



Analysis of the draft amendments to the Law “On the Electricity Market” related to the harmonization of the rules for the cross-border capacity allocation

by the Energy Community Secretariat

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PURPOSE STATEMENT

Assessment of the draft amendments to the Law “On the Electricity Market” related to the harmonization of the rules for the cross-border capacity allocation provided by the NEURC

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Assessment 4/23

Introduction

The present assessment concerns draft amendments to the Law “On the Electricity Market” (hereinafter, Electricity Market Law) proposed by the National Energy and Utilities Regulatory Commission (hereinafter, NEURC). The amendments concern joint capacity allocations on interconnectors between Ukraine and neighbouring Parties to the Energy Community such as the European Union and Moldova. They are currently pending at the competent committee of the Verkhovna Rada.

Background

The implementation of the joint capacity allocation on interconnectors by the transmission system operator (hereinafter, TSO) of Ukraine, *Ukrenergo*, has been delayed due to an alleged ambiguity in Article 38(5) of the Electricity Market Law. Following previous amendments to the Law in April 2021,¹ the Article reads as follows: “*The transmission system operator shall develop, approve with the relevant transmission system operator of the adjacent state that is party to the Energy Community and submit to the Regulator for approval the **procedure of cross-border transmission capacity allocation**, which may contain special **regional conditions**. Such conditions that are applicable in a specific region or at the specific crossing shall make integral **annexes to the procedure** of cross-border transmission capacity allocation.*”

In NEURC’s interpretation, the general (common, single) procedure shall be developed by *Ukrenergo* and agreed with all neighbouring TSOs whereas special regional conditions (per border, per region) shall be included in the annexes to this general procedure. In the interpretation of *Ukrenergo*, the provisions of the Electricity Market Law as amended in 2021 do not require the approval of one common general procedure by all TSOs, as it says “... *develop, approve with the relevant transmission system operator of the adjacent state...*” (relevant TSO – singular), but instead different procedures can be defined for different borders.

The draft amendments to the Electricity Market Law subject to the present assessment aim at enabling joint capacity allocation with neighboring TSOs. The proposed amendments foresee the simplification of the adoption procedure (NEURC shall not approve, but provide its *consent* to the rules and does not have the obligations to organize public consultations on the rules proposed by TSOs). The draft amendments also propose changes to Article 38(5) replacing the term “procedure” with the term “rules”, specifying that the rules can be developed per border (region), at the same time the proposed amendments to the Electricity market Law shall be clarified as detailed in the recommendations below.

¹ Introduced by the Law No. 1396-IX of 15.04.2023

The draft amendments are meant to apply during a transitional period until the full transposition of the new electricity package adopted by the Ministerial Council in December 2022 (as described below), namely until the end of 2023.

Impact of joint capacity allocation on the markets and stakeholders in Ukraine and neighbouring systems

The implementation of joint capacity allocation on interconnections between Ukraine and neighbouring Parties to the Energy Community such as the EU Member States and Moldova is a crucial step towards the further market integration of Ukraine. Jointly agreed procedures are needed to allow market participants to exchange electricity according to predefined rules and by that facilitate cross-border trade, so as to achieve efficiency gains, efficient economic signals to market participants and TSOs and competitive prices in wholesale and retail markets. Furthermore, the development will contribute to the efficient long-term operation and development of the electricity transmission system and electricity sector as well as ensuring operational security.

Further delays with the implementation of joint capacity allocation are a risk for any potential commercial exchanges. The to a lack of compliance, the existing procedure (unilateral capacity allocation) is currently not applied on the borders with Hungary and Romania. At risk is also the existing allocation on the border with the Slovak Republic (as current provisions of the Electricity Market Law do not allow *Ukrenergo* to share the revenues received from the allocation under unilateral procedure).

Compliance assessment

On 15 December 2022, the Ministerial Council by Decision 2022/03/MC-EnC incorporated the European Union's electricity market acquis in the Energy Community complemented by Procedural Act 2022/01/MC-EnC on Regional Energy Market Integration. The deadline for transposition and implementation of those acts by Contracting Parties, including Ukraine, is 31 December 2023. As part of those acts, the Network Codes and Guidelines set out detailed rules related to different market segments and system operation, including related to capacity allocation in for the long-term (Regulation (EU) 2016/1719) and short-term (Regulation (EU) 2015/1222) timeframe.

