

**DECISION No 36/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 22 December 2020

**on technical specifications
for cross-border participation in capacity mechanisms**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

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

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators ('ACER')¹, and, in particular, Article 9(1)(b) 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 26(11) and Article 27(3) thereof,

Having regard to the outcome of the consultation with the European Network of Transmission System Operators for Electricity ('ENTSO-E'),

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

Having regard to the favourable opinion of ACER's Board of Regulators ('BoR') of 16 December 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

¹ [OJ L 158, 14.6.2019, p. 22.](#)

² [OJ L 158, 14.6.2019, p. 54.](#)

1. INTRODUCTION

- (1) Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity (the ‘Electricity Regulation’) establishes rules to ensure the functioning of the internal market for electricity. These rules include the requirement on Member States to open their capacity mechanisms (‘CMs’) to direct cross-border participation of capacity providers located in other Member States. This requirement also applies to strategic reserves, where technically feasible.
- (2) Article 26 of the Electricity Regulation provides the legal framework for enabling capacity providers located in one EU Member State to participate in CMs of other Member States, and mandates ENTSO-E to further develop certain elements of this framework. These elements are listed in Article 26(11) of the Electricity Regulation, and consist of methodologies, common rules and terms of operation, hereinafter collectively referred to as ‘technical specifications’.
- (3) Article 26(11) of the Electricity Regulation requires ENTSO-E to submit their proposed technical specifications to ACER by 5 July 2020.
- (4) Pursuant to Article 27(3) of the Electricity Regulation, within three months of the date of receipt of the proposed technical specifications, ACER shall either approve or amend them. In the latter case, ACER shall consult ENTSO-E before approving the amended proposals.
- (5) This Decision is issued following a review and amendment by ACER of the technical specifications submitted by ENTSO-E, and includes the following annexes:
 - Annex I sets out the technical specifications as amended and approved by ACER.
 - Annex II provides the results of ACER’s public consultation, for information.
 - Annex III provides ENTSO-E’s written comments on ACER’s preliminary position, for information.
- (6) Where relevant, this Decision differentiates between the version of the technical specifications, as proposed by ENTSO-E and submitted to ACER for approval (henceforth referred to as the ‘proposed technical specifications’)³ and the final, amended version of the technical specifications, as approved by ACER (referred to as

³ ENTSO-E, Cross-border participation in capacity mechanisms. Proposed methodologies, common rules and terms of operation in accordance with Article 26 of Regulation (EU) 2019/943 of the European Parliament and of Council of 5 June 2019 on the internal market for electricity (recast), 3 July 2020 (‘the proposed technical specifications’) available at

https://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_E_12.aspx

‘Annex I’).⁴ This differentiation is particularly relevant for section 6.5, which describes ACER’s amendments of the technical specifications.⁵

2. PROCEDURE

- (7) On 3 July 2020, ENTSO-E submitted to ACER the proposed technical specifications developed pursuant to Article 26(11) of the Electricity Regulation.
- (8) Between 8 July and 9 August 2020, ACER held a public consultation⁶ on the proposed technical specifications, seeking views from all interested parties. Annex II provides a summary of comments received along with ACER’s responses to these comments.⁷
- (9) Between 3 July and 23 October 2020, ACER engaged in extensive discussions with ENTSO-E, Transmission System Operators (‘TSOs’), regulatory authorities, Member States, the European Commission and other relevant stakeholders. These discussions involved numerous conference calls and electronic exchange of documents, allowing ACER to gather information and form its preliminary position on the proposed technical specifications. In particular, these discussions focused on:
 - (a) the legal framework for cross-border participation provided in the Electricity Regulation in order to ensure a common understanding among all stakeholders as to the relevant legal requirements;
 - (b) the existing practices related to cross-border participation in various types of CMs, thereby examining whether the proposed technical specifications are practical and promote workable arrangements, enabling their timely implementation across the EU;
 - (c) the feedback received in the public consultation, which was individually discussed with the relevant stakeholders where required;
 - (d) the assessment of the proposed technical specifications against the legal framework, current practices and stakeholders’ feedback in order to suggest amendments, where necessary; and

⁴ Given its extensive editorial amendments, ACER decided not to publish a ‘track-change’ version of the proposed technical specifications, as it would not assist the stakeholders to identify the relevant substantive amendments.

⁵ References to sections and paragraphs should be read as cross-references to other sections and paragraphs of this Decision, unless explicitly stated otherwise. References to annexes should be read as references to the annexes of this Decision, unless explicitly stated otherwise.

⁶ PC/2020/E/12: https://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_E_12.aspx

⁷ This is a summary and not to be considered a complete representation of the comments received. All non-confidential responses are published on ACER’s consultation page (see footnote 6). Any comments which are not directly related to cross-border participation (e.g. relating to setting of the reliability standard) are beyond the scope of this Decision and not considered here.

- (e) reaching a common understanding and working out compromise solutions for certain aspects of the proposed technical specifications.
- (10) Between 23 October and 6 November 2020, ACER consulted ENTSO-E and TSOs, Member States (through the Electricity Coordination Group) and other relevant stakeholders⁸ on its preliminary position, by sharing an updated version of the proposed technical specifications setting out its suggested amendments. The consulted parties provided their views by 6 November 2020. These views are summarised in section 5.2.
- (11) Between 6 and 20 November 2020, ACER considered all the written comments received on its preliminary position, and further discussed them with the individual stakeholders, where necessary. In particular, upon request from ENTSO-E, ACER held an oral hearing with ENTSO-E on 10 November 2020. Following this process, ACER introduced further amendments to the proposed technical specifications to take some issues raised by the consulted parties into account.
- (12) The AEWG was consulted between 20 and 27 November 2020, and provided its advice on 27 November 2020 (see section 5.3). Ofgem was consulted outside the AEWG framework.
- (13) On 16 December 2020, ACER's BoR issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSED TECHNICAL SPECIFICATIONS

- (14) Pursuant to Article 9(1)(b) of Regulation (EU) 2019/942, Article 26(11) and Article 27(3) of the Electricity Regulation, ENTSO-E shall submit the proposed technical specifications to ACER, and ACER shall approve them within three months of the date of their receipt, amending them where necessary.
- (15) On 3 July 2020, ENTSO-E submitted the proposed technical specifications for ACER's approval. ACER is competent to decide on the proposed technical specifications based on Article 9(1)(b) of Regulation (EU) 2019/942 read in conjunction with Article 26(11) and Article 27(3) of the Electricity Regulation.

⁸ The consulted parties included interconnector owners and/or developers and CM operators.

4. SUMMARY OF THE PROPOSED TECHNICAL SPECIFICATIONS

- (16) The proposed technical specifications submitted to ACER on 3 July 2020 included a ‘whereas’ section and the following titles:

Title 1	setting out the general provisions; and
Title 2	consisting of the elements required by Article 26(11) of the Electricity Regulation:
Section 1	methodology for calculating the maximum entry capacity for cross-border participation;
Section 2	methodology for sharing the revenues arising through the allocation of entry capacity;
Section 3	common rules for carrying out availability checks;
Section 4	common rules for determining when a non-availability payment is due;
Section 5	terms of operation of the registry of eligible capacity providers;
Section 6	common rules for identifying foreign capacity eligible to participate in a given CM.

