

**DECISION No 16/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 15 July 2020

**on the methodology for classifying the activation purposes of balancing
energy bids**

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, point (b) of the second subparagraph of Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Article 5(2)(d) and Article 6(2) thereof,

Having regard to the outcome of the public consultation and the consultation with the concerned regulatory authorities and transmission system operators,

Having regard to the outcome of the consultation with the Agency's Electricity Working Group ('AEWG'),

Having regard to the favourable opinion of the Board of Regulators of 2 July 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of requirements for electricity balancing, platforms for the exchange of balancing

¹ OJ L158, 14.6.2019, p. 22.

² OJ L312, 23.11.2017, p. 6.

energy, as well as pricing and settlement of balancing energy. These requirements include the development of a methodology for classifying the activation purposes of balancing energy bids ('activation purposes methodology').

- (2) Pursuant to Articles 4(1) and 5(2)(d) of the EB Regulation, all transmission system operators ('TSOs') are required to develop a common proposal for the activation purposes methodology in accordance with Article 29(3) of the EB Regulation and submit it to all regulatory authorities for approval. In turn, according to Article 5(6) of the EB Regulation, all regulatory authorities shall reach an agreement and take a decision on the proposal for the activation purposes methodology within six months after the receipt of the proposal by the last regulatory authority. In addition, all regulatory authorities can require an amendment to the proposal in accordance with Article 6(1) of the EB Regulation, where all TSOs have two months to submit an amended proposal to all regulatory authorities. Then, all regulatory authorities have two months to decide on the amended proposal. When all regulatory authorities fail to reach an agreement within the two-month period after the submission of the amended proposal or upon their joint request, ACER, pursuant to Article 6(2) of the EB Regulation, shall adopt a decision concerning the TSOs' proposal in accordance with point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision follows from the request of all regulatory authorities that ACER adopts a decision on the proposal for the activation purposes methodology, which all TSOs submitted to all regulatory authorities for approval and on which all regulatory authorities could not agree on. Annex I to this Decision sets out the activation purposes methodology pursuant to Article 29(3) of the EB Regulation as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (4) Article 29(3) of the EB Regulation requires all TSOs to submit a proposal for the activation purposes methodology by one year after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, all TSOs were required to submit a proposal for the activation purposes methodology by 18 December 2018.
- (5) On 12 September 2018, all TSOs published for public consultation the draft 'All TSOs' proposal for classification methodology for the activation purposes of balancing energy bids pursuant to Article 29(3) of Commission Regulation (EU)

2017/2195 establishing a guideline on electricity balancing³. The consultation lasted from 12 September 2018 until 13 November 2018.

- (6) On 18 December 2018, all TSOs submitted to all regulatory authorities an ‘All TSOs’ proposal for classification methodology for the activation purposes of balancing energy bids pursuant to Article 29(3) of Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing⁴. The last regulatory authority received the Proposal on 11 February 2019.
- (7) All regulatory authorities jointly agreed on 23 July 2019 to request an amendment to this activation purposes methodology and sent this request to all TSOs. The last regulatory authority issued the request for amendment nationally on 11 September 2019.
- (8) Although the amended ‘All TSOs’ proposal for classification methodology for the activation purposes of balancing energy bids pursuant to Article 29(3) of Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing⁵ (hereafter referred to as the ‘Proposal’) was submitted by most TSOs by 11 November 2019 (i.e. within two months after the requirement for an amendment) to all regulatory authorities, it was submitted by the last TSO on 14 November 2019. Therefore, the new deadline for approval by all regulatory authorities was 14 January 2020.

