

**DECISION No 28/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 18 November 2020

**on the request of the regulatory authorities of Continental Europe
Synchronous Area to extend the period for reaching an agreement on the
proposal for additional properties for frequency containment reserves**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 5(3) and Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation, and in particular, Article 154(2) thereof,

Having regard to the outcome of the consultation with ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 12 November 2020, delivered pursuant to Article 22(5) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (the 'SO Regulation') laid down a range of requirements for the purpose of safeguarding operational security, frequency quality and the efficient use of the interconnected system and resources. These requirements include the development and approval of terms and conditions of methodologies of transmission system operators ('TSOs'), including the

¹ OJ L158, 14.6.2019, p. 22.

methodologies, conditions and values included in the synchronous area operational agreements ('SAOA') such as the additional properties of the frequency containment reserves ('FCR') in accordance with Article 154(2).

- (2) Pursuant to point (iii) of Article 6(3)(d) and Article 154(2) of the SO Regulation, TSOs of a synchronous area have the right to specify, in the SAOA, common additional properties of the FCR required to ensure operational security in a synchronous area and submit it to the competent regulatory authorities for approval. Then, those regulatory authorities should reach an agreement and take a decision on the proposal for additional properties of the FCR within six months after the receipt of the proposal by the last regulatory authority, according to Article 6(7) of the SO Regulation. Where the regulatory authorities fail to reach an agreement within the six-month period or upon their joint request, ACER, pursuant to Article 6(8) of the SO Regulation, is called upon to adopt a decision concerning the TSOs' proposal in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision follows from the request of the regulatory authorities of Continental Europe Synchronous Area ('CE regulatory authorities'), namely of Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain, to extend the period for reaching an agreement on the Continental Europe Synchronous Area TSOs' ('CE TSOs') proposal for additional properties for FCR ('Proposal') by three months, pursuant to Article 6(10) of Regulation (EU) 2019/942.

2. PROCEDURE

- (4) In a letter dated 5 October 2020 and received by ACER on 6 October 2020, ARERA submitted, on behalf of all CE regulatory authorities, a joint request to grant a three-month extension, according to Article 6(10) of Regulation (EU) 2019/942, thereby postponing the deadline for the regulatory authorities' decision-making on the Proposal to 24 January 2021.
- (5) According to this letter, all CE regulatory authorities received from all CE TSOs the Proposal between December 2019 and April 2020. The last regulatory authority received the Proposal on 24 April 2020.
- (6) In support of the request for extension, the letter explains the delays in the approval of the Proposal:
 - (a) *'The [Continental Europe] SAOA's terms & conditions and methodologies should have been submitted originally within 12 months after the entry into force of the SOGL (i.e. by 14 September 2018). Nonetheless, the initial package submitted by CE TSOs did not include the FCR additional properties proposal, since the CE TSOs had not been able to reach an agreement by the required qualified majority on that topic. The last CE NRA received the original CE SAOA package on 2 October 2018. All CE RAs agreed on 31 March 2019 to approve this package. The national decisions followed in the subsequent months.'*

(b) *On 28 January 2019, the CE TSOs reached an agreement on the FCR additional properties proposal and submitted it to their concerned CE NRAs in accordance with Article 6(3)(d)(iii) of SOGL in the subsequent months. This submission was not considered legally sound by CE NRAs, since:*

- *the FCR additional properties proposal was mentioned in the first edition of the Continental Europe Synchronous Area Framework Agreement (hereinafter referred to as: CE SAFA) that includes the provisions of CE SAOA; this proposal was listed in the A-section with the statement “to be included”;*
- *the FCR additional properties proposal was submitted after the original deadline of 14 September 2018 – and also well ahead of the final approval of the CE SAOA package.*

(c) *For these reasons, CE NRAs asked CE TSOs to resubmit the FCR additional properties proposal, clearly stating that this submission shall be intended as an amendment to the CE SAOA original package included in the CE SAFA.’*

(7) *The letter also explains that ‘CE NRAs have been working for months with CE TSOs in order to improve the quality of the FCR additional properties proposal: a number of amendments have been included in the text by CE NRAs in accordance with Article 5(6) of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast)’ and that ‘[d]ue to the technical complexity of the matter and the need of regular interaction with TSOs in order to check the effectiveness of the proposed amendments, the final document was finalized at working level only in late September 2020.’*

(8) *Given the timing issues described in the previous paragraphs, CE regulatory authorities state in their letter that, ‘[t]heoretically CE NRAs would be on time to adopt a decision by the 24th October 2020, nonetheless some NRAs have announced that, according to their national regulatory framework, they need to run a public consultation at national level on the final amended text’ and that ‘[t]hese consultations are expected to be run in October 2020, thus preventing the CE NRAs to adopt a decision on time’. Therefore, the CE regulatory authorities unanimously agreed to jointly request ACER to provide a three months extension on the basis of Article 6(10) of Regulation (EU) 2019/942.*