- (17) The proposed technical specifications were accompanied by an explanatory document⁹ and the results from ENTSO-E’s public consultation¹⁰, submitted for information.

5. OBSERVATIONS RECEIVED BY ACER

5.1. Public consultation on the proposed technical specifications

- (18) Responses to ACER’s public consultation¹¹ are summarised in Annex II to this Decision.

⁹ ENTSO-E, Explanatory Document, ENTSO-E proposed methodologies, common rules and terms of reference related to cross-border participation in capacity mechanisms, 3 July 2020, ACER’s consultation page (see footnote 6).

¹⁰ ENTSO-E, Public consultation on draft methodologies and common rules for cross-border participation in capacity mechanisms, Response to public consultation comments received during the consultation held from 31 January to 13 March 2020, 3 July 2020, available on ACER’s consultation page (see footnote 6).

¹¹ See footnote 6.

5.2. Consultation on ACER's preliminary position

- (19) This section summarises the views of ENTSO-E, Member States and other relevant stakeholders consulted on ACER's preliminary position.¹²

5.2.1. Feedback from ENTSO-E

- (20) The following paragraphs summarise the key concerns raised by ENTSO-E during the oral hearing and in their written response to ACER's preliminary position. ENTSO-E's written response is provided, for information, in Annex III.
- (21) Regarding the calculation of the maximum entry capacity, ENTSO-E raised concerns that ACER's proposed approach to consider the contribution from non-neighbouring Member States may conflict with a Member State's choice (pursuant to Article 26(2) of the Electricity Regulation) to limit cross-border participation to directly-connected Member States. The related amendments and ACER's position are discussed in section 6.5.1.3.
- (22) Regarding revenue-sharing, ENTSO-E raised concerns that using the congestion income sharing key may not reflect the actual scarcity of the interconnection as a limiting factor for adequacy. ENTSO-E also outlined that the revenue-sharing methodology should only apply in case of direct cross-border participation of physical assets capable of providing equivalent technical performance to domestic capacities. The related amendments and ACER's position are discussed in section 6.5.1.4.
- (23) Regarding availability and eligibility checks, ENTSO-E raised concerns that ACER's proposal to introduce binding provisions may limit Member States' ability to design the most suitable CMs to solve their respective resource adequacy concerns. The related amendments and ACER's position are discussed in sections 6.5.1.5 and 6.5.1.8.
- (24) Regarding cost coverage, ENTSO-E responded that this aspect is key to facilitate the implementation of cross-border participation and was concerned that ACER deleted the proposed related provisions. ACER's position on cost coverage is discussed in paragraph (59).
- (25) Regarding the registry, ENTSO-E was concerned that ACER proposed to include data related to availability commitments in the registry's data. ENTSO-E was of the view that the registry should not include operational data, and that this requirement would not only significantly increase the cost of operating the registry, but also might not be feasible in practice. ENTSO-E stated that adding this requirement would breach the

¹² This is a summary and not to be considered a complete representation of the comments received. Any comments which are not directly related to cross-border participation (e.g. relating to setting of the reliability standard) are beyond the scope of this Decision and not considered here.

principle of proportionality pursuant to Article 5 of TFEU. The relevant amendments are set out in section 6.5.1.7.

5.2.2. Feedback from the Member States

- (26) Three Member States provided comments on ACER's preliminary position.
- (27) One Member State noted the lack of clarity regarding the application of the technical specifications to strategic reserves. The amendments addressing this concern are discussed in paragraph (60).
- (28) Another Member State commented on the calculation of maximum entry capacity and revenue-sharing.
- (29) Regarding the calculation of maximum entry capacity, the Member State made reference to Article 26, paragraphs (2) and (7), of the Electricity Regulation and noted that a differentiated approach where a country without direct network connection is taken into account explicitly (or not) goes beyond the subsidiarity principle and creates a market distortion. This Member State also mentioned that only Member States with direct network connection should be considered in the calculation of the maximum entry capacity. These concerns are further discussed in section 6.5.1.3.
- (30) Regarding revenue-sharing, the Member State raised concerns that a symmetrical sharing (as a result of the application of congestion income sharing key) may imply physical congestion of the infrastructure which may not be scarce. This Member State suggested to re-evaluate the approach based on congestion income sharing key and to reflect the actual scarcity of the interconnection as limiting factor for adequacy. Revenue-sharing is discussed in section 6.5.1.4.
- (31) Finally, one Member State highlighted the importance of a provision on TSO cost coverage for a successful implementation of cross-border participation, and suggested a cost coverage approach which differentiates between the implementation costs (approved by the relevant regulatory authorities and borne by the Member State of the CM) and the costs incurred by the foreign TSO (shared between the two Member States based on a mutual sharing agreement). Cost coverage is further discussed in paragraph (59).

5.2.3. Feedback from other consulted parties

- (32) The majority of other consulted parties agreed with the revenue-sharing approach based on congestion income sharing key, and did not support any further adjustments of the sharing key based on simultaneous system stress or technical equivalence.
- (33) Some parties echoed ENTSO-E's concerns regarding cost coverage and the scope of data provided in the registry (see paragraphs (24) and (25)).

5.3. Consultation of the AEWG

- (34) The AEWG provided its advice on 27 November 2020, broadly endorsing the draft ACER Decision with Annexes. The AEWG suggested to further investigate how to consider reliability options within the technical specifications. Finally, the AEWG supported the approach of close monitoring of cost-sharing, to be followed by a recommendation in case issues are identified.
- (35) Six regulatory authorities submitted specific comments during the consultation phase. These comments related to the calculation of maximum entry capacity, revenue-sharing, cost-sharing and cost recovery. ACER further discussed them bilaterally with the respective regulatory authorities and considered them in finalising the drafts.
- (36) One regulatory authority suggested reflecting potential contributions to adequacy throughout the system operation region when calculating the maximum entry capacities for the CM borders for which cross-border participation in a CM is allowed, thereby aiming to bring the maximum entry capacity closer to the results from the European resource adequacy assessment.
- (37) Two regulatory authorities submitted comments that cost-sharing provisions are essential to enable bilateral TSO agreements and a timely implementation of cross-border participation in CMs. Another regulatory authority noted that a recommendation on cost-sharing could be a compromise approach.

6. ASSESSMENT OF THE PROPOSED TECHNICAL SPECIFICATIONS

6.1. Procedural requirements

- (38) Articles 26(11) and 27(2) of the Electricity Regulation require ENTSO-E to carry out a consultation before submitting the proposed technical specifications to ACER. This consultation shall involve all relevant stakeholders, including regulatory authorities and other national authorities, and its results shall be duly taken into consideration by ENTSO-E.
- (39) The requirements for ENTSO-E's consultations are further specified in Article 31 of the Electricity Regulation. In particular, paragraph (3) of this Article requires ENTSO-E to indicate how observations received during the consultation have been taken into consideration, and provide reasons where they have not been taken into account. In addition, Article 41(2) of the Electricity Regulation requires ENTSO-E to operate in full transparency towards stakeholders and the general public, and publish all relevant documentation on its website.
- (40) Article 26(11) of the Electricity Regulation requires ENTSO-E to submit the proposed technical specification to ACER by 5 July 2020.

