4. If the fallback procedure described in paragraph 1 and 2 of this Article cannot be implemented for the same product period, the allocation platform shall offer the respective cross zonal capacities in subsequent capacity allocation process.
5. The allocation platform shall inform all registered participants, without undue delay, of the postponement by notification published in the auction tool and/or on the webpage of the allocation platform and/or by electronic means as specified by the allocation platform on its website.

*Article 42*

**Fallback auction**

1. If it is technically not possible to hold an auction following the process set forth in CHAPTER 4, the allocation platform may generate rights document using auction results determined within the last simulation of the auction carried out according to paragraph 3 of this Article before the technical problems occurred.
2. The allocation platform shall inform all registered participants, of the application of fallback auction by notification published in the auction tool and/or on the webpage of the allocation platform and/or by e-mail no later than at 10:15 a.m. on day preceding the deliver day.
3. The allocation platform shall simulate the auction of the day preceding the delivery day. In this simulation of the auction allocation platform will use the latest available default bids for fallback auction together with the latest available information on the offered capacity.

4. In the simulation of the auction according to paragraph 2 above the credit limit of the registered participant will be taken into consideration. However, contrary to Article 21 and 31 the potential outstanding payment obligations resulting from fallback auction will be considered for credit limit assessment only if the results of the fallback auction are published.
5. The daily transmission rights generated according to the auction simulation set forth in paragraphs 3 and 4 of this Article will be published and notified according to Article 33 (2) by 10:15 a.m. on day preceding the day of delivery. Information according to Article 33 (3) will be notified in accordance with Article 40(2). Article 34 applies as well.
6. If new default bids cannot be uploaded and if the auction cannot be carried out according to CHAPTER 4 because the technical problems continue, allocation platform shall continue to generate daily transmission rights according paragraphs 2 to 6 of this Article based on the results of the last available simulation of the auction from before the technical problems initially occurred. The allocation platform will inform the registered participant of the necessity to carry out a consecutive fallback auction without undue delay. The registered participant has to inform the allocation platform by e-mail between 11:00 a.m. and 05:00 p.m. on the same day, when the allocation platform informs about the consecutive fallback auction, if he does not want to receive daily transmission rights in the consecutive fallback auction of the following day. daily transmission rights will only be allocated to the registered participant in the consecutive fallback auction if he has sufficient credit limit.

#### *Article 43*

#### **Auction cancellation**

1. In case the allocation platform cancels an auction, all bids already submitted and any results of the respective auction shall be deemed null and void.
2. The allocation platform shall inform all registered participants without undue delay, of the auction cancellation by notification published in the auction tool or on webpage of allocation platform and by electronic means as specified by the allocation platform on its website.
3. An auction cancellation may be announced in the following cases:
  - (a) before the end of the contestation period in case the allocation platform faces technical obstacles during the auction process like a failure of standard processes and fallback procedures in the event of erroneous results due to incorrect marginal price calculation or incorrect offered capacity values; in case of Swiss Northern borders the rights documents that have been eventually sent are not valid anymore; and

- (b) after the end of the contestation period, in the event of erroneous results due to incorrect marginal price calculation, incorrect offered capacity values or incorrect allocation of daily transmission rights to registered participants or similar reasons.
- 4. In case of auction cancellation before the contestation period elapses, no compensation shall be paid to the registered participants.
- 5. The allocation platform shall publish on its website, without undue delay, the reasons for the auction cancellation.

*Article 44*

**Fallback procedure for eligible person notification**

- 1. In case of failure in the standard process of eligible person notification to the allocation platform via the auction tool, the allocation platform may apply the fallback procedure for data exchange in accordance with Article 40.
- 2. The allocation platform shall publish information about the possibility to use the fallback procedure for data exchange in due time before the expiration of the deadline for eligible person notification.
- 3. In case the fallback procedure for data exchange cannot be implemented as necessary to enable the registration of the eligible person, the eligible person shall be deemed notified as set forth in information system rules.

## **CHAPTER 7**

### **Curtailment**

#### *Article 45*

#### **Triggering events and consequences of curtailment on daily transmission rights**

1. Daily transmission rights may be curtailed in the event of force majeure or an emergency situation according to applicable legislation.
2. On Germany – Switzerland border, daily transmission rights may be also curtailed in case to ensure operation remains within operational security limits according to applicable legislation.
3. Curtailment may be applied on allocated daily transmission rights including, where the case may be, on nominated physical transmission rights.
4. Each registered participant affected by curtailment shall lose its right to nominate for physical use the concerned transmission rights.
5. In case of curtailment, the affected registered participant is entitled to receive reimbursement or compensation according to Articles 46 to 48.

#### *Article 46*

#### **Process and notification of curtailment on daily transmission rights**

1. In all cases curtailment on daily transmission rights shall be carried out by the allocation platform based on a request by one or more TSO(s) at the bidding zone border where transmission rights have been allocated.
2. The allocation platform shall notify the affected holders of transmission rights as soon as possible of a curtailment of transmission rights via electronic means as specified by the allocation platform on its website and on the webpage of the allocation platform. The notification shall identify the affected transmission rights, the affected volume in MW per MTU for each concerned period, the triggering events for curtailment as described in Article 45 and the amount of transmission rights that remain after the curtailment.
3. The allocation platform shall publish the triggering events for curtailment in accordance with Article 45 including their estimated duration on its website as soon as possible.
4. The curtailment of transmission rights during a specific time period shall be applied to all transmission rights of the concerned periods on a pro rata basis, which means in proportion to the held transmission rights.
5. For each affected registered participant, remaining transmission rights which have not been curtailed shall be rounded down to the nearest MW.