2.2. Proceedings before ACER

- (9) In an email⁶ dated 16 January 2020 and received by ACER on the same day, the Chair of the Energy Regulators Forum⁷, on behalf of all regulatory authorities informed ACER that they were not able to reach an agreement within the two-month deadline. Therefore, the activation purposes methodology can be considered referred to ACER, as of 14 January 2020, and ACER shall adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation.
- (10) In the email, it was explained that since the Proposal had been submitted after the entry into force of the Commission Regulation (EU) 2019/942 of 4 July 2019, establishing a European Union Agency for the Cooperation of Energy Regulators,

³ <https://consultations.entsoe.eu/markets/ebgl-art29-app/>

⁴ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/08%20Activation%20purposes/Action%201%20-%20Activation%20purposes%20proposal.pdf>

⁵ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/08%20Activation%20purposes/Action%203%20-%20Activation%20purposes%20amended%20proposal.pdf>

⁶ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/08%20Activation%20purposes/Action%204%20-%20Activation%20purposes%20referral%20to%20ACER%20letter.pdf>

⁷ The all regulatory authorities’ platform to consult and cooperate for reaching a unanimous agreement on NEMO’s and TSO’s proposals.

some regulatory authorities considered that they were not competent to issue a decision on the Proposal. Therefore, all regulatory authorities were not able to reach an agreement within the deadline of two months and, according to Article 6(2) of the EB Regulation, from 14 January 2020 the Proposal is to be considered as referred to ACER.

- (11) On 10 February 2020, ACER started the consultation phase on the Proposal, inviting the concerned parties, here all TSOs and all regulatory authorities, to send their comments on the Proposal. On 9 March 2020, ACER launched a public consultation on the Proposal, inviting all market participants to submit their comments by 29 March 2020. The summary and evaluation of the responses received are presented in Annex II to this Decision.
- (12) ACER cooperated closely with all regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposals suggested by ACER. In general, before each interaction, ACER shared with the regulatory authorities and TSOs a new version of amendments proposed by ACER to the Proposal; in particular, the following procedural steps were taken:
- 22 and 23 January 2020: discussion with all regulatory authorities in the framework of ACER's Electricity Balancing Taskforce ('EB TF');
 - 31 January 2020: telephone conference call with all regulatory authorities and TSOs;
 - 14 February 2020: telephone conference call with all regulatory authorities and TSOs;
 - 26 and 27 February 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 28 February 2020: telephone conference call with all regulatory authorities and TSOs;
 - 17 March 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 3 April 2020: telephone conference call with all regulatory authorities and TSOs;
 - 17 April 2020: telephone conference call with all regulatory authorities and TSOs;
 - 22 April 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 23 April 2020: discussion with all regulatory authorities in the framework of AEWG;
 - 24 April 2020: telephone conference call with all regulatory authorities and TSOs;
 - 13 May 2020: discussion with all regulatory authorities in the framework of the EB TF;

- 13 May 2020: discussion with all regulatory authorities at the Board of Regulators' meeting (for information);
- 27 May 2020: discussion with all regulatory authorities in the framework of AEWG;
- 17 June 2020: discussion with all regulatory authorities at the Board of Regulators' meeting.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (13) Pursuant to Article 6(2) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement or upon their joint request, ACER shall adopt a decision concerning the submitted terms and conditions or methodologies within six months in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (14) According to the email of the Chair of the all Energy Regulators Forum dated 16 January 2020, all regulatory authorities did not reach an agreement on the Proposal and therefore ACER became competent to adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation. This email was sent by all regulatory authorities after the expiry of the two-month deadline after receiving the Proposal (i.e. 14 January 2020).
- (15) Therefore, in accordance with Article 6(2) of the EB Regulation and Article 6(10) of Regulation (EU) 2019/942, ACER became responsible to adopt a decision concerning the Proposal by the expiry of the deadline for all regulatory authorities on 14 January 2020 and communicated to ACER on 16 January 2020.