As the draft amendments to the Electricity Market Law are evidently not intended to transpose Decision 2022/03/MC-EnC, the detailed compliance assessment in the Annex is based on the rules of the Third Energy Package, namely Directive 2009/72/EC and Regulation (EC) 714/2009. Ensuring complete transposition of the new acquis by the end of this year will require further amendments to the primary (and secondary) legislation which are not yet incorporated within these draft amendments submitted to the Secretariat for review.

Conclusions and recommendations

The proposed amendments to the Law are largely compliant with the Energy Community *acquis* in force. That said, and as further elaborated in the table below,

- The draft amendments are not clear in relation to the timeframes governed. In accordance with the Regulation (EC) 714/2009, there shall be rules governing the allocation of cross-zonal capacity both in the long-term and short-term timeframe (day-ahead and intraday) and the draft amendments shall clearly define this.
- The provision requiring the national regulatory authority to consent to the TSO's proposed rules on cross-zonal capacity allocation should be complemented by the right of NEURC to amend or ask for amendments to the rules. The deadline for doing so should also be defined within the Law. It is furthermore not clear what the consequences would be if NEURC does not consent to rules proposed by the TSO.
- On the structure and content of the rules, the Law should not restrict the possibilities to adopt different rules for different timeframes and for different sets of borders to ensure timely implementation and possibilities for cooperation with several neighboring TSOs. However, the rules should be jointly agreed between relevant TSOs to ensure the most efficient outcome providing the maximum amount of cross-zonal capacity to the market.
- As the rules for joint allocation are a crucial next step for further integration of the Ukrainian market with the neighboring ones, it is highly recommended to stipulate deadlines by the Law for the proposal to be made by the TSO, and for the procedure in which the national regulatory authority will have to consent.
- Acknowledging that the Electricity Market Law lacks clarity on the sharing of congestion revenues with neighbouring TSOs, the Secretariat recommends to introduce an additional provision defining that the congestion revenues are shared among the TSOs involved, in accordance with criteria agreed between the TSOs involved and reviewed by the respective regulatory authorities (in accordance with the point 6.3 of Annex I to Regulation (EC) 714/2009).

Annex

Detailed assessment of the draft amendments to the Electricity Market Law

Existing provisions	Proposed changes	Comments	Secretariat's assessment and recommendations
<p>Article 1</p> <p>13) free cross-border transmission capacity (hereinafter referred to as the free transmission capacity) means available cross-border transmission capacity excluding transmission capacity allocated at the auctions and transmission capacity exempted from provisions of Articles 38, 39 of this Law. When calculating daily free transmission capacity, consideration shall be taken of the unused transmission capacity allocated at the earlier auctions.</p>	<p>Article 1</p> <p>13) offered cross-border transmission capacity (hereinafter referred to as the proposed transmission capacity) means the value of the cross-border capacity, which offered for the allocation at the relevant auction;</p>	<p>Existing definition of the term "free cross-border transmission capacity" does not take into account cases in which participants can return allocated rights. Also, the contract of the participant can be stopped or suspended (in case early termination contract) and corresponding rights shall be proposed for auction. The definition also does not take into account case of intraday allocation.</p> <p>According to the Regulation 2016/1719 and Harmonized allocation rules (HAR), which were approved by ACER on 29.11.2021 in EU legislation the term "offered capacity". Such definition given in Regulation 2013/543: "offered capacity" means the cross zonal capacity offered by the transmission capacity allocator to the market</p>	<p>The most common used term for the specific definition (13) is 'available' cross-zonal capacity. It is correct that the HAR also use the word offered, but it is not used in higher-level legislation (Regulations and Guidelines). All terms used by the Law and subordinate rules and methodologies (incl. the draft methodology for calculating cross-border capacities) should be aligned.</p> <p>Furthermore, it should be clarified to which timeframe the definition refers, or if it relates to the available capacity as sum over all timeframes (cf. Art. 2(3) of Annex I to Regulation (EC) 714/2009 states <i>'Each capacity-allocation procedure shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations.'</i>)</p>
<p>16¹) guarantees shall mean an assurance that the allocated physical right to use cross-border transmission capacity will remain available for use and that reimbursement will be paid in accordance with the procedure for allocation of cross-</p>	<p>16¹) guarantees shall mean an assurance that the allocated physical right to use cross-border transmission capacity will remain available for use and that reimbursement will be paid in accordance with the rules for allocation of cross-</p>	<p>Also for the purpose of harmonization terminology in the title of the document according to which are directly conducted auctions (EU acts operate the term "rules" and must be agreed with adjacent TSO according to the text of the Law in a number of</p>	<p>Under the new Energy Community electricity package the term used is 'firmness' of allocated cross-zonal capacity (cf. Art. 2(44) of Regulation (EU) 2015/1222; <i>'firmness' means a guarantee that cross-zonal capacity rights will remain unchanged and that a compensation is</i></p>