*Article 47*

**Compensation for curtailments to ensure operation remains within operational security limits**

For Germany – Switzerland, in the case of curtailments to ensure operation remains within operational security limits, holders of curtailed transmission rights shall be entitled to receive a reimbursement equal to the price of the transmission rights set during the transmission rights allocation process, which for each affected MTU and registered participant shall be calculated as:

- (a) the marginal price of the initial auction in EUR/MWh; multiplied by
- (b) the amount in MW; corresponding to
- (c) the difference between the daily transmission rights held by the registered participant before and after the curtailment; multiplied by
- (d) a coefficient of 110%; multiplied by
- (e) the MTU in hours.

*Article 48*

**Reimbursement for curtailments due to force majeure or emergency situation**

In the case of force majeure or emergency situation holders of curtailed transmission rights shall be entitled to receive a reimbursement equal to the price of the transmission rights set during the daily transmission rights allocation process, which for each affected MTU and registered participant shall be calculated as:

- (a) the marginal price of the initial auction in EUR/MWh; multiplied by
- (b) the amount in MW corresponding to the difference between the daily transmission rights held by the registered participant before and after the curtailment; multiplied by
- (c) the MTU in hours.

## **CHAPTER 8**

### **Invoicing and Payment**

#### *Article 49*

##### **General principles**

1. A registered participant shall pay the amounts due as calculated in accordance with Article 50 for all transmission rights allocated to him.
2. The registered participant may upon payment use the cross zonal capacity connected with the allocated transmission rights as described in these allocation rules only. Any right for physical use of the transmission system may be subject to separate agreements between the registered participant and the concerned TSOs.
3. All financial information, prices and amounts due shall be expressed in Euros (€), except if deviations are required by applicable law or regulations.
4. The payment shall be settled on the date upon which the given amount is credited to the account of the beneficiary. Any interest for late payment shall be considered as settled on the date when the payment was credited from the account of the payer.
5. Payments shall be done in Euros (€).
6. The allocation platform shall consider taxes and levies at the rate and to the extent applicable when assessing payment obligations and issuing invoices under these allocation rules subject to Article 51.
7. The registered participant shall provide the allocation platform with relevant information for justifying whether or not respective taxes and levies are applicable when signing the participation agreement as well as any changes in this respect without undue delay. Therefore, the registered participant agrees to inform the allocation platform of any local, intra-community or extra-community taxes and levies which are in line with the legislation of the registered participant's country of establishment.

#### *Article 50*

##### **Calculation of due amounts**

1. Registered participants shall pay for each of the transmission rights allocated to them and for individual MTU an amount equal to:
  - (a) the marginal price (EUR/MWh); multiplied by
  - (b) the transmission rights in MW allocated in individual MTU of a day; multiplied by
  - (c) the MTU in hours.



2. The amount due plus any applicable taxes and levies, duties or other charges subject to Article 51, shall be rounded to two decimal places.
3. The transmission rights will be invoiced on a monthly basis. The allocation platform shall calculate the due amount to be paid retroactively for the preceding month.

#### *Article 51*

#### **Tax gross-up**

1. Each registered participant must settle all payments with respect to the allocation rules without any tax deduction, unless a tax deduction is required by law.
2. If a tax deduction is required by law to be made by a registered participant, the amount of the payment due from the registered participant to the allocation platform will be increased to an amount which (after making the tax deduction) leaves an amount equal to the payment which would have been due if no tax deduction had been required (“Tax gross-up”).
3. Paragraph 2 of this Article does not apply with respect to any tax assessed on the allocation platform on any payment received in connection with the allocation rules under the laws of the jurisdiction in which the allocation platform is incorporated or, if different, the jurisdiction (or jurisdictions) in which the allocation platform is treated as resident for tax purposes or has or is deemed for tax purposes to have a permanent establishment or a fixed place of business to which any payment under the allocation rules is attributable. Paragraph 2 of this Article does not apply to value added tax as provided for in the Directive 2006/112/EC as amended from time to time and any other tax of a similar nature.

#### *Article 52*

#### **Invoicing and payment conditions**

1. The payment will be settled at the next fixed invoice date.
2. The allocation platform shall issue invoices for payments for all transmission rights on a monthly basis and no later than the tenth (10<sup>th</sup>) working day of each month.
3. The invoices shall be issued for the amount due set forth in Article 50.
4. The allocation platform shall send the invoice via electronic means as specified by the allocation platform on its website to the registered participant at the e-mail address of the financial contact person submitted in accordance with Article 8(i) or it should make it available to the registered participant via the auction tool. The date of issuance of the invoice shall be the date on which the invoice is sent by electronic means as specified by the allocation platform on its website or the date when the invoice is made available via the auction tool if this is done during working hours or the next working day if sent after working hours.

