

DECISION No 05/2024
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 2 May 2024

**on the request of the regulatory authority of the Netherlands to extend the
period for adopting coordinated decisions on cross-zonal risk hedging
opportunities**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation², and, in particular, Article 30 thereof,

Having regard to the outcome of the consultation with ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 24 April 2024, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 (the FCA Regulation) lays down detailed rules on cross-zonal capacity allocation in the forward markets. One of the key objectives of the FCA Regulation, specified in its Article 3, is the promotion of effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants.

¹ OJ L158, 14.6.2019, p. 22.

² OJ L 259, 27.9.2016, p. 42.

- (2) Article 30 of the FCA Regulation sets out a process whereby the competent regulatory authorities decide on cross-zonal risk hedging opportunities.
- (3) According to Article 30(1) of the FCA Regulation, the transmission system operators (TSOs) shall issue long-term transmission rights ('LTTRs') on a given bidding zone border unless the competent regulatory authorities of the bidding zone border have adopted coordinated decisions not to issue long-term transmission rights on that border.
- (4) In accordance with Article 30(2) of the FCA Regulation, where long-term transmission rights do not exist on a bidding zone border at the entry into force of the FCA Regulation, the competent regulatory authorities of the bidding zone border shall adopt coordinated decisions on the introduction of long-term transmission rights no later than six months after the entry into force of the FCA Regulation.
- (5) The decisions of the regulatory authorities pursuant to Article 30, paragraphs (1) and (2), shall be based on an assessment as to whether the electricity forward market provide sufficient hedging opportunities in the concerned bidding zones. This assessment shall be carried out in a coordinated manner by the competent regulatory authorities of the bidding zone border in accordance with Article 30, paragraphs (3) to (5), of the FCA Regulation.
- (6) According to Article 30(5) of the FCA Regulation, in case insufficient cross-zonal risk hedging opportunities are identified in one or more bidding zones, the competent regulatory authorities of the bidding zone border shall request the relevant TSOs: a) to issue LTTRs; or b) to make sure that other long-term cross-zonal hedging products are made available to support the functioning of wholesale electricity markets.
- (7) After the FCA Regulation became part of the Agreement on the European Economic Area (EEA) by decision of the EEA Joint Committee No. 205/2020, the FCA Regulation was made binding in the internal legal order in Norway through national measures with entry into force on 1 August 2021. By ACER Decision 08/2023 of 31 March 2023 for the EU and respectively the EFTA Surveillance Authority's (ESA) Decision 065/23/COL of 24 April 2023 and NVE-RME's Decision 201705443-14 of 18 August 2023 for Norway, the bidding zone border NO2-NL was included in Capacity Calculation Region Hansa (CCR Hansa).
- (8) Following the inclusion into CCR Hansa of the bidding zone border NO2-NL, where long-term transmission rights do not exist, the competent regulatory authorities are required, pursuant to the process set out in Article 30 of the FCA Regulation, to assess cross-zonal risk hedging opportunities for this bidding zone border. Based on the assessment the regulatory authorities shall conclude if hedging opportunities in the relevant bidding zones are sufficient and, if not, within six months, adopt coordinated decisions on whether to introduce long-term transmission rights or ask TSOs for other measures to improve cross-zonal hedging opportunities.
- (9) The present Decision follows from the request of the regulatory authority of the Netherlands, Autoriteit Consument & Markt (ACM), to extend the period for reaching

coordinated decisions with the regulatory authority of Norway, NVE-RME, on cross-zonal risk hedging opportunities for the bidding zone border NO2-NL in accordance with Article 30(2) of the FCA Regulation, by six months pursuant to Article 6(10), subparagraph three, of Regulation (EU) 2019/942.

