

DECISION No 10/2024
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 23 July 2024

**on the request of the regulatory authorities of the Continental Europe
Synchronous Area to extend the period for reaching an agreement on the
proposal for a probabilistic dimensioning approach 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 153(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 17 July 2024, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Pursuant to Article 6(3)(d)(ii) and Article 153(2) of Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (the 'SO Regulation'), transmission system operators ('TSOs') shall have the right to define a probabilistic dimensioning approach for frequency containment reserves ('FCR'), taking into account the pattern of load, generation and

¹ OJ L158, 14.6.2019, p. 22.

inertia, including synthetic inertia as well as the available means to deploy minimum inertia in real-time with the aim of reducing the probability of insufficient FCR to below or equal to once in 20 years.

- (2) In accordance with Article 6(7) of the SO Regulation, the regulatory authorities should reach an agreement and take a decision on the proposal for the dimensioning rules for FCR in accordance with Article 153 of the SO Regulation including the proposal for a probabilistic dimensioning approach, within six months after the receipt of the proposal by the last regulatory authority. Where the regulatory authorities fail to reach an agreement within the six-month period, ACER, 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. According to Article 7(4) of the SO Regulation, this procedural framework also applies to proposals for amendment to the dimensioning rules for FCR in accordance with Article 153 of the SO Regulation.
- (3) The present Decision follows from the request of the regulatory authorities of Continental Europe Synchronous Area ('CE SA'), namely of Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain, to extend the period for reaching an agreement on the Continental Europe Synchronous Area TSOs' proposal for the amendment of FCR dimensioning rules by including a probabilistic approach (the 'Proposal') by six months, pursuant to the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.

2. PROCEDURE

- (4) By letter dated 22 May 2024, ARERA, on behalf of all CE SA regulatory authorities, submitted to ACER a joint request to grant a six-month extension (the 'Letter'), according to the third subparagraph of Article 6(10) of Regulation (EU) 2019/942, to reach an agreement in accordance with Article 6(7) of the SO Regulation.
- (5) According to the Letter, the CE SA TSOs finalised the Proposal in late 2023, which was received by the last regulatory authority on 17 January 2024.
- (6) In support of the request for extension, the Letter put forward in particular the following reasons:
 - (a) *'The CE TSOs submitted the first version of the FCR dimensioning rules in late 2018 determining a capacity for FCR equal to the reference incident (3000 MW in positive and negative direction) pursuant to Article 153(2)(b)(i) of the SOGL as part of the Synchronous Area Operational Agreement package developed pursuant to Article 118(1) of the SO GL. On 31 March 2019 the CE NRAs reached a unanimous agreement to approve the package including the FCR dimensioning. The CE NRAs have been also assessing the proposal for the minimum delivery time period for limited energy reservoirs (hereinafter referred to as: T_{min} LER), developed by the CE TSOs according to Article 156(10) of the SO GL. Unfortunately, despite a multiple-year discussion, this proposal has not been*

approved, yet. In particular, in March 2023, the CE TSOs failed in accommodating a request for amendment submitted by the CE NRAs. Consequently, pursuant to Article 5(9) of the SOGL, the latter identified some appropriate steps in order to have a new proposal resubmitted by 31 December 2024.

As a first step, the CE NRAs requested the CE TSOs to finalize the amendment of FCR dimensioning rules by including a probabilistic approach as allowed by Article 153(2)(c) of the SO GL and to submit it for approval to the CE NRAs in accordance with Article 7(4) of the SO GL’.

- (b) Further steps would include a proper study on the roots of the long-lasting frequency deviations (the ‘LLFDs’) and on possible mitigation measures to reduce their extent. The outcome of the LLFDs study would be of utmost importance for the FCR dimensioning since the LLFDs’ trend is one of the statistical inputs to be considered in the FCR probabilistic approach. This study was finalised only at the end of March 2024 and the main content was discussed with the stakeholders in early May 2024. However, before adopting a decision on the FCR dimensioning proposal, a further check by the CE SA regulatory authorities would be needed. Moreover, according to the Letter, the FCR dimensioning proposal would lack mathematical details regarding how to treat the different inputs and the simulation model used for determining the FCR needs. In addition, appropriate criteria for determining the FCR initial obligations for each individual TSO should be determined.
- (c) *‘All the abovementioned topics require a certain level of interaction with the TSOs in order to improve the overall understandability of the methodology and to check the effectiveness of the FCR initial obligation criteria in promoting a proper mitigation measure of the LLFD. This interaction cannot leave aside the new run of the cost benefit analysis pursuant to Article 156(11) of the SO GL, aimed at identifying the minimum T_{min} LER. In particular, FCR probabilistic dimensioning and the cost benefit analysis for the T_{min} LER are strictly interrelated. These two deliverables use the historical trends in frequency deviations and the data on historical outages as their input. Thus, such input dataset should coincide in order to ensure the consistency of the results. Unfortunately, the preliminary results of the new run of the cost benefit analysis, along with detailed information on the relevant datasets, will be available no earlier than September 2024’.*
- (7) Therefore, the CE SA regulatory authorities unanimously agreed to jointly request ACER to provide a six-month extension on the basis of Article 6(10) of Regulation (EU) 2019/942.
- (8) On 18 June 2024, a proposed draft of the present decision was submitted to ACER’s Electricity Working Group for consultation in accordance with Article 24(2) of Regulation (EU) 2019/942.