5. In the cases of curtailment of transmission rights, the invoices shall take into account any payments to be credited to the registered participant. The payments to be credited to the registered participants shall:
  - (a) be settled through self billing mechanism which shall allow the allocation platform to issue invoices in the name and on behalf of the registered participant; and
  - (b) be notified through the same invoice as the one used for the payments of the registered participant as set forth in paragraph 3 of this Article.
6. The payments due shall be netted by the allocation platform taking into account the amount as set forth in paragraph 3 and 5 of this Article.
7. If the balance of the payments as set forth in paragraph 3 and 5 of this Article results in a net payment from the registered participant to the allocation platform, the registered participant shall settle this balance within five (5) working days after the date of issuance of the invoice.
8. Payments by the registered participant as set forth in paragraph 7 of this Article shall be collected as follows:
  - (a) based on the standard procedure, the allocation platform shall collect the payment automatically from the dedicated business account of the registered participant on the respective due date of the invoice; or
  - (b) alternatively, the registered participant shall ensure payment through a non- automated transaction from the bank account as announced during the accession process in accordance with Article 8 paragraph 1(h) by the registered participant to the account of the allocation platform specified on the invoice by indicating the invoice reference.
9. The alternative procedure may be used upon request of the registered participant and with the consent of the allocation platform. The registered participant shall notify the allocation platform by electronic means as specified by the allocation platform on its website the request to use the alternative procedure at least two (2) working days before the date of issuing of the next invoice as set forth in paragraph 2 of this Article. Once the alternative procedure is agreed, it shall be deemed to be valid until otherwise agreed between the registered participant and the allocation platform.
10. If the balance of the payments as set forth in paragraph 3 and 5 of this Article results in a net payment from the allocation platform to the registered participant, the allocation platform shall pay this balance within seven (7) working days after the date of issuance of the invoice to the bank account as announced during the accession process in accordance with Article 8 paragraph 1(h) by the registered participant who is entitled to the payments at the due date.

11. Upon the collection of the payment as set forth in paragraph 8 of this Article, the allocation platform shall update the credit limit accordingly.
12. Erroneous invoices shall be corrected and settled as follows:
  - (a) in case of an erroneous invoice resulting in an additional payment of the allocation platform or the registered participant the allocation platform shall correct the invoice and any due amount shall be settled as soon as possible and at the latest within thirty (30) working days to the registered participant or the allocation platform;
  - (b) in case of an erroneous invoice based on erroneous information provided by third parties, the allocation platform shall correct the amount and settle the amount to the registered participant as soon as possible and at the latest within given ninety (90) working days, from the date the registered participant informed the allocation platform of the erroneous information;
  - (c) in case the error in the invoice occurred due to technical constraint and if the resolution of technical constraint requires the allocation platform to update the auction tool, the allocation platform shall resolve the technical constraint, correct the invoice and settle the amount to the registered participant as soon as possible and at the latest within one hundred eighty (180) working days.
13. Bank fees of the payer's bank shall be covered by the payer. Bank fees of the receiving bank shall be covered by the beneficiary. Bank fees of any intermediary bank, shall be covered by the registered participant.
14. The registered participant shall not be entitled to offset any amount, or withhold any debts arising in connection with obligations resulting from an auction, against any claims towards the allocation platform, whether or not arising out of an auction. Nevertheless, the right to offset and the right to withhold are not excluded in case the registered participant's claim against allocation platform is established by a legally binding judgement or is uncontested.

*Article 53*  
**Payment disputes**

1. A registered participant may dispute the amount of an invoice, including any amounts to be credited to the registered participant. In this case, the registered participant shall notify the nature of the dispute and the amount in dispute to the allocation platform as soon as practicable and in any event within fifteen (15) working days after the date of issuance of the invoice or credit note by registered mail and electronic means as specified by the allocation platform on its website. Beyond this period, the invoice shall be deemed to have been accepted by the registered participant.

2. If the registered participant and the allocation platform are unable to resolve the difference within ten (10) working days after the notification, the procedure for the dispute resolution in accordance with Article 57 shall apply.
3. A dispute shall in no way relieve the party from the obligation to pay the amounts due as set forth in Article 52.
4. If it is agreed or determined based upon the dispute resolution procedure as set forth in Article 57 that an amount paid or received by the registered participant was not properly payable, the following process shall apply:
  - (a) the allocation platform shall refund any amount including interest to be calculated according Article 49 to the registered participant in case that the amount paid by the registered participant as set forth in Article 52 was higher or the amount paid by the allocation platform was lower than the due amount. The allocation platform shall make the payment to the bank account indicated by the registered participant for this reimbursement in accordance with Article 8 paragraph 1 (h) provided the allocation platform has received the amount due from the relevant TSOs if applicable.
  - (b) the registered participant shall pay any amount including interest to be calculated according to Article 49 to the allocation platform in case that the amount paid by the Registered party as set forth in Article 52 and was lower or the amount paid by the allocation platform was higher than the due amount. The registered participant shall make the payment in accordance with the procedure set forth in Article 52. Upon such payment the allocation platform shall update the credit limit of the registered participant as set forth in Article 52.
5. The interest paid in case of a payment in accordance with paragraph 4 of this Article shall be applied from the first (1<sup>st</sup>) day following the date on which the payment was due up to the date on which the disputed amount was refunded and it shall apply also to all taxes and levies required by law.

#### *Article 54*

#### **Late payment and payment incident**

1. In case the registered participant has not fully paid an invoice by the due date specified on the invoice, the allocation platform shall notify the registered participant that a payment incident will be registered if the amount including applicable interest due is not received within three (3) working days upon sending of the notification. In case of no payment within the deadline, the allocation platform shall notify the registered participant that the payment incident was registered.

2. Immediately after registration of the payment incident the allocation platform may invoke the collaterals. After a recurring payment incident, the allocation platform may require from the registered participant to change its bank guarantee collateral to a cash deposit collateral.
3. The allocation platform may suspend or terminate the participation agreement in case of registered payment incident in accordance with Articles 58 and 59.
4. In case of late payment or refund, the parties shall pay interest on the due amount including taxes and levies as from the first (1<sup>st</sup>) day following the date on which the payment was due until the date on which the payment is settled. The interest shall be equal to the highest amount of:
  - (a) a flat rate of 100 €; or
  - (b) in accordance with Article 5 of Directive 2011/7/EU, eight (8) percentage points per annum above the reference interest rate as officially published by the national authorities of the country in which the allocation platform is located and rounded up to the nearest half percentage point.

