

**DECISION No 09/2023**  
**OF THE EUROPEAN UNION AGENCY**  
**FOR THE COOPERATION OF ENERGY REGULATORS**

**of 14 April 2023**

**on the request of the regulatory authorities of the Nordic capacity  
calculation region to extend the period for reaching an agreement on the  
proposal for an amendment to the methodology for the market-based  
allocation process for the exchange of balancing capacity or sharing of  
reserves**

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 Regulators<sup>1</sup>, 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 balancing, and, in particular, Articles 5(3)(h), 5(7) and 41 thereof,<sup>2</sup>

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 29 March 2023, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

## **1. INTRODUCTION**

- (1) Pursuant to Articles 4(1) and 5(3)(h) of Commission Regulation (EU) 2017/2195 of 23 November 2017 ('EB Regulation'), transmission system operators ('TSO's) of a capacity calculation region shall agree on a common proposal for the market-based allocation process of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves in accordance with Article 41(1) of the EB Regulation and submit it to the

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<sup>1</sup> OJ L158, 14.6.2019, p. 22.

<sup>2</sup> OJ L 312, 28.11.2017, p. 6.

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. According to Article 5(7) of the EB Regulation, where the regulatory authorities fail to reach an agreement within the six-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.

- (2) The present Decision follows from the request of the regulatory authorities of the Nordic Capacity Calculation Region ('Nordic CCR'), namely of Denmark, Finland and Sweden, to extend the period for reaching an agreement with regard to the Nordic CCR TSOs' proposal for an amendment to the methodology for the market-based allocation process for the exchange of balancing capacity or sharing of reserves in accordance with Article 41 of the EB Regulation, by six months pursuant to Article 6(10), subparagraph three, of Regulation (EU) 2019/942.<sup>3</sup>

## **2. PROCEDURE**

- (3) The Nordic CCR TSOs submitted a proposal to the regulatory authorities of the Nordic CCR by mid-July 2021.
- (4) On 9 December 2021, the regulatory authorities of the Nordic CCR informed the Nordic CCR TSOs about the decision not to approve the submitted proposal.
- (5) In June 2022, the Nordic CCR TSOs submitted the amendment proposal to the regulatory authorities of the Nordic CCR.
- (6) By letter dated 19 December 2022, Forsyningstilsynet, the regulatory authority of Denmark, submitted, also on behalf of the regulatory authorities of Finland and Sweden, 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 a proposal for an amendment to the methodology for the market-based allocation process for the exchange of balancing capacity ('the Proposal').
- (7) According to this letter, the last regulatory authority of the Nordic CCR received the TSOs' Proposal on 29 June 2022.

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<sup>3</sup> The TSOs' proposal for amendment is a consequence of [ACER Decision No 22/2020 of 5 August 2020 on the market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the CCR Nordic](#). Pursuant to Article 6(4) of Annex I to Decision No 22/2020, no later than 12 months after approval of the methodology, the TSOs had to submit an amendment to the methodology based on one of the alternative principles pursuant to Article 39(5) of the EB Regulation.

- (8) In support of the request for extension, the letter reports that the energy crisis impacted upon the forecast accuracy of the methodology since the TSOs' submission of the Proposal.
- (9) In addition, it is reported that, alongside the Proposal, the regulatory authorities of the Nordic CCR are currently assessing three additional methodologies namely:
- the proposal for the amendment of the methodology on the application of the Nordic CCR market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the Nordic load frequency control ('LFC') Block and the LFC area of Western Denmark pursuant to Article 38 of the EB Regulation;
  - the exemption to the obligation to allow transfer of manual Frequency Restoration Reserve ('mFRR') balancing capacity for the Nordic LFC Block and the LFC area of Western Denmark pursuant to Article 34 of the EB Regulation;
  - the methodology on the common and harmonised rules and processes for the exchange and procurement of mFRR balancing capacity for the Nordic LFC Block and the LFC area of Western Denmark pursuant to Article 33 of the EB Regulation.
- (10) The regulatory authorities of the Nordic CCR therefore consider that due to the fact that the three above-mentioned methodologies, together with the Proposal, are necessary in order for the Nordic CCR TSOs to launch a common Nordic CCRc mFRR capacity market, it is necessary to further assess in detail the interplay between the Proposal and the three above-mentioned methodologies.
- (11) Finally, the regulatory authorities of the Nordic CCR indicated that the proposal for a methodology for a harmonized allocation process of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves per timeframe in accordance with Article 38(3) of the EB Regulation is to be assessed by ACER in the course of the year 2023, and since this has the potential to impact the Proposal, an extension of the time limit to reach an agreement is due.
- (12) The letter also states that in case the extension would be granted by ACER, the CCR Nordic NRAs *'will strive to reach a unanimous agreement on the amended market-based methodology proposal or on a possible Request for Amendment of that proposal'*.
- (13) On 27 February 2023, ACER requested information from the competent regulatory authorities to clarify certain aspects of the request, namely the procedural steps of the Proposal leading to the request for extension.
- (14) On 28 February 2023, Forsyningstilsynet provided the requested clarifications on the procedural steps of the Proposal leading to the request for extension.
- (15) On 1 March 2023, 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.