2. PROCEDURE

- (10) By letter dated 16 February 2024, ACM submitted to ACER a request to grant a six-month extension according to Article 6(10), subparagraph three, of Regulation (EU) 2019/942, to reach coordinated decisions with NVE-RME³ in accordance with Article 30(2) of the FCA Regulation.
- (11) According to this letter, ACM has an ongoing investigation in accordance with Article 30 of the FCA Regulation for the bidding zone border NO2-NL. The letter indicates that the period of six-months to reach coordinated decisions under Article 30(2) of the FCA Regulation commenced on 18 August 2023, i.e. the day when the inclusion of the bidding zone border NO2-NL in the CCR Hansa became applicable for the Norwegian TSO Statnett, and that hence, coordinated decisions of ACM and NVE-RME be due by 18 February 2024.
- (12) In support of the request for extension, ACM explains that it has carried out an assessment in accordance with Article 30(3) of the FCA Regulation, consisting of an evaluation and a consultation. Based on the assessment ACM has concluded that the electricity forward market provides insufficient hedging opportunities for the Dutch bidding zone, and that the way forward is to request TenneT to issue transmission rights for the bidding zone border NO2-NL.
- (13) Furthermore, ACM explains that NVE-RME also concludes that there are insufficient hedging opportunities for its bidding zone. The authorities have discussed the way forward, but have been unable to reach coordinated decisions. Instead, ACM and NVE-RME have agreed to update their assessments in light of upcoming developments, in particular that zonal futures will be introduced in the Nordic market in March 2024. In addition, NVE-RME has asked Statnett to assess other hedging products in Norwegian bidding zones that are suitable for cross-zonal hedging. ACM considers that it would be beneficial to await these upcoming developments and to take them into consideration in the assessment of hedging opportunities.
- (14) Moreover, ACM and NVE-RME have agreed on the next steps deemed necessary to be able to adopt coordinated decisions:

³ On 16 February 2024, NVE-RME submitted to ESA a request for a six-month extension of the period to reach coordinated decisions with ACM.

- ACM will update its analysis of liquidity indicators (churn rate, bid-ask spread, and open interest) for monthly, quarterly, and yearly products for the Dutch bidding zone with data until 30 June 2024;
 - ACM will assess whether or not this updated analysis leads to the same or a different conclusion on hedging opportunities for the Dutch bidding zone;
 - NVE-RME will update their liquidity analysis with data until 30 June 2024; and
 - NVE-RME will assess whether or not this updated analysis leads to the same or a different conclusion on hedging opportunities for the NO2 bidding zone.
- (15) The letter also states that if the conclusion of the analysis remains that there are insufficient hedging opportunities in the Dutch bidding zone and/or the NO2 bidding zone, ACM and NVE-RME intend to jointly request respectively ACER (for the EU) and ESA (for Norway) to take a decision in accordance with Article 30(5) of the FCA Regulation.
- (16) On 27 March 2024, a proposed draft of the present decision was submitted to ACER's Electricity Working Group for consultation in accordance with Article 24(2) of Regulation (EU) 2019/942.
- (17) On 10 April 2024, ACER's Electricity Working Group endorsed the draft ACER Decision on the request of ACM to extend the period for reaching coordinated decisions on cross-zonal risk hedging opportunities.
- (18) In its advice, the AEWG also invited ACER to consider the comments raised by the regulatory authority of Germany, BNetzA, during the AEWG consultation period. BNetzA considered that the decision should be based on Article 30(1) of the FCA Regulation in conjunction with Article 6(10) of the Regulation (EU) 2019/942, instead of Article 30(2) of the FCA Regulation. According to BNetzA, Article 30(2) of the FCA Regulation applies to those existing bidding zone borders that did not have LTTRs at the time of entry into force of the FCA Regulation and not to bidding zone borders that came into existence later. For the latter, in BNetzA's view, Article 30(1) of the FCA Regulation is applicable and hence TSOs should issue LTTRs unless the competent regulatory authorities have adopted coordinated decisions not to issue LTTRs (see also Recital 23).
- (19) On 24 April 2024, ACER's Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

- (20) According to point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, ACER shall decide on regulatory issues having effects on cross-border trade or cross-border system security, which require a joint decision by at least two regulatory authorities, where such competences have been conferred on the regulatory

authorities under network codes and guidelines adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines and where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from the referral of the case to the last of those regulatory authorities.

- (21) According to the third subparagraph of Article 6(10) of Regulation (EU) 2019/942, the competent national regulatory authorities may jointly request that the six-month period is extended by a period of up to six months.
- (22) According to Article 30(2) of the FCA Regulation (which has been adopted as a guideline before 4 July 2019), the competent regulatory authorities of the bidding zone border shall adopt coordinated decisions on the introduction of long-term transmission rights no later than six months after the entry into force of the FCA Regulation, where long-term transmission rights do not exist on the bidding zone border at the entry into force of the FCA Regulation.