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

(9) *According to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942, all regulatory authorities of the region concerned shall unanimously agree on proposals for terms and condition or methodologies for the implementation of those network codes or guidelines that were adopted before 4 July 2019 and, where no unanimous agreement has been reached, shall refer the relevant proposal to ACER for*

approval in accordance with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

- (10) According to point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, ACER shall decide on regulatory issues having effects on cross-border trade or cross-border system security, which require a joint decision by at least two regulatory authorities, where such competences have been conferred on the regulatory authorities under network codes and guidelines adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines and where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from the referral of the case to the last of those regulatory authorities. According to the third subparagraph of Article 6(10) of Regulation (EU) 2019/942, the competent national regulatory authorities may jointly request that the six-month period is extended by a period of up to six months.
- (11) According to Article 6(3)(d)(iii) of the SO Regulation (which has been adopted as a guideline before 4 July 2019), the proposal for additional properties of the FCR pursuant to Article 154(2) of the same Regulation shall be subject to approval by all regulatory authorities of the concerned region.
- (12) According to Article 6(7) of the SO Regulation, where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order to reach an agreement, and they shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraph (3) of the same Article within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (13) According to Article 6(8) of the SO Regulation, where the regulatory authorities have not been able to reach an agreement within the six-month period, ACER shall adopt a decision concerning the submitted proposal for terms and conditions or methodologies within six months, in accordance with Article 6(10) of Regulation (EU) 2019/942.

3.2. Admissibility

- (14) Article 5(3) in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Article 6(7) and (8) of the SO Regulation require the concerned regulatory authorities to take the decision and to reach an agreement on the Proposal within six months from the receipt of the submission, but does not explicitly provide for the possibility to extend that period.
- (15) Those provisions do not explicitly provide for the possibility to extend the six-month period. However, they do condition ACER's competence on the expiry of the six-month period referred to in point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

- (16) Therefore, the transfer of the decision-making competence from the regulatory authorities to ACER under Article 5(3) of Regulation (EU) 2019/942 and Article 6(8) of the SO Regulation may also be subject to an extension of the regulatory authorities' deadline to reach an agreement, in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (17) The third subparagraph of Article 6(10) of Regulation (EU) 2019/942 allows for an extension of the prescribed period within which the competent regulatory authorities have to reach an agreement. The competent regulatory authorities should submit the respective request before the end of the period for reaching an agreement. The maximum period of an extension is six months.
- (18) The present request for extension relates to a proposal for additional properties for FCR, which was submitted by all CE TSOs in accordance with Article 154(2) of the SO Regulation to all CE regulatory authorities (Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain). The requesting regulatory authorities of those countries are therefore competent to decide on the Proposal according to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942 and Article 6(3)(d)(iii) of the SO Regulation. Accordingly, they are also the competent regulatory authorities that may request an extension of the six-month period for reaching an agreement under Article 5(3) and Article 6(10) of Regulation (EU) 2019/942 and Article 6(7) and (8) of the SO Regulation.
- (19) Since the last competent regulatory authority received the Proposal on 24 April 2020, the competent regulatory authorities had to decide on it, in accordance with Article 5(3) and Article 6(10) of Regulation (EU) 2019/942 and Article 6(7) and (8) of the SO Regulation, by 24 October 2020. The request for extension was received by ACER on 6 October 2020. Thus, it was received before the expiry of the six-month deadline on 24 October 2020.
- (20) In their request, the competent regulatory authorities ask for an extension of three months, i.e. to 24 January 2021. As such, the requested extension does not exceed the maximum limit of six months as provided for in Article 6(10) of Regulation (EU) 2019/942.
- (21) Therefore, ACER considers the request for extension as admissible.

3.3. Substance

- (22) Article 6(10) of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (23) The requesting regulatory authorities consider the extension justified on the ground that they need to allow for the regulatory authorities that are required under their national framework to conduct a public consultation at national level on the text of the Proposal.

- (24) ACER understands from this justification that some regulatory authorities cannot adopt a decision unless they have conducted a public consultation at national level on the text of the Proposal and that they would not be able to take their decisions by 24 October 2020 if conducting a public consultation.
- (25) ACER agrees with CE regulatory authorities that the requested extension of three months is justified to enable regulatory authorities to comply with the requirement under their national framework to conduct a public consultation at national level on the text of the Proposal.
- (26) Furthermore, ACER cannot detect any inappropriate delays that the requested extension would cause.
- (27) Therefore, ACER considers an extension until 24 January 2021 justified.

4. CONCLUSION

- (28) For the above reasons, ACER accepts the request for an extension submitted by CE regulatory authorities and extends the period for those regulatory authorities to reach an agreement on the Proposal until 24 January 2021,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Continental Europe Synchronous Area (Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain) shall reach an agreement on the proposal for the additional properties for FCR, is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by three months, until 24 January 2021.

Article 2

This Decision is addressed to:

Energie-Control Austria (Austria)
Commission de Régulation de l'Électricité et du Gaz (Belgium)
комисия за енергийно и водно регулиране (Bulgaria)
Hrvatska energetska regulatorna agencija (Croatia)
Energetický regulační úřad (Czechia)
Forsyningstilsynet (Denmark)
Commission de régulation de l'énergie (France)
Bundesnetzagentur (Germany)
Ρυθμιστική Αρχή Ενέργειας (Greece)
Magyar Energetikai És Közmű-Szabályozási Hivatal (Hungary)
Autorità di Regolazione per Energia Reti e Ambiente (Italy)

Institut Luxembourgeois de Régulation (Luxembourg)
Autoriteit Consument & Markt (the Netherlands)
Urząd Regulacji Energetyki (Poland)
Entidade Reguladora dos Serviços Energéticos (Portugal)
Autoritatea Națională de Reglementare în Domeniul Energie (Romania)
Úrad pre reguláciu siet'ových odvetví (Slovakia)
Agencija za Energijo (Slovenia)
La Comisión Nacional de los Mercados y la Competencia (Spain)

Done at Ljubljana, on 18 November 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressees may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.