6.2. Compliance with procedural requirements

- (41) Between 31 January and 13 March 2020, ENTSO-E held a public consultation¹³ on the draft technical specifications in accordance with Article 26(11) of the Electricity Regulation. The consultation included a stakeholder workshop on 12 February 2020 to further explain the drafts and discuss initial feedback provided by the stakeholders.
- (42) Following the consultation, ENTSO-E compiled all the comments received and provided its response to each comment. This document explained how stakeholders' views have been taken into consideration, and provided reasons where they have not been taken into account.¹⁴
- (43) ENTSO-E submitted the proposed technical specifications to ACER on 3 July 2020, i.e. within the timeframe required by the Electricity Regulation. In addition, ENTSO-E regularly informed and consulted ACER and the regulatory authorities in preparation for the formal submission. This included a workshop for ACER and the regulatory authorities on 4 June 2020.
- (44) Given the above, ACER considers that ENTSO-E fulfilled the procedural requirements of Article 26(11), Article 27(2), Article 31 and Article 41(2) of the Electricity Regulation regarding the consultation of stakeholders, transparency and the submission of the proposed technical specifications to ACER.

6.3. Substantive requirements

- (45) Article 26 of the Electricity Regulation provides the legal framework for direct cross-border participation which must be taken into account in these technical specifications.
- (46) Article 22 of the Electricity Regulation sets out the design principles for CMs, relevant for the assessment of these technical specifications.
- (47) Article 41(2) of the Electricity Regulation requires ENTSO-E and the Regional Coordination Centres ('RCCs') to operate in full transparency towards stakeholders and the general public, and publish all relevant documentation on their respective websites.
- (48) Section 15 of Annex I to the Electricity Regulation further specifies the RCCs' task of calculating the maximum entry capacity; it is therefore also relevant for the assessment of the proposed technical specifications.

¹³ All the relevant documents are available on [ENTSO-E's website](#).

¹⁴ The document is available on [ENTSO-E's website](#).

- (49) In addition, Article 1 and Article 3 of the Electricity Regulation lay down objectives and main principles of electricity market operation which these technical specifications have to adhere to.

6.4. Compliance with substantive requirements

- (50) Having assessed the proposed technical specifications against the relevant legal framework, ACER considers that certain aspects of the ENTSO-E submission are not in line with the substantive requirements of Article 26 and section 15 of Annex I to the Electricity Regulation. Section 6.5.1 explicitly refers to these aspects and explains the substantive amendments which ACER has introduced in order to bring the proposed technical specifications in line with the relevant provisions of Article 26 and section 15 of Annex I to the Electricity Regulation.
- (51) Regarding Article 22 of the Electricity Regulation, ACER considers that the proposed technical specifications might not fully reflect the CM design principles listed therein. Therefore, as outlined in section 6.5.1, certain substantive amendments aim to eliminate potential inconsistencies with these principles. In particular, ACER has clarified that the technical specifications are technology-neutral and require, where possible, equivalent treatment of foreign and domestic capacity providers, thereby preventing potential undue market distortions.
- (52) Furthermore, in the light of ENTSO-E's and the RCCs' transparency obligations imposed by Article 41(2) of the Electricity Regulation, ACER has introduced, where necessary, additional transparency requirements to the proposed technical specifications.
- (53) Lastly, ACER considers that the proposed technical specifications observe the objectives and market principles set out in Article 1 and Article 3 of the Electricity Regulation, in particular in aspects outlined in Recital 11 of Annex I.

6.5. ACER's amendments

- (54) This section outlines ACER's amendments to the proposed technical specifications, taking into account stakeholders' feedback received during the public consultation (see Annex II), comments on ACER's preliminary position provided by the relevant parties (see section 5.2) and AEWG's advice (see section 5.3). Section 6.5.1 outlines the amendments which alter the meaning of the content (substantive amendments). The remaining amendments are considered of editorial nature and briefly discussed in section 6.5.2.

6.5.1. Substantive amendments

6.5.1.1. The "whereas" section

- (55) ACER has replaced Recitals (2), (3) and (25) of the proposed technical specifications with Recital (11) of Annex I. The latter details how these technical specifications

contribute to the objectives of the Electricity Regulation and how they comply with the main principles of the electricity market operation.

- (56) ACER has added Recitals (4) to (10) of Annex I in order to explain the purpose of the technical specifications, their nature, as well as the legal and policy context in which they are adopted. In particular, Recitals (5) to (7) of Annex I acknowledge the role of the relevant actors, the need for cooperation and the importance of bilateral agreements to foster a timely and effective implementation of these technical specifications. Recital (8) of Annex I notes that, while this is not required, certain aspects of these technical specifications may apply to cross-border participation of interconnectors in CMs. The latter is temporarily allowed for the existing CMs, so a harmonised approach may be encouraged where appropriate and applicable. Recital (9) of Annex I emphasises that the calculation of maximum entry capacity builds on the outcome of the European resource adequacy assessment ('ERAA'). Finally, Recital (10) of Annex I provides the rationale for imposing certain transparency requirements on ENTSO-E, TSOs, CM operators and RCCs.
- (57) ACER has deleted Recitals (5) to (24) of the proposed technical specifications which detailed and interpreted the requirements of Article 26 of the Electricity Regulation. In ACER's view, a general reference to Article 26 in Recitals (1) and (2) of Annex I is sufficient and better ensures consistency between this section and the legal basis.

6.5.1.2. General provisions

- (58) ACER has deleted Article 1(j) of the proposed technical specifications referring to the implementation period. The latter is specified in Article 4 of Annex I, and discussed below in paragraph (61).
- (59) ACER has deleted Article 3 of the proposed technical specifications relating to the sharing and recovery of costs incurred by TSOs for the implementation of cross-border participation in CMs. ACER considers that this matter is beyond the scope of the technical specifications, noting the mandate of the regulatory authorities to ensure an effective organisation of cross-border participation, pursuant to Article 26(13) of the Electricity Regulation. However, ACER acknowledges the concerns expressed by ENTSO-E and some regulatory authorities as well as other stakeholders¹⁵ that a lack of agreement on cost-sharing between the relevant TSOs and/or their regulatory authorities might be a barrier to timely implementation of cross-border participation. In line with the AEWG advice described in paragraph (34) and considering the views expressed in paragraph (37), ACER intends to follow this aspect closely and may consider a separate recommendation on the matter, if appropriate.
- (60) ACER has added Article 3(1) of Annex I defining the scope of application of these technical specifications. This Article clarifies that these technical specifications apply

¹⁵ See section 5.2 and 5.3 and Annex II, part 7.

at least to CMs open to direct cross-border participation of foreign capacity providers capable of providing equivalent technical performance pursuant to Article 26 of the Electricity Regulation. Firstly, Article 3(1) of Annex I aims to address concerns expressed by one Member State regarding strategic reserves (see paragraph (27)). These technical specifications apply to strategic reserves only if the latter are open to cross-border participation. However, determining whether it is technically feasible to open strategic reserves to cross-border participation goes beyond the scope of these technical specifications. Secondly, Article 3(1) of Annex I aims to highlight that these technical specifications, or parts thereof, may also apply to CMs which are only open to cross-border participation without technical equivalence between domestic and foreign capacity providers, if this is deemed appropriate by the relevant regulatory authorities.