border transmission if such right is curtailed;	border transmission if such right is curtailed;	provisions it is proposed use the term "rules".	<i>paid if they are nevertheless changed.)</i>
<p>96⁻²) registered participant shall mean an economic entity, including a non-resident, that meets the requirements set forth by the procedure for allocation of cross-border transmission capacity and has concluded an agreement on participation in the transmission capacity allocation with an auction office;</p>	<p>96⁻²) registered participant shall mean an economic entity, including a non-resident, that meets the requirements set forth by the rules for allocation of cross-border transmission capacity and has concluded an agreement on participation in the transmission capacity allocation with an auction office;</p>	<p>The reasoning is similar to the above</p>	
<p>Article 6. State Regulation of the Electricity Market</p> <p>3. The scope of Regulator's powers on the electricity market shall include:</p> <p>4) approval of market rules, the "day-ahead" and intra-day market rules, the transmission network code, the distribution network code, commercial metering code, retail market rules, procedure of cross-border transmission capacity allocation, which, in particular, includes provisions on the specifics of cross-border transmission capacity allocation with third countries, other normative and legal acts and standard documents governing operation of the electricity market;</p> <p>There is no provision</p>	<p>Article 6. State Regulation of the Electricity Market</p> <p>3. The scope of Regulator's powers on the electricity market shall include:</p> <p>4) approval of market rules, the "day-ahead" and intra-day market rules, the transmission network code, the distribution network code, commercial metering code, retail market rules, other normative and legal acts and standard documents governing operation of the electricity market;</p> <p>4-1) consent of the rules for the allocation of capacity of interstate crossings;</p> <p>...</p> <p>4. The Regulator has the right to:</p>	<p>Considering the adoption procedure defined by the Law of Ukraine "On NEURC" and the Law of Ukraine "On the Electricity Market", the introduction of auctions under a joint coordinated procedure is extremely difficult. The Law of Ukraine "On the Electricity Market" provides: NPC "Ukrenergo" coordinates the General Procedure with all TSOs and submits it to the Regulator for approval. The order must contain appendices - special regional conditions for each intersection, which must also be agreed with the relevant TSO of the neighbouring state. The Law of Ukraine "On NEURC" provides: - compliance with the requirements of Ukrainian legislation and normative design techniques; - a defined procedure for adopting a regulatory act (approval; collection of comments; open discussions);</p>	<p>It should be added that NEURC also consults with other national regulatory authorities. Furthermore, Art. 1(10) of Annex I to Regulation (EC) 714/2009 requires the national regulatory authorities to regularly evaluate the congestion-management methods (including consultation of all market participants and dedicated studies).</p> <p>It is not clear what would be the consequences if NEURC does not give consent to the rules proposed by the TSO.</p> <p>Beyond consenting, NEURC should be given the right to amend or ask for amendments of the proposed rules for the allocation of cross-zonal capacity following its assessment especially</p>

<p>4. The Regulator has the right to:</p> <p>... 7) require relevant operators to prepare amendments in the market rules, the "day-ahead" and intra-day market rules, the transmission network code and the commercial metering code, procedure for allocation of transmission capacity of cross-border intersections to ensure compliance with the principle of proportionality and non-discrimination;</p>	<p>... 7) require relevant operators to prepare amendments in the market rules, the "day-ahead" and intraday market rules, the transmission network code and the commercial metering code, to ensure compliance with the principle of proportionality and non-discrimination;</p>	<p>- approval (consent) with the AMCU.</p> <p>According to the results of the specified procedure, the Procedure or its appendices, agreed by all neighboring TSOs, undergo changes and must be re-approved by the neighboring TSOs, after which they must go through the acceptance procedure again.</p> <p>The joint coordinated procedure is an implementation of the provisions of European legislation. Approval of the Rules (developed on the basis of acts of European legislation) sent by NPC "Ukrenergo" after approval by the relevant TSO of the neighbouring state significantly simplifies the process of introducing joint auctions.</p>	<p>with regards to the compliance with the applicable rules. When doing so, NEURC should be obliged to consult with its counterparts in the neighbouring countries. It is recommended to include a deadline for NEURC's actions and/or requests.</p>
<p>Article 33. Functions, Rights and Obligations of the Transmission System Operator</p> <p>1. The transmission system operator shall:</p> <p>... 15) ensure allocation of cross-border transmission capacity in accordance with the procedure prescribed by this Law and the procedure for allocation of cross-border transmission capacity; 16) cooperate with the transmission system operators of neighbouring states, coordinate actions and exchange</p>	<p>Article 33. Functions, Rights and Obligations of the Transmission System Operator</p> <p>1. The transmission system operator shall:</p> <p>... 15) ensure allocation of cross-border transmission capacity in accordance with the procedure prescribed by this Law and the rules for the allocation of cross-border transmission capacity; 16) cooperate with the transmission system operators of neighbouring states, coordinate actions and exchange</p>	<p>The rationale for changing the name of the normative act is similar to that given in Article 1.</p> <p>The rationale for the reasons for changing the regulatory act approval procedure is similar to that given in Article 6.</p>	<p>In the light of the increasing cooperation with other TSOs of Member States and Energy Community Contracting Parties, the Secretariat recommends adding to (16) the TSOs' obligation to cooperate also with ENTSO-E.</p>

