

**DECISION No 01/2024
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 8 March 2024

on the request of the regulatory authorities of the Hansa capacity calculation region to extend the period for reaching an agreement on the proposal for the cross-zonal capacity calculation methodology for the balancing timeframe

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, Articles 5(3) and 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Articles 5(3)(f), 6(1), 6(2) and 37(3) 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 7 March 2024, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Pursuant to Articles 4(1) and 5(3)(f) of Commission Regulation (EU) 2017/2195 of 23 November 2017 ('the EB Regulation'), transmission system operators ('TSO's) of a capacity calculation region ('CCR') shall develop a methodology for cross-zonal capacity calculation within the balancing timeframe for the exchange of balancing

¹ OJ L158, 14.6.2019, p. 22.

² OJ L 312, 28.11.2017, p. 6.

energy or for operating the imbalance netting process in accordance with Article 37(3) of the EB Regulation and submit it to the regulatory authorities of that capacity calculation region for approval. In accordance with Articles 5(3) and 5(6) of the EB Regulation, the regulatory authorities shall reach an agreement and take a decision within six months after the receipt of the proposal by the last regulatory authority concerned.

- (2) In accordance with Article 6(1) of the EB Regulation, where the regulatory authorities jointly require an amendment in order to approve the submitted methodology, the relevant TSOs' shall submit a proposal for amended methodology for approval within two months following the request from the regulatory authorities. The regulatory authorities shall decide on the amended methodology within two months following their submission. According to Article 6(2) of the EB Regulation, where the regulatory authorities fail to reach an agreement within the two-month period, ACER is called upon to adopt the required decision in accordance with the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision follows from the request of the regulatory authorities of the Hansa CCR, which includes Denmark, Germany, the Netherlands, Norway, Poland and Sweden, to extend the period for reaching an agreement with regard to the Hansa CCR TSOs' amended proposal for the methodology for cross-zonal capacity calculation for the balancing timeframe in accordance with Article 37(3) of the EB Regulation ('the Proposal'), by six months pursuant to Article 6(10), subparagraph three, of Regulation (EU) 2019/942.

2. PROCEDURE

- (4) On 14 December 2022 the Hansa TSOs' issued their first proposal for the methodology for cross-zonal capacity calculation within the balancing timeframe. The TSOs submitted the proposal to the last regulatory authority of the Hansa CCR on 12 January 2023.
- (5) On 11 July 2023 the regulatory authorities of the Hansa CCR issued a request for amendment to the Hansa TSOs'. The Hansa TSOs' issued their amended proposal on 13 October 2023 (the Proposal), and submitted it to the last regulatory authority on 6 December 2023.
- (6) By letter dated 17 January 2024, Bundesnetzagentur, the regulatory authority of Germany, submitted, also on behalf of all regulatory authorities of the Hansa CCR, to ACER a joint request to grant a six-month extension according to Article 6(10), subparagraph three, of Regulation (EU) 2019/942, to decide upon the Proposal.
- (7) According to this letter, the last regulatory authority of the Hansa CCR received the TSOs' Proposal on 6 December 2023, and hence, a respective Hansa CCR regulatory authorities agreement within two months would be due by 6 February 2024.
- (8) In support of the request for extension, the letter explains that:

‘Since numerous provisions and in particular the provisions on allocation constraints have been extended or modified in the BTCC as well as in the adjacent CCRs Nordic and Core, the Hansa NRAs, for efficiency reasons, would like to await the pending amendment of the cross-zonal capacity calculation methodology for the intraday timeframe in order to fully comply with the consistency requirements set out in Art. 37(3) EB Regulation. Hansa TSOs are currently working on the amendment of the Hansa cross-zonal capacity calculation methodology for the day-ahead and intraday timeframe (according to Regulation (EU) 2015/1222). According to recent communication with Hansa TSOs they intend to submit the amended version to Hansa NRAs by the end of May 2024. A 6-month extension of the BTCC would allow Hansa NRAs to assess the required consistency of both revised methodologies before the summer break.’