4. SUMMARY OF THE PROPOSAL

- (16) The Proposal consists of the following elements:
- (a) the 'Whereas' section, a list of abbreviations and Articles 1 and 2, which include the subject matter, scope of application and definitions and interpretation;
 - (b) Article 3, which covers the activation purposes and classification criteria;
 - (c) Article 4, which describes the implementation timeline;
 - (d) Article 5, which describes the publication of the activation purposes methodology; and
 - (e) Article 6, which includes provisions on language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of all regulatory authorities

- (17) According to the email of the Chair of the all Energy Regulators Forum of 16 January 2020, all regulatory authorities were not able to reach an agreement within the deadline of two months because some regulatory authorities considered that they were

not competent to issue a decision. In the email, all regulatory authorities were silent about possible shortcomings of the Proposal.

5.2. Consultation of all regulatory authorities and TSOs

(18) ACER, in close cooperation and consultation with all regulatory authorities and TSOs as detailed in Recital (12) above, discussed mainly the following topics:

- a) the scope of the activation purposes methodology, in particular with respect to the possibility of introducing additional activation purposes or classification criteria through national methodologies;
- b) the system constraints activation purpose, in particular with respect to the classification criteria and its applicability in the European platforms for the exchange of balancing energy, as well as the level of transparency when publishing the reason for these activations.

5.3. Public consultation

(19) On 9 March 2020, ACER launched a public consultation on the Proposal, inviting all stakeholders to provide their comments by 29 March 2020. The consultation document asked stakeholders to provide views on two topics, which were deemed as the most relevant: (i) the scope of the methodology and (ii) system constraint purposes; the consultation also allowed respondents to submit comments on other topics under item (iii) ‘other topics’.

(20) The summary and evaluation of the responses received are presented in Annex II to this Decision. It presents the summary of stakeholders’ concerns regarding some of the above mentioned issues and in particular on the questions made by ACER, as well as initial views and proposals made by ACER:

- (a) Regarding the scope of the activation purposes methodology, the vast majority of stakeholders agrees with ACER’s interpretation that this activation purposes methodology should describe all possible activation purposes for balancing energy bids, not only the ones that are to be used for balancing energy bids activated from the common merit order lists of the European balancing platforms. In the context of this question, many stakeholders expressed their view that activations for system constraints should not take place in the European balancing platforms.
- (b) Regarding the transparency on the system constraints activation purpose, the vast majority of stakeholders requests for more transparency on the ‘system constraints’ activation purpose and in general agrees with ACER’s proposal for having as sub-category in this activation purpose each of the classification criteria included in Article 3(4) of the Proposal.
- (c) Regarding other topics, four stakeholders underlined the inconsistency of the Proposal with the ACER Decisions 01/2020, 02/2020 and 03/2020 (two of which underlined the importance of transparency with respect to the activations

on the European balancing platforms, as well as of clarifying the case of the unavailable bids), and one stakeholder proposed the early implementation of this activation purposes methodology.

5.4. Hearing phase

- (21) ACER initiated a hearing phase on 30 April 2020 by providing all TSOs and all regulatory authorities with a near final draft of Annex I to this Decision, as well as the reasoning for the introduced changes to the Proposal. The hearing phase lasted until 15 May 2020. During this time, ACER received a written response from ENTSO-E⁸, on behalf of all TSOs.
- (22) All TSOs' feedback was submitted together (in a single document) with their feedback in the ACER's hearing phase on the methodology pursuant to Article 50(1) of the EB Regulation (the 'TSOs settlement methodology'). In the first part of the document, all TSOs explain how they envisioned the interlinks between the activation purposes of balancing energy bids, their pricing (pursuant to Article 30(1) of the EB Regulation – ACER Decision 01/2020) and the resulting TSOs settlement (pursuant to Article 50(1) of the EB Regulation). Regarding the activation purposes methodology, all TSOs state that they appreciate most changes made by ACER but request ACER to confirm TSOs' understanding of the applicability of the methodology for standard and specific balancing energy product bids, as well as for integrated scheduling process bids used by central dispatching model TSOs. Additionally, all TSOs require further clarifications on the national methodologies for classification criteria, as well as for balancing energy bids activated for testing purposes.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (23) Articles 4(1) and 5(2)(d) of the EB Regulation require all TSOs to provide the proposal for the activation purposes methodology in accordance with Article 29(3) of the EB Regulation. This proposal must be submitted to all regulatory authorities for their approval. Additionally, Article 6(1) of the EB Regulation require all TSOs to submit an amended proposal for the activation purposes methodology for approval to all regulatory authorities, following a requirement for amendment of the initial proposal by all regulatory authorities.
- (24) Article 29(3) of the EB Regulation sets out the requirements for all TSOs to develop a proposal for a methodology for classifying the activation purposes of balancing energy bids. This methodology shall describe all possible purposes for the activation