## **CHAPTER 9**

### **Miscellaneous**

#### *Article 55*

#### **Duration and amendment of allocation rules**

1. The allocation rules are of indefinite duration and are subject to amendment in accordance with this Article. These allocation rules and any amendments thereof shall be consulted upon subject to paragraph 7 of this Article proposed by the relevant TSOs, and enter into force in accordance with the applicable national regulatory regime. The allocation platform shall publish the amended allocation rules and send an amendment notice to registered participants.
2. Subject to Article 4, an amendment shall enter into force at the date and time specified in the amendment notice but not earlier than thirty (30) calendar days after the amendment notice is sent to registered participants by the allocation platform.
3. Each amendment shall apply to all aspects of these allocation rules, including but not limited to all auctions conducted after the date on which the amendment takes effect.
4. Unless expressly stated otherwise by the allocation platform the amended allocation rules shall govern all rights and obligations in connection with these allocation rules including those acquired before the date of amendment but with the delivery date after the amendment takes effect.
5. Any amendment of these allocation rules shall apply automatically to the participation agreement in force between the allocation platform and the registered participant, without the need for the registered participant to sign a new participation agreement but without prejudice to the registered participant's right to request the termination of its participation agreement in accordance with Article 59. By participating in the auction after the registered participant was informed about the changes and/or adaptations of the allocation rules and after these changes and/or adaptations of the allocation rules entered into force, it is deemed that the registered participant has accepted the changes, i.e. the valid and effective version of the allocation rules.
6. The allocation rules and annexes thereto shall be periodically reviewed by the allocation platform and the relevant TSOs at least every two years involving the registered participants. In case the relevant TSOs consider the amendment of these allocation rules as a result of this review, the procedure described in this Article shall apply. This biennial review is without prejudice to the competence of national regulatory authorities and/or the allocation platform to request at any time amendments of the allocation rules and the annexes included thereto.

7. These allocation rules are subject to the legislation prevailing at the time at which they take effect. In the event that there is a change in relevant legislation or any action by competent authorities at national or European Union level which have an effect on these allocation rules and/or their annexes then, notwithstanding any other provision of these allocation rules, the allocation rules shall be amended accordingly and pursuant to this Article.
8. For the purposes of the approval or the future amendment of bidding zone border specific requirements of these allocation rules, only the relevant regulatory authorities of the respective bidding zone border will have to state their explicit approval. Non-concerned competent authorities of these allocation rules will be duly informed.

*Article 56*  
**Liability**

1. The allocation platform and the registered participants are solely responsible for the fulfilment of any obligation they undertake or are subject to and which arises from or is in connection with the allocation rules and the participation agreement.
2. Subject to any other provisions of these allocation rules the allocation platform shall only be liable for damages caused by:
  - (a) fraud, gross negligence or wilful misconduct.
  - (b) death or personal injury arising from its negligence or that of its employees, agents or subcontractors.
3. In derogation to paragraph 2(a) of this Article, liability for indirect, consequential damages including, but not limited to, loss of profit, loss of opportunity, loss of chance, trading losses is excluded in all cases.
4. For the avoidance of doubt, the allocation platform shall not be liable for damages suffered by registered participants as a result of technical problems unless such act or omission is a result of fraud, gross negligence or wilful misconduct. The allocation platform shall have tested the computer systems and other technical equipment in their responsibility sufficiently before putting them into operation and shall be responsible for their adequate maintenance.
5. A registered participant shall indemnify and keep indemnified the allocation platform and its officers, employees and agents from and against any and all loss or liability (including legal costs) related to a direct damage that it has caused, which any of them may suffer or incur by reason of any claim by any third party on account of any and all direct loss suffered by the claimant or any of the claimant's officers, agents, subcontractors or employees in connection with these allocation rules. Liability of registered participants for indirect, consequential damages is excluded in all cases.

6. The allocation platform and each registered participant acknowledges and agrees that it holds the benefit of paragraph 3 of this Article for itself and as trustee and agent for its officers, employees and agents.
7. The registered participant shall be solely responsible for its participation in auctions including but not limited to the following cases:
  - (a) the timely arrival of bids and transfer and return notifications by the registered participant;
  - (b) technical failure of the information system on the side of the registered participant preventing the communication via the channels foreseen in accordance with these allocation rules.
8. In case of curtailment compensation due to force majeure or in order to ensure operation remains within operational system security limits or emergency situation in accordance with Article 47 and Article 48 registered participants shall not be entitled to other compensation than the compensation described in these allocation rules.
9. The registered participant shall be liable with respect to any sanctions, penalties, or charges that may be imposed by financial authorities on the allocation platform for incorrect tax treatment due to wrong or incomplete information provided by the registered participant.
10. This Article survives the termination of the registered participant's participation agreement.

