

DECISION No 17/2022
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS
of 26 October 2022

**on Svenska kraftnät's request for a derogation from the 70% requirement
pursuant to Article 16(9) of Regulation (EU) 2019/943**

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, Article 6(10), second subparagraph, point (a) thereof,

Having regard to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity², and, in particular, Article 16(9) thereof,

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

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 24 October 2022, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

¹ OJ L158, 14.6.2019, p. 22.

² OJ L158, 14.6.2019, p. 54.

1. INTRODUCTION

- (1) According to Article 16(8) of Regulation (EU) 2019/943, transmission system operators ('TSOs') may not limit interconnection capacity in order to solve congestion or manage flows resulting from transactions inside their own bidding zone. The TSOs are considered compliant with this provision if they make available for cross-zonal trade at least 70% of the capacity respecting operational security limits of internal and cross-zonal critical network elements ('CNEs') and taking into account contingencies ('CNECs'). This minimum threshold is hereinafter referred to as the '70% requirement'.
- (2) According to Article 16(9) of Regulation (EU) 2019/943, a TSO may obtain a temporary derogation from the 70% requirement to maintain operational security. Such derogations may be granted under certain conditions by the competent regulatory authorities or, in case of a disagreement between the regulatory authorities, by ACER.
- (3) On 6 October 2021, the Swedish TSO, Svenska kraftnät ('Svk') asked the Swedish regulatory authority, Energy Market Inspectorate ('Ei'), for a derogation from the 70% requirement for its interconnections on nine electricity bidding zone borders for the year 2022. Ei was of the view that Svk should be granted a derogation for interconnectors on two bidding zone borders: between Finland and Sweden 3 and between Denmark 1 and Sweden 3. However, the Finnish and Danish regulatory authorities disagreed with granting a derogation to Svk on any border. As a result, on 27 April 2022, Ei referred Svk's derogation request to ACER for a decision.

2. PROCEDURE

2.1 Proceedings before regulatory authorities

- (4) On 6 October 2021, Svk submitted to Ei a request for a derogation³ from the 70% requirement for the duration of 2022 for interconnections between the following bidding zones: Denmark 1 – Sweden 3 ('DK1-SE3'), Denmark 2 – Sweden 4 ('DK2-SE4'), Finland – Sweden 3 ('FI-SE3'), Germany/Luxembourg – Sweden 4 ('DE/LU-SE4'), Poland – Sweden 4 ('PL-SE4'), Lithuania – Sweden 4 ('LT-SE4'), Sweden 3 – Sweden 4 ('SE3-SE4'), Sweden 2 – Sweden 3 ('SE2-SE3') and Sweden 3 – Norway 1 ('SE3-NO1').
- (5) By email of 18 October 2021, Ei forwarded Svk's derogation request to the regulatory authorities of other Member States forming part of the affected capacity calculation region ('CCR'),⁴ inviting them to express any formal disagreement with the requested derogation by 21 November 2021.

³Svk's derogation request is accessible at: https://forsyningstilsynet.dk/media/10532/svenska-kraftnaet-request-for-derogation-2022_article_16-9-2019_943.pdf

⁴ Ei consulted the concerned regulatory authorities via the All Regulatory Authorities Working Group ('ARA WG').

- (6) In their position papers of 2 November and 11 November 2021, the Finnish regulatory authority, Energiavirasto ('EV'), and the Danish Utility Regulator ('DUR'), respectively expressed their formal disagreements with granting a derogation to Svk on any border.
- (7) On 21 April 2022, Ei decided⁵ not to grant a derogation for the following six bidding zone borders: DK2-SE4, DE/LU-SE4, PL-SE4, LT-SE4, SE3-SE4 and SE2-SE3. Regarding interconnectors on the two remaining bidding zone borders, DK1-SE3 and FI-SE3, Ei was of the view that Svk should be granted the requested derogation. Ei did not take any position on the SE3-NO1 bidding zone border.
- (8) Considering that EV and DUR opposed granting a derogation in its entirety, Ei referred Svk's request to ACER to decide on the two contested borders, DK1-SE3 and FI-SE3, in line with Article 16(9) of Regulation (EU) 2019/943.

2.2 Proceedings before ACER

- (9) By email of 27 April 2022, Ei referred Svk's derogation request to ACER. In the referral letter, Ei specified that its referral only concerns the DK1-SE3 and FI-SE3 bidding zone borders, which were subject to disagreement between the regulatory authorities. The regulatory authorities agreed that no derogation should be granted for the other bidding zone borders in Svk's request.
- (10) By emails of 16 and 26 May 2022, ACER notified the concerned regulatory authorities (Ei, EV and DUR) and the concerned TSOs (Svk, Fingrid and Energinet) of the initiation of ACER's procedure to decide on Svk's derogation request.
- (11) On 18 May 2022, ACER published a notice inviting interested third parties to submit observations by 30 June 2022. ACER received 11 observations representing a broad range of stakeholders: energy traders, energy producers, power exchanges, industry associations and regulatory authorities. ACER refers to these observations in sections 5 and 6.
- (12) ACER held a number of working meetings with the concerned regulatory authorities and the TSOs to assess the case and understand the position of each party. In particular, the following meetings took place:

31 May 2022 meeting (teleconference) with DUR, EV, Ei and Svk;

17 June 2022 meeting (teleconference) with DUR, EV, Ei and Svk;

⁵ Ei's decision 2021-102881, accessible at:

<https://e-diarium.ei.se/search/mypages;jsessionid=BhI495S64DJmzFdo3gAnuEAJPgQBKhbbH4g2rBeq.ei-srv-205?0&searchQuery=2021-102881>

Unofficial English translation:

[https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Documents/\(2022-06-21_EI%20decision\)%20Beslut-2021-102881-21%20april%202022%20\(EN_UnofficialTranslation\).pdf](https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Documents/(2022-06-21_EI%20decision)%20Beslut-2021-102881-21%20april%202022%20(EN_UnofficialTranslation).pdf)

- 23 June 2022 meeting (teleconference) with Energinet, Fingrid and Kraftnät Åland;
- 8 July 2022 meeting (teleconference) with DUR, EV, Ei, NVE-RME⁶ and Svk;
- 26 August 2022 meeting (teleconference) with DUR, EV, Ei, NVE-RME and Svk;

- (13) On 5 September 2022, ACER notified the parties of its preliminary position, setting a time limit for providing views in writing. The parties provided their views by 14 September 2022. These views are summarised in section 5.3. None of the parties requested an oral hearing.
- (14) On 19 September 2022, ACER notified the parties of the closure of the written and oral procedure.
- (15) On 23 September 2022, the draft Decision was submitted to ACER's Electricity Working Group ('AEWG') for advice. No regulatory authority submitted comments during the commenting phase. In its advice of 30 September 2022, the AEWG endorsed the draft Decision, without additional comments.
- (16) On 24 October 2022, ACER's Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ACER'S COMPETENCE TO ADOPT A DECISION

- (17) According to the first subparagraph of Article 16(9) of Regulation (EU) 2019/943, at the request of the TSOs in a CCR, the relevant regulatory authorities may grant a derogation from Article 16(8) of the same Regulation (i.e. the 70% requirement) on foreseeable grounds where necessary for maintaining operational security.
- (18) According to the second subparagraph of Article 16(9), before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of other Member States forming part of the affected CCRs; where a regulatory authority disagrees with the proposed derogation, ACER shall decide whether it should be granted pursuant to point (a) of Article 6(10) of Regulation (EU) 2019/942.
- (19) According to point (a) of Article 6(10) of Regulation (EU) 2019/942, ACER shall be competent to adopt a decision where the competent regulatory authorities have not been able to reach an agreement within six months of referral of the case to the last of those regulatory authorities.
- (20) Following Svk's request of 6 October 2021 to Ei for a derogation from the 70% requirement for its interconnections and the disagreement between Ei, EV and DUR on a derogation for the bidding zone borders FI-SE3 and DK1-SE3, Ei referred the request for a derogation concerning those bidding zone borders to ACER for a decision pursuant

⁶ On 22 June 2022, the Norwegian Energy Regulatory Authority ('NVE-RME') was invited by ACER to attend all the meetings with the concerned regulatory authorities as an observer.

to Article 16(9) of Regulation (EU) 2019/943 and point (a) of Article 6(10) of Regulation (EU) 2019/942, on 27 April 2022.

- (21) Therefore, ACER has become competent to decide on Svk's derogation request for the bidding zone borders FI-SE3 and DK1-SE3, according to point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and the second subparagraph of Article 16(9) of Regulation (EU) 2019/943.