⁸ European Network of Transmission System Operators for Electricity.

of balancing energy bids and define classification criteria for each possible activation purpose.

- (25) Article 29(4) of the EB Regulation requires that for each balancing energy bid activated from the common merit order list, the TSO activating the bid defines the activation purpose based on the methodology pursuant to Article 29(3) of the EB Regulation.
- (26) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

6.2.1.1. Development of the Proposal

- (27) The Proposal fulfils the requirements of Articles 4(1), 4(2) and 5(2)(d) of the EB Regulation, as all TSOs jointly developed a proposal for the activation purposes methodology and submitted it for approval to all regulatory authorities.
- (28) The procedure for the development of the proposal for the activation purposes methodology did not respect the requirements of Article 29(3) of the EB Regulation, as this proposal, while submitted by most TSOs by 18 December 2018, which is within six months after entry into force of the EB Regulation, was submitted by the last TSO on 11 February 2019. This is in breach of the six month-submission deadline.
- (29) Additionally, following the requirement for an amendment of the proposal for the activation purposes methodology by all regulatory authorities on 11 September 2019 pursuant to Article 6(1) of the EB Regulation, all TSOs were required to submit the amended proposal for approval to all regulatory authorities within two months (i.e. by 11 November 2019). Although the Proposal was submitted by most TSOs by 11 November 2019 (i.e. within two months after the requirement for an amendment), it was submitted by the last TSO on 14 November 2019.

6.2.1.2. Proposed timescale for implementation

- (30) The Proposal fulfils the requirements of Article 5(5) of the EB Regulation with regard to the timescale for implementation. Article 4 of the Proposal includes an implementation timeline, linked to each TSO's participation in the European platforms for the exchange of balancing energy pursuant to Articles 19, 20 and 21 of the EB Regulation. During the public consultation, one of the comments was linked to an early implementation of the methodology, as mentioned in Recital (20)(c) above. However, since the application of the activation purposes methodology is mandatory for the balancing energy bids in common merit order lists, i.e. for the standard balancing energy product bids, pursuant to Article 29(4) of the EB Regulation, ACER

understands that the timeline included in the Proposal is in line with the requirements of the EB Regulation.

6.2.1.3. Description of the expected impact on the objectives of the EB Regulation

(31) The Proposal does not fulfil the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation. Recital 7 of the Proposal briefly states that the Proposal fulfils the objectives of the EB Regulation, but it does not describe the expected impact of the activation purposes methodology on them. Therefore ACER added subparagraphs (a) to (e) in recital 7 to clearly address each of the objectives included in Article 3(1) of the EB Regulation.

6.2.2. Assessment of the requirements for describing all possible purposes for the activation of balancing energy bids

(32) Pursuant to Article 29(3)(a) of the EB Regulation, the activation purposes methodology shall describe all possible purposes for the activation of balancing energy bids. Furthermore, Article 29(4) of the EB Regulation requires that the TSOs activating balancing energy bids from the common merit order lists should define the activation purpose based on the aforementioned methodology.

(33) Article 3(1) of the Proposal lists all possible activation purposes for balancing energy bids, these being: (a) balancing and (b) system constraints. Therefore the Proposal is compliant with the requirement of Article 29(3)(a) of the EB Regulation to the extent that it includes all possible activation purposes for balancing energy bids.