- (61) ACER has amended Article 4 of the proposed technical specifications, to improve the proposed implementation aspects. In general, ACER acknowledges that the full implementation of these technical specifications relies on the adaptation of the relevant regulatory frameworks. This is reflected in Article 4(1) of Annex I. However, different elements of these specifications might require different implementation timelines, notwithstanding the legal deadline envisaged for the registry of eligible capacities. For example, implementation of Title 2 depends on the establishment of the RCCs and the availability of ERAA results. Article 4 of Annex I, paragraph (2) and (3), reflects this aspect.
- (62) ACER has deleted the last sentence of Article 4 of the proposed technical specifications to remove the prerequisite of the full implementation of the economic viability assessment in ERAA for the implementation of Title 2. Given that Article 6(4)(b) of Annex I allows for a calibration of resource adequacy studies, the RCCs or the TSOs are able to mitigate the impact of a simplified economic viability assessment on the calculation of the maximum entry capacity. Therefore, a full implementation of the economic viability assessment is not necessary for the implementation of Title 2.
- (63) ACER has added Article 4(4) of Annex I, to request ENTSO-E to review these technical specifications after their first application. This requirement ensures that experience and knowledge gained from the implementation of these technical specifications allow to improve cross-border participation in CMs in a timely manner.
- (64) ACER has added Article 4(5) of Annex I, to ensure that cybersecurity risks, which may arise during the implementation of these technical specifications, are properly monitored and mitigated.
- (65) ACER has added Article 4(6) of Annex I, to enable ACER's monitoring tasks required by Regulation (EU) 2019/942.

6.5.1.3. Methodology for calculating the maximum entry capacity

- (66) ACER considers that the proposed methodology for calculating the maximum entry capacity appropriately takes into account the expected availability of interconnection

and the likely concurrence of system stress in the system where the CM is applied and the system in which the foreign capacity is located, as required by Article 26(7) of the Electricity Regulation.

- (67) The proposed methodology specifies the geographic scope of bidding zones for which to calculate the maximum entry capacity. However, in ACER's view, the proposed geographic scope does not meet the requirement of section 15.3 of Annex I to the Electricity Regulation that a calculation is done for each bidding zone border covered by the system operation region. Furthermore, the proposed methodology also specifies a different geographic scope of considered bidding zones in the net transmission capacity and flow-based approaches, without properly justifying this difference. Finally, the proposed methodology would lead to excluding some bidding zones of Member States with direct network connection from cross-border participation in a CM, when such bidding zones are not part of the same capacity calculation region as the bidding zone of the CM. For example, assuming a German CM open to cross-border participation, Sweden has a direct network connection to Germany (SE4 – DE) so capacity mechanism units ('CMUs') located anywhere in Sweden should be allowed to participate in the German CM. The other Swedish bidding zones SE1, SE2 and SE3 are not part of the same capacity calculation region as the SE4 - DE bidding zone border. In this case, the proposed methodology would lead to zero maximum entry capacity from the Swedish bidding zones SE1, SE2 and SE3 into the German CM, thus effectively excluding the Swedish CMUs located in these bidding zones from participating in the German CM.
- (68) The following paragraphs describe how ACER has amended the proposed technical specifications to solve the aforementioned concerns and to improve the robustness of the calculation.
- (69) ACER is of the view that it is appropriate to rely on two approaches based on net positions or cross-zonal exchanges. However, ACER considers that the choice among these approaches should be based on the ability of bidding zones to contribute to security of supply (subject to the choice of Member States pursuant to Article 26(2) of the Electricity Regulation), and not be based on the capacity calculation and allocation approach.
- (70) ACER has introduced Article 6(2) of Annex I to specify the geographic scope for calculating the maximum entry capacity. For a given CM, the maximum entry capacity shall at least be calculated for the foreign bidding zones which are allowed to participate in the given CM. In particular, pursuant to Article 26(2) of the Electricity Regulation, if a foreign Member State has a direct network connection with the Member State of the CM, all bidding zones of the foreign Member State shall be allowed to participate in the CM. ACER disagrees with the comment from paragraph (29) that maximum entry capacity should only be computed for Member States with direct network connection. Article 26(2) of the Electricity Regulation allows Member States to restrict cross-border participation to these directly connected Member States, but some Member States may allow other Member States (i.e. without direct network connection) to participate in their CM. In this case, computing the maximum entry capacity only for Member States with direct network connection would be inconsistent

with the choice of the Member State of the CM, and would discriminate the other Member States which are allowed to participate in the CM. As a result, the choice of the Member State of the CM is taken as input for the calculation of the maximum entry capacity. This input ensures consistency between the maximum entry capacity and the average import of the Member State of the CM during system stress. Finally, in order to ensure up-to-date and robust information, the TSO(s) of the Member State applying the CM shall provide the RCC with this piece of information.

- (71) ACER has introduced Article 6(3) of Annex I in order to clarify how to define considered CM borders, for which to calculate the maximum entry capacity, based on Article 6(2) of Annex I.
- (72) ACER has amended Article 6(4) of Annex I to specify that a single resource adequacy study be used for calculating the contribution on all CM borders for a given CM, in order to ensure consistent maximum entry capacities. ACER also clarified the purpose and scope for calibrating resource adequacy studies before calculating the maximum entry capacity.
- (73) ACER has amended Article 6(5) of Annex I to allow the RCC to expand the scope of system stress MTUs, where appropriate. ACER also required that system stress MTUs be identical among all CM borders for a given CM bidding zone, in order to ensure consistent maximum entry capacities.
- (74) ACER has added Article 6(6)(d) and Article 9 of Annex I requiring the RCC to calculate the total available capacity resource margin for the origin bidding zone of each CM border, with and without cross-zonal exchanges. This calculation, which is detailed in Article 9 of Annex I, aims to reflect the effective ability of a given bidding zone to contribute to resource adequacy. Knowing the expected availability of capacity resources in the origin bidding zone during system stress may assist the TSOs when setting the maximum entry capacity. Therefore, ACER considers that this calculation should be part of the RCC recommendation to the TSOs pursuant to Article 26(7) of the Electricity Regulation.
- (75) For the same reason, ACER has added Article 6(7)(f) of Annex I, providing an option to the RCC, where it deems it appropriate, to propose to the TSO(s) how to reflect a low total available capacity margin in the maximum entry capacity. This would be the case, for instance, where the foreign bidding zone evidently lacks available capacity margin to provide the level of resource adequacy services corresponding to the maximum entry capacity.
- (76) Pursuant to Article 26(2) of the Electricity Regulation, Member States may restrict direct cross-border participation to capacity providers located in a Member State with direct network connection. If a bidding zone spans multiple Member States, a part of a bidding zone may be excluded from cross-border participation pursuant to this Article. As a result, ACER has added Article 6(6)(e) of Annex I to ensure a realistic and robust maximum entry capacity in this case, by allowing the RCC to adjust the maximum entry capacity to reflect only the part of the bidding zone which is considered for participation in the CM.

