

DECISION No 06/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 7 February 2020

**on the request of the regulatory authorities of the Hansa capacity
calculation region to extend the period for reaching an agreement on the
long-term capacity calculation methodology**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

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

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

Having regard to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation², and, in particular, Article 4(10) thereof,

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

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (the ‘FCA Regulation’) laid down a range of requirements on cross-zonal capacity allocation in the forward markets. These requirements also include the development of the capacity calculation methodology (‘CCM’) for the long-term time frames (‘LT’) in each capacity calculation region (‘CCR’) in accordance with Article 10 *et seq.* of the FCA Regulation.

¹ OJ L158, 14.6.2019, p. 22.

² OJ L259, 27.9.2016, p. 42.

- (2) Pursuant to Article 4(1) and (7)(a), as well as Article 10(1) of the FCA Regulation, transmission system operators ('TSOs') of each CCR are required to develop a proposal for a common coordinated CCM for long-term time frames within the respective CCR 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 the CCM within six months after the receipt of the proposal by the last regulatory authority, according to Article 4(9) of the FCA Regulation. When the regulatory authorities fail to reach an agreement within the six-month period or upon their joint request, the Agency, pursuant to Article 4(10) of the FCA 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 of the Agency follows from the request of all the regulatory authorities of the Hansa CCR ('Hansa regulatory authorities') to extend the period for reaching an agreement on the Hansa CCR's TSOs' proposal for the long-term CCM (the 'Proposal'), by six months, pursuant to Article 6(10) of Regulation (EU) 2019/942.

2. PROCEDURE

- (4) In a letter dated 13 December 2019 and received by the Agency on the same day, the chair of the Energy Regulators Regional Forum CCR Hansa³ submitted, on behalf of all Hansa regulatory authorities, a joint request to grant a six-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 3 July 2020.
- (5) According to this letter, all Hansa regulatory authorities received the Proposal from the TSOs of the Hansa CCR by 3 July 2019.
- (6) In support of the request for extension the letter lists three issues to be considered:
- a) Concerning the dependency of the LT CCM on the CCM for the day-ahead and intraday time frames, the letter states that *'The regional design of the LT CCM for CCR Hansa is in practice based upon and dependent on the capacity calculation methodology for the day-ahead and intraday timeframes ("DA&ID CCM") for CCR Hansa, pursuant to Article 21 of Commission Regulation (EU) 2015/1222 of 24 July 2015 ("CACM Regulation")*. Thus Article 10(3) of the FCA Regulation states that the LT CCM for the CCR in question shall be compatible with the DA&ID CCM for that same CCR. The Dutch NRA, Authority for Consumers & Markets ("ACM"), has not yet issued a decision regarding the approval of the DA&ID CCM for Hansa, because of its legal concerns regarding

³ The Hansa regulatory authorities' platform to consult and cooperate for reaching a unanimous agreement on NEMO's and TSO's proposals.