6.2.2.1. Bids activated for testing purposes

(34) As mentioned in Recital (22) above, in their submission during the hearing phase, all TSOs informed ACER that they have realised that there is an additional case of activated bids from balancing service providers, these being bids activated for testing purposes, for example in the context of the availability tests for balancing service providers, i.e. to assess whether a balancing service provider can deliver the energy they had offered, either to maintain its prequalification or to avoid financial penalties. The TSOs claim that these bids cannot be considered ‘balancing energy bids’, since they are not used by TSOs to perform balancing, hence they do not fall into the scope of the definition of ‘balancing energy’, pursuant to Article 2(4) of the EB Regulation.

(35) ACER understands that the process pursuant to Article 57(1) of Commission Regulation (EU) 2017/1485 (the ‘SO Regulation’) allows the TSOs to perform operational tests with respect to compliance with the requirements of the SO Regulation, expected input or output and contracted provision of ancillary services at any time. However, the procedure for those operational tests is notified in due time prior to the launch of the operational test, and a list of relevant information is published. Therefore, ACER understands that this process is not related to balancing and agrees with the all TSOs' position that it does not fall in the scope of this activation purposes methodology.

6.2.2.2. *Scope of the activation purposes methodology*

- (36) Article 3(1) of the Proposal specifies that the defined activation purposes are to be used only for the balancing energy bids from the common merit order lists. Additionally, in Article 3(6) of the Proposal, the TSOs include provisions for optional implementation of this methodology on locally activated RR or mFRR balancing energy bids, without prejudice of rules defined in national terms and conditions. Moreover, Article 1(3) of the Proposal allows additional classification methodologies to be developed at national level for activations of balancing energy bids that are not included in the common merit order lists.
- (37) ACER understands that the requirement of Article 29(3)(a) of the EB Regulation refers to “*all possible purposes for the activation of balancing energy bids*” (emphasis added), hence it does not share the view that new activation purposes or classification criteria for the activation of balancing energy bids can be defined at national level (i.e. the methodology includes an exhaustive list of activation purposes and classification criteria). Therefore, ACER deleted paragraph 3 of Article 1 of the Proposal, as well as paragraph 6 of Article 3 of the Proposal.
- (38) Following the discussions with TSOs and regulatory authorities during the consultation, and the concern raised by the TSOs during the hearing phase as mentioned in Recital (22) above, ACER understands that further specification of the already described classification criteria at national level is possible.
- (39) Despite the fact that this activation purposes methodology defines an exhaustive list of the activation purposes, as well as of the respective classification criteria, ACER considers that the usage of the methodology for defining the activation purpose of a balancing energy bid is mandatory only for the bids of the common merit order lists, as specified in Article 29(4) of the EB Regulation (i.e. it is not mandatory for not converted integrated scheduling process bids or not converted specific product bids). Therefore, ACER amended paragraph 2 of Article 1 of the Proposal to clarify the non-mandatory character of the Proposal for the non-converted balancing energy bids.
- (40) However, ACER considers that balancing energy bids of the common merit order lists include also the ones that have been declared as unavailable and activated at a local level, as mentioned also in the recital (6) of the Proposal. ACER amended this recital to clarify this understanding, and also paragraph 2 of Article 1 of the Proposal, to explicitly state that this activation purposes methodology is mandatory also for locally activated bids that have been declared as unavailable in the European balancing platforms.

6.2.3. Assessment of the requirements for the classification criteria for each possible activation purpose

- (41) Pursuant to Article 29(3)(b) of the EB Regulation, the Proposal should define the classification criteria for each possible activation purpose. Paragraphs 3 and 4 of Article 3 of the Proposal define the classification criteria for each of the two possible activation purposes, as they are defined in Article 3(1) of the Proposal. More

specifically, each of the classification criteria includes a reference to the respective provision of the SO Regulation, hence ACER considers that they are clearly defined. Therefore, the Proposal fulfils the requirements of Article 29(3)(b) of the EB Regulation.

