

**DECISION No 15/2020**  
**OF THE EUROPEAN UNION AGENCY**  
**FOR THE COOPERATION OF ENERGY REGULATORS**

**of 14 July 2020**

**ON THE REQUEST OF REGULATORY AUTHORITIES OF THE HANSA  
CAPACITY CALCULATION REGION TO EXTEND THE PERIOD FOR  
REACHING AN AGREEMENT ON THE PROPOSAL FOR AMENDMENT  
OF THE METHODOLOGY FOR COST SHARING OF REDISPATCHING  
AND COUNTERTRADING**

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

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management<sup>2</sup>, and, in particular, Article 9(11) and (13) 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 1 July 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

**1. INTRODUCTION**

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the 'CACM Regulation') laid down

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<sup>1</sup> OJ L 158, 14.6.2019, p. 22.

<sup>2</sup> OJ 197, 25.7.2015, p. 24.

a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements include the development of a methodology for the cost sharing of redispatching and countertrading, in accordance with Article 74 of that Regulation.

- (2) Pursuant to Articles 9(1), 9(7)(h), and 74(1) of the CACM Regulation, transmission system operators ('TSOs') of each capacity calculation region ('CCR') are required to develop a proposal for a common methodology for redispatching and countertrading cost sharing within the respective region and submit the proposal to the regulatory authorities of the concerned region for approval. Pursuant to Article 9(13) of the CACM Regulation, the same TSOs may request amendments to the approved methodology and submit the proposal for amendment to the concerned regulatory authorities for approval. If the regulatory authorities fail to reach an agreement and to take decisions on this proposal within six months, ACER is mandated to decide on the proposal. The competent regulatory authorities may jointly request that the six-month period is extended by a period of up to six months, in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (3) The regulatory authorities of Denmark, Germany, Poland, and Sweden issued coordinated decisions on a common methodology for redispatching and countertrading cost sharing for the Hansa CCR by 20 February 2019. By ACER Decision No 04/2019 of 19 April 2019, the Hansa CCR has been changed to include also the Netherlands.<sup>3</sup>
- (4) The present Decision follows from the request of the regulatory authorities of the Hansa CCR (Denmark, Germany, Netherlands, Poland, Sweden) to extend the period for reaching an agreement on a proposal, submitted by all TSOs of the Hansa CCR, for the amendment of a common methodology for redispatching and countertrading cost sharing in the Hansa CCR (the 'Proposal') by six months pursuant to Article 6(10) of Regulation (EU) 2019/942.

## **2. PROCEDURE**

- (5) In a letter dated 6 March 2020 and received by ACER on the same day, the team manager of the energy department of the Dutch Energy Regulatory Authority submitted, on behalf of all regulatory authorities of the Hansa CCR, a joint request to grant a six-month extension of the period for reaching an agreement on the Proposal,

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<sup>3</sup> Following Article 4 of Annex I of the ACER Decision No 06/2016 on CCR, "The CCR Hansa shall include the bidding zone borders listed below [...]: a) Denmark 1 -Germany/Luxembourg (DK1-DE/LU), Energinet.dk and TenneT TSO GmbH; b) Denmark 2 - Germany/Luxembourg (DK2-DE/LU), Energinet.dk and 50Hertz Transmission GmbH; and c) Sweden 4 -Poland (SE4 — PL), Svenska Kraftnät and PSE S.A."; Following Article 1 of Annex I of the ACER Decision No 04/2019 on CCR amending ACER Decision No 06/2016, "The Hansa CCR as defined in Article 4 of the Determination of CCRs shall be amended as follows: (a) The Denmark 1 - The Netherlands (DK1 - NL), bidding zone border is included in the Hansa CCR; (b) The Denmark 1 - The Netherlands (DK1 - NL) bidding zone border is attributed to following TSOs: Energinet.dk, and TenneT TSO B.V"

according to Article 6(10) of Regulation 2019/942, thereby postponing the deadline to 30 September 2020.