- (16) On 10 March 2023, ACER's Electricity Working Group endorsed the draft ACER Decision on the request of the regulatory authorities of the Nordic capacity calculation region to extend the period for reaching an agreement on the proposal for an amendment to the methodology for the market-based allocation process for the exchange of balancing capacity or sharing of reserves.

### **3. ASSESSMENT OF THE REQUEST**

#### **3.1. Legal framework**

- (17) 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.
- (18) 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.
- (19) 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.
- (20) According to the Article 5(3)(h) 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 a market-based allocation process of cross-zonal capacity.
- (21) 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.
- (22) According to Article 5(7) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement within the six-month period, ACER shall adopt a decision concerning the submitted proposal for terms and conditions or methodologies

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**

- (23) Article 5(3) in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Articles 5(3)(h) and 5(6) of the EB Regulation require the concerned regulatory authorities to take the decision and to reach an agreement on the Proposal within six months from the receipt of the submission but does not explicitly provide for the possibility to extend that period.
- (24) Although the possibility to extend the six-month period is not explicitly indicated, ACER's competence is made contingent upon the expiry of the six-month period referred to in point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (25) As indicated in previous decisions,<sup>4</sup> the transfer of the decision-making competence from the regulatory authorities to ACER under Article 5(3) and point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Article 5(7) 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.
- (26) 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.
- (27) The Proposal to which the request for extension is related falls under the competence of the requesting regulatory authorities pursuant to Articles 5(3)(h) and 5(6) of the EB Regulation. Accordingly, they are also the competent regulatory authorities that may request an extension of the six-month period for reaching an agreement under Article 5(3) and point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Articles 5(6) and 5(7) of the EB Regulation.
- (28) Since the last competent regulatory authority received the Proposal on 29 June 2022, the competent regulatory authorities were required to agree on it by 28 December 2022, in accordance with Article 5(6) of the EB Regulation and point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942. The request for extension was received by ACER on 19 December 2022, hence before the expiry of the six-month deadline on 28 December 2022.

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<sup>4</sup> Decision No 08/2022 of the European Union Agency for the Cooperation of Energy Regulators of 18 July 2022 on the request of the regulatory authorities of the Continental Europe synchronous area to extend the period for reaching an agreement on the proposal for the minimum activation period to be ensured by frequency containment reserves providers.

- (29) In their request, the competent regulatory authorities ask for an extension of six months, which, given the initial deadline of 28 December 2022, would defer the final deadline to 28 June 2023. 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.
- (30) In light of the above, ACER considers the request for extension as admissible.

### **3.3. Substance**

- (31) Article 6(10), subparagraph three, of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (32) The justification provided by the requesting regulatory authorities, as reported at paragraph (8) above, indicates the need to further assess the Proposal in light of the changed market circumstances since its submission and that this process would not be completed before the regulatory authorities' deadline to adopt their decisions by 28 December 2022.
- (33) ACER's 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, since a methodology on the market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the Nordic CCR is already in place<sup>5</sup>. Under those circumstances, ACER deems it reasonable to enable the regulatory authorities to conclude the pending approval proceedings.
- (34) 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) of the EB Regulation.
- (35) Therefore, ACER considers an extension until 28 June 2023 justified.

## **4. CONCLUSION**

- (36) For the above reasons, ACER accepts the request for an extension submitted by the regulatory authorities of the Nordic CCR and extends the period for those regulatory authorities to reach an agreement on the Proposal, until 28 June 2023,

HAS ADOPTED THIS DECISION:

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<sup>5</sup> See footnote 4 above.

*Article 1*

The period within which the regulatory authorities of the Nordic Capacity Calculation Region, i.e. of Denmark, Finland and Sweden, shall reach an agreement on the proposal for proposal for an amendment to the methodology for the market-based allocation process for the exchange of balancing capacity or sharing of reserves is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 28 June 2023.

*Article 2*

This Decision is addressed to:

- (1) Forsyningstilsynet,
- (2) Energiavirasto, and
- (3) Energimarknadsinspektionen.

Done at Ljubljana, on 14 April 2023.

**- 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.*