<p>information with them; 17) develop market rules, the transmission network code, the commercial metering code, procedure for cross border capacity allocation, and submit them for approval by the Regulator;</p> <p>There is no provision</p>	<p>information with them; 17) develop market rules, the transmission network code, the commercial metering code, and submit them for approval by the Regulator;</p> <p>17-1) develops rules for the allocation of cross-border transmission capacity for each interstate crossing separately and submits them for approval to the Regulator. (...)</p>		<p>The Secretariat recommends amending the wording to allow for the rules to apply to either one or more bidding-zone borders and to include the option to merge the rules for several bidding-zone borders (by introducing “for each <i>or more</i>”), to allow for the alignment of common parts of those rules and to increase consistency.</p> <p><i>Missing:</i> the amendments of the Law should clearly require the adoption of rules for all timeframes, i.e. for both the long-term and for the short-term timeframe (possibly separate rules).</p> <p>In addition, the Secretariat recommends requiring the TSO to consult with other involved TSOs on the rules for the allocation of cross-zonal capacity allocation as they highly impact also market participants in the neighbouring countries.</p>
<p>Article 38. General Principles on Congestion Management</p> <p>5. The transmission system operator shall develop, approve with the relevant transmission system operator of the adjacent state that is party to the Energy Community and submit to the Regulator for approval the procedure of cross-border transmission capacity allocation, which may contain</p>	<p>Article 38. General Principles on Congestion Management</p> <p>5. The transmission system operator shall develop, approve with the relevant transmission system operator of the adjacent state-member (party) of European Union or the Energy Community and submit to the Regulator for consent the rules of cross-border transmission capacity</p>	<p>The rationale for the reasons for changing the regulatory act approval procedure is similar to that given in Article 1. The rationale for the reasons for changing the regulatory act approval procedure is similar to that given in Article 6.</p>	<p>Generally, the Secretariat recommends to further clarify the applicability of the rules to different timeframes. The amendments mostly seem to relate to the long-term timeframe while capacity allocation must take place also in the short-term timeframe (day-ahead and intraday) according to Regulation (EC) 714/2009. (as well as the Law). Provisions of the Law shall not restrict NEURC and Ukrenergo in developing one rules for both timeframes</p>