*Article 57*

**Dispute resolution**

1. Without prejudice to paragraphs 6 and 8 of this Article, where there is a dispute the allocation platform and the registered participant shall first seek amicable settlement through mutual consultation pursuant to paragraph 2. For this purpose, the party raising the dispute shall send a notification to the other party indicating:
  - (a) the existence of a participation agreement between the parties;
  - (b) the reason for the dispute; and
  - (c) a proposal for a future meeting, physical or not, with a view to settle the dispute amicably.
2. The parties shall meet within twenty (20) working days after the matter has been referred to them and seek to resolve the dispute. If no agreement is reached or no response received within a period of thirty (30) working days from the date of the aforementioned notification, either party may refer the matter to the senior management of the parties to resolve the dispute pursuant to paragraph 3.



3. The senior representative of each of the allocation platform and the registered participant with authority to resolve the dispute shall meet within twenty (20) working days of a request to meet and seek to resolve the dispute. If the representatives are unable to resolve the dispute within twenty (20) working days of the meeting or such longer time as may be agreed then the dispute shall be determined by arbitration in accordance with paragraph 4.
4. Where a dispute is to be referred to arbitration under paragraph 3, either the allocation platform or the registered participant may give notice to the other stating the nature of the dispute and referring the dispute to arbitration. Arbitration shall be conducted in accordance with the Rules of Arbitration of the Chamber of Commerce (ICC). The arbitration shall be conducted before one (1) arbitrator to be nominated upon agreement of the parties unless a party requests the appointment of three (3) arbitrators. In case of one (1) arbitrator, the parties shall agree on the nomination of the arbitrator within two (2) months after the notice was given by the party referring the dispute to arbitration. If no agreement can be found, the arbitrator shall be appointed by the ICC Court. In case of three (3) arbitrators. The claimant shall nominate one (1) arbitrator and the respondent shall nominate one (1) arbitrator. The arbitrators nominated by each party shall then nominate the chairman of the arbitral tribunal within three (3) working days from the confirmation of the appointment of the second arbitrator by the respondent. If the arbitrators nominated by each party cannot agree on the appointment of the chairman, the chairman shall be appointed by the ICC Court. The arbitration shall take place in the location of the allocation platform unless otherwise defined in the participation agreement and in accordance with the governing law of these allocation rules while the language of the arbitration proceedings shall be English. The Emergency arbitrator provisions according to the Rules of Arbitration of the Chamber of Commerce shall not apply but the interim or injunctive relief measures under the governing law shall apply.
5. Arbitration awards shall be final and binding on the allocation platform and the relevant registered participant as from the date that they are made. The allocation platform and the registered participant shall carry out any award of an arbitration relating to any dispute without delay and each waive their right to any form of appeal or recourse to a court of law or other judicial authority, in so far as such waiver may validly be made.
6. Notwithstanding paragraphs 3 and 4 of this Article, the parties may jointly agree to apply court proceedings instead of arbitration to settle a dispute arisen in connection with these allocation rules.
7. In cases of late payment and notwithstanding Article 53 and paragraphs 1 to 4 of this Article, a party may bring court proceedings against the other party for any amount due under or in connection with these allocation rules and unpaid for more than twenty (20) working days after the date the amounts were due.
8. The parties agree that proceedings referred to in paragraph 6 may be brought in any competent court to hear such claim. The registered participant irrevocably waives any objection which it may have now or hereafter regarding the venue of such proceedings in any competent court and any claim that any such proceedings have been brought in an inconvenient forum.

9. Notwithstanding any reference to amicable settlement, expert resolution or arbitration under this Article, the allocation platform and the registered participant shall continue to perform their respective obligations under these allocation rules and the registered participant's participation agreement.
10. This Article survives the termination of the registered participant's participation agreement.

*Article 58*

**Suspension of the participation agreement**

1. The allocation platform may by notice to the registered participant suspend temporarily the registered participant's rights in connection with these allocation rules with immediate effect if the registered participant commits a major breach of an obligation in connection with these allocation rules which may have a significant impact to the allocation platform as follows:
  - (a) if a registered participant fails to pay any amount properly due and owing to the allocation platform pursuant to Article 54;
  - (b) if a registered participant fails to provide and maintain collaterals in accordance with Article 23;
  - (c) (c) any breach which may have a significant financial impact to the allocation platform;
  - (d) if the allocation platform has reasonable grounds to believe that the registered participant no longer satisfies one or more of any other conditions to participate in auctions according to these allocation rules unless termination applies according to Article 59; and
  - (e) if the registered participant is under economic and trade sanctions which may have a significant impact to the allocation platform.
2. In any case of a minor breach in relation to these allocation rules such as but not limited to the failure of the registered participant to notify a change in the submitted information in accordance with Article 8, the allocation platform may by notice to the registered participant inform the registered participant's that its rights in connection with these allocation rules may be suspended unless the registered participant remedies the suspension event in the time period specified in the notice. The suspension shall take effect when the period specified for remedy has elapsed without that such remedy has taken place.
3. After the suspension takes effect in accordance with paragraphs 1 and 2 of this Article, the following applies:
  - (a) in cases of suspension in accordance with Article 58(1)(a) to (d), the suspended registered participant may no longer participate in an auction and, unless the payment of the transmission right is fully settled or fully secured by collaterals by the suspended registered participant, the suspended Registered Participant shall not be entitled to use transmission rights according to CHAPTER 5.