4. SUMMARY OF SVK'S DEROGATION REQUEST

- (22) Svk requested a derogation under Article 16(9) of Regulation (EU) 2019/943 from the 70% requirement for the year 2022. While Svk's request covers nine bidding zone borders, Ei's referral to ACER concerns only the two bidding zone borders DK1-SE3 and SE3-FI.
- (23) In its request, Svk sets out the reasons for requesting a derogation from the 70% requirement, in particular that:
- (a) Svk lacks remedial actions to meet the 70% requirement without endangering operational security in an 'N-1' situation;
 - (b) congestion in the West Coast Corridor inside the SE3 bidding zone, in combination with the lack of available downregulation, requires Svk to reduce capacity on six oriented bidding zone borders: SE3-NO1, DK1-SE3, DK2-SE4, DE/LU-SE4, PL-SE4 and LT-SE4;
 - (c) a higher flow of energy from east to west ('East-West flow'), compared to historical flows, has created a new congestion in the Swedish grid. This affects the following oriented bidding zone borders: SE3-NO1, SE3-DK1, SE2-SE3, SE3-SE4 and FI-SE3. Svk lists the following main reasons for inducing the East-West flow:
 - i. two reactors in the Ringhals nuclear power plant⁷ were taken out of operation in December 2019 and December 2020 respectively;
 - ii. at the end of 2020, the NordLink interconnector - a new interconnector between Norway and Germany (NO2-DE/LU) - became operational;
 - (d) in order to manage congestion resulting from the East-West flow, downregulation is required in SE2 and/or FI, and the corresponding upregulation is required in DK1, NO1 and SE4;
 - (e) Annex A to Svk's derogation request illustrates a lack of redispatching potential needed to resolve the East-West flow problems on three relevant CNECs in the

⁷ In a supplementary note submitted to Ei in December 2021, Svk also reported that the East-West flow is affected by outages of the Oskarshamn and Forsmark nuclear power plants. In response to ACER's preliminary position, Svk further explained that the most obvious negative impact on capacities in the east-to-west direction comes from outages in the nuclear plants Ringhals and Oskarshamn, both located in the south of Sweden. Svk also argued that in certain flow and grid situations though, unavailability of Forsmark 3, located north of Stockholm, can also negatively impact the capacities.

period between May 2020 and July 2021. The required redispatching potential per CNEC is mainly a constant value throughout the observed period⁸;

- (f) in the derogation request submitted to Ei in October 2021, Svk noted that the situations where it faces challenges to meet the 70% requirement occur due to structural congestions; in a supplementary note submitted to Ei in December 2021 and also in the proceedings before ACER, Svk clarified that these are occasional congestions (section 6.2.1).

5. SUMMARY OF OBSERVATIONS RECEIVED BY ACER

5.1 Views of the parties concerned on Svk's derogation request

5.1.1 Danish Regulatory Authority (DUR)

- (24) On 2 November 2021, DUR expressed its formal disagreement with the derogation requested by Svk. In its letter, DUR noted that:
 - (a) Svk already obtained derogations in 2020 and 2021 based on the lack of remedial actions. DUR is of the view that Svk may not be granted a third derogation in a row, as, in DUR's view, Article 16(9) Regulation (EU) 2019/943 allows for granting derogations up to a maximum of two years;
 - (b) capacity reductions on the Swedish interconnectors have been an ongoing problem for more than ten years, and their extent does not seem to decrease. In DUR's view, application by Svk of redispatching and countertrading to meet the 70% requirement was insufficient, and Svk has failed to develop countertrading possibilities to a satisfactory degree;
 - (c) Svk did not improve the levels of available cross-zonal capacity between 2020 and 2021 on the DK1-SE3 border, so the derogations granted to Svk to date have not incentivised Svk to take steps to meet the 70% requirement.
- (25) DUR reiterated its position in the submission of 30 June 2022 to ACER's public notice. DUR additionally stated in its submission that:
 - (a) the 70% requirement should apply to all bidding zone borders, including bidding zone borders within a Member State;
 - (b) Svk's request refers to challenges of long-term structural character which, in DUR's view, should not be addressed by temporary derogations, but with long-term solutions such as bidding zone reconfiguration, action plans and/or countertrading and redispatching;
 - (c) if the derogation was granted only for two bidding zone borders (SE3-DK1 and FI-SE3), internal congestions in Sweden would be moved to these two borders, creating an adverse effect;

⁸ Svk further commented on this analysis in their response to ACER's preliminary position (see recital (53)).

- (d) if SvK cannot provide ACER with the requested data, derogation should not be granted.

5.1.2 Finnish Regulatory Authority (EV)

- (26) On 11 November 2021, EV expressed its formal disagreement with the derogation requested by SvK. In its submission, EV stated that:
- (a) SvK failed to demonstrate that the derogation is necessary for maintaining operational security: the derogation is requested for situations originating from structural congestions inside of one of the Swedish bidding zones. According to EV, structural congestions should not be the basis for requesting a derogation;
 - (b) the assessment that led SvK to conclude that it lacks countertrading resources to ensure the 70% requirement is incorrect. In EV's view, the requirement to use countertrading and redispatching applies regardless of whether the Nordic redispatching and countertrading ('RDCT') cost sharing methodology⁹ is implemented or not;
 - (c) SvK failed to demonstrate that the derogation is limited only to the extent that is required to maintain operational security. In EV's view, SvK should have committed in its derogation request to reach a minimum level of margin available for cross-zonal trade;
 - (d) SvK did not provide any long-term solution for the issues arising in the West Coast Corridor, following the derogations obtained in the past;
 - (e) The quality and relevance of SvK's data and analyses is questionable. EV noted that the congestion problems evoked by SvK to justify its derogation on the FI-SE3 border (decommissioning of the nuclear power plants' units and the NordLink interconnector) already existed in 2021, whereas no derogation had been requested on this border for 2021;
 - (f) Annex A of SvK's derogation request explains that "*as the zone-to-zone [power transfer distribution factor ('PTDF')¹⁰] values as well as the limiting CNECs vary over time, a firm constant value of regulation volume that needs to be available for each hour and area cannot be defined.*" In relation to this, EV noted that the "*required regulation volume*" is determined in the relevant figures of Annex A, and that it seems to be a constant value most of the time.

5.1.3 Swedish Regulatory Authority (Ei)

⁹ Nordic TSOs' common methodology for redispatching and countertrading cost sharing in the Nordic Capacity Calculation Region in accordance with Article 74 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

¹⁰ PTDF describes the impact of a bidding zone's net position or of a commercial exchange between two bidding zones on a CNEC.

- (27) By its decision of 21 April 2022, Ei rejected SvK's request for derogation for six bidding zone borders (DK2-SE4, DE/LU-SE4, PL-SE4, LT-SE4, SE2-SE3 and SE3-SE4).
- (28) Ei noted that congestion in the West Coast Corridor, being the reason for derogation for the DK2-SE4, DE/LU-SE4, PL-SE4, SE3-NO1 and LT-SE4 bidding zone borders, was already evoked for requesting derogations in the past. This, in Ei's view, implies that the measures taken by SvK to address congestion in the West Coast Corridor were not sufficient. Ei also stated that SvK failed to demonstrate the necessity for this derogation, as Ei's investigation showed that SvK did not, in fact, use the derogation granted for 2021¹¹.
- (29) SvK's derogation request for the FI-SE3, DK1-SE3, SE2-SE3, SE3-SE4 and NO1-SE3 bidding zone borders related to the East-West flow, i.e. an increased flow from east to west that occurs in certain operational conditions;
- (a) Ei rejected the derogation for SE2-SE3 and SE3-SE4 because, in Ei's view, these are internal bidding zone borders and cannot be considered 'interconnectors' in the meaning of Article 2(1) of Regulation (EU) 2019/943;
- (b) Ei was of the view that the derogation for FI-SE3 and SE3-DK1 was necessary to maintain operational security of the system. According to its assessment, the 70% requirement would likely not be met by SvK in 2022 in order to ensure operational safety in the electricity grid. Ei considered that countertrading possibilities would not be sufficient to meet the 70% requirement at all times, even though it expected the situation would be slightly better than in 2021;
- (c) Ei did not comment on the SE3-NO1 bidding zone border.
- (30) As stated in Ei's decision, "*in order to monitor how Svenska kraftnät complied with the 70% rule in parts of 2021, Ei has asked Svenska kraftnät to submit the basic data resulting from ACER's methodology to calculate the minimum level of 70% transmission capacity for the critical network segments. SvK has provided parts of this data. SvK has not provided all the requested data and states that some of the requested data cannot be calculated until the flow-based capacity calculation method is implemented in the Nordic countries. Furthermore, certain data have not been disclosed to Ei due to confidentiality. For example, Svenska kraftnät has not further specified where the five critical network segments are physically located in the electricity grid*"¹². Despite this, Ei noted that the data and the calculation method were sufficient to enable Ei, pending the introduction of the flow-based approach in Sweden, to verify whether the 70% requirement is met while ensuring operational security¹³.

5.1.4 Finnish TSO (Fingrid) and Danish TSOs (Energinet)

¹¹ Unofficial translation of Ei's decision (n 5), p 19.

¹² Unofficial translation of Ei's decision (n 5), p. 13.

¹³ Unofficial translation of Ei's decision (n 5), p. 18.

- (31) Fingrid and Energinet provided their views at the meeting of 23 June 2022.
- (32) Fingrid acknowledged the need for a reduction in the power transfer, and that the planned grid reinforcements in Sweden would improve the situation as late as 2030. Nonetheless, Fingrid was of the view that Svk needs a roadmap and an action plan to reach the 70% requirement by 2025.
- (33) Energinet was of the view that Svk's efforts to develop countertrading opportunities have been insufficient. Energinet also claimed that Svk has no sufficient tools to monitor and meet the 70% requirement.