- (6) According to this letter, the regulatory authorities of the Hansa CCR had received the Proposal from all TSOs of the Hansa CCR by 30 September 2019.
- (7) In support of the request for extension, the letter states in particular the following:

*'Some Hansa NRAs have communicated legal concerns for both the present version of DA&ID CCM for CCR Hansa and the proposal for LT CCM for CCR Hansa. Notably due to the regulatory framework for the interconnector between the BZs DK2-DE, Kriegers Flak Combined Grid Solution ("KF CGS"). Thus, the European Commission in collaboration with both the policy authorities and the regulatory authorities of the relevant Member States, Denmark and Germany, are currently seeking to find a solution on this case within the provisions of the Clean Energy Package. A legal solution is not foreseen before the deadline for approval.*

*Consequently, all Hansa NRAs view that for adopting the currently submitted proposals for CCR Hansa, there has to be more clarity with regard to the KF CGS issue. Hansa NRAs do not expect that this clarity will be reached within the current legal deadline and consider that there will be a significantly increased possibility that this clarity may be reached in a case of a 6-month extension of the deadline.*

*The proposals for applying CNTC, for RDCT and for RDCTCS are strongly linked to the proposal for CCMs and all Hansa NRAs agree that no decision on these proposals can be taken without taking a decision on the proposal for the CCMs.*

*Consequently, [...] all Hansa NRAs will not be able to adopt a decision on the RDCTCS Hansa TSOs proposal by the deadline of 30 March 2020 and, therefore, unanimously agree to jointly request the Agency to grant a 6-month extension according to Article 6(10) of Regulation (EU) 942/2019 of the European Parliament and of the Council of 5 June 2019 establishing an Agency for the Corporation of Energy Regulators.*

*Within 6 months following the extension, if granted by ACER, Hansa NRAs will strive to reach a unanimous agreement on the proposals or on a possible Request for Amendment of these proposals.'*

- (8) During the consultation, the regulatory authorities of the Hansa CCR, i.e. of Denmark, Germany, Netherlands, Poland, and Sweden, clarified that the TSOs in those Member States submitted the Proposal for approval to them, each to the respectively competent regulatory authority.

- (9) ACER informed the TSOs of the Hansa CCR of the present request for extension and invited them for comments. The TSOs did not provide any comments by the time given.
- (10) On 15 June 2020, 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.

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

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

- (11) 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.
- (12) 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.
- (13) According to Article 9(7)(h) of the CACM Regulation (which has been adopted as a guideline before 4 July 2019), the proposal for a common methodology for redispatching and countertrading cost sharing in accordance with Article 74(1) of that Regulation shall be subject to approval by all regulatory authorities of the concerned region(s).
- (14) According to Article 9(10) of the CACM 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 paragraphs 6, 7 and 8, within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (15) According to Article 9(11) of the CACM Regulation, where the regulatory authorities have not been able to reach an agreement on the terms and conditions or

methodologies within the six-month deadline, ACER shall adopt a decision concerning the submitted proposal for terms and conditions or methodologies within six months, in accordance with Article 6(10) of Regulation (EU) 2019/942.

- (16) According to Article 9(13) of the CACM Regulation, proposals for amendment to terms and conditions or methodologies shall be approved in accordance with the procedure set out in Article 9 of the CACM Regulation.