- (9) The regulatory authorities of the Hansa CCR consider that these issues merit an extension of six months of the deadline to adopt a decision. The letter also states that within six months following the extension, if granted by ACER, the regulatory authorities of the Hansa CCR will strive to reach a unanimous agreement on the Proposal.
- (10) On 24 January 2024, ACER requested information from the regulatory authorities to clarify certain aspects of the request, namely the procedural steps of the Proposal leading to the request for extension.
- (11) On 24 January 2024, Bundesnetzagentur provided the requested clarifications on the procedural steps of the Proposal leading to the request for extension.
- (12) On 6 February 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.
- (13) On 15 February 2024, ACER’s Electricity Working Group endorsed the draft ACER Decision on the request of the regulatory authorities of the Hansa CCR to extend the period for reaching an agreement on the proposal for the methodology for cross-zonal capacity calculation for the balancing timeframe.
- (14) On 7 March 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

- (15) According to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942, all regulatory authorities of the region concerned shall unanimously agree on proposals for terms and condition or methodologies for the implementation of those network codes or guidelines that were adopted before 4 July 2019 and, where no unanimous agreement has been reached, shall refer the relevant proposal to ACER for

approval in accordance with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

- (16) 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.
- (17) 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.
- (18) According to the Article 5(3)(f) of the EB Regulation (which has been adopted as a guideline before 4 July 2019), the regulatory authorities of the capacity calculation region shall review and approve the TSOs' proposal for the methodology for cross-zonal capacity calculation for the balancing timeframe.
- (19) According to Article 5(6) of the EB Regulation, where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order to reach an agreement, and they shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraph (3) of the same Article within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (20) According to Article 6(1) of the EB Regulation, where, following a request from the relevant regulatory authorities, the submitted proposal for the methodology have been resubmitted with amendments, the relevant regulatory authorities shall decide on that amended methodology within two months following the resubmission.
- (21) According to Article 6(2) of the EB Regulation, where the relevant regulatory authorities have not been able to reach an agreement on the amended methodology within the two-month deadline, ACER shall adopt a decision concerning the amended methodology within six months, in accordance with Article 5(3) and the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

3.2. Admissibility

- (22) Article 5(3) of Regulation (EU) 2019/942 and Article 6(1) of the EB Regulation require the relevant regulatory authorities to take the decision and to reach an agreement on the amended Proposal within two months from the receipt of the submission, but does not explicitly provide for the possibility to extend that period.

- (23) However, Article 6(2) of the EB regulation stipulates that ACER shall take its decision in accordance with Articles 5(3) and 6(10) of Regulation (EU) 2019/942 when the regulatory authorities did not reach an agreement within the two-month deadline. Thus, ACER's competence is made contingent upon the expiry of the two-month period referred to in Article 6(2) of the EB Regulation.
- (24) Therefore, the transfer of the decision-making competence from the regulatory authorities to ACER under Article 6(2) of the EB Regulation may also be subject to an extension of the regulatory authorities' deadline to reach an agreement, in accordance with Article 6(10), subparagraph three, of Regulation (EU) 2019/942.
- (25) For an extension of this six-month period, the joint request by the competent regulatory authorities should be submitted before the end of the period for reaching an agreement, and the maximum requested extension should not exceed the period of six months in accordance with Article 6(10), third subparagraph, of Regulation (EU) 2019/942.
- (26) The Proposal to which the request for extension is related falls under the competence of the requesting regulatory authorities pursuant to Articles 5(3)(f) of the EB Regulation. Accordingly, they are also the competent regulatory authorities that may request an extension of the two-month period for reaching an agreement under Article 6(1) of the EB Regulation.
- (27) In that regard it is to note that the request for extension was submitted by Bundesnetzagentur, the regulatory authority of Germany, on behalf of all regulatory authorities of the Hansa CCR, of which also the Norwegian regulatory authority NVE-RME is part of.³
- (28) As regards NVE-RME it is further to note that point 47(d) of Annex IV to the EEA Agreement⁴, as established by EEA Joint Committee Decision No. 93/2017, contains provisions setting out a specific procedure concerning binding decisions in cases involving EFTA States⁵. According to these provisions the EFTA Surveillance Authority (ESA) is authorised to adopt decisions addressed to the national regulatory authorities of the concerned EFTA State(s), where ACER is competent on the EU side. ACER and ESA shall cooperate closely when adopting decisions and decisions by ESA shall be adopted on the basis of drafts prepared by ACER.