5.2 Observations from other stakeholders

5.2.1 Norwegian Energy Regulatory Authority (NVE-RME)

- (34) On 24 November 2021, NVE-RME communicated to Ei its views on Svk's derogation request and capacity limitations on the SE3-NO1 bidding zone border. According to NVE-RME, possible capacity reductions would be foreseen until 2030 in the direction from Sweden 3 to Norway 1. In NVE-RME's view, Svk lacks transparency, in particular regarding the causes of capacity reductions, the possible use of remedial actions and the methodology to distribute the available cross zonal capacity between the different bidding zone borders.

5.2.2 Observations from stakeholders in response to ACER's public notice

- (35) In response to its public notice of 18 May 2022, ACER has received 11 submissions from the following stakeholders: the European Federation of Energy Traders ('EFET'), Ørsted, Nordenergi, Statkraft Energi AS ('Statkraft'), UPM Energy Oy, Swedenergy, UNIPER, Norsk Hydro, Green Power Denmark, Nord Pool and DUR.
- (36) Aggregated views of all stakeholders are provided below. A summary of the views of each stakeholder but DUR is provided in recitals (37) to (46). DUR's views as a party concerned are provided in section 5.1.
 - (a) None of the ten respondents to ACER's public notice supported granting the derogation to Svk. Eight respondents clearly opposed the derogation, and two respondents noted the importance of maximising the transmission capacities and improving their transparency and predictability;
 - (b) Some stakeholders were of the view that proper data disclosure is essential for effective monitoring of the TSOs' compliance with the 70% requirement. These stakeholders raised concerns about Ei's intention to grant a derogation without having all the necessary data at hand (such as non-anonymised data on critical branches);
 - (c) The majority of stakeholders noted that Svk's efforts to develop redispatching and countertrading opportunities were insufficient. Some of those stakeholders commented that further resources for redispatching and countertrading are actually available to Svk, in Sweden as well as in other countries;

- (d) Some stakeholders considered the need to set a minimum target when seeking a derogation.
- (37) EFET opposed granting a derogation for the SE3-DK1 and SE3-FI borders. EFET questioned SvK's conclusion that there is no sufficient countertrading potential as well as SvK's declarations that it took sufficient action to minimise capacity restrictions. In addition, EFET noted that proper data disclosure is required to monitor the TSOs' compliance with the 70% requirement. In that respect, EFET could not understand why "*Svk is still anonymising critical branches and withholding data from its own regulator and ACER, let alone market participants*". EFET also disagreed with Ei's conclusion that internal bidding zone borders should not be subject to the 70% requirement.
- (38) Ørsted, an energy producer in Denmark, opposed granting a derogation to SvK. Ørsted supported the comments made by DUR and EV. Ørsted added that SvK failed to undertake the necessary grid investments to address long-recognised congestion in the West Coast Corridor. Ørsted disagreed with SvK's assessment that there is no sufficient countertrading potential, noting that some volumes are available in Denmark, or would become available in response to an adequate price signal. Finally, Ørsted stressed that the absence of public data does not allow to conclude that a derogation is necessary.
- (39) Nordenergi, a collaboration between the Nordic associations for electricity producers, suppliers, and distributors, opposed granting a derogation and supported the comments of DUR, EV and NVE-RME. Nordenergi noted that resources available for redispatching and countertrading were not called upon by SvK, and thus questioned whether SvK took sufficient action to meet the 70% requirement. Nordenergi was also concerned that SvK did not disclose the relevant data on CNEs and that Ei concluded on the derogation without all the necessary data.
- (40) Statkraft, an energy producer and trader, opposed granting a derogation to SvK. Statkraft noted that a derogation would prevent market participants to have visibility over cross-zonal capacity levels. Statkraft recognised SvK's efforts to increase available trading capacities but questioned whether SvK took sufficient preventive measures, considering that the reasons evoked for the derogation (decommissioning of nuclear plants and the NordLink interconnector) were long-known, and that the neighbouring TSOs did not request any derogations. Finally, Statkraft was of the view that SvK was in a position to use more countertrading.
- (41) UPM Energy Oy, an energy producer, noted that maximising transmission capacities is important for market participants.
- (42) Swedenergy, an industry organisation representing companies that supply, distribute, sell, and store energy, opposed granting a derogation to SvK. Swedenergy claimed that further resources for redispatching and countertrading were available to SvK, in Sweden and in other countries, but that SvK decided not to use them. Swedenergy also questioned the legitimacy of Ei to approve SvK's derogation requests as SvK did not provide Ei with all necessary information for decision-making.
- (43) UNIPER, an energy producer, was against granting a derogation to SvK. In their view, SvK's request does not meet the conditions of Article 16(9) of Regulation (EU) 2019/943. According to UNIPER, there has been no improvement in cross-zonal

capacities, nor sufficient attempts from Svk to ensure that sufficient remedial actions are available. UNIPER also suggested that requests for derogation should include a minimum target and an action plan. Lastly, UNIPER called for more transparency from Svk and also questioned the basis for Ei's conclusion that Svk needs a derogation, considering the lack of information from Svk.

- (44) Norsk Hydro, an energy producer and industrial company, noted that low capacities, due to congestions in the SE3 bidding zone, are a recurring problem, in particular taking place on the SE3-NO1 border in 2021 and 2022. Norsk Hydro called for more transparency and predictability from the TSOs, and in particular from Svk, and for clear transitory targets when requesting a derogation.
- (45) Green Power Denmark, an industry organisation representing companies in the green energy value chain, was strongly against granting a derogation to Svk. Green Power Denmark was of the view that Svk had resources for remedial actions but had not taken steps to increase the opportunities for remedial actions and countertrading. Green Power Denmark stated that Svk demonstrated a "*fundamental unwillingness to secure and use the needed redispatch/countertrade resources to avoid reductions in cross-zonal capacity*", and that granting the derogation would support the continuation of this practice.
- (46) Nord Pool, a power exchange, called for a greater use of market measures and remedial actions to be used by the Nordic TSOs to maximise cross-zonal capacity.

5.3 Comments on ACER's preliminary position

- (47) On 5 September 2022, ACER notified the parties of its preliminary position, in which it set out its preliminary assessment of the case and its intention to conclude that the requested derogation should not be granted as it does not meet all the relevant conditions specified in Article 16(9) of Regulation (EU) 2019/943 for granting a derogation. In particular, ACER's preliminary assessment did not confirm the necessity of the requested derogation for maintaining operational security, and Svk has not provided sufficient reasoning or evidence to the contrary. ACER noted that Svk did not sufficiently explain how it would ensure that the requested derogation does not result in discrimination between internal and cross-zonal exchanges.
- (48) ACER received comments from Svk, DUR, EV, Energinet and the German regulatory authority (Bundesnetzagentur, 'BNetzA').

5.3.1 Svk's comments

- (49) Svk asked ACER to specify in which way(s) Svk has not ensured necessary levels of redispatching and countertrading capacity, clarifying also if there are any limitations to Svk's rights to contract resources for these purposes, even those resources that may not currently be in the market. Svk also asked ACER to expand on specific properties of such contracts, for example regarding their duration, structure (combined capacity/energy payments) etc.
- (50) Svk highlighted the need for deepened regional cooperation and coordination when it comes to, for instance, updating the Nordic TSOs' common methodologies for

coordinated redispatching and countertrading ('Nordic RDCT methodology')¹⁴ and regional operational security coordination ('Nordic ROSC methodology')¹⁵.

- (51) Svk also asked ACER to clarify how Svk (or any other TSO) could in practice guarantee non-discrimination in situations where it is not able to offer at least 70% of available capacity respecting operational limits.
- (52) Svk noted that, in their derogation request, Svk had stated that the implementation of the Nordic flow-based capacity calculation is a prerequisite for an accurate assessment of MACZT, which is in line with ACER's preliminary position.
- (53) Svk provided further clarifications to their claim that it had exhausted resources for remedial actions required primarily for upregulation to manage the East-West flow, as shown in the derogation request and illustrated in its Annex A. In that respect, Svk provided a figure illustrating the required relieving effect of remedial actions for an exemplary limiting CNEC, noting that there are resources available for upregulation most of the time. However Svk argued that it is not always guaranteed that it would find sufficient volumes in the right place(s) to alleviate overloads in the relevant CNECs. Thus, Svk concluded that it would need to contract specific generation units (or flexible demand) for the minimum periods of the year, but preferably to be available all year, in order to be able to guarantee a minimum available capacity in the affected CNECs. Svk's understanding was that "*a shortage of available resources for just a handful of MTU's during a year*" would still necessitate a derogation.