- (77) ACER has amended Article 6(7) of Annex I to list the minimum set of elements that the RCC shall provide to TSOs when making a recommendation pursuant to Article 26(7) of the Electricity Regulation. These elements include a recommendation for maximum entry capacity accompanied by other relevant calculations in order to enable the TSO to make an informed and well-grounded decision on the maximum entry capacity.
- (78) ACER has added Article 6, paragraphs (8) and (9) of Annex I in order to comply with section 15.3 of Annex I to the Electricity Regulation. The added provisions ensure that a calculation is provided for each relevant CM border within the system operation region, while allowing for simplified calculations for some CM borders to ensure feasibility of the calculation process.
- (79) ACER has amended Article 7 of Annex I, in order to ensure consistency between the calculations of contributions based on net positions and commercial exchanges. In particular, if the bidding zone of the CM exports during system stress, the contributions to maximum entry capacity should reflect this pattern. Furthermore, ACER has added Article 7(2) of Annex I to ensure consistency between the two calculations as well as to ensure that direct cross-border participation in CMs matches the expected imports during system stress. ACER disagrees with the view expressed in paragraph (36). Deleting Article 7(2) and reflecting the whole system operation region when calculating the maximum entry capacity would implicitly lead to assume that all bidding zones within a system operation region contribute to resource adequacy in the Member State of the CM, even if they were excluded from participating in the CM pursuant to Article 26(2) of the Electricity Regulation. The exclusion of these bidding zones would create a gap in the contribution to maximum entry capacity of other CM borders, and there would be no possibility for the bidding zones allowed for cross-border participation to make up for this gap. As a result, without Article 7(2) of Annex I, the RCCs would in many cases compute a maximum entry capacity much below the average contribution of foreign capacity providers to resource adequacy in the Member State applying a CM, de facto limiting the potential for cross-border participation in that CM.
- (80) To ensure that the RCCs operate in full transparency in line with Article 41(2) of the Electricity Regulation, ACER has introduced Article 10 of Annex I. This Article describes the minimum set of data items that the RCC shall publish, so that stakeholders are able to understand the results from the calculation of the maximum entry capacity, along with the main underlying assumptions.
- (81) Finally, ACER has removed Article 10(7) and (8) of the proposed technical specifications, because setting the maximum entry capacity (pursuant to Article 42(3) of the Electricity Regulation) is beyond the scope of the technical specifications. These technical specifications focus only on the calculation underlying the RCC recommendation for maximum entry capacity.

6.5.1.4. Methodology for sharing the revenues from the allocation of entry capacity

- (82) ACER disagrees with ENTSO-E's proposed methodology for sharing the revenues from the allocation of entry capacity, in particular with the proposed revenue-sharing key. ACER considers it necessary to amend the proposed methodology as outlined in the following paragraphs.
- (83) ACER has deleted Article 12, paragraphs (1), (2) and (3), second sentence, of the proposed technical specifications relating to the scope of application of the revenue-sharing methodology. This is because Article 26(9) of the Electricity Regulation, read in conjunction with its Article 26(1), sufficiently defines this scope. In ACER's view, any further specification of the scope, such as narrowing down the scope of revenue-sharing to the same delivery period, would depart from the Electricity Regulation. Article 11(1) of Annex I fully aligns this scope with the Electricity Regulation.
- (84) ACER has deleted Article 12(3), first sentence, of the proposed technical specifications. ACER notes that these technical specifications are intended for direct cross-border participation in CMs, as stipulated in Article 26(1) of the Electricity Regulation. Nevertheless, the Electricity Regulation does not explicitly prevent the application of these specifications, or parts thereof, to interconnectors participating in a CM pursuant to Article 26(2) of the Electricity Regulation. Therefore, ACER considers that these technical specifications should not explicitly exclude their possible extension to interconnectors. This aspect is also discussed in paragraph (56) explaining the insertion of Recital (8) of Annex I.
- (85) ACER has deleted Article 13 of the proposed technical specifications, relating to the determination of the total revenue considered for sharing. ACER considers that this proposed Article failed to fully reflect the potential diversity of national CM approaches for allocating entry capacity. ACER considers that this aspect should align with national CM designs and arrangements for cross-border participation in CMs.
- (86) ACER has amended Article 14 of the proposed technical specifications on the determination of the sharing key. ENTSO-E is of the view that revenue-sharing with the neighbouring TSO should provide appropriate incentives for the development of additional transmission capacity. According to ENTSO-E,¹⁶ such incentive should only be provided where the probability of simultaneous system stress between two neighbouring Member States is low, and therefore where additional interconnection capacity on the considered CM border would likely provide significant resource adequacy benefits. On the contrary, ENTSO-E also considers that no incentive should be given where the probability of simultaneous system stress is high, because increasing interconnection capacity would likely not bring significant benefits to resource adequacy. Based on the above reasoning, ENTSO-E proposed a sharing key,

¹⁶ See Explanatory Document (footnote 9), section 4.2.

whereby the revenue shared with the neighbouring TSO decreases with the probability of simultaneous system stress (as modelled in ERAA). As a result, the higher the simultaneity of system stress between the two neighbouring Member States, the less revenue is shared between their TSOs and the more revenue is allocated to the TSO of the Member State applying the CM.

- (87) ACER disagrees with ENTSO-E's proposed sharing key for the following reasons, described in paragraphs (88) to (91).
- (88) First of all, additional interconnection investments are not the only purpose for which the revenues from the allocation of entry capacity should be used. Pursuant to Article 26(9) of the Electricity Regulation, TSOs shall use the revenues from the allocation of entry capacity for the purposes set out in Article 19(2) of the Electricity Regulation, namely:
- (a) guaranteeing the actual availability of the allocated capacity including firmness compensation; or
 - (b) maintaining or increasing cross-zonal capacities through optimisation of the usage of existing interconnectors by means of coordinated remedial actions, where applicable, or covering costs resulting from network investments that are relevant to reduce interconnector congestion.
- (89) ACER notes that the Electricity Regulation does not prioritise between the above objectives, and the use of congestion income is to be determined under the scrutiny and approval of the relevant regulatory authorities. Furthermore, most actions taken to achieve these objectives (for instance, coordinated remedial actions or firmness compensation) trigger costs for both concerned TSOs alike. Thus, designing a revenue-sharing key to provide incentives solely for increasing cross-zonal capacity without consideration of the other objectives, i.e. maintaining these capacities or guaranteeing the actual availability of the allocated capacity, including firmness compensation, is, in ACER's view, not consistent with Article 19 of the Electricity Regulation.
- (90) Secondly, under the EU regulatory framework, interconnection investments are preceded by an extensive cost-benefit analysis which estimates projects' benefits for the relevant neighbouring bidding zones but also for a wider EU region. It is at this stage, and not at the stage of revenue-sharing, that the regulatory authorities assess adequacy benefits of future investments. Even if simultaneous system stress between two bidding zones may reduce adequacy benefits of a new interconnector, other adequacy benefits could still be identified through a pan-regional assessment. This would be the case, for instance, if a new interconnector reduces congestion with third bidding zones which do not face simultaneous system stress. These wider, potential adequacy benefits are not considered in the ENTSO-E proposed sharing key, which relies on simultaneity of system stress. As a result, the proposed sharing key could potentially undermine decision-making on new investments.