³ The inclusion of the Norwegian bidding zone borders in CCR Hansa, and consequently of NVE-RME as a regulatory authority of the Hansa CCR, follows from ACER Decision 08/2023 of 31 March 2023 for the EU and respectively the EFTA Surveillance Authority's Decision 065/25/COL of 24 April 2023 and NVE-RME's Decision 201705443-14 of 18 August 2023 for Norway.

⁴ Agreement on the European Economic Area, OJ No L 1, 3.1.1994, p. 3.

⁵ These provisions replace the provisions concerning binding decisions of ACER referred to in e.g. Article 8 of Regulation 713/2009, which includes decisions on requests from regulatory authorities on extending the deadline for them to reach an agreement.

- (29) Moreover, on 5 February 2024 NVE-RME submitted a request to ESA to grant a six-month extension for reaching an agreement with regard to the Hansa CCR TSOs' amended proposal for the methodology for cross-zonal capacity calculation for the balancing timeframe. On 8 February 2024 ESA requested ACER to prepare a draft for its decision.
- (30) It follows from the above, and the procedure under point 47(d) of Annex IV to the EEA Agreement, that the relevant competent regulatory authorities to raise the present request with ACER are the EU regulatory authorities of the Hansa CCR. This decision on the request is therefore addressed only to the EU regulatory authorities of the Hansa CCR listed in Article 2.
- (31) Since the last competent regulatory authority received the Proposal on 6 December 2023, the competent regulatory authorities were required to agree on it by 6 February 2024, in accordance with Articles 5(6) and 6(1) of the EB Regulation. The request for extension was received by ACER on 17 January 2024, hence before the expiry of the two-month deadline.
- (32) In their request, the regulatory authorities ask for an extension of six months, which, given the initial deadline of 6 February 2024, would defer the final deadline to 6 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 the requesting regulatory authorities, as reported at paragraph (8) above, indicates the need to await the pending amendment of the cross-zonal capacity calculation methodology for the intraday timeframe, intended to be submitted by the Hansa TSOs in May 2024, in order for the regulatory authorities to be able to assess the Proposal's compliance with the consistency requirement set out Article 37(3) of the EB Regulation. A six-month extension would allow the regulatory authorities of the Hansa CCR to assess the required consistency of both methodologies.
- (36) ACER understands from this justification that the additional period of six months would allow sufficient time for the regulatory authorities of the Hansa CCR to assess the Proposals compliance with the legal requirements of the EB Regulation and to reach an agreement with regard to the Proposal.
- (37) ACER considers that continuing and completing the regulatory authorities' ongoing assessment can contribute to the efficient conclusion of the pending approval proceedings. In ACER's view, this continuation and completion would not unduly

impact the fulfilment of the objective of the EB Regulation. Under those circumstances, ACER deems it reasonable to enable the regulatory authorities to conclude the pending approval proceedings.

(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 to adopt a decision on the Proposal in accordance with Article 5(6) and 6(1) of the EB Regulation.

(39) Therefore, ACER considers an extension until 6 August 2024 justified.

4. CONCLUSION

(40) For the above reasons, ACER accepts the request for an extension submitted by the regulatory authorities of the Hansa CCR and extends the period for those regulatory authorities to reach an agreement on the Proposal, until 6 August 2024,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the EU regulatory authorities of the Hansa Capacity Calculation Region, i.e. of Denmark, Germany, the Netherlands, Poland and Sweden, shall reach an agreement on the proposal for the methodology for cross-zonal capacity calculation for the balancing timeframe is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 6 August 2024.

Article 2

This Decision is addressed to:

1. Forsyningstilsynet (Denmark)
2. Bundesnetzagentur (Germany)
3. Autoriteit Consument & Markt (the Netherlands)
4. Urząd Regulacji Energetyki (Poland)
5. Energimarknadsinspektionen (Sweden)

Done at Ljubljana, on 8 March 2024.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees 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 addressees 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.