3.2. Admissibility

- (23) ACM requested an extension of the six-month period according to Article 6(10), subparagraph three, of Regulation (EU) 2019/942 for proceedings to adopt coordinated decisions which it initiated with regards to Article 30(2) of the FCA Regulation. Since the proceedings for which the extension is requested are pending under the legal basis of Article 30(2) of the FCA Regulation, the requested extension is to be assessed for these specific proceedings, and not for other proceedings which, for instance, are based on a different legal basis (e.g. Article 30(1) of the FCA Regulation).
- (24) Article 30(2) of the FCA Regulation requires the relevant regulatory authorities on a bidding zone border where long-term transmission rights do not exist to take coordinated decisions on cross-zonal risk hedging opportunities within six months, but does not explicitly provide for the possibility to extend that period.
- (25) However, point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, stipulates that ACER shall adopt a decision when the regulatory authorities did not reach an agreement within the six-month deadline. Thus, ACER's competence is made contingent upon the expiry of the six-month period.
- (26) Therefore, the transfer of the decision-making competence from the regulatory authorities to ACER under Article 30(2) of the FCA Regulation may also be subject to an extension of the regulatory authorities' deadline to reach coordinated decisions, in accordance with Article 6(10), subparagraph three, of Regulation (EU) 2019/942.
- (27) For an extension of this six-month period, the request by the competent regulatory authorities should be submitted before the end of the period for reaching coordinated decisions, and the maximum requested extension should not exceed the period of six months in accordance with Article 6(10), subparagraph three, of Regulation (EU) 2019/942.

- (28) The coordinated decisions to which the request for extension is related falls under the competence of ACM and NVE-RME pursuant to Article 30(2) of the FCA Regulation. Accordingly, those regulatory authorities are also the competent regulatory authorities that may request an extension of the six-month period.
- (29) In that regard it is to note that on 18 February 2024 ACM submitted the present request to ACER while on 16 February 2024 NVE-RME submitted a request to ESA to grant a six-month extension for reaching coordinated decisions with ACM. On 23 February 2024 ESA requested ACER to prepare a draft for its decision in accordance with the procedure under point 47(d) of Annex IV to the EEA Agreement.
- (30) Accordingly, the relevant competent regulatory authority to request an extension from ACER is ACM. This decision is therefore addressed to ACM.
- (31) ACER understands that ACM and NVE-RME commenced the procedure under Article 30(2) of the FCA Regulation at the time when the inclusion of the bidding zone border NO2-NL in CCR Hansa became applicable. The point in time when the regulatory authorities became concerned with this matter was thus on 18 August 2023. Therefore, the competent regulatory authorities were required to adopt coordinated decisions on cross-zonal hedging opportunities within six months from 18 August 2023, i.e. on 19 February 2024⁴. The request for extension was received by ACER on 18 February 2024, and hence before the expiry of the six-month deadline.
- (32) In its request, ACM asks for an extension of six months, which, given the initial deadline of 19 February 2024, would defer the final deadline to 19 August 2024. As such, the requested extension does not exceed the maximum limit of six months as provided for in Article 6(10), subparagraph three, of Regulation (EU) 2019/942.
- (33) In light of the above, ACER considers the request for extension admissible.

3.3. Substance

- (34) Article 6(10), subparagraph three, of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (35) The justification provided by ACM, as reported at paragraphs (12) to (14) above, indicates the need to await upcoming developments and a renewed assessment by the regulatory authorities of the cross-zonal hedging opportunities, in order for the regulatory authorities to be able to adopt coordinated decisions.

⁴ Since 18 of February 2024 was a Sunday, the six-month period is considered to have expired the following working day, i.e. on 19 February 2024.

- (36) ACER understands from this justification that the additional period of six months would allow sufficient time for the regulatory authorities to update their analysis and conclude on the hedging opportunities for their respective bidding zones.
- (37) ACER considers that continuing and completing the regulatory authorities' ongoing assessment can contribute to the efficient conclusion of the pending proceedings. In ACER's view, this continuation and completion would not unduly impact the fulfilment of the objective of the FCA Regulation. Under those circumstances, ACER deems it reasonable to enable the regulatory authorities to conclude the proceedings to reach coordinated decisions.
- (38) Furthermore, ACER considers that the request for extension for a total of six months is proportionate in light of the activities to be performed by the competent regulatory authorities.
- (39) Therefore, ACER considers an extension until 19 August 2024 justified.

4. CONCLUSION

- (40) For the above reasons, ACER accepts the request for an extension submitted by the regulatory authority of the Netherlands and extends, pursuant to Article 6(10), subparagraph three, of Regulation (EU) 2019/942, the period for that regulatory authority to reach coordinated decisions on cross-zonal hedging opportunities, until 19 August 2024,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authority of the Netherlands shall reach a decision on cross-zonal risk hedging opportunities, that is coordinated with the regulatory authority of Norway, is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 19 August 2024.

Article 2

This Decision is addressed to Autoriteit Consument & Markt.

Done at Ljubljana, on 2 May 2024.

- SIGNED -

For the Agency
The Director
C. ZINGLERSEN

In accordance with Article 28 of Regulation (EU) 2019/942, the addressee may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressee may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.