6.2.4. Amendments necessary to ensure legal clarity and consistency with existing legal provisions

- (42) As mentioned in Recital (22) above, in their submission during the hearing phase, all TSOs explain how they envisioned the interlinks between their proposals for this activation purposes methodology, the pricing (pursuant to Article 30(1) of the EB Regulation – ACER Decision 01/2020) and the resulting TSOs settlement (pursuant to Article 50(1) of the EB Regulation). In this context, all TSOs describe the two-run approach for distinguishing balancing energy bids activated by the activation optimisation function of the European platforms for balancing and for system constraints.
- (43) ACER, as stated in recitals (43) and (44) of its Decision 01/2020, understands that under the current design of the balancing platforms, since all the activations are decided by the activation optimisation function in one step, respecting the merit order, it is not possible to distinguish exactly which bids have been activated for which purpose. The two runs approach assumes that the cheapest bids on the merit order are to be activated for balancing purposes and the most expensive bids are activated for system constraints. However, this choice is completely arbitrary and without justification, since any bid activated on the merit order can serve either balancing purpose or system constraint purpose.
- (44) In the opinion of the TSOs, as stated in their submission during the hearing phase, the choice is not arbitrary, but obvious, since it is mathematically defined which bids are activated due to the “negative ATC” as they would not have been activated without them. However, ACER considers that, to the extent that mathematical clarity can be achieved, this choice should be integrated in the optimisation algorithm and the classification of the activation purpose of each balancing energy bid be the outcome of the activation optimisation function, and not an ex post, arbitrary, artificial labelling.
- (45) Paragraph 5 of Article 3 of the Proposal requires the abovementioned two-run approach to be executed by the activation optimisation function of the European platforms for defining the activation purpose of bids activated by these platforms. As mentioned in Recital (42) above, this process was in line with the two-run approach for the optimisation algorithm, in order to identify bids activated for different purposes and to remunerate them separately. However, following the ACER decisions 1/2020 and 3/2020 issued in January 2020, the two-run approach is not part of the design of the platforms and of the pricing methodology. Therefore, ACER deleted paragraph 5 of Article 3 of the Proposal.
- (46) Article 3(2) of the Proposal specifies which activation purposes can be used by each European platform. Since this activation purposes methodology describes the

activation purposes and the classification criteria for each of them, ACER considers that defining their use by the European platforms is out of the scope of this methodology. The implementation framework of each European platform, developed under Articles 19, 20 and 21 of the EB Regulation, describes how the selection and activation of balancing energy bids take place; hence, depending on which classification criteria are met during the bid selection/activation, in the context of the implementation framework, the activation purpose of each balancing energy bid will be defined. ACER considers that paragraph 2 of Article 2 of the Proposal is out of the scope of this methodology, therefore it deleted it.

- (47) In paragraph 7 of Article 3 of the submitted proposal, the TSOs specify an obligation for coordinated request of activations for system constraint purpose. ACER understands that this provision describes a process in the context of the European balancing platforms, which was in line with the initial TSOs' proposal for implementation of this methodology for activation purposes. However, under the clarified scope of the methodology, the activations for system constraints will not always require a coordination. Moreover, the coordination between the TSOs in the context of the European platforms is out of the scope of this methodology; it is part of the implementation frameworks pursuant to Articles 19, 20 and 21 of the EB Regulation. Therefore, ACER deleted paragraph 7 of Article 3 of the Proposal.