### **3.2. Admissibility**

- (17) Article 5(3) in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Article 9(10) and (11) in conjunction with Article 9(13) of the CACM Regulation requires the concerned regulatory authorities to take the decision and to reach an agreement on the proposal for amendment of the common methodology for redispatching and countertrading cost sharing within six months after receipt of the submission.
- (18) 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.
- (19) 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 9(11) of the CACM Regulation may be subject also to an extension of the six-month period to reach an agreement, in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (20) The third subparagraph of Article 6(10) of Regulation (EU) 2019/942 allows for an extension of the prescribed period within which the competent regulatory authorities have to reach an agreement. The competent regulatory authorities should submit the respective request before the end of the period for reaching an agreement. The maximum period of an extension is six months.
- (21) The present request for extension relates to a proposal for amendment of the common methodology for redispatching and countertrading cost sharing in accordance with Article 74(1) of that Regulation, which have been submitted by the TSOs of the Hansa CCR in accordance with Article 9(7)(h) and Article 9(13) of the CACM Regulation to the regulatory authorities of the countries within that CCR, i.e. Denmark, Germany, Netherlands, Poland, and Sweden. 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) and Article 9(7)(h) of the CACM Regulation. Accordingly, they are also the competent regulatory authorities which 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 9(10), (11) and (13) of the CACM Regulation.

- (22) Given the initial submission of the Proposal by 30 September 2019, the competent regulatory authorities have to decide on this Proposal, in accordance with Article 5(3) and Article 6(10) of Regulation (EU) 2019/942 and Article 9(10), (11) and (13) of the CACM Regulation, by 30 March 2020. Their request for extension was received by ACER on 6 March 2020. Thus, it was received before the expiry of the six-month deadline on 30 March 2020.
- (23) In their request, the competent regulatory authorities ask for an extension of six months. As such, the requested extension does not exceed the maximum limit of six months as provided in the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (24) Therefore, ACER considers the request for extension admissible.

### **3.3. Substance**

- (25) Article 6(10) of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (26) The requesting regulatory authorities of Denmark, Germany, Netherlands, Poland, and Sweden consider the extension justified as, in their views, (i) the regulatory framework of the interconnector between the bidding zones between Denmark and Germany, the so-called Kriegers Flak Combined Grid Solution (“KF CGS”), poses legal concerns over the existing day-ahead and intraday capacity calculation methodologies, to which the Proposal is linked, and (ii) absent the necessary legal clarity over the issue of the KF CGS, the requesting regulatory authorities lack the clarity to decide on the Proposal. The requesting regulatory authorities also refer to on-going discussions over a solution in collaboration with the European Commission.
- (27) ACER notes that the requested extension of the deadline to reach an agreement would inevitably lead to a delay in the adoption of the amended common methodology for redispatching and countertrading cost sharing, as well as its implementation. However, ACER also understands that such delays are unavoidable under the current circumstances, as the legal situation of the KF CGS must be solved before the adoption of the methodology at issue. On balance, ACER finds it reasonable and proportionate that the regulatory authorities of the Hansa CCR first strive for a legal solution for the KF CGS and, for that purpose, their agreement on the Proposal could be deferred for up to six months.
- (28) Therefore, ACER considers an extension of six months justified.

## **4. CONCLUSION**

- (29) For the above reasons, ACER accepts the request for an extension submitted by the regulatory authorities of the Hansa CCR, competent according to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942 and Article 9(7)(h) of the CACM Regulation, i.e. the regulatory authorities of Denmark, Germany, Netherlands,

Poland, and Sweden, and extends the period for those regulatory authorities to reach an agreement on the Proposal by six months, i.e. until 30 September 2020.

HAS ADOPTED THIS DECISION:

*Article 1*

The period within which the regulatory authorities of the Hansa CCR (Denmark, Germany, Netherlands, Poland, and Sweden), competent according to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942 and Article 9(7)(h) of Commission Regulation (EU) 2015/1222, shall reach an agreement on the proposal for amendment of a common methodology for redispatching and countertrading cost sharing in accordance with Article 74(1) of Regulation (EU) 2015/1222, submitted by the transmission system operators of the Hansa CCR by 30 September 2019, is extended, in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942, by six months, until 30 September 2020.

*Article 2*

This Decision is addressed to:

Forsyningstilsynet (Denmark)  
Bundesnetzagentur (Germany)  
Autoriteit Consument & Markt (the Netherlands)  
Urząd Regulacji Energetyki (Poland)  
Energimarknadsinspektionen (Sweden)

Done at Ljubljana, on 14 July 2020.

**- 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 ACER 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.*