5.3.2 Comments from the other parties

- (54) DUR and EV explicitly supported ACER's preliminary position that a derogation should not be granted to Svk.
- (55) DUR supported ACER's reasoning and conclusion that the 70% requirement also applies to internal bidding zone borders. Conversely, Energinet did not agree with this reasoning. Energinet questioned ACER's interpretation that an interconnector can be a line inside a Member State while, according to Article 2(1) of Regulation (EU) 943/2019, the definition of an 'interconnector' has a clear cross-border element. Energinet could not see how ACER's interpretation can set aside this definition.
- (56) DUR did not support ACER's reasoning and conclusion that Article 16(9) of Regulation (EU) 2019/943 allows for successive derogations from the 70% requirement beyond a maximum period of 2 years. However, DUR acknowledged that the question on the duration of a derogation is not decisive for ACER's preliminary position in this case.

¹⁴ Nordic TSOs' common methodology for coordinated redispatching and countertrading in the Nordic Capacity Calculation Region in accordance with Article 35 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

¹⁵ Nordic TSOs' common methodology for regional operational security coordination in the Nordic capacity calculation region in accordance with Article 76 and Article 77 of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation.

- (57) BNetzA asked if the minimum capacity target, if defined, could be deemed sufficient to avoid discrimination between internal and cross-zonal exchanges.
- (58) Regarding the question of necessity of the derogation, EV proposed not to refer to the observed MACZT levels as it could give a signal that it is acceptable merely to apply for a derogation without sufficient basis and then try to prove the required foreseeable grounds afterwards.
- (59) BNetzA also commented on necessity, noting that Svk can still provide operational security and reduction of cross-border capacity may be used as a measure of last resort, according to the second subparagraph of Article 16(3) of Regulation (EU) 2019/943.

6. ASSESSMENT OF THE DEROGATION REQUEST

- (60) As confirmed by Svk, Ei and the other concerned regulatory authorities, Svk's derogation request, as referred by Ei to ACER, is direction-wise, i.e. it relates to the west-bound direction on the bidding zone borders FI to SE3 and SE3 to DK1. ACER's decision therefore concerns the two oriented borders and relevant congestions caused by the East-West flow. ACER refers to other aspects of the Svk's derogation request only as far as these were raised by the parties concerned in the context of this decision-making procedure or are otherwise relevant for this decision.

6.1 Legal framework

- (61) Pursuant to Article 16(8) of Regulation (EU) 2019/943, TSOs shall not limit the volume of interconnection capacity to be made available to market participants as a means of solving congestion inside their own bidding zone or as a means of managing flows resulting from transactions internal to bidding zones. The TSOs are considered compliant with this provision if they meet the 70% requirement, that is, where the following minimum levels of available capacity for cross-zonal trade are reached:
 - (a) for borders using a coordinated net transmission capacity approach, the minimum capacity shall be 70 % of the transmission capacity respecting operational security limits after deduction of contingencies, as determined in accordance with Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management ('CACM Regulation);
 - (b) for borders using a flow-based approach, the minimum capacity shall be a margin set in the capacity calculation process as available for flows induced by cross-zonal exchange. The margin shall be 70 % of the capacity respecting operational security limits of internal and cross-zonal critical network elements, taking into account contingencies, as determined in accordance with the CACM Regulation.
- (62) Article 16(8) further specifies that the total amount of 30% can be used for the reliability margins, loop flows and internal flows on each critical network element.
- (63) Pursuant to the first subparagraph of Article 16(9) of Regulation (EU) 2019/943, at the request of the TSOs in a CCR, the relevant regulatory authorities may grant a derogation from the 70% requirement on foreseeable grounds where necessary for maintaining operational security. Such derogations, which shall not relate to the curtailment of capacities already allocated pursuant to Article 16(2) of the Regulation, shall be granted

for no more than one-year at a time, or, provided that the extent of the derogation decreases significantly after the first year, up to a maximum of two years. The extent of such derogations shall be strictly limited to what is necessary to maintain operational security and they shall avoid discrimination between internal and cross-zonal exchanges.

- (64) Pursuant to the second subparagraph of Article 16(9) of Regulation (EU) 2019/943, before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of other Member States forming part of the affected capacity calculation regions. Where a regulatory authority disagrees with the proposed derogation, ACER shall decide whether it should be granted pursuant to point (a) of Article 6(10) of Regulation (EU) 2019/942. The justification and reasons for the derogation shall be published.
- (65) Pursuant to the third subparagraph of Article 16(9) of Regulation (EU) 2019/943, where a derogation is granted, the relevant TSOs shall develop and publish a methodology and projects that shall provide a long-term solution to the issue that the derogation seeks to address. The derogation shall expire when the time limit for the derogation is reached or when the solution is applied, whichever is earlier.

6.2 Preliminary remarks

- (66) In view of the observations summarised in section 5, it is important to first clarify a few broader aspects which are relevant in ACER's assessment, namely (1) what type of congestions can be subject to a derogation, (2) whether the 70% requirement also applies to the bidding zone borders within a Member State and (3) the need for timely implementation of the Nordic ROSC, RDCT and RDCT cost sharing methodologies.

6.2.1 Type of congestions subject to a derogation

- (67) In its derogation request submitted to Ei in October 2021, Svk stated that structural congestions are the reason for the derogation request. In a supplementary note provided to Ei in December 2021, and also during the proceedings before ACER, Svk clarified that these congestions are not of a structural nature, but rather occur occasionally. ACER notes the clarification of Svk's position, as structural congestion is explicitly defined in Regulation (EU) 2019/943 and its identification in a Member State triggers the processes set out in Articles 14 and 15 of Regulation (EU) 2019/943.
- (68) Pursuant to point (4) of Article 2 of Regulation (EU) 2019/943, 'congestion' means a situation in which all requests from market participants to trade between network areas cannot be accommodated because they would significantly affect the physical flows on network elements which cannot accommodate those flows. 'Structural congestion' is defined in point (6) of the same Article as congestion in the transmission system that is capable of being unambiguously defined, is predictable, is geographically stable over time, and frequently reoccurs under normal electricity system conditions.
- (69) According to Article 14(7) of Regulation (EU) 2019/943, structural congestion can be identified by the TSO(s) of a Member State in a report approved by the competent regulatory authority, by the European Network of the Transmission System Operators for Electricity ('ENTSO-E') in a report on congestions or by a bidding zone review. The

identification of structural congestion triggers a process whereby the relevant Member State shall, in cooperation with its TSO(s), decide, within six months of receipt of the relevant report, either to establish national or multinational action plans pursuant to Article 15 of Regulation (EU) 2019/943, or to review and amend its bidding zone configuration. This decision shall be immediately notified to the European Commission and to ACER.

- (70) In view of these provisions, structural congestions should be first and foremost identified in line with the process set out in Article 14 of Regulation (EU) 2019/943, and then addressed by action plans or bidding zone reconfigurations, as appropriate.

6.2.2 Application of the 70% requirement to internal bidding zone borders

- (71) ACER assumes in its assessment that the 70% requirement applies to bidding zone borders within Sweden ('internal bidding zone borders'), namely SE2-SE3 and SE3-SE4, and considers flows which were exchanged over these borders in MACZT analyses for SE3 cross-zonal capacities in the observed period, as provided in section 6.3.3.
- (72) In ACER's view, the application of the 70% requirement to all bidding zone borders, including internal bidding zone borders, is consistent with the applicable legal framework, considering the following definitions and their contextual interpretation.
- (73) Article 16(8) of Regulation (EU) 2019/943 requires a 70% minimum target level of available capacity for cross-zonal trade. The 70% requirement forms part of the 'General principles of capacity allocation and congestion management' as referred to in the heading of Article 16, which is situated under Section 1 of Chapter III of the Regulation, entitled 'Capacity Allocation'.
- (74) 'Capacity allocation' is defined in Article 2(66) of Regulation (EU) 2019/943 as the attribution of cross-zonal capacity, and, according to Article 2(70) of this Regulation, 'cross-zonal capacity' means the capability of the interconnected system to accommodate energy transfers between bidding zones. For the definition of 'interconnected system', Article 2(57) of Regulation (EU) 2019/943 refers to Article 2(40) of Directive (EU) 2019/944, which defines 'interconnected system' as a number of transmission and distribution systems linked together by means of one or more interconnectors. Article 2(39) of the Directive defines 'interconnector' broadly, as equipment used to link electricity systems.
- (75) Considering the above, if 'cross-zonal capacity' is defined by reference to Article 2(40) of Directive (EU) 2019/944, it is consistent to interpret the terms of that Article 2(40), absent any explicit cross-references, also in the light of the definitions of Directive (EU) 2019/944, in particular the one of 'interconnector' in Article 2(39). Hence, the 70% requirement under Article 16(8) of Regulation (EU) 2019/943 should be understood as referring to the capability of a number of transmission and distribution systems linked together by means of one or more interconnectors to accommodate energy transfers between bidding zones, whereby interconnectors are the 'equipment used to link electricity systems', regardless of whether the link is within or between Member States, according to Article 2(39) of Directive (EU) 2019/944, rather than only such transmission lines which cross or span border between Member States according to Article 2(1) of Regulation (EU) 2019/943.