- (9) On 28 June 2024 ACER's Electricity Working Group endorsed the draft ACER Decision on the request of all CE SA regulatory authorities to extend the period for reaching an agreement on dimensioning rules for FCR.
- (10) On 17 July 2024 ACER's Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

- (11) According to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942, all regulatory authorities of the region concerned shall unanimously agree on proposals for terms and condition or methodologies for the implementation of those network codes or guidelines that were adopted before 4 July 2019 and, where no unanimous agreement has been reached, shall refer the relevant proposal to ACER for approval in accordance with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (12) According to point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, ACER shall decide on regulatory issues having effects on cross-border trade or cross-border system security, which require a joint decision by at least two regulatory authorities, where such competences have been conferred on the regulatory authorities under network codes and guidelines adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines and where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from the referral of the case to the last of those regulatory authorities.
- (13) 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.
- (14) According to Article 6(3)(d)(ii) of the SO Regulation (which has been adopted as a guideline before 4 July 2019), the regulatory authorities of the concerned synchronous area shall approve the TSOs' proposal for the dimensioning rules for FCR pursuant to Article 153 of the same Regulation and for amendments thereof.
- (15) 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.

- (16) According to Article 6(8) of the SO Regulation, where the regulatory authorities have not been able to reach an agreement within the six-month period, ACER shall adopt a decision concerning the submitted proposal for terms and conditions or methodologies within six months, in accordance with Article 5(3) and the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

3.2. Admissibility

- (17) Article 5(3) in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Articles 6(3)(d)(ii), 6(7) and 7(4) 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.
- (18) Although the possibility to extend this six-month period is not explicitly indicated in the SO Regulation, ACER's competence under Article 6(8) and 7(4) of the SO Regulation to take a decision in accordance with Article 6(10) of Regulation (EU) 2019/942 is contingent also upon the expiry of the six-month period referred to in point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (19) Therefore, the transfer of the decision-making competence from the regulatory authorities to ACER under Articles 6(3)(d)(ii), 6(7) and 7(4) of the SO Regulation may also be subject to an extension of the regulatory authorities' deadline to reach an agreement, in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (20) For an extension of this six-month period, the joint request by the competent regulatory authorities should be submitted before the end of the period for reaching an agreement, and the maximum requested extension should not exceed the period of six months in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (21) The Proposal to which the request for extension is related falls under the competence of the requesting regulatory authorities pursuant to Article 6(3)(d)(ii), 6(7) and 7(4) 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 point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Articles 6(7), 6(8) and 7(4) of the SO Regulation.
- (22) Since the last competent regulatory authority received the Proposal on 17 January 2024, the competent regulatory authorities had to agree on it by 17 July 2024, in accordance with Articles 6(7) and 7(4) of the SO Regulation and point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942. The request for extension was received by ACER on 22 May 2024, hence before the expiry of the six-month deadline on 17 July 2024.
- (23) In their request, the competent regulatory authorities ask for an extension of six months, i.e. to 17 January 2025. As such, the requested extension does not exceed the

maximum limit of six months as provided for in the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.

(24) In light of the above, ACER considers the request for extension as admissible.

3.3. Substance

(25) Article 6(10) of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.

(26) The requesting regulatory authorities consider the extension justified on the ground that the extension will allow them to acquire the studies necessary to fully assess the Proposal.

(27) In that regard, ACER understands from the justification of the requesting regulatory authorities that they would not be able to reach an agreement and to adopt a decision on the Proposal unless they have:

- (i) the outcome of the LLFDs study which is of utmost importance for the FCR dimensioning, since the LLFDs' trend is one of the statistical inputs to be considered in the FCR probabilistic approach;
- (ii) mathematical details in the Proposal regarding how to treat the different inputs and the simulation model used for determining the FCR needs;
- (iii) appropriate criteria for determining the FCR initial obligations for each individual TSO;
- (iv) verified consistency of the results of the cost benefit analysis for the T_{min} LER proposal and FCR probabilistic dimensioning, as these two are strictly interrelated.

(28) ACER considers that continuing and completing the regulatory authorities' ongoing assessment can contribute to the efficient conclusion of the pending approval proceedings. In ACER's view, this continuation and completion would not unduly impact the fulfilment of the objective of the SO Regulation. Under those circumstances, ACER deems it reasonable to enable the regulatory authorities to conclude the pending approval proceedings.

(29) Furthermore, ACER considers that the request for extension for a total of six months is proportionate in light of the activities to be performed by the competent regulatory authorities to adopt a decision on the Proposal in accordance with Article 6(7) of the SO Regulation.

(30) Therefore, ACER considers an extension until 17 January 2025 justified.

4. CONCLUSION

- (31) 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 17 January 2025,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Continental Europe Synchronous Area i.e. 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 amendment of FCR dimensioning rules by including a probabilistic approach is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 17 January 2025.

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 Αποβλήτων, Ενέργειας & Υδάτων (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 sieťových odvetví (Slovakia)
Agencija za Energijo (Slovenia)
La Comisión Nacional de los Mercados y la Competencia (Spain)

Done at Ljubljana, on 23 July 2024.

- 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.