<p>special — regional conditions. — Such conditions that are applicable in a specific region or at the specific crossing shall make integral annexes to the procedure of cross-border transmission capacity allocation.</p> <p>...</p> <p>10. Holders of the physical right for transmission shall receive reimbursement from the transmission system operator for any reduction of the physical right for transmission according to the procedure of cross-border transmission capacity allocation, except for the reductions caused as a result of force majeure.</p> <p>11. All available transmission capacity of cross-border crossing shall be proposed for allocation subject to compliance with the operational safety standards. The transmission system operator shall define the available transmission capacity using the methodology approved by the Regulator upon consultations with the Energy Community Secretariat and published on the official website of the transmission system operator.</p> <p>There is no provision</p>	<p>allocation between two power systems of the adjacent countries.</p> <p>...</p> <p>10. Holders of the physical right for transmission shall receive reimbursement from the transmission system operator for any reduction of the physical right for transmission according to the rules of cross-border transmission capacity allocation.</p> <p>11. All available transmission capacity of cross-border crossing shall be proposed for allocation subject to compliance with the operational safety standards. The transmission system operator shall define the available transmission capacity using the methodology approved by the Regulator upon consultations with the Energy Community Secretariat and published on the official website of the transmission system operator.</p> <p>Offered capacity determined by the auction office in accordance with the rules of cross-border capacity allocation, taking into account, in particular available cross-border</p>	<p>Regulations 2015/1222 and 2016/1719, as well as harmonized allocation rules (HAR) approved by ACER on 29.11.2021 provide for reimbursement or compensation for reduction also in case of force majeure or emergency situation.</p>	<p>(long- and short-term) per border.</p> <p>As stated above, NEURC should not only be allowed to consent to the rules but have the right to amend or ask for amendments (within deadlines to be defined by the Law).</p> <p>The term 'structure of the cross-border allocation' is not defined. It may be assumed that it refers to the splitting rules determining the fraction of available capacity for different timeframes of Article 39 (10) of the Law, which is governed by Art. 2(3) and 2(6) of Annex I to Regulation (EC) 714/2009. According to the Regulation, it (the structure of the cross-border allocation) requires approval by NEURC (including for joint coordinated auctions).</p>
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<p>12. The transmission system operator shall not reduce cross-border transmission capacity in order to settle congestions in the UES of Ukraine, except for the events of violation of operational safety. The transmission system operator shall undertake to notify the registered participants of the reduction of cross-border transmission capacity constraints and of the reasons for such reduction, and provide reimbursement according to the procedure of cross-border transmission capacity allocation.</p>	<p>capacity and the structure of the cross-border allocation. ... 12. The transmission system operator shall not reduce cross-border transmission capacity in order to settle congestions in the UES of Ukraine, except for the events of violation of operational safety. The transmission system operator shall undertake to notify the registered participants of the reduction of cross-border transmission capacity constraints and of the reasons for such reduction, and provide reimbursement according to the rules of cross-border transmission capacity allocation.</p>		<p>Furthermore, the auction office should not change the available capacity values provided by the TSO. The TSO is the party responsible for its calculation and splitting (structure) according to the Energy Community rules.</p>
<p>Article 39. Allocation of Available Transmission Capacity of Cross-Border Crossings</p> <p>1. Available cross-border capacity at crossings shall be allocated at the explicit and/or implicit auctions to be held in accordance with the procedure of e-auction using an electronic document flow and electronic digital signature. Both auctions may be held for the same cross-border crossing. ... 5. At each auction a portion of available transmission capacity designated for allocation at this auction plus any</p>	<p>Article 39. Allocation of Available Transmission Capacity of Cross-Border Crossings</p> <p>1. Proposed cross-border capacity at crossings shall be allocated at the explicit and/or implicit auctions to be held in accordance with the procedure of e-auction using an electronic document flow and electronic digital signature. Both auctions may be held for the same cross-border crossing. ... Delete</p>	<p>The rationale for the reasons for changing the regulatory act approval procedure is similar to that given in Article 1.</p> <p>The provision does not cover the entire formula for calculating the proposed capacity. The relevant provisions were transferred to Article 38(11).</p>	