- (91) Finally, the ENTSO-E proposed sharing key would not take into account past investments in networks by foreign TSOs. For example, if, on a given CM border with currently 5 GW of interconnection capacity, it is estimated that building more than these 5 GW of interconnection capacity would not bring additional adequacy benefits, ENTSO-E's sharing key would allocate all the revenue from the entry capacity to the TSO of the CM,¹⁷ disregarding the fact that the (other) interconnector owner(s) made a significant investment in the existing 5GW interconnection to provide resource adequacy benefits in the first place.
- (92) As a result, ACER considers that the revenue from the allocation of entry capacity should be shared according to the congestion income sharing key, as specified in Article 11 of Annex I. In ACER's view, this sharing key is consistent with the objectives of the Electricity Regulation and the principles underpinning the EU electricity market. Since the revenues from the allocation of entry capacity are earmarked for covering the same costs as congestion income, these revenues should follow the same sharing key, in line with the congestion income distribution methodology pursuant to Article 57 of the FCA Regulation. This methodology, which was approved by ACER, aims to promote efficient congestion management.¹⁸
- (93) ACER notes ENTSO-E's concerns regarding a sharing key based on congestion income distribution methodologies. In ENTSO-E's view, revenue arising from the allocation of entry capacity represents both the scarcity value of interconnector and a market access right (independent from the interconnector scarcity) and as such, cannot be directly compared to revenue coming from the allocation of cross-zonal capacity. While ACER acknowledges that the characteristics of the entry capacity differ from other products for which the congestion income distribution methodology applies, ACER considers that the revenues from the allocation of entry capacity do not reflect any market access right, for the following reasons. ACER notes that Article 26(9) of the Electricity Regulation requires that entry capacity revenues accrue to the TSOs, not to CM operators (which would be a more appropriate entity to collect market access rights). As a result, assuming that revenues from the allocation of entry capacity partly reflect a market access right would contradict Article 26(9) of the Electricity Regulation. Moreover, applying market access rights to foreign capacity providers only¹⁹ might create an undue market distortions, and might thus contradict Article 22(1)(b) of the Electricity Regulation. As a result, ACER considers that revenues from the allocation of entry capacity should usually reflect the scarcity of entry capacity. As for other products auctioned within the internal electricity market, the entry capacity should be considered scarce when market participants are willing to bid for more than the maximum entry capacity. This empirical comparison should highlight the scarcity of entry capacity. If market participants bid for less entry capacity than

¹⁷ Based on the full simultaneity of system stress. If system stress is not fully simultaneous, additional interconnection capacity would very likely bring additional resource adequacy benefits.

¹⁸ See ACER Decision No 07/2017 on the congestion income distribution methodology.

¹⁹ Such a market access right would not apply to domestic capacity providers, because these providers do not rely on entry capacity to participate in the CM.

the maximum entry capacity, the entry capacity price should likely be zero, resulting in no revenue to share among the TSOs.

- (94) ACER also disagrees with ENTSO-E's comment that Title 3 of Annex I should only apply in cases of technical equivalence (see paragraph (22)). Where CMs allow for cross-border participation in two neighbouring Member States, Article 26(9) of the Electricity Regulation requires that any revenues from the allocation of entry capacity should be eligible for revenue-sharing under the conditions set out in therein. ACER thus considers that for CMs which allow participation of technically 'equivalent' as well as 'non-equivalent' capacity providers, any revenues from the allocation of entry capacity should be eligible for revenue-sharing. However, recognising the specificities of reliability options, ACER notes that the application of Title 3 may in this case be subject to further conditions (as agreed by both relevant regulatory authorities) in order to ensure the provision of appropriate incentives to the involved stakeholders. This aspect is specified in Article 3 of Annex I.
- (95) Given the changes to the sharing key described above, ACER has also deleted the related paragraphs (4) to (7) of Article 12 of the proposed technical specifications, describing the principles underpinning ENTSO-E's proposed revenue-sharing key.

6.5.1.5. Common rules for carrying out availability checks

- (96) ACER has amended Article 15(4) of the proposed technical specifications defining the timeframe for the availability checks. ACER understands that availability checks may be conducted outside the delivery period, depending on the rules of a given CM. However, ACER has clarified that foreign TSOs may conduct availability checks outside of the delivery period if this also applies to domestic CMUs, where possible. This requirement ensures equal treatment between all capacity providers participating in a given CM, in line with Article 22(1)(d) of the Electricity Regulation. ACER specified this in Article 14(3) of Annex I.
- (97) In line with the above amendment, ACER has also replaced 'delivery period' with 'reference period' in Article 16(2)(a) of the proposed technical specifications. This is reflected in Article 12(3)(a) of Annex I, and also addresses the related comment provided in the public consultation (see Annex II, part 3).
- (98) ACER has amended Article 16(2)(b) of the proposed technical specifications, which initially required (if possible) the same frequency of availability checks for both foreign and domestic capacity providers. ACER considers that the minimum frequency of availability checks should also as much as possible be equivalent for foreign and domestic CMUs, to ensure non-discrimination among CMUs. This amendment is reflected in Article 12(3)(c) of Annex I.
- (99) ACER has amended Article 17 of the proposed technical specifications regarding the exchange of information between the CM operator and the foreign TSO in facilitating the availability checks. In particular, ACER considers that the results from the availability checks should include information on the total available capacity for each market time unit and shall be communicated in a timely manner, in order to ensure a

timely calculation of non-availability payments and settlement process. The required amendment is set out in Article 13 of Annex I.

- (100) In Article 18 of the proposed technical specifications, ACER has deleted paragraph (1) related to the intended non-binding character of the content of this Article. Article 26(11)(c) of the Electricity Regulation explicitly requires ENTSO-E to submit common rules for the carrying out of availability checks. Submitting best practices, as opposed to common rules, would not meet this legal requirement.
- (101) In this context, ACER notes ENTSO-E's concern that the binding rules for carrying out availability checks might restrict Member States' right to design their CM in a way which best addresses their respective resource adequacy concerns (see section 5.2.1). Nevertheless, ACER reiterates that the aim of Title 4 of Annex I is to establish common rules to ensure a level-playing field between domestic and foreign capacity providers. This aims to prevent undue market distortions in line with Article 22(1)(b) of the Electricity Regulation, without unduly limiting or otherwise affecting the existing or future CM designs.
- (102) For the purpose of the application of availability checks, ACER has defined, in Article 14(1) of Annex I, 'markets considered for availability checks' as markets including at least the wholesale day-ahead and balancing markets (and wholesale intraday markets, where possible). This definition departs from the initial wording of Article 18 of the proposed technical specifications which refers to 'energy markets' and 'ancillary services markets'. ACER notes that Article 2(48) of the Electricity Directive defines 'ancillary service' as a service necessary for the operation of a transmission or distribution system, including balancing and non-frequency ancillary services, but not including congestion management. As such, following ACER's definition, availability checks may be applied in balancing markets, but not in other markets for ancillary services, such as non-frequency ancillary services.²⁰ ACER is of the view that non-frequency ancillary services do not directly affect resource adequacy, and should thus not, by default, be included in the markets considered for availability checks.
- (103) ACER has added Article 12(5)(b) of Annex I recommending that the foreign TSO endeavour to minimise the impact of availability checks on the markets considered for availability checks. ACER considers that this amendment is consistent with Article 22(1)(b) of the Electricity Regulation, requiring that CMs shall not create undue market distortions and not limit cross-zonal trade.
- (104) ACER has amended Article 18(5) of the proposed technical specifications to specify that CMUs which are technically available but which are unable to meet their commitments or generate because of system operation reasons (e.g. due to congestion

²⁰ Defined in Article 2(49) of the Electricity Directive as services used by a transmission system operator or distribution system operator for steady state voltage control, fast reactive current injections, inertia for local grid stability, short-circuit current, black start capability and island operation capability.

management) should still be considered available, as system operation constraints are beyond their control. The relevant amendment is set out in Article 15(2)(a) of Annex I.