- (b) in cases of suspension in accordance with Article 58(1)(e), the suspended registered participant may no longer participate in an auction and shall not be entitled to use transmission rights according to CHAPTER 5.
- 4. The allocation platform may withdraw a notice under paragraphs 1 or 2 of this Article at any time. Having given a notice under paragraphs 1 or 2 of this Article, the allocation platform may give a further or other notice at any time in respect of the same or a different suspension event.
- 5. Once the registered participant has fulfilled or remedied the suspension event as notified to it in the notice sent by the allocation platform, the allocation platform shall reinstate as soon as reasonably practicable the registered participant's rights in relation to its ability to participate in auctions by written notice to the registered participant. As from the date of effect of the reinstatement, the transmission rights allocated prior to the suspension and which remain unused may be nominated and the registered participant may participate in daily auctions.
- 6. If the allocation platform gives a notice to a registered participant under paragraph 1 or 2 of this Article, such notice of suspension does not relieve the registered participant from its payment obligations under CHAPTER 8.

#### *Article 59*

#### **Termination of the participation agreement**

- 1. A registered participant may at any time request the allocation platform to terminate the participation agreement to which the registered participant is a party. The termination shall take effect after thirty (30) working days upon receipt of the termination request by the allocation platform and if all outstanding payment obligations are settled.
- 2. A registered participant may terminate the participation agreement to which the registered participant is a party for good cause when the allocation platform has committed a major breach of an obligation connected with these allocation rules or the participation agreement in the following cases:
  - (a) where the allocation platform repeatedly fails to pay any amount properly due and owing to the registered participant with a significant financial impact;
  - (b) where there is a significant breach of the confidentiality obligations in accordance with Article 62.

The registered participant shall send a notice to the allocation platform stating the reason for termination and giving the allocation platform twenty (20) working days to remedy the breach. Unless the allocation platform remedies the breach within the abovementioned deadline, the termination shall take effect immediately upon expiration of such deadline.

3. If any of the termination events in paragraph 4 occurs in relation to a registered participant, the allocation platform may by notice to the registered participant terminate the participation agreement, including the registered participant's rights connected with these allocation rules. A termination under this paragraph takes effect from the time of the notice or any later time specified in it. The registered participant may not at a later stage enter into the participation agreement with the allocation platform until the circumstances of termination continue to exist or it is not sufficiently guaranteed that the breach may not occur again.
4. The termination events referred to in paragraph 3 shall be the following:
  - (a) if the rights of the registered participant are suspended for longer than thirty (30) working days;
  - (b) if a registered participant does not qualify for the participation in the auction as set forth in Article 9;
  - (c) if a registered participant received three single payment incident notifications within the same calendar year from the allocation platform, as described in Article 54 paragraph (3) of these allocation rules;
  - (d) if a registered participant repeatedly breaches these allocation rules or a participation agreement, whether or not the breach is capable of remedy;
  - (e) if a competent authority determines that the registered participant has committed a misuse or fraudulent act and requests the allocation platform to terminate the participation agreement to which such registered participant is a party or agrees that the allocation platform has reasonable grounds to believe that the registered participant has committed a misuse or fraudulent act in participating in auctions; or
  - (f) if the registered participant has taken any action which may lead to the damaging or reduction in effectiveness of the auction tool (it being understood that such an action is deemed to happen in case of any behavior that can be assimilated to an attack on the information system such as, but not limited to, deny of service, spam, virus, brute forcing, Trojan horse attack); or
  - (g) if the registered participant has been inactive in the business relationship with the allocation platform for more than fifteen (15) months. For the sake of clarity, the allocation platform shall have notified the registered participant ahead of the upcoming termination.
5. After the termination takes effect in accordance with paragraphs 1 to 3 of this Article and from that time, the registered participant may no longer participate in an auction. CHAPTER 5 shall not apply to such acquired transmission rights. For the avoidance of doubt, the transmission rights, which the registered participant is prohibited from using as a result of termination, may be offered by the allocation platform in subsequent auctions.

6. Termination of a participation agreement does not affect any rights and obligations under or in connection with the participation agreement and these allocation rules which arose prior to that termination unless otherwise specified in this Article. Accordingly, any registered participant whose participation agreement is terminated will remain liable, subject to and in accordance with the allocation rules, in respect of all such rights and liabilities. This paragraph shall apply without prejudice to other remedies available to the allocation platform under these allocation rules.

*Article 60*

**Force majeure**

1. The allocation platform or a registered participant, which invokes force majeure, shall promptly send to the other party a notification describing the nature of force majeure and its probable duration and shall continue to furnish reports with respect thereto with reasonable frequency during the period of force majeure. The party invoking the force majeure shall make every possible effort to limit the consequences of the force majeure.
2. The affected obligations, duties and rights of a party subject to force majeure shall be suspended from the beginning of force majeure, with the exception of the confidentiality provisions in accordance with Article 62.
3. Suspension under paragraph 2 is subject to the following:
  - (a) suspension will be of no greater scope and of no longer duration than is required by the force majeure;
  - (b) the suspension applies only for so long as the party invoking to force majeure is using reasonable efforts to remedy their inability to perform.
4. The consequences of a force majeure event, which is not subject to any discussion or litigation between the allocation platform and the registered participant, are:
  - (a) the party invoking force majeure cannot be held responsible to pay compensation for any damage suffered, due to the non-performance or partial performance of all or any of its obligations during the force majeure and when such non-performance or partial performance is due directly to force majeure;
  - (b) the acquired transmission rights which have been entirely paid and become subject to force majeure are reimbursed for the duration of the force majeure in accordance with any applicable legislation and these allocation rules; and

- (c) where the transmission rights' holder is the party claiming the force majeure event, the allocation platform may, for their own benefits, reallocate the holder's transmission rights to the subsequent auctions and for the duration of the force majeure event.
5. If the force majeure continues for a period longer than six (6) months, the allocation platform or each registered participant may, by notice to the other given at any time while the force majeure continues beyond that period, unilaterally terminate the participation agreement. The termination shall take effect ten (10) working days after the notice is given or any later date specified in the notice.
  6. For avoidance of doubt this Article is without prejudice to the provisions of CHAPTER 7 regarding the curtailment of transmission rights.