<p>remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations shall be allocated.</p> <p>6. Allocation of cross-border transmission capacity shall be made according to the procedure of cross-border transmission capacity allocation. The allocated cross-border transmission capacity is guaranteed.</p> <p>7. Cross-border transmission capacity for a short-term period offered in the course of allocation at an auction may be determined as non-guaranteed, of which it should be notified before conducting an auction. Holders of the physical right for transmission for a long- or medium-term period shall have the right to transfer or sell to other registered participants such physical right for transmission by having notified the auction office in the established procedure. In the event of refusal to transfer or sell the physical right for allocation, the auction office shall undertake to explain the reasons for such refusal to relevant holders of the physical right for transmission and to the Regulator. The list of the reasons for which the auction</p>	<p>6. Allocation of cross-border transmission capacity shall be made according to the rules of cross-border transmission capacity allocation. The allocated cross-border transmission capacity is guaranteed.</p> <p>7. Cross-border transmission capacity for a short-term period offered in the course of allocation at an auction may be determined as non-guaranteed, of which it should be notified before conducting an auction. Holders of the physical right for transmission for a long- or medium-term period shall have the right to transfer or sell to other registered participants such physical right for transmission or return it to the auction office, by having notified the auction office in the established procedure. In the event of refusal to transfer, sell or return the physical right for allocation, the auction office shall undertake to explain the reasons for such refusal to relevant holders of the physical right for transmission and to the Regulator. The list of the reasons for which the auction office may refuse to transfer, sell or return the physical</p>	<p>The rationale for the reasons for changing the regulatory act approval procedure is similar to that given in Article 1.</p> <p>The rationale for the reasons for changing the regulatory act approval procedure is similar to that given in Article 1.</p> <p>Regulation 2016/1719 and the Harmonized Distribution Rules provide for the right to return the physical rights for transfer to the transmission system operator (auction office) and the subsequent auction of these rights for subsequent auctions.</p> <p>The rationale for the reasons for changing the regulatory act approval procedure is similar to that given in Article 1. In accordance with Article 36 of Regulation 2016/1719, the owners of physical transmission rights notify TSOs about the use of bandwidth in</p>	
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<p>office may refuse to transfer or sell the physical right for transmission shall be defined by the procedure for cross-border transmission capacity allocation.</p> <p>The physical right for transmission for a long- or medium-term periods shall be covered by the “use or sell” principle, which is applied with the account of requirements of the procedure for cross-border transmission capacity allocation. Prior to each allocation of the physical right for transmission, the auction office shall make public the amount of transmission capacity to be allocated, as well as the time periods during which the transmission capacity will be reduced or unavailable.</p> <p>8. Market participants shall within the established period notify the transmission system operator of the use of capacity they purchased in accordance with the market rules.</p> <p>The auction office shall allocate the unused transmission capacity at the auctions for the next allocation periods according to the procedure for cross-border transmission capacity allocation.</p>	<p>right for transmission shall be defined by the rules for cross-border transmission capacity allocation. The physical right for transmission for a long- or medium-term periods shall be covered by the “use or sell” principle, which is applied with the account of requirements of the rules for cross-border transmission capacity allocation. Prior to each allocation of the physical right for transmission, the auction office shall make public the proposed transmission capacity to be allocated, as well as the time periods during which the transmission capacity will be reduced or unavailable.</p> <p>8. Market participants shall within the established period notify the transmission system operator of the use of capacity they purchased in accordance with the market rules. The auction office shall allocate the unused and returned transmission capacity at the auctions for the next allocation periods according to the rules for cross-border transmission capacity allocation.</p>	<p>accordance with the nomination rules developed by both TSOs and approved by the relevant Regulators. Regulation 2016/1719 and the Harmonized Distribution Rules also provide for the possibility of returning physical rights for transfer to the operator of the transmission system (auction office) and further offering these rights for subsequent auctions.</p>	
<p>Article 40. Information on Cross-Border</p>	<p>Article 40. Information on Cross-Border</p>	<p>The rationale for the reasons for changing the regulatory act</p>	

<p>Transmission Capacity</p> <p>1. The transmission system operator shall publish the following information:</p> <p>...</p> <p>The transmission system operator shall publish, in particular:</p> <p>...</p> <p>e) information on the capacity already allocated for each settlement period on the electricity market and on relevant conditions of use of the capacity so as to identify any available capacity volumes;</p>	<p>Transmission Capacity</p> <p>1. The transmission system operator shall publish the following information:</p> <p>...</p> <p>The transmission system operator shall publish, in particular:</p> <p>...</p> <p>e) information on the capacity already allocated for each settlement period on the electricity market and on relevant conditions of use of the capacity so as to identify any offered capacity volumes;</p>	<p>approval procedure is similar to that given in Article 1.</p>	
<p>Section XVII. FINAL AND TRANSITIONAL PROVISIONS</p> <p>Auctions for the allocation of available transmission capacity of the cross-border sections with application of the provisions of Articles 38-41, 42 of this Law shall be held beginning from the relevant dates defined by the Regulator, but no later than the auctions for the allocation of available transmission capacity of the cross-border sections for 2019.</p> <p>Until the mentioned date the auctions for the allocation of available transmission capacity of the cross-border sections are held in accordance with the procedure approved by the Regulator.</p>	<p>For interstate crossings where a joint coordinated capacity allocation procedure has not been implemented, auctions for the allocation of the offered capacity are held in accordance with the procedure approved by the Regulator.</p>	<p>It is proposed to exclude it, since the specified provisions of the Law have lost their relevance</p>	

When there are constraints, access to transmission capacity shall be provided based on the principle where the access to the capacity is given to market participants that offer the highest price. In case of capacity constraints, the transmission system operator shall accept all commercial exchanges on export or import of electricity to the full extent and shall provide access to capacities of cross-border intersections on a free of charge basis.