- (76) Such interpretation takes also into account that bidding zones are defined without any reference to a Member State border, in Article 2(65) of Regulation (EU) 2019/943, as the largest geographical areas within which market participants are able to exchange energy without capacity allocation, and that exchanges between internal bidding zones should not be discriminated against exchanges concerning bidding zones between Member States. Trade between any bidding zones – and not just across Member State borders – is an essential element of a functioning internal electricity market.
- (77) Finally, such interpretation is also consistent with treating the flows resulting from electricity exchanges between internal bidding zones as allocated flows, contributing to the margin available for cross-zonal trade on the border between them and on other bidding zone borders. On the other hand, treating these electricity exchanges as purely internal exchanges would result in considering the flows resulting from them as contributing to loop flows, i.e. flows having the source and the sink in the same bidding zone, which would undermine the very purpose of creating internal bidding zones.
- (78) Accordingly, ACER considers that the cross-zonal capacities of internal bidding zone borders are also subject to the 70% requirement.

6.2.3 Enhancing regional coordination in the Nordic region

- (79) ACER's analyses reveal the importance of not only enabling sufficient redispatching and countertrading potential in the Nordic region, but also of establishing an efficient pan-regional mechanism for its coordination. According to the information provided by the Nordic regulatory authorities and the TSOs, the Nordic ROSC, RDCT and RDCT cost sharing methodologies are expected to be implemented in 2024, however no clear roadmap has been provided. ACER agrees with Svk's comment (recital (50)) that additional efforts are needed to deepen regional cooperation and coordination between the Nordic TSOs and regulatory authorities when it comes to implementing or, if necessary, updating the ROSC, RDCT and RDCT cost sharing methodologies.
- (80) The Nordic region primarily relies on the concept of (zonal) countertrading, using the same availability list as for the frequency restoration reserve with manual activation ('mFRR'). Despite this, ACER encourages the Nordic TSOs and the Nordic regional coordination centre ('RCC') to intensify their efforts in applying also (nodal) redispatching actions, which are expected to be more precise and more efficient in dealing with a particular congestion.

6.3 Analysis of the 70% requirement for the Svk borders under consideration

- (81) In order to inform its decision, ACER has analysed the historical MACZT levels met by Svk and compared them with the 70% requirement. This subsection presents the data that ACER requested for this purpose, the data provided by Svk, and the resulting limitations, the assumptions taken to perform the calculation, and the results of the calculation.

6.3.1 Data requested by ACER

- (82) At the meeting of 31 May 2022, ACER requested Svk to provide data for the purpose of calculating the historical MACZT levels. ACER requested the following data items at least for 2021 and for the first half of 2022:
- (a) CNECs limiting the capacity calculation on each of the bidding zone borders with SE3, and for each hour;
 - (b) For each limiting CNEC, the associated zone-to-zone PTDFs of all borders which impact the flow on the CNEC;
 - (c) For each limiting CNEC, the maximum admissible flow ('Fmax'). ACER requested Svk to provide both the temporary limit (temporary admissible transmission loading, or 'TATL') as well as the permanent limit (permanent admissible transmission loading, or 'PATL');
 - (d) The hourly net transfer capacities ('NTCs') on each of Svk's bidding zone borders;
 - (e) The hourly forecasted schedules used during the capacity calculation process. ACER informed Svk that in case these schedules are not provided, ACER is going to use the day-ahead forecasted schedules publicly available on ENTSO-E's Transparency Platform¹⁶;
 - (f) During the meetings of 8 July and 26 August, ACER asked for the presentation and results of internal and loop flows on the limiting CNECs, matched against the total flow and allocated flow, for 2021.

6.3.2 Data provided by Svk

- (83) Svk provided the requested data, however, with some limitations which prevented ACER from performing a certain number of checks for the purpose of assessing Svk's derogation request. In particular:
- (a) Svk provided the data for a period between 1 May 2020 and 18 June 2022. Nonetheless, data was missing for 2% of the timestamps (i.e. hours), and was incomplete (missing PTDF values¹⁷) for 11% of the timestamps¹⁸;
 - (b) Svk provided the information on anonymised CNECs. Having only an anonymised name of CNECs (e.g. 'CNEC 1') and the bidding zone where it is located, ACER was not in a position to perform a number of checks, in particular regarding consistency of the Fmax of the CNECs;
 - (c) Svk did not provide the unique CNEC per each observed hour, which limits the capacity calculation on a bidding zone border. Svk explained that it is not in a

¹⁶ ENTSO-E's Transparency Platform is accessible at: <https://transparency.entsoe.eu/>

¹⁷ Svk commented: "when the PTDFs are missing it is caused by one of the following reasons; either the load flow calculations did not converge or the real time grid models were missing in our systems or there is an outage of the CNEC."

¹⁸ ACER's analysis excludes the missing timestamps and the CNECs with incomplete data.

position to provide this information due to extensive manual data treatment. Instead, Svk provided a few CNECs (in general between two and four) for each timestamp that were likely to be the limiting CNECs;

- (d) Svk provided the PTDF values for the following borders: DK1-SE3, DK2-SE4, FI-SE3, FI-SE4, NO1-SE3, SE1-SE2, SE2-SE3, SE3-SE4, DE/LU-SE4, LT-SE4 and PL-SE4. Svk stated that the influence of other borders was considered negligible for the calculation.
- (84) In this context, and having in mind that also Ei could not access all the data (see recital (30)), ACER notes that full disclosure of data relevant for assessing the MACZT would enhance transparency, ensure effective monitoring of the 70% requirement and facilitate the assessment of derogation requests. Non-disclosure of data impacts in particular the following elements of the assessment:
- (a) the application of Fmax values and its attribution to the concrete transmission elements;
 - (b) monitoring of calculated transmission capacities and network parameters (such as the PTDF values) in the absence of common grid models;
 - (c) methodologies for defining minimum capacity target and ensuring non-discrimination between internal and cross-zonal exchanges are not defined in the derogation request (see recitals (115) and (117) respectively). However, even if these elements were defined, it would still be impossible to monitor them without the necessary data.
- (85) The information about the internal and loop flows on the limiting CNECs were not provided by Svk. This prevented ACER to have a full insight in the potential total loading of limiting CNECs, as aggregated influence of allocated, internal and loop flows.

6.3.3 Calculation of the margin available for cross-zonal trade

6.3.3.1 *Coordination area*

- (86) In order to perform the calculation of the MACZT in line with ACER Recommendation No 01/2019¹⁹, the TSO must first determine the ‘coordination area’, i.e. *‘the set of bidding zone borders within which capacity calculation is fully coordinated for the considered timeframe’*. The scope of the coordination area for the Swedish bidding zone borders was discussed between ACER and Svk during the working meetings. Svk stated that most of the time, the coordination area encompassed, on the Swedish side, all bidding zone borders of SE3: DK1-SE3, FI-SE3, NO1-SE3, SE2-SE3 and SE3-SE4. Svk

¹⁹ Recommendation No 01/2019 of 08 August 2019 on the implementation of the minimum margin available for cross-zonal trade pursuant to Article 16(8) of Regulation (EU) 2019/943, accessible at: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2001-2019.pdf

declared that these bidding zone borders are strongly interdependent and that, most of the time, the same set of CNECs loaded by the East-West flow limits the capacity calculation on all of the above-mentioned bidding zone borders. Svk also declared that the East-West flow congestions have been occurring since March 2021.

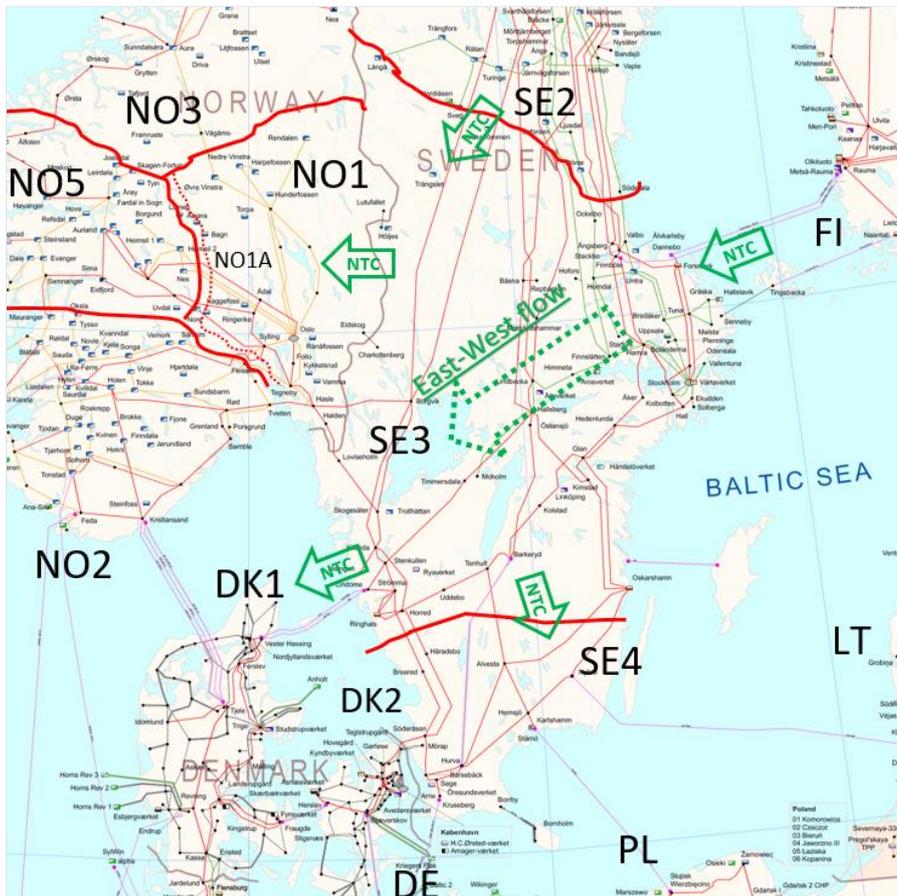


Figure 1: Bidding zone borders included in the coordination area related to the East-West flow (grid map by ENTSO-E).