- (i) wind feed in at Kriegers Flak and (ii) the dependency of the CCMs of Nordic and Core. Consequently, Hansa NRAs view that the process for adopting LT CCM for Hansa should be paused, until the content of DA&ID CCM for CCR Hansa (possibly in an amended version) is clear. Hansa NRAs do not expect that this clarity may be reached within the current legal deadline and consider that there will be a significantly increased possibility that this clarity may be reached in the case of a 6 months extension of the deadline.'*
- b) Concerning the presently unsolved legal status of the Kriegers Flak Combined Grid Solution ('KF CGS') interconnector, the letter states that *'Some Hansa NRAs have communicated legal concerns for both the present version of DA&ID CCM for CCR Hansa and the proposal for LT CCM for CCR Hansa. Notably due to the regulatory framework for the interconnector between the BZs DK2-DE, Kriegers Flak Combined Grid Solution ("KF CGS"). Thus, the European Commission in collaboration with both the policy authorities and the regulatory authorities of the relevant Member States Denmark and Germany, are currently seeking to find a solution on this case within the provisions of the Clean Energy Package. A legal solution is not foreseen before the end of 2019. Consequently, Hansa NRAs view that for adopting LT CCM for CCR Hansa, there has to be more clarity with regard to the KF CGS issue. Hansa NRAs do not expect this clarity will be reached within the current legal deadline and consider that there will be a significant increased possibility that this clarity may be reached within a 6-months extension of the deadline.'*
- c) Concerning the dependency of the LT CCM of the Hansa CCR on the LT CCMs of the Nordic and Core CRR, the letter states that *'According to the proposal, a part of the capacity calculation for the CCR Hansa will be done within the CCR Nordic and CCR Core. The foreseen implementation of the LT CCM for the CCR Hansa is therefore to a large extent dependent on the LT CCMs for CCR Nordic and CCR Core. Article 18(1)(d) of the all CCR Hansa TSOs proposal of 18 June 2019 for LT CCM for CCR Hansa states that, "Implementation of this CCM will be a stepwise process with the following milestones: d) The LT CCMs of CCR Core and of CCR Nordic have been implemented and take fully into account the influences of the CCR Hansa interconnectors during the capacity calculation according to the respective CCMs of these two regions." ACER adopted the LT CCM for the Nordic on 30 October 2019. However, Core TSOs have informed the Core NRAs in line with Article 4(4) of the FCA Regulation that they haven't reached an agreement on a proposal for LT CCM for CCR Core, and whether the final proposal for LT CCM for CCR Core will fully take into account the influences of the CCR Hansa. Hansa NRAs consider that there will be a significantly increased possibility that this clarity may be reached in a case of a 6-month extension of deadline.'*
- (7) Given the lack of clarity on the issues described in the previous recital, the Hansa regulatory authorities state in their letter that they will not be able to adopt a decision by the deadline of 3 January 2020 and unanimously agree to request the Agency to grant a six-month extension according to Article 6(10) of Regulation (EU) 942/2019. Within this six months following the extension, if granted by the Agency, the Hansa

regulatory authorities will strive to reach a unanimous agreement on the Proposal or on a possible Request for Amendment of the Proposal.

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

- (8) According to Article 6(10) of Regulation (EU) 2019/942, the Agency 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.
- (9) According to Article 4(7)(a) of the FCA Regulation (which has been adopted as a guideline before 4 July 2019), the proposal for the capacity calculation methodology pursuant to Article 10 of the same Regulation shall be subject to approval by all regulatory authorities of the concerned region.
- (10) According to Article 4(9) of the FCA 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 paragraphs 6, 7 and 8, within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (11) According to Article 4(10) of the FCA Regulation, where the regulatory authorities have not been able to reach an agreement on the terms and conditions or methodologies within the six-month deadline, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 6(10) of Regulation (EU) 2019/942.

3.2. Admissibility

- (12) Article 4(10) of the FCA Regulation requires the concerned regulatory authorities to take the decision and to reach an agreement on the proposal for the capacity calculation methodology pursuant Article 10 of the same Regulation within six months after receipt of the submission, but does not explicitly provide for the possibility to extend the six-month period.
- (13) However, Article 4(10) of the FCA Regulation relies on Article 6(10) of Regulation (EU) 2019/942. This requires the Agency to take its decision in accordance with

Article 6(10) of Regulation (EU) 2019/942 when the regulatory authorities did not reach an agreement within the six-month deadline.

- (14) Therefore, the transfer of the decision-making competence from the regulatory authorities to the Agency under Article 4(10) of the FCA 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.
- (15) 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 on a regulatory issue before the decision-making competence is transferred from the regulatory authorities to the Agency. The maximum period of such an extension is six months. The extension may be requested by the competent regulatory authorities. The fact that the requesting authorities need to be competent implies also that the competent regulatory authorities should submit the request before the end of the period for reaching an agreement.
- (16) The present request for extension relates to the proposal for the capacity calculation methodology pursuant Article 10 of the FCA Regulation. The proposal has been submitted by TSOs of the Hansa CCR in accordance respectively with Article 4(7)(a) of the FCA Regulation to the regulatory authorities of the Hansa CCR (Denmark, Germany, Luxembourg, Netherlands, Poland and Sweden). The requesting regulatory authorities, i.e. the regulatory authorities of those countries within the Hansa CCR, are therefore competent to decide on the Proposal according to Article 4(7)(a) of the FCA Regulation. Accordingly, they are also the competent regulatory authorities, which may request an extension of the six-month period for reaching an agreement under Article 4(9) and (10) of the FCA Regulation.
- (17) Given the submission of the Proposal on 3 July 2019, the competent regulatory authorities have to decide on the Proposal, in accordance with Article 4(9) and (10) of the FCA Regulation, by 3 January 2020. The request for extension was received by the Agency on 13 December 2019. Thus, it was received before the expiry of the six-month deadline on 3 January 2020.
- (18) In their request, the competent regulatory authorities ask for an extension of six months. 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.
- (19) Therefore, the Agency considers the request for extension as admissible.

