

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**

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,¹ and, in particular, Article 5(3) and Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation,² and, in particular, Article 6(3)(d)(v), Article 6(7) and Article 156(10), 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 13 July 2022, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Article 156(10) of Commission Regulation (EU) 2017/1485 ('SO Regulation') provides that all transmission system operators ('TSOs') of Continental Europe synchronous area ('CE SA') and Nordic synchronous area shall develop a proposal

¹ OJ L158, 14.6.2019, p. 22.

² OJ L 220, 25.8.2017, p. 1.

concerning the minimum activation period to be ensured by frequency containment reserves ('FCR') providers.

- (2) According to Article 6(3)(d)(v) of the SO Regulation, this proposal is subject to approval by all regulatory authorities of the concerned region, and, according to Article 6(7) of the SO Regulation, those regulatory authorities have to reach an agreement and take a decision on the proposal within six months after the receipt of the proposal by the last regulatory authority. Where the regulatory authorities fail to reach an agreement within the six-month period, ACER, according to Article 6(8) of the SO Regulation, is called upon to adopt a decision concerning the TSOs' proposal in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision follows from the joint request of the competent regulatory authorities of the CE SA, namely of Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain, to extend, in accordance with Article 6(10) of Regulation (EU) 2019/942, the six-month period for reaching an agreement with regard to the CE SA TSOs' proposal for the minimum activation period to be ensured by FCR providers developed in accordance with Article 156(10) of the SO Regulation, by further six months.

2. PROCEDURE

- (4) By letter of 17 May 2022, the Italian regulatory authority, Autorità di Regolazione per Energia Reti e Ambiente, submitted, on behalf of the regulatory authorities of the CE SA a joint request to grant a six-month extension of the deadline to issue their decision regarding a proposal developed by the TSOs of the CE SA for the minimum activation period to be ensured by FCR providers having units or groups with limited energy reservoirs to remain available during alert state ('Proposal') in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (5) The Proposal is dated 5 October 2021. The last regulatory authority of the CE SA received the Proposal on 3 December 2021, and hence, a respective CE SA regulatory authorities' agreement within 6 months would be due by 3 June 2022.
- (6) In support of the request for extension, the letter explains that:

'The CE NRAs have been discussing the topic for months with the CE TSOs in order to understand all the implications associated to the possible T_{min} values [i.e., time-period referred to in Article 156(10) of the SO Regulation – ACER's remark] proposed in the range from 15 to 30 minutes, according to Article 156(10) of SO GL.' 'The CE NRAs consider the extent of the long-lasting frequency deviations to be the main problem. These are persisting deviations due to a lack of FRR [i.e., frequency restoration reserves – ACER's remark] which, in turn, requires a prolonged intervention of FCR.' 'The TSOs' first best solution, as proposed in the T_{min} proposal, would be to cope with the long-lasting frequency deviations by setting a T_{min} for newly prequalified LER [i.e., limited energy reservoirs – ACER's remark] FCR providers to 30 min (instead of the

currently widely used 15 min).’ ‘The CE NRAs nonetheless asked the TSOs to investigate other alternative solutions and potential mitigation measures to be introduced to improve FRR performances (e.g. reaction time, dimensioning) and to reduce the frequency and the extent of long lasting frequency deviations. The TSOs established a dedicated expert group to accommodate this request, but unfortunately, the results will be available only in late 2022, i.e. after the expiration of the six months’ deadline for the NRAs to reach an agreement on the Tmin proposal.’

- (7) On 14 June 2022, ACER submitted a proposed draft of the present decision to ACER’s Electricity Working Group for consultation in accordance with Article 24(2) of Regulation (EU) 2019/942.
- (8) On 21 June 2022, ACER’s Electricity Working Group endorsed the draft ACER Decision on the request of the regulatory authorities of CE SA to extend the period for reaching an agreement on the proposal for the minimum activation period to be ensured by FCR providers.

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

- (9) 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.
- (10) 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. 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.
- (11) According to Article 6(3)(d)(v) of the SO Regulation (which has been adopted as a guideline before 4 July 2019), the regulatory authorities of the concerned synchronous area shall approve the TSOs’ proposal concerning the minimum activation period to be ensured by FCR providers in accordance with Article 156(10) of the SO Regulation within a six-month period, as provided in Article 6(7) of the SO Regulation.

