

**DECISION No 11/2019**  
**OF THE EUROPEAN UNION AGENCY**  
**FOR THE COOPERATION OF ENERGY REGULATORS**

**of 26 September 2019**

ON THE REQUEST OF REGULATORY AUTHORITIES OF THE CORE CAPACITY  
CALCULATION REGION TO EXTEND THE PERIOD FOR REACHING AN  
AGREEMENT ON THE PROPOSAL FOR THE METHODOLOGY FOR THE  
COORDINATION AND THE COST SHARING OF REDISPATCHING AND  
COUNTERTRADING

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<sup>1</sup>, and, in particular, Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management<sup>2</sup>, and, in particular, Article 9(11) thereof,

Having regard to the favourable opinion of the Board of Regulators of 24 September 2019, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

**1. INTRODUCTION**

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the ‘CACM Regulation’) laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements include the development of a methodology for the coordination of redispatching and

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<sup>1</sup> OJ L 158, 14.6.2019, p. 22.

<sup>2</sup> OJ 197, 25.7.2015, p. 24.

countertrading, pursuant to Article 35 of the CACM Regulation, as well as the development of a methodology for the sharing of redispatching and countertrading cost, in accordance with Article 74 of the Regulation.

- (2) Pursuant to Articles 9(1), 9(7)(c), 9(7)(h), 35(1) and 74(1) of the CACM Regulation, transmission system operators ('TSOs') of each capacity calculation region ('CCR') are required to develop a proposal for a common methodology for coordinated redispatching and countertrading, as well as a proposal for a common methodology for redispatching and countertrading cost sharing within the respective region and submit both proposals to the concerned regulatory authorities for approval. Then those regulatory authorities should reach an agreement and take a decision on those proposals within six months after the receipt of the proposals by the last regulatory authority, according to Article 9(10) of the CACM Regulation. When the regulatory authorities fail to reach an agreement within the six-month period, the Agency, pursuant to Article 9(11) of the CACM Regulation, is called upon to adopt a decision concerning the TSOs' proposals in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision of the Agency follows from the request of the regulatory authorities of the Core CCR<sup>3</sup> (Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia) to extend the period for reaching an agreement on the TSOs' proposal for a common methodology for coordinated redispatching and countertrading and the proposal for a common methodology for redispatching and countertrading cost

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<sup>3</sup> Following Article 4 of Annex I of the Agency decision No 06/2016 on CCR, 'The CCR Core shall include the bidding zone borders listed below [...]: a) France - Belgium (FR - BE), RTE — Réseau de transport d'électricité and Elia System Operator NV/SA; b) Belgium - Netherlands (BE - NL), Elia System Operator NV/SA and TenneT TSO B.v.; c) France - Germany/Luxembourg (FR - DE/LU), RTE— Réseau de transport d'électricité; Amprion GmbH and TransnetBW