3.3. Substance

- (20) Article 6(10) of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (21) The requesting regulatory authorities (Denmark, Germany, Luxembourg, Netherlands, Poland and Sweden) consider the extension justified as, in their views,

they need to obtain clarification on (i) the status of the Hansa CCM in accordance with Article 21 of Commission Regulation (EU) 2015/1222 of 24 July 2015 ('CACM Regulation'), (ii) the legal status of the KF CGS interconnector and (iii) the status of the LT CCMs in the Core and Nordic CCRs before they may assess the Proposal with a view on a possible approval. According to the Hansa regulatory authorities, they will strive to reach a unanimous agreement on the Proposal if the extension is granted.

- (22) According to Article 10(1) of the FCA Regulation the LT CCM of a CCR has to be submitted by the relevant TSOs no later than six months after the approval of the respective CCM in accordance with Article 21 of the CACM Regulation. This CCM for the day-ahead and intraday timeframe has been approved by the Hansa regulatory authorities on 19 December 2018. With the Agency's Decision 04/2019 from 1 April 2019 on the amendments for the determination of capacity calculation regions the Dutch regulatory authority needs to be included in regional decisions concerning the Hansa CCR due to the assignment of the new DK1-NL bidding zone border to the Hansa CCR. Hence, while the CCM in accordance with Article 21 of the CACM Regulation of the Hansa region is currently approved, the decision of the Dutch regulatory authority is still open, which leads to a certain lack of clarity for the linked LT CCM in the Hansa CCR. Since Article 10(3) of the FCA Regulation requires compatibility of the LT CCM with the CCM for the day-ahead and intraday time frames of the same CCR, the Agency agrees that clarity concerning the CCM in accordance with Article 21 of the CACM Regulation of the Hansa CCR would allow the Hansa regulatory authorities to make a better assessment of the LT CCM of the Hansa CCR to take a decision on the proposal.
- (23) While the bidding zone border between the bidding zones Denmark2 and Germany/Luxembourg is operational and a part of the Hansa CCR, the composition of the new KF CGS interconnector on this bidding zone border does raise some challenging legal questions on how to include this interconnector in the current legal framework. The Agency agrees that having clarity on the legal status of the KF CGS interconnector would allow Hansa regulatory authorities to make a better assessment whether or how this interconnector can be taken into account in the LT CCM of the Hansa CCR.
- (24) Given the above reasons for extending the deadline for the decision on the Proposal, the Agency acknowledges that increased clarity on the LT CCM of the Core CCR could support the Hansa regulatory authorities in taking an informed decision.
- (25) On those grounds, the Agency considers an extension of six months justified.

4. CONCLUSION

- (26) For the above reasons, the Agency accepts the request for an extension submitted by the regulatory authorities of the Hansa CCR competent according to Article 4(7)(a) of the FCA Regulation, i.e. the regulatory authorities of Hansa CCR (Denmark, Germany, Luxembourg, Netherlands, Poland and Sweden), and extends the period for those regulatory authorities to reach an agreement on the Proposal by six months, i.e. until 3 July 2020,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of the Hansa CCR (Denmark, Germany, Luxembourg, Netherlands, Poland and Sweden), competent according to Article 4(7)(a) of Commission Regulation (EU) 2016/1719, shall reach an agreement on the proposal for capacity calculation methodology pursuant to Article 10 of that Regulation, submitted by the transmission system operators by 3 July 2019, is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 3 July 2020.

Article 2

This Decision is addressed to:

Forsyningstilsynet (Denmark)
Bundesnetzagentur (Germany)
Institut Luxembourgeois de Régulation (Luxembourg)
Autoriteit Consument & Markt (the Netherlands)
Urząd Regulacji Energetyki (Poland)
Energimarknadsinspektionen (Sweden)

Done at Ljubljana, on 7 February 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.