If long-term repeated constraints appear, appropriate pre-determined and pre-approved congestion management measures shall be implemented by the transmission system operator. Congestion management shall be addressed using non-discriminatory market-based solutions which ensure efficient economic signals to market participants and the transmission system operator and facilitate cross-border trade in electricity.

The congestion management procedure is applied and allocation of cross-border capacity for import and export is performed irrespective of the functioning of the wholesale electricity market in Ukraine.

<p>Congestion management measures shall ensure that electricity flows associated with all allocated transmission capacity comply with operational safety standards. Congestion management measures shall not in any case lead to discrimination of commercial exchanges.</p> <p>The transmission system operator may refuse in the access of the market participant to cross-border transmission capacity in case the following conditions occurred at the same time:</p> <ol style="list-style-type: none"> 1) the increase in electricity flows following the results of such access leads to the violation of operational safety; 2) the price offered by the market participant for access to transmission capacity is lower than all other prices offered by market participants, whom access to transmission capacity will be granted. <p>The transmission system operator can limit cross-border transmission capacity in order to avoid the violation of operational safety of UES of Ukraine. The transmission system operator shall notify market participants of the capacity constraints and reasons of such</p>			
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<p>constraints. When balancing the UES of Ukraine using operational measures and re-dispatching, the transmission system operator shall take into account the effect of those measures on energy systems of adjacent states.</p> <p>Constraints of commercial exchanges shall be of non-discriminatory nature. Market participants who have obtained access to transmission capacity shall be compensated by the transmission system operator for constraints of the rights for the use of allocated transmission capacity, except for cases when such constraint has resulted from force majeure circumstances. The sum of money to be returned is estimated according to the procedure of allocation of transmission capacity of the cross-border sections.</p> <p>All available transmission capacity of cross-border sections shall be proposed to market participants in the course of allocation, subject to compliance with operational safety standards.</p> <p>The transmission system operator shall determine the available capacity for</p>			
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~~all directions under a methodology developed by it, in accordance with ENTSO-E experience (practice) and shall be approved by the Regulator.~~

~~Until this methodology is approved, TSO shall use the methodology for calculation of available transmission capacity applicable as of the day of entry into effect by this Law.~~

~~Available transmission capacity of the cross-border sections shall be allocated at the explicit and/or implicit auctions to be held in accordance with the procedure of e-auction using an electronic document flow and electronic digital signature. Both auctions may be held for one and the same cross-border section.~~

~~Congestion management mechanisms shall apply for short-, medium- and long-term periods of transmission capacity allocation.~~

~~Temporarily, until 31 December 2021, the Regulator shall have the powers to restrict available transmission capacity allocated at daily and monthly auctions for 2021 in terms of cross-border sections between Ukraine and the states that are not parties to the Energy Community.~~

{Paragraph 1 of Section XVII has been supplemented with a new indent according to the Law No. 330-IX dd. 04.12.2019; in the version of the Law No. 1396-IX dd. 15.04.2021}

The Regulator shall have the right to cancel the results of the annual auction where the transmission capacity for 2020 and 2021 in terms of cross-border sections between Ukraine and the states that are not parties to the Energy Community has been allocated. In this case, costs paid for the allocated transmission capacity shall be reimbursed.

{Paragraph 1 of Section XVII has been supplemented with a new indent according to the Law No. 330-IX dd. 04.12.2019; with the amendments introduced as per Law No. 1396-IX dd. 15.04.2021}

Capacity allocation shall not discriminate between market participants that wish to get access to transmission capacity for any direction. All market participants shall be permitted to participate in the capacity allocation process provided that they are registered in accordance with the procedure on cross-