#### *Article 61*

#### **Notices**

1. Any notice or other communication to be given under or in connection with these allocation rules shall be in English.
2. Unless otherwise expressly provided in these allocation rules, all notices or other communications shall be in writing and shall be sent by electronic means as specified by the allocation platform on its website and marked for the attention of the other party's representative as set out in the participation agreement or as notified by the registered participant from time to time in accordance with Article 8.
3. All notices or other communications shall be given by letter delivered by hand against receipt or sent by registered mail or courier in the following cases:
  - (a) the conclusion of the participation agreement in accordance with Article 6;
  - (b) the suspension and termination according to Article 58 and Article 59; and
  - (c) the submission of the bank guarantee, in the event the bank guarantee includes handwritten signature(s), in accordance with Article 19.
4. All notices or other communications shall be deemed to have been received:
  - (a) in the case of delivery by hand, when delivered against receipt; or
  - (b) in the case of recorded delivery prepaid post, on the day following the recorded day of delivery; or

- (c) in the case of sent by electronic means as specified by the allocation platform on its website, when delivered to the other party but only if an acknowledgement of receipt is requested and obtained by the party sending the sent by electronic means as specified by the allocation platform on its website.
5. If a notice or other communication has been received outside normal working hours on a working day), it is deemed to have been received at the opening of business on the next working day.

*Article 62*  
**Confidentiality**

1. The participation agreement and any other information exchanged relating to its preparation and the application of a market participant shall be considered as confidential.
2. Subject to paragraph 3 of this Article, the allocation platform and each registered participant who is a recipient of confidential information in relation to these allocation rules shall preserve the confidentiality of such information and shall not directly or indirectly reveal, report, publish, disclose, transfer or use any item of the confidential information otherwise than for the purpose for which it was disclosed.
3. Notwithstanding paragraph 2 of this Article, the allocation platform or a registered participant may disclose confidential information of a disclosing party to a third party with the other party's prior consent expressed in writing and subject to the condition that the receiving party has given assurance that such third party is bound by equivalent confidentiality obligations as set out in these allocation rules directly enforceable by the other party.
4. Notwithstanding paragraph 2 of this Article the allocation platform or a registered participant may disclose confidential information of a disclosing party:
  - (a) to the extent expressly permitted or contemplated by the allocation rules;
  - (b) to any person who is one of the directors, officers, employees, agents, advisers or insurers of the recipient and who needs to know the confidential information in connection with these allocation rules;
  - (c) as far as required in order to comply with applicable national or EU legislation such as Regulation (EU) No 1227/2011 and Regulation (EU) No 543/2013 or any other relevant domestic administrative acts such as grid codes;
  - (d) as far as required by a court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the recipient is a party;

- (e) as may be required by the relevant TSOs for the proper fulfilment of their mission and their obligations in accordance with applicable laws and these allocation rules by themselves or through agents or advisers; or
  - (f) as far as required in order to obtain clearances or consents from a competent authority.
5. Moreover, the obligations arising from this Article shall not apply:
- (a) if the party which receives the information can prove that at the time of disclosure, such information was already publicly available;
  - (b) if the receiving party provides proof that, since the time of disclosure, the said information has been legally received from a third party or has become publicly available;
  - (c) to confidential information communicated, in accordance with the legal and regulatory provisions, in an incorporated form from which no item of information specific to a market participant can be deduced;
  - (d) to information whose publication is explicitly provided for by the present allocation rules.
6. The obligations of confidentiality in this Article shall remain valid for a period of five (5) years after termination of the registered participant's participation agreement.
7. The signature of a participation agreement and the exchange of confidential information do not confer any rights to patents, knowledge or any other form of intellectual property concerning information or tools made available or sent by one party to the other under the terms of these allocation rules.

*Article 63*

**Assignment and subcontracting**

1. The allocation platform may assign, novate or otherwise transfer any of its rights or obligations under a participation agreement or these allocation rules to another allocation platform. The allocation platform shall notify the registered participants of the change by electronic means as specified by the allocation platform on its website with acknowledgment of receipt as soon as possible and in any event at least ten (10) working days before the date on which the change takes effect.
2. A registered participant may not assign, novate or otherwise transfer any of its rights or obligations under its participation agreement or these allocation rules without the prior written consent of the allocation platform.



3. Nothing in this Article shall prevent an allocation platform or registered participant from entering into a subcontracting agreement in relation to this allocation rules. Entry into a subcontracting agreement by a registered participant does not relieve the registered participant of any obligation or liability under its participation agreement or these allocation rules. Entry into a subcontracting agreement by the allocation platform does not relieve the allocation platform of any obligation or liability under these allocation rules.

*Article 64*

**Governing law**

These allocation rules shall be governed by and construed in all respects in accordance with the law of the location of the registered office of the allocation platform unless otherwise specified in the participation agreement.

*Article 65*

**Language**

The applicable language for these allocation rules shall be English. For the avoidance of doubt, where TSOs need to translate these allocation rules into their national language, in the event of inconsistencies between the English version published by the allocation platform and any version in another language, the English version published by the allocation platform shall prevail.

*Article 66*

**Intellectual property**

No party shall acquire any right, title, license or interest in or to any intellectual property rights of the other party in connection with these allocation rules.