6.2.5. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.5.1. *Requirements for transparency*

- (48) Article 3 of the Proposal defines two activation purposes for balancing energy bids: balancing and system constraints, considering that these are all the possible activation purposes as required by Article 29(3)(a) of the EB Regulation. Article 3(4) of the Proposal includes a list with the classification criteria for defining the activation purpose of a balancing energy bid as 'system constraints'.
- (49) Following the discussion with TSOs and regulatory authorities during consultation, ACER suggested to label as a separate system constraint purpose each of the classification criteria included in Article 3(4) of the Proposal. ACER consulted also on this topic and the vast majority of the stakeholders requested increased transparency for the system constraints activations, in line with ACER's proposal in the public consultation, as mentioned in Recital (20)(b) above. However, the TSOs claimed that the activation of a balancing energy bid for system constraints does not always fulfil a single classification criteria from the exhaustive list included in Article 3(4) of the Proposal. Therefore, and in order to increase the transparency in the activation of balancing energy bids for system constraints, the TSOs proposed a further categorisation of the system constraints activation purpose, for publication purposes: redispatching, countertrading, other remedial actions. These subcategories are not linked to classification criteria, as these actions may serve each time a different or a subset of different classification criteria; therefore, they are all still labelled as "activation for system constraints".

- (50) ACER sees the transparency benefits of such an approach, although it does not change the activation purposes classification, hence it added a new paragraph 4 in Article 3 of the Proposal.

6.2.5.2. *Consultation and involvement of stakeholders*

- (51) When drafting the Proposal, all TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.
- (52) As indicated in Recital (5) above, all TSOs fulfilled the requirements of Article 10 of the EB Regulation, since stakeholders were consulted on the initial draft proposal pursuant to Article 10(1) of the EB Regulation. This involvement took place during a public consultation, which ran from 12 September 2018 until 13 November 2018. In addition, all regulatory authorities were regularly informed and consulted pursuant to Article 10(1) of the EB Regulation. The justifications regarding the consideration given to the views expressed by stakeholders during the public consultation in the drafting of the initial proposal were provided in a separate document dated 18 December 2018 and submitted to all regulatory authorities.

7. **CONCLUSION**

- (53) For all the above reasons, ACER considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.
- (54) Therefore ACER approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The methodology for classifying the activation purposes of balancing energy bids in accordance with Article 29(3) of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to all TSOs

50Hertz - 50Hertz Transmission GmbH
Amprion - Amprion GmbH
APG - Austrian Power Grid AG
Augstsprieguma tīkls - AS Augstsprieguma tīkls
ČEPS - ČEPS a.s.

CREOS Luxembourg - Creos Luxembourg S.A.
EirGrid - EirGrid plc
Elering - Elering AS
ELES - ELES, d.o.o.
Elia - Elia Transmission Belgium SA/NV
Energinet - Energinet
ESO - Electroenergien Sistemen Operator EAD
Fingrid - Fingrid Oyj
HOPS - Croatian Transmission System Operator Ltd
IPTO - Independent Power Transmission Operator S.A.
Kraftnät Åland - Kraftnät Åland Ab
LITGRID - Litgrid AB
MAVIR ZRt. - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság ZRt.
National Grid ESO
PSE - Polskie Sieci Elektroenergetyczne S.A.
REE - Red Eléctrica de España S.A.
REN - Rede Eléctrica Nacional, S.A.
RTE - Réseau de Transport d'Electricité, S.A
SEPS - Slovenská elektrizačná prenosová sústava, a.s.
SONI - System Operator for Northern Ireland Ltd;
Svenska Kraftnät - Affärsverket svenska kraftnät
TenneT GER - TenneT TSO GmbH
TenneT TSO - TenneT TSO B.V.
Terna - Terna Rete Eletrica Nazionale S.p.A.
Transelectrica - National Power Grid Company Transelectrica S.A.
TransnetBW -TransnetBW GmbH
VÜEN - Vorarlberger Übertragungsnetz GmbH

Done at Ljubljana, on 15 July 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Methodology for classifying the activation purposes of balancing energy bids pursuant to Article 29(3) of the Electricity Balancing Regulation

Annex Ia (for information only) – Methodology for classifying the activation purposes of balancing energy bids pursuant to Article 29(3) of the Electricity Balancing Regulation – with track changes

Annex II (for information only) – Evaluation of responses to the public consultation on the methodology for classifying the activation purposes of balancing energy bids

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.