<p>border — capacity allocation.</p> <p>Establishing — price constraints — during capacity — allocation procedures shall not be allowed, except for cases — of — new interconnectors which shall be subject to — exemption — under Article 24 of this Law.</p> <p>At each auction, a portion of available transmission capacity designated — for allocation — at this auction — plus transmission capacity not — previously allocated, — and unused — value — of transmission capacity allocated at previous auctions shall be allocated.</p> <p>Market — participants, who gained access to transmission capacity at — annual — and monthly — auctions, shall have the right to transfer or sell to other — electricity market — participants access to capacity by notifying — the transmission system operator — in due course. In the event of — refusal — in transmission or sale of — transmission capacity — by one market participant to another one, the transmission system operator — shall explicitly — and transparently explain the reasons of such refusal to relevant market — participants and the Regulator. The list of the reasons for — which — the</p>			
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<p>transmission system operator may refuse in transmission or sale of transmission capacity by one market participant to another one shall be defined by the procedure on cross border capacity allocation.</p> <p>Prior to each cross border capacity allocation, the transmission system operator shall make public the amount of capacity to be allocated, and time periods during which the capacity will be reduced or not available in accordance with the procedure on cross border capacity allocation.</p> <p>Market participants shall within the established period notify the transmission system operator of the use of capacity they purchased in accordance with the procedure of capacity allocation of cross border sections.</p> <p>The transmission system operator shall allocate unused transmission capacity at the auctions for the next allocation periods. The transmission system operator shall define a structure of transmission capacity allocation for different timeframes, which may include reserving the portion of transmission capacity for the day-</p>			
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ahead and intra-day allocation. Such an allocation structure shall be approved by the Regulator. When drawing up the structure of capacity allocation, the transmission system operator shall take into account the operational conditions and the level of harmonization of transmission capacity portions and timeframes defined for different capacity allocation mechanisms.

The transmission system operator shall publish the following information, specifically:

- 1) data related to network operability, network access and network use, including information on available capacity constraints, congestion management methods and plans for removal thereof in the future;
- 2) data on cross-border transmission capacity and energy system functioning, specifically:
 - a) annually: information on the long-term development prospects of the transmission system infrastructure and the impact of such development on cross-border transmission capacity;
 - b) weekly: forecasts of the transmission capacity of cross-

<p>border sections at the electricity market for the following week, taking into account all available relevant information;</p> <p>c) information on the allocated transmission capacity of cross-border sections for each settlement period and relevant conditions of use of the transmission capacity so as to identify any available transmission capacity;</p> <p>d) information about allocated transmission capacity of cross-border sections after each allocation, as well as its price;</p> <p>e) information about total transmission capacity of cross-border sections used for each settlement period immediately upon receipt of notices of use thereof;</p> <p>f) real description of measures to limit transmission capacity adopted by the transmission system operator for solving network or system operation problems;</p> <p>g) information on planned and actual outages on the interconnectors;</p> <p>h) unplanned and/or emergency outages of generation units with capacity exceeding 100 MW;</p> <p>3) data on aggregated forecasted and actual demand, availability and actual use of generating capacities</p>			
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and consumption facilities capable of regulation, availability and use of network and intersections, balancing electricity and capacity reserves;

4) the procedures of congestion management and allocation of transmission capacity of cross-border sections applied by the transmission system operator.

The transmission system operator shall publish relevant actual data.

All information published by the transmission system operator shall be made publicly available. All data shall contain information for the past two years.

The transmission system operator shall put in place the coordination and information exchange mechanisms to ensure safety of network in terms of congestion management. The transmission system operator shall regularly exchange data on network parameters with the transmission system operators of neighboring countries. At the relevant request, those data shall be submitted to the Regulator. When preparing to the day-ahead network operation, the

<p>transmission system operator shall exchange information with the transmission system operators of neighboring countries, in particular concerning their forecasted network topology, available and forecasted loads of generation units and electricity flows in order to optimize network operation.</p> <p>Market participants shall provide the transmission system operator with data required for exchange of information on the transmission capacity of cross-border sections, as required by this Law, market rules and other regulatory legal acts governing operation of the electricity market. The market participants shall have no obligation to inform the transmission system operator on their commercial contracts for purchase and sale of electricity.</p> <p>Cross-border capacity allocation shall be provided in coordination with the transmission system operator of relevant cross-border section.</p> <p>Coordination of capacity allocation shall include, in particular, the verification of flows for compliance with the requirements of network safety in operational planning and implementing the real-time mode,</p>			
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<p>procedure of information exchange between the transmission system operators.</p> <p>For the export of electricity, the required volume thereof shall be purchased at the wholesale electricity market of Ukraine operating in line with the Law of Ukraine "On Electricity Sector", at the wholesale market price determined by the rules of the wholesale electricity market of Ukraine.</p> <p>Electricity transmission shall be exercised on the basis of a contract concluded with the transmission system operator.</p> <p>Transmission system operator shall enter into a contract with the auction winner as to access to transmission capacity of cross-border electricity networks of Ukraine, including technical specifications to ensure export and import of electricity.</p> <p>The suggested format of a contract on access to transmission capacity of cross-border electricity networks of Ukraine shall be approved by the Regulator.</p>			
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