- (105) ACER has amended Article 19 of the proposed technical specifications on the reporting to the relevant regulatory authorities. In ACER's view, the CM operator should not be required to report to the foreign regulatory authority. Instead, the amended Article 16 of Annex I requires that both the CM operator and the foreign TSO report to their respective regulatory authorities.

6.5.1.6. Common rules for determining when a non-availability payment is due

- (106) ACER has deleted Article 20, paragraphs (2) and (3) of the proposed technical specifications, and introduced Article 18, paragraphs (1) and (3) of Annex I. This amendment clarifies that capacity providers shall be required to make non-availability payments where their capacity is not available, in line with Article 26(6) of the Electricity Regulation.
- (107) ACER has deleted Article 22(1) of the proposed technical specifications. ACER notes that these aspects are governed by the rules on non-availability payments specific to each CM and further specified in the relevant CM contracts.
- (108) ACER has amended Article 23(3) of the proposed technical specifications relating to the calculation of the non-availability volumes. ACER considers that a mathematical formula better describes this calculation and avoids ambiguity. Article 19, paragraphs (2) and (3) of Annex I set out the relevant formulas for the calculation of the availability and non-availability volumes.
- (109) ACER has deleted Article 23(5) of the proposed technical specifications because ACER considers that the delivery period of a CM should accurately reflect the residual resource adequacy concern that a Member State intends to address.
- (110) ACER has deleted Article 23(6) of the proposed technical specifications referring to a review of the calculation for the non-availability volume. ACER notes that Article 4(4) of Annex I requires ENTSO-E to review (all) the technical specifications after their first application. As this review would include the calculation of the non-availability volume, Article 23(6) of the proposed technical specifications is not required anymore.
- (111) In Article 24 of the proposed technical specifications, ACER has deleted paragraph (1) related to the non-binding character of the content of this Article, for the same reasons as those set out in paragraph (100).
- (112) Notwithstanding the above, ACER acknowledges that each CM may have specific rules on non-availability payments and these should apply to capacity providers, including foreign capacity providers, in a transparent and non-discriminatory manner. In particular, the elements listed in Article 24 of the proposed technical

specifications²¹ should be applied equivalently to both foreign and domestic capacity providers, where this is possible, and this is clarified in Article 17(2) of Annex I.

- (113) ACER has amended Article 25 of the proposed technical specifications on the reporting to the relevant regulatory authorities. As already noted in paragraph (105), the CM operator should not be required to report to the foreign regulatory authority. Instead, the amended Article 20 of Annex I requires that both the CM operator and the foreign TSO report to their respective regulatory authorities.
- (114) ACER has also set out additional requirements in Article 20 of Annex I. ACER considers that the relevant regulatory authorities should also receive data on non-availability volumes, in addition to the data on non-availability payments. ACER has also amended the frequency of reporting (at least yearly or upon request) to ensure timely data delivery, thereby enabling the tasks of the regulatory authorities pursuant to Article 26(13) of the Electricity Regulation. Finally, ACER notes that aggregated data is usually sufficient for monitoring purposes.

6.5.1.7. Terms of operation of the registry of eligible capacity providers

- (115) ACER considers that the proposed technical specifications for the registry were very general and did not provide sufficient clarity regarding the roles and responsibilities of the different registry users. ACER's substantive amendments to the ENTSO-E proposed terms of operation focused on clarifying these issues, as outlined below.
- (116) ACER has amended the definition of 'registry user' in Article 26(3) of the proposed technical specifications, in order to include the foreign TSOs responsible for the eligibility checks. ACER notes that foreign TSOs need to access to the registry in order to fulfil their responsibilities related to eligibility checks and registration of eligible capacity providers. ACER notes that providing the TSOs responsible for the eligibility checks with registry access is in line with Article 26(15) of the Electricity Regulation which states that the registry shall be open to all eligible capacity providers, the systems implementing the CMs and their TSOs.
- (117) ACER has amended Article 26(4) of the proposed technical specifications. ACER considers that it is for the relevant regulatory authorities, within their mandate under Article 26(13) of the Electricity Regulation, to allow other parties access the registry, where they deem appropriate.
- (118) ACER has deleted Article 26(5) of the proposed technical specifications, related to the possibility to include in the registry additional data related to prequalification, contract acceptance, etc. ACER considers that this specification is not necessary,

²¹ Alternative penalties, exceptions, force majeure clauses, stop loss limits, escalation of penalties and CM contract termination fees.

given that the list of data to be provided in the registry is non-exhaustive, as clarified in Article 22(4) of Annex I.

- (119) ACER has amended Article 27 of the proposed technical specifications to clarify the minimum scope of data that should be provided in the registry in relation to each eligible capacity provider, each eligible CMU and each CM. In particular, Article 22 of Annex I includes the following amendments:
- (a) regarding the data related to each capacity provider, ACER has added corporate credentials, in order to facilitate administrative processes.
 - (b) regarding the scope of data related to each CM, ACER has added the CM operator's list of all technical requirements for cross-border participation. Providing this list is required, as it would enable the foreign TSOs to assess the eligibility of foreign CMUs for that CM.
- (120) ACER has amended Article 27, paragraphs (3) and (4) and Article 28(2) of the proposed technical specifications, to clarify the responsibilities of the relevant registry users with respect to data accuracy and data updates. The relevant aspects are specified in Article 24(2) and (3) of Annex I.
- (121) ACER has amended Article 28, paragraphs (1) and (3) of the proposed technical specifications to clarify the registry access rights. Article 21(4) of Annex I specifies which registry users may submit and edit data and which users may only view data, without editing rights.
- (122) ACER has amended Article 28, paragraphs (4) to (8) of the proposed technical specifications to clarify and further specify the provisions on the reports based on the registry data. In particular, ACER has specified that the reports should be issued annually, and aligned the scope of the reports with the scope of the registry data. The relevant amendments are set out in Article 25 of Annex I.
- (123) ACER has deleted Article 28(10) of the proposed technical specifications as dispute settlement falls within the competence of the relevant regulatory authorities. In this context, ACER notes the concerns expressed in the public consultation regarding the lack of appropriate dispute settlement mechanism for potential cross-border disputes related to the registry. In view of these concerns, ACER considers that this aspect of implementation might be subject to further bilateral arrangements, where deemed appropriate by the relevant regulatory authorities, as noted in Recital (7) of Annex I.
- (124) ACER has added new requirements in Article 21, paragraphs (6) to (8) of Annex I, to ensure effective access to the registry for all European capacity providers, while not presenting an excessive administrative burden for ENTSO-E. Paragraph (6) requires a single point of contact for registry users, to enable efficient communication related to the registry. Paragraph (7) specifies that the registry shall at least be accessible in English. Finally, paragraph (8) recommends that ENTSO-E should endeavour to ensure user-friendly access and data submission.