*Article 67*

**Relationship of the parties**

1. The relationship of the allocation platform and the registered participant is that of service provider and service user respectively. Except as expressly provided in these allocation rules, nothing contained or implied in these allocation rules constitutes or is deemed to constitute the allocation platform or a registered participant, the partner, agent or legal representative of the other for any purpose whatsoever or create or be deemed to create any partnership, agency, or trust between the parties.
2. The registered participant acknowledges that neither the allocation platform nor any person acting on behalf of or associated with the allocation platform makes any representation, gives any advice or gives any warranty or undertaking of any kind in respect of these allocation rules, the participation agreements or the

disclosed information or otherwise in relation to or in connection with these allocation rules, the participation agreements and the disclosed information or any transaction or arrangement contemplated by these allocation rules, the participation agreements and the disclosed information except as specifically provided in these allocation rules or the participation agreement.

*Article 68*

**No third party rights**

The allocation platform and each registered participant acknowledge and agree that a person who is not a party to the participation agreement between them, including any other market participant, has no rights to enforce these allocation rules or the participation agreement as between the allocation platform and that registered participant.

*Article 69*

**Waiver**

1. No omission to exercise or delay in exercising any right, power or remedy provided by law or under these allocation rules shall impair or constitute a waiver of such or any other right, power or remedy. No single or partial exercise of any such right, power or remedy precludes or impairs any other or further exercise thereof or the exercise of any other right, power or remedy provided by law or under these allocation rules.
2. Any waiver of any right, power or remedy under these allocation rules must be in writing and may be given subject to any conditions thought fit by the grantor. Unless otherwise expressly stated, any waiver is effective only in the instance and only for the purpose for which it is given.

*Article 70*

**Entire agreement**

These allocation rules and the participation agreement contain or expressly refer to the entire agreement between the allocation platform and each registered participant with respect to the subject matter hereof and expressly exclude any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the allocation platform and each registered participant with respect thereto. The allocation platform and each registered participant acknowledge and confirm that none of them accede to these allocation rules or the participation agreement in reliance on any representation, warranty or other undertaking (other than where made fraudulently) not fully reflected in the terms of these allocation rules or the participation agreement.

*Article 71*

**Remedies exclusive**

The rights and remedies provided by these allocation rules and the participation agreement to the allocation platform and each registered participant are exclusive and not cumulative and, to the extent permissible by law, shall exclude and be in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by law or statute in respect of the subject matter of these allocation rules and the participation agreement. Accordingly, the allocation platform and each registered participant hereby waives to the fullest extent possible all such rights and remedies provided by law or statute, and releases each other of them if it is liable to any other of them, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by law or statute in respect of the matters dealt with in these allocation rules and the participation agreement and undertakes not to enforce any of the same except as expressly provided herein.

*Article 72*

**Severability**

If any provision of these allocation rules or a participation agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or pursuant to arbitration or by order of any competent authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of these allocation rules and the participation agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality. Any invalid, illegal, void and/or unenforceable part(s) or provision(s) shall be replaced by valid, legal and/or enforceable part(s) or provision(s) in order to achieve the intended economic and legal effect.

## **Annexes list**

**Annex 1:** List of bidding zone borders and/or their subsets to which the allocation rules apply

**Annex 2:** List of agreements per oriented bidding zone border needed with the concerned TSOs or other legal entities depending on the relevant national legislation to be entitled to nominate the allocated transmission rights

**Annex 3:** Nomination principles

## Annex 1

List of bidding zone borders and/or their subsets to which the allocation rules apply

<b>List of bidding zone borders and/or their subsets of interconnectors</b>		
List of responsible TSOs		
<b>Austria (AT)</b> APG	<>	<b>Switzerland (CH)</b> Swissgrid
<b>France (FR)</b> RTE	<>	<b>Switzerland (CH)</b> Swissgrid
<b>Germany (DE)</b> Amprion, TransnetBW	<>	<b>Switzerland (CH)</b> Swissgrid
<b>Italy NORD (IN)</b> Terna	<>	<b>Switzerland (CH)</b> Swissgrid

## Annex 2

List of agreements per oriented bidding zone border needed with the concerned TSOs or other legal entities depending on the relevant national legislation to be entitled to nominate the allocated transmission rights

Per oriented bidding zone border	Agreements needed with the concerned TSOs or other legal entities depending on the relevant national legislation to be entitled to nominate the allocated transmission rights		
CH<>DE	Balance Group Contract with Swissgrid	and	At least one Bilanzkreisvertrag with TransnetBW and/or Amprion
CH<>FR	Balance Group Contract with Swissgrid	and	Import/Export Rules with RTE
CH>IN	Balance Group Contract with Swissgrid		
CH<>AT	Balance Group Contract with Swissgrid	and	Two Datenübermittlungsverträge with APG and a BGV-Vertrag with APCS which together result in a valid Genehmigungsbescheid from Energie-Control Austria A
IN >CH	Contratto di Dispacciamento with TERNA <b>and</b> Congestion Management Rules on Italian Interconnections with TERNA		

## Annex 3

### Nomination principles

Type of nomination	Principle	Diagram
A to A	The Participant A shall be the eligible person to nominate on both sides of the concerned TSO border.	
A to B	The Participant A may appoint one legal entity B as eligible person on the importing TSO side.	

### Nomination principles applied per bidding zone border

Country border	Principle applied	Designation of eligible person
AT<>CH, CH<>DE, CH<>FR	A to A	Not applicable
CH<>IN	A to B	To the concerned TSOs