- (87) Svk also stated that the coordination area may sometimes encompass only a subset of the borders listed above. Nonetheless, in the absence of more precise information and data, and because it is necessary to define a coordination area that is steady over time, ACER assumed a coordinated capacity calculation on all of the SE3 bidding zone borders for the purpose of this calculation.²⁰ ACER notes that a larger coordination area usually leads to higher values of the MACZT. Consequently, the MACZT value ACER calculated based on Svk’s data and the unique coordination area of all SE3 borders is likely overestimated in certain periods. To evaluate the magnitude of this overestimation, ACER has additionally calculated the MACZT values for the coordination area encompassing only the FI-SE3 bidding zone border and the coordination area encompassing only SE3-DK1 bidding zone border. Such calculation

²⁰ It should be noted that the capacity calculation is not yet fully coordinated in the Nordic region. Consequently, this calculation is only relevant for the Swedish TSO.

most likely underestimates the MACZT in certain periods. This is further explained in recital (95).

6.3.3.2 Maximum admissible flow on a CNEC

- (88) During the working meetings, the Nordic TSOs explained that they define two maximum admissible flow values for each CNE. The lower permanent value, i.e. PATL, can be sustained by a CNE for an indefinite period of time. The higher temporary value, i.e. TATL, can be sustained by a CNE for 15 minutes.
- (89) The Nordic TSOs declared that in the Nordic region, capacity calculation is based on TATL, hence providing higher capacities than with PATL. The TSOs aim at reaching the TATL provided that a sufficient redispatching and countertrading reserve is available. However, when reporting the maximum admissible flow ('Fmax') for the 70% requirement monitoring, the Nordic TSOs use PATL. ACER considered PATL values as Fmax for the 70% requirement monitoring. The use of PATL for the MACZT monitoring is also consistent with the approach used in Continental Europe.

6.3.3.3 Consideration of Norway

- (90) During the working meetings, the concerned regulatory authorities and the TSOs confirmed that there are only bilateral agreements on cost sharing between the Norwegian TSO and the other Nordic TSOs, as per the rules applicable to the Nordic CCR. These cost sharing rules are defined in the Nordic System Operation Agreement, and will be subject to changes in 2024 with the implementation of the Nordic ROSC methodology.
- (91) For Norway, which is an EEA EFTA State, ACER initially computed two different MACZT values: with and without Norway. Nonetheless, ACER deems that the level of cooperation between the Norwegian TSO and the other Nordic TSOs, including Svk, is such that it allows to include the relevant bidding zone border with Norway (SE3-NO1²¹) in the calculation and subsequent analyses for the purpose of ACER's decision. ACER notes that while this approach is consistent with the MACZT calculation methodology²², the inclusion of the SE3-NO1 bidding zone border does not substantially change the results and conclusions of the MACZT analyses.

6.3.3.4 MACZT monitoring for NTC-based capacity calculation approach

- (92) ACER Recommendation No 01/2019 sets out the principles for monitoring the MACZT for two types of CCRs, i.e. those applying a flow-based capacity calculation and those applying an NTC-based capacity calculation. In the Nordic region, the TSOs currently apply an NTC-based capacity calculation, which is not fully coordinated at the CCR

²¹ Svk provided no information on other borders of Norway.

²² See Section 4.1 of ACER Recommendation No 01/2019.

level. The implementation of the flow-based capacity calculation in the Nordic CCR is planned for 2023. For this reason, ACER applied the NTC-based approach when calculating the MACZT for the SE3 borders.

- (93) ACER Recommendation No 01/2019 highlights a number of shortcomings in the application of the MACZT monitoring with the NTC-based approach, which are not present in the flow-based approach²³. These mainly relate to the determination of the coordination area and to the fact that only limiting CNECs can be monitored, in contrast to the flow-based approach which allows for monitoring of all CNECs. In the Nordic case, these shortcomings are further exacerbated by the fact that the NTC approach is not coordinated across the CCR. The results of ACER's MACZT calculation in the present case are affected by the above shortcomings.
- (94) With regard to the definition of a coordination area, section 4.2 of ACER Recommendation No 01/2019 states that until the coordinated capacity calculation methodologies are implemented in a CCR, "*coordination areas should be defined on a yearly basis by regulatory authorities and the Agency, in coordination with TSOs, based on the declared level of coordination in capacity calculation among bidding zone borders for the considered timeframe.*" This is the case of Sweden, so the selection of the coordination area is based on an arbitrary decision, and its definition (i.e. the interdependency among certain bidding zone borders) can have different validity through the observed time horizon, i.e. these borders can have different level of interdependence at given CNECs, in different periods of time.
- (95) The calculated MACZT values²⁴ may be overestimated in certain periods as the definition of the unique coordination area (all SE3 bidding zone borders) leads to the MACZT values which are above 100% of Fmax for certain timestamps. This situation is to a large extent the consequence of the need to determine a coordination area relatively stable over time (on a yearly basis, according to ACER Recommendation No 01/2019), but which, in practice, can vary throughout the year. In order to assess the lower band of the MACZT values, ACER also calculated, with the same limiting CNECs, the MACZT values for the FI-SE3 and SE3-DK1 bidding zone borders as if there was no coordination in capacity calculation²⁵.

²³ See caveats provided in the Recommendation: *5.1 Definition of CNECs* (on monitoring the limiting CNECs for NTC-based approach) and *4.2. Scope of MACZT, MCCC and MNCC* (on determination of coordination area among interdependent borders applying the NTC-based approach).

²⁴ As mentioned in section 6.3.3.1, and later demonstrated in the calculation results.

²⁵ According to the MACZT calculation methodology provided in ACER Recommendation No 01/2019, with the unique coordination area of SE3, the NTC values of all oriented borders contribute to the MACZT values on the limiting CNECs to the maximum extent (having only a burdening effect), through the margin from coordinated capacity calculation ('MCCC'). When a single bidding zone border is a coordination area on its own, only its NTC value contributes to the MACZT value, while other borders are contributing through the margin from non-coordinated capacity calculation ('MNCC'), through scheduled exchanges (which can be lower than or equal to the corresponding NTC values); these contributions can have a burdening or relieving effect, depending on the direction of a scheduled exchange.

- (96) ACER followed the principles of ACER Recommendation No 01/2019 to calculate the MACZT for the purpose of this decision. This approach is consistent with ACER's annual report on MACZT monitoring²⁶. Nonetheless, ACER emphasizes the shortcomings of monitoring the MACZT for the NTC-based approach. These are inherent to the NTC-based calculation itself, and lead to less robust monitoring results compared to the flow-based approach. These shortcomings are further exacerbated by non-disclosure of relevant data (see section 6.3.2). For these reasons, conclusions are to be drawn from the MACZT values resulting from both the unique coordination area (being overestimated) and separate non-coordination areas FI-SE3 and SE3-DK1 (being underestimated). In any case, the calculated trends of MACZT provide valid information to analyse the correlation the nuclear power plants unavailability.

6.3.3.5 Results of calculating the MACZT values

- (97) ACER calculated the MACZT based on ACER Recommendation No 01/2019, using the data provided by Svk. ACER performed the calculation considering the shortcomings on Svk's data listed in sections 6.3.2 and 6.3.3.4.
- (98) According to Svk, unavailability of Ringhals and Oskarshamn nuclear power plants is one of the main reasons for failing to meet the 70% requirement. Therefore, in addition to calculating the MACZT and comparing it to the 70% requirement, ACER analysed in parallel the reduction of generation in the two nuclear power plants.
- (99) ACER calculated the MACZT values for the entire period for which Svk provided the data (May to December 2020, 2021 and January to June 2022). During the working meetings, Svk explained that the East-West flow congestion started to occur on a regular basis in March 2021 and that the CNECs provided for the review were not limiting for the period before March 2021. Figure 2 provides the results of the MACZT analysis and the availability of the two concerned nuclear power plants for the period March 2021-June 2022. The provided MACZT values are calculated for:
- (a) single coordination area encompassing all SE3 bidding zone borders (which is the upper estimation of the MACZT values);
 - (b) separate coordination areas of borders FI-SE3 and SE3-DK1 (which is the lower estimation of MACZT values); and
 - (c) the average of (a) and (b)²⁷ as an indicator of possible balanced estimation of MACZT value.

²⁶ More information on ACER's yearly monitoring: <https://www.acer.europa.eu/electricity/market-monitoring-report/cross-zonal-capacity-70-target>

²⁷ The average of the two values under b) has been used here.