- (12) According to Article 6(7) of the SO 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.
- (13) According to Article 6(8) of the SO 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

- (14) Article 5(3) in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Article 6(7) and (8) of the SO 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.
- (15) Those provisions do not explicitly provide for the possibility to extend the six-month period. However, they do condition ACER's competence on 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.
- (16) Therefore, the transfer of the decision-making competence from the regulatory authorities to ACER under Article 5(3) of Regulation (EU) 2019/942 and Article 6(8) of the SO Regulation may also be subject to an extension of the regulatory authorities' deadline to reach an agreement, in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (17) For an extension of this six-month period, the competent regulatory authorities should submit the respective request 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 third subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (18) The present request for extension relates to a proposal concerning the minimum activation period to be ensured by FCR providers developed in accordance with Article 156(10) of the SO Regulation by all TSOs in the CE SA to all competent regulatory authorities of the CE SA, referred to in recital 4. The requesting regulatory authorities of those countries are therefore competent to decide on the Proposal according to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942 and Article 6(3)(d)(v) of the SO 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 Article 6(10) of Regulation (EU) 2019/942 and Article 6(7) and Article 6(8) of the SO Regulation.

- (19) Since the last concerned regulatory authority received the Proposal on 3 December 2021, the competent regulatory authorities were required to agree on it, in accordance with Article 5(3) and Article 6(10) of Regulation (EU) 2019/942 and Article 6(3)(d)(v), Article 6(7) and Article 6(8) of the SO Regulation, by 3 June 2022. The request for extension was received by ACER on 17 May 2022. Thus, it was received before the expiry of the six-month deadline on 3 June 2022.
- (20) In their request, the competent regulatory authorities ask for an extension of six months, which, given the initial deadline of 3 June 2022, would defer the final deadline to 3 December 2022. As such, the requested extension does not exceed the maximum limit of six months as provided for in Article 6(10) of Regulation (EU) 2019/942.
- (21) Therefore, ACER considers the request for extension as admissible.

3.3. Substance

- (22) Article 6(10) of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (23) The requesting CE SA regulatory authorities consider the extension justified on the ground that they need more time to fully understand and assess all the implications associated to the possible values ranging from 15 to 30 minutes. In that regard, they point in particular to the extent of long-lasting frequency deviations, associated with a lack of FRR which results in the need for a prolonged activation period of FCR. They already asked the TSOs of the CE SA to investigate other alternative solutions and potential mitigation measures to be introduced to improve FRR performances (e.g. reaction time, dimensioning) and to reduce the frequency deviations and the extent of long lasting frequency deviations. However, the results of the TSOs' investigation are expected to be available only late 2022. Accordingly, the CE SA regulatory authorities could not inform their decision with those results by 3 June 2022.
- (24) ACER understands from this justification that the additional period of six months would allow sufficient time for the regulatory authorities of the CE SA to determine the optimal solution for the identified problem of long-lasting frequency deviations and, consequently, reach an agreement with regard to the Proposal.
- (25) ACER recognises a close cooperation and coordination between the requesting regulatory authorities and their efforts in consulting the TSOs of CE SA to identify the best suited solution. Additionally, ACER cannot detect any inappropriate delays that the requested extension would cause.
- (26) Therefore, ACER considers an extension until 3 December 2022 as justified.

4. CONCLUSION

- (27) For the above reasons, ACER accepts the request for an extension submitted by the competent regulatory authorities of the CE SA and extends the period for those regulatory authorities to reach an agreement with regard to the Proposal until 3 December 2022,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Continental Europe synchronous area, i.e. of Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain, shall reach an agreement on the proposal concerning the minimum activation period to be ensured by frequency containment reserves providers is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 3 December 2022.

Article 2

This Decision is addressed to:

- a) Energie-Control Austria (Austria)
- b) Commission de Régulation de l'Électricité et du Gaz (Belgium)
- c) комисия за енергийно и водно регулиране (Bulgaria)
- d) Hrvatska energetska regulatorna agencija (Croatia)
- e) Energetický regulační úřad (Czechia)
- f) Forsyningstilsynet (Denmark)
- g) Commission de régulation de l'énergie (France)
- h) Bundesnetzagentur (Germany)
- i) Ρυθμιστική Αρχή Ενέργειας (Greece)
- j) Magyar Energetikai És Közmű-Szabályozási Hivatal (Hungary)
- k) Autorità di Regolazione per Energia Reti e Ambiente (Italy)
- l) Institut Luxembourgeois de Régulation (Luxembourg)
- m) Autoriteit Consument & Markt (the Netherlands)
- n) Urząd Regulacji Energetyki (Poland)
- o) Entidade Reguladora dos Serviços Energéticos (Portugal)
- p) Autoritatea Națională de Reglementare în Domeniul Energie (Romania)
- q) Úrad pre reguláciu sieťových odvetví (Slovakia)
- r) Agencija za Energijo (Slovenia)
- s) La Comisión Nacional de los Mercados y la Competencia (Spain)

Done at Ljubljana, on 18 July 2022.

- 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.