6.5.1.8. Common rules for identifying eligible foreign capacity

- (125) ACER views the concept of ‘eligibility’ as proposed by ENTSO-E as inconsistent with Article 26, paragraphs (2) and (10)(a) of the Electricity Regulation. Therefore, ACER’s substantive amendments outlined below focus particularly on this aspect, aiming to bring it into compliance with the Electricity Regulation.
- (126) ACER has amended Article 29, paragraphs (1), (4) and (5) of the proposed technical specifications related to the concept of ‘eligibility’. Pursuant to Article 29(1) of the proposed technical specifications, eligibility and registration in the registry means that the capacity provider only meets certain minimum technical criteria for cross-border participation, which are common to all CMs. As further explained in Article 29(4) of the proposed technical specifications, each CM operator may define additional requirements for the participation of capacity providers, which are outside the scope of the eligibility check and not required for the registration in the registry. ACER considers that the ENTSO-E proposal to base the eligibility check on minimum technical criteria is not in line with Article 26, paragraphs (2) and (10)(a) of the Electricity Regulation. The latter paragraph states that, for the purpose of the registration, the foreign TSO shall establish the technical performance as required by the CM in which the capacity provider intends to participate. Therefore, ACER has introduced amendments specifying that ‘eligibility’ of a CMU for a given CM shall mean that it meets all technical requirements for participating in that CM. ACER acknowledges that each CM operator may request additional requirements from foreign capacity providers; however these requirements shall not relate to technical performance and shall be proportionate, in order to ensure a non-discriminatory selection of capacity providers in line with Article 22(1)(d) of the Electricity Regulation. The relevant amendments are set out in Article 26, paragraph (1) and (2) of Annex I.
- (127) ACER has amended Article 29, paragraphs (6) and (7), of the proposed technical specifications related to restrictions of simultaneous participation in multiple CMs for aggregated CMUs. ENTSO-E explained that these provisions ensure that the foreign TSO is able to isolate the eligibility and/or availability of a given unit in order to apply Title 5 of Annex I.²² To ensure proportionate requirements, ACER has clarified that this restriction shall only apply in case the foreign TSO is unable to assess the technical performance (related to eligibility) and/or availability of a given individual unit within an aggregated CMU. The relevant amendments are set out in Article 26(3) of Annex I.
- (128) ACER has amended Article 30 of the proposed technical specifications, to clarify that the foreign TSO may consult the CM operator on a given eligibility check, where this is appropriate. ACER has also specified that the capacity provider must be given reasons for a negative eligibility check. This requirement enables the capacity

²² See Explanatory Document (footnote 9), section 9.1.

provider to address such reasons, where possible, and submit a new request to the foreign TSOs, if applicable. Finally, ACER has required that all the actions of the foreign TSO related to the registration process (including notifications and updates) are performed in a timely manner and without unjustified delay. These amendments are reflected in Article 27 of Annex I.

- (129) ACER has amended Article 31(1) of the proposed technical specifications listing the data for the eligibility check. In particular, ACER has specified that the list provided therein is non-exhaustive, given that this list shall reflect all the technical requirements provided by a given CM operator. ACER has also required that the data for the eligibility check shall be submitted based on a template that is developed by the foreign TSO in close collaboration with the CM operator. This requirement ensures that the submitted data correspond to the technical requirements of the CM, which the eligibility check relates to. Finally, ACER has also amended point (d) of the list, referring to capacity, to enable participation of demand response in line with Article 22(1)(h) of the Electricity Regulation. The relevant amendments are set out in Article 27(2) and Article 28(1) of Annex I.
- (130) ACER has amended Article 31(5) of the proposed technical specifications on the verification of the data for the eligibility check. ACER has removed the proposed yearly frequency of verification by the foreign TSO as it considers that such verification (including its frequency) may be specific to each CM. This verification should however apply as equivalently as possible to foreign and domestic capacity providers. This is specified in Article 27(6) of Annex I.
- (131) ACER has deleted Article 31, paragraphs (6) and (7), of the proposed technical specifications, describing the legal consequences of a CMU losing its ‘eligibility’ status in the registry for the CM participation. ACER notes that such consequences may be CM-specific. It is thus more appropriate to stipulate them in the relevant CM contracts, rather than in the common rules for identifying eligible capacity.
- (132) ACER has deleted Article 31(8) of the proposed technical specifications on eligibility-related disputes, for reasons set out in paragraph (123).
- (133) Finally, ACER has added Article 28(3) of Annex I to take into account CMUs which are not yet operational, to ensure equal treatment of existing and potential capacity providers.

6.5.2. Editorial amendments

- (134) In ACER's public consultation, stakeholders submitted comments regarding unnecessary complexity and the overall lack of clarity of the proposed technical specifications (see Annex II). ACER agrees with these comments and has introduced considerable editorial amendments to improve clarity, conciseness, consistency and readability of the proposed technical specifications, while preserving the intended meaning of the content. These editorial amendments generally relate to:
- (a) simplifying the structure for ease of use; this includes changing the title of the proposed technical specifications in line with the terminology of Article 9(2)(b) of Regulation (EU) 2019/942, amending the table of content and title headings;
 - (b) reordering the existing content. This includes deleting articles, recitals, paragraphs and/or parts thereof, in order to avoid repetition;
 - (c) deleting redundant content, for instance articles, recitals and paragraphs which repeat the requirements of the Electricity Regulation;
 - (d) aligning the information among/within the titles. In particular, ACER updated the list of definitions in Article 2 of Annex I to align with the substantive amendments. This update involved defining new terms as well as amending and/or removing the existing definitions. Where applicable, ACER referred to definitions already provided in the EU legislation.
 - (e) simplifying and shortening the sentences, removing passive voice, punctuation changes and grammar/orthographic corrections.

7. CONCLUSION

- (135) For the above reasons, ACER considers that the amendments detailed in section 6.5 are necessary in order to bring the proposed technical specifications in compliance with the Electricity Regulation, as well as to improve the editorial quality.
- (136) Therefore, ACER approves the proposed technical specifications subject to the necessary substantive and editorial amendments. Annex I to this Decision sets out the technical specifications, as amended and approved by ACER.

HAS ADOPTED THIS DECISION:

Article 1

The technical specifications pursuant to Article 26(11) of Regulation (EU) 2019/943 are approved as set out in Annex I to this Decision.

Article 2

This Decision is addressed to ENTSO-E.

Done at Ljubljana, on 22 December 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

- Annex I Technical specifications for cross-border participation in capacity mechanisms
- Annex II Evaluation of responses to ACER's public consultation on technical specifications for cross-border participation in capacity mechanisms, for information
- Annex III ENTSO-E's written comments on ACER's preliminary position, for information

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.