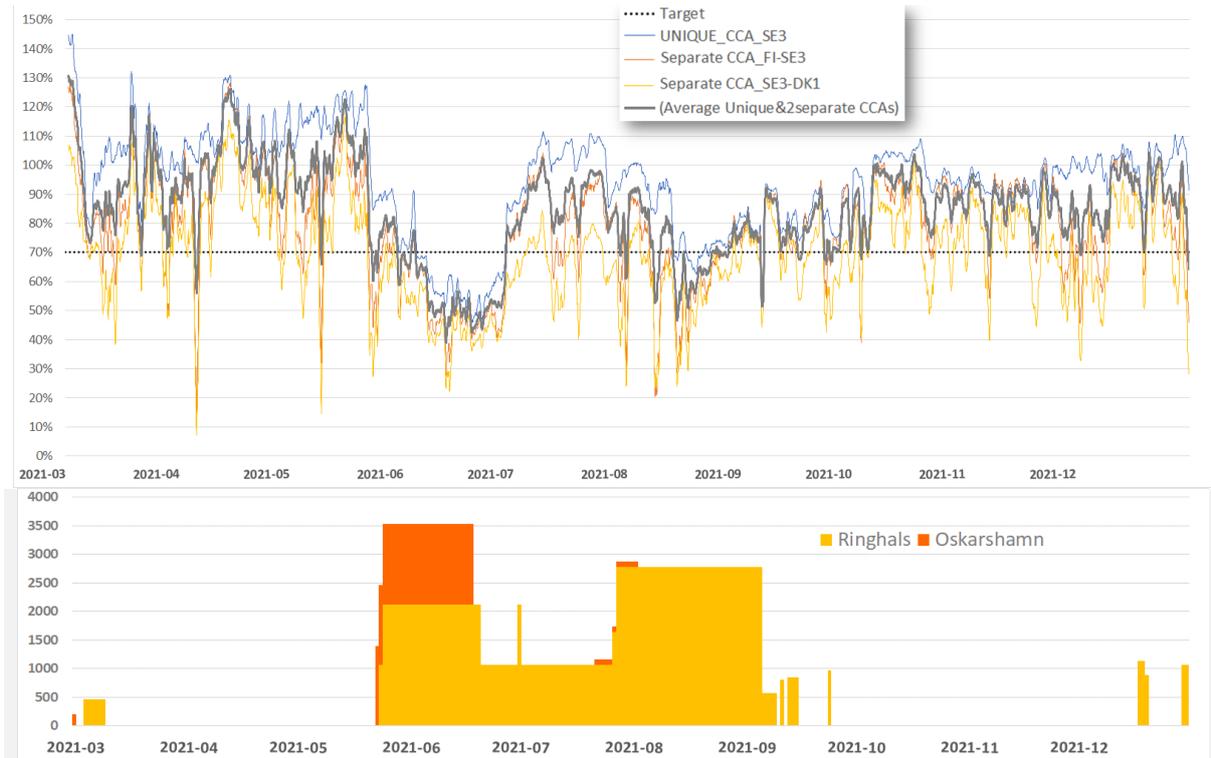


Figure 2 Levels of MACZT [%] (top) and unavailability of production [MW] in Ringhals and Oskarshamn nuclear power plants (bottom): Mar-Dec 2021

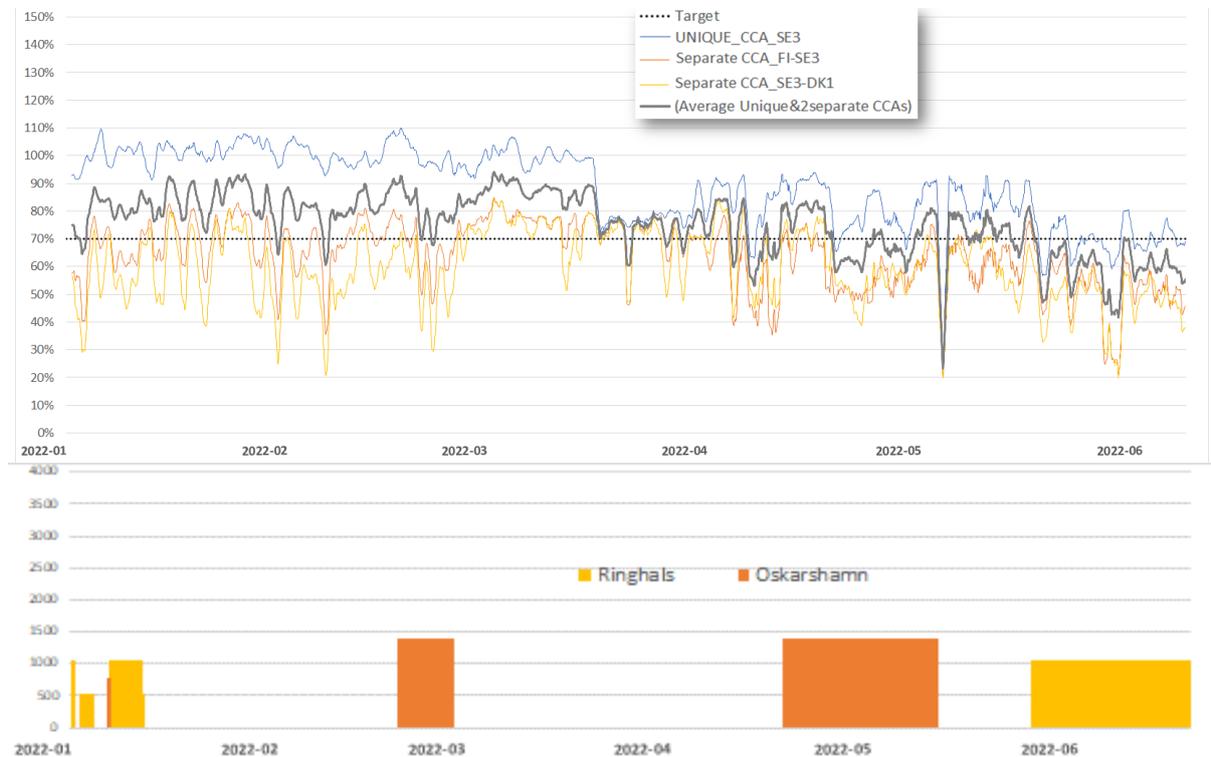


Figure 3 Levels of MACZT [%] (top) and unavailability of production [MW] in Ringhals and Oskarshamn nuclear power plants (bottom): Jan-Jun 2022

- (100) The average of the two approaches to estimate MACZT referred to in point (c) of recital (99) may somewhat decrease the uncertainty error caused by the choice of the coordination area. Nevertheless, such improvement still does not address the uncertainty and shortcomings arising from monitoring of limiting CNECs which is crucial in the estimation of MACZT value in the NTC approach. Therefore, the analysis based on the values presented in Figure 2 and 3 is only indicative. Yet, ACER emphasises that it represents the best possible analysis ACER could perform under the given circumstances and data availability.
- (101) The analysis based on the indicator referred to in point (c) of recital (99), shows that:
- (a) Svk did not reach the 70% requirement in about 20% of hours of the analysed period in 2021 (1 March to 31 December 2021). The average MACZT during this period was 84%. For the hours when the 70% requirement is not met, the average MACZT value was 57%;
 - (b) Svk did not reach the 70% requirement in about 29% of hours of the analysed period in 2022 (1 January to 18 June 2022). The average MACZT during this period was 75%. For the hours when the 70% requirement is not met, the average MACZT value was 58%;
- (102) The main time periods with lower MACZT (30 May to 28 June 2021, 13 August to 23 August 2021, 17 May to 6 June 2022) seem to be partly linked to the unavailability of the Ringhals and Oskarshamn nuclear power plant units.
- (103) Nonetheless, the unavailability of the nuclear power plants cannot be the sole reason for explaining Svk's levels of MACZT, as some temporary decreases in these levels (e.g. in 2022) did not relate to the outages. In addition, it appears from this analysis that any outages below 2000 MW do not notably affect the Svk's levels of MACZT.

6.4 Assessment of compliance with Article 16(9) of Regulation (EU) 2019/943

- (104) Article 16(9) of Regulation (EU) 2019/943 provides that:
- (a) a derogation from the 70% requirement may be granted on foreseeable grounds where necessary to maintain operational security;
 - (b) the extent of a derogation shall be strictly limited to what is necessary to maintain operational security;
 - (c) a derogation shall not relate to the curtailment of capacities already allocated pursuant to Article 16(2) of Regulation (EU) 2019/943;
 - (d) a derogation shall be granted for no more than one-year at a time, or, provided that the extent of the derogation decreases significantly after the first year, up to a maximum of two years; and
 - (e) a derogation shall avoid discrimination between internal and cross-zonal exchanges.

6.4.1 Necessity of the derogation to maintain operational security

- (105) Pursuant to Article 16(9) of Regulation (EU) 2019/943, the relevant regulatory authorities may grant a derogation from the 70% requirement on foreseeable grounds where necessary for maintaining operational security.
- (106) Svk's request fails to explain why a derogation would be necessary for maintaining network security. Svk refers to this condition as follows: *"This means that Svenska kraftnät during 2022 can not exclude situations where capacity allocation not meeting the 70% requirement will be necessary to ensure that the operational security is maintained."*²⁸
- (107) ACER's assessment²⁹ does not confirm the necessity of granting this derogation since it shows that the MACZT value is above 70% for most of the observed period (71% of time in 2021, 80% of time in 2022) and not exceedingly below 70% in the remaining period (57-58%, on average). Such a volume of missing capacity could have been provided, in ACER's view, by redispatching and countertrading while maintaining operational security. This is complemented by the stakeholders' opinions as provided in recital (112), stating that Svk did not undertake sufficient efforts to ensure adequate redispatching and countertrading capacity to meet the 70% requirement.
- (108) In the submitted documents,³⁰ Svk illustrates the lack of upregulation related to the East-West flow in certain periods and considers that *"a shortage of available resources for just a handful of MTUs during a year"* would still necessitate a derogation.
- (109) First of all, ACER fails to understand how the need for relieving the flow on a limiting CNEC can be represented by a constant value³¹ throughout the year. A constant value implies that the level of congestion, and therefore the required counter-flow to relieve it, is constant, which cannot hold true. This question was also raised by EV (see recital (26)(f)). The dedicated discussion on the working meeting held on 8 July 2022 did not provide further explanations of this issue.
- (110) Second of all, ACER does not see the need for a derogation if the shortage of available resources occurs only in a few market time units ('MTUs') throughout the year. As pointed out by BNetzA (recital (59)), Article 16(3) of Regulation (EU) 2019/943 indeed foresees a possibility for the RCCs to set out coordinated actions reducing cross-zonal capacities as a measure of last resort in cases where available remedial actions in a CCR or between CCRs are not sufficient to reach the 70% requirement while respecting operational security limits. ACER notes that the RCCs are required to submit regular reports to the relevant regulatory authorities and to ACER on any such 'last-resort' reduction of cross-zonal capacities, and that they have to assess the incidences and make recommendations, if necessary, on how to avoid such deviations in the future.³²

²⁸ Svk's derogation request (3), p. 10

²⁹ As set out in section 6.3 and summarised in recital (100).

³⁰ Annex A to Svk's derogation request (recital (23) point (d)); Svk's response to ACER's preliminary position (recital (53)).

³¹ It deviates only when Fmax of the transmission line is changeable with ambient temperature, and if e.g. the bus bar limit is more restricting, the value is constant.

³² Third subparagraph of Article 16(3) of Regulation (EU) 2019/943.

- (111) Based on the above and since Svk didn't provide sufficient evidence that it was not possible to ensure necessary levels of redispatching and countertrading capacity, ACER concludes that the necessity condition has not been met.
- (112) The view that the requested derogation is not necessary to maintain operational security is supported by DUR, EV, Energinet and the majority of stakeholders who submitted observations to ACER (eight out of ten). These stakeholders were of the view that Svk did not undertake sufficient efforts to ensure adequate redispatching and countertrading capacity to meet the 70% requirement.
- (113) In response to ACER's preliminary position, Svk asked ACER to specify in which way(s) it has not ensured the necessary levels of redispatching and countertrading capacity, whether there are any limitations to Svk's rights to contract resources, and what would be the specific properties of such contracts. While ACER is not in a position to offer guidance on Svk's contractual rights or specific contractual arrangements, it is to note that Article 16(4) of Regulation (EU) 2019/943 requires that countertrading and redispatching, including cross-border redispatching, is used to maximise available capacities to meet the 70% requirement, subject to compliance with the safety standards of secure network operation.

6.4.2 Extent of the derogation

- (114) Pursuant to Article 16(9) of Regulation (EU) 2019/943, the extent of derogations shall be strictly limited to what is necessary to maintain operational security. As outlined in the previous section, ACER does not see a basis for finding that the derogation is necessary to maintain operational security. A fortiori, one cannot consider the derogation to be strictly limited to what is necessary to maintain operational security.
- (115) Even if the requested derogation was necessary to maintain operational security, Svk does not explain at all how it would make sure that its extent does not go beyond what is necessary for maintaining operational security. In particular, there is no methodology which would describe the calculation of a minimum capacity target that would strictly limit the extent of the derogation to the level necessary to maintain the operational security limit. Such a minimum capacity target would need to be computed taking into account the specific capacity calculation methodology in place for the borders and CNECs for which the derogation is requested. It should also take account of specific network situations related to the derogation request. For example, in the Svk case, it would have been beneficial to provide a mathematical formulation relating the required capacity decrease of a limiting CNEC to the size of unavailable generation in the relevant nuclear power plants during their maintenance, as illustrated in ACER's analysis in section 6.3.3.5. In the absence of the methodology describing the minimum capacity target calculation, ACER also has no basis for finding that the derogation is strictly limited to what is necessary to maintain operational security.

6.4.3 Derogation not related to the curtailment of already allocated capacities pursuant to Article 16(2) of Regulation (EU) 2019/943

- (116) According to Article 16(9) of Regulation (EU) 2019/943, a derogation shall not relate to the curtailment of capacities already allocated pursuant to Article 16(2) of the same

Regulation. Article 16(2) provides for the possibility to use transaction curtailment procedures only in emergency situations, namely where the TSO must act in an expeditious manner and redispatching or countertrading is not possible. Derogations under Article 16(9) are meant to address foreseeable problems for ensuring operational security, a requirement which by definition excludes close to real-time emergency situations. The TSOs are in fact allowed to curtail cross-zonal capacities pursuant to Article 16(2) provided that they comply with the requirements specified in this Article.

6.4.4 Duration of the derogation

- (117) Pursuant to Article 16(9) of Regulation (EU) 2019/943, derogations shall be granted for no more than one-year at a time, or, provided that the extent of the derogation decreases significantly after the first year, up to a maximum of two years.
- (118) Svk's derogation request covers a period of one year, and therefore complies with this requirement.
- (119) In relation to this, DUR raised concerns that Svk requests a derogation for a third year in a row, while, in DUR's view, successive derogations are only allowed up to a maximum period of two years based on Article 16(9) of Regulation (EU) 2019/943. ACER notes that Article 16(9) only specifies the permissible length of one single derogation which should not exceed one year, and exceptionally two years provided that the extent of the derogation decreases significantly after the first year. Article 16(9) does not determine how many single derogations can be granted to a TSO, however, its wording ("*derogations [...] shall be granted for no more than one-year at a time*"; emphasis added) implies that multiple successive derogations are possible. Moreover, in the absence of any explicit restriction on the number of derogations, it is reasonable to assume that a TSO may be granted several successive derogations, which together may have a duration of more than two years, as long as granting these derogations meets the conditions specified in this Article.

6.4.5 Non-discrimination between internal and cross-zonal exchanges

- (120) Pursuant to Article 16(9) of Regulation (EU) 2019/943, derogations shall avoid discrimination between internal and cross-zonal exchanges.
- (121) Svk's derogation request does not include any methodological approach on how to avoid discrimination between internal and cross-zonal exchanges. The only reference to this condition is the following statement in the derogation request: "*The derogation avoids undue discrimination between internal and cross-zonal exchanges as Svenska kraftnät will maintain the available capacity above the CEP 70% requirement for as much of the time as possible.*"
- (122) Based on Svk's statement, ACER understands that Svk aims to ensure non-discrimination between internal and cross-zonal exchanges by employing redispatching and countertrading to the maximum extent to reach the 70% requirement for as much of the time as possible. This approach could in principle be consistent with the requirement of Article 16(4) of Regulation (EU) 2019/943 to use countertrading and redispatching, including cross-border redispatching, to maximise available capacities to reach the 70%

requirement. However, even if this was the intended reading of Svk's statement, Svk has not further specified how their proposed approach to avoid discrimination would apply in practice, or how it would be monitored. For this reason, ACER is not in a position to conclude that the requested derogation would avoid discrimination between internal and cross-zonal exchanges.

7. CONCLUSION

- (123) ACER has assessed Svk's derogation request against the relevant requirements specified in the first subparagraph of Article 16(9) of Regulation (EU) 2019/943.
- (124) ACER's assessment did not confirm that the requested derogation is necessary for maintaining operational security, and Svk has not provided sufficient reasoning or evidence to the contrary. Also, Svk did not explain how it would make sure that the extent of the derogation would not go beyond what is necessary for maintaining operational security.
- (125) Finally, Svk did not sufficiently explain how it would ensure that the requested derogation does not result in discrimination between internal and cross-zonal exchanges.
- (126) Based on the above, ACER has concluded that Svk's request does not meet all the relevant conditions specified in Article 16(9) of Regulation (EU) 2019/943 for granting a derogation and therefore, derogation should not be granted in this case.

HAS ADOPTED THIS DECISION:

Article 1

The derogation pursuant to Article 16(9) of Regulation (EU) 2019/943 for the FI-SE3 and SE3-DK bidding zone borders for year 2022, requested by Svenska kraftnät, is not granted.

Article 2

This Decision is addressed to Svenska kraftnät.

Done at Ljubljana, on 26 October 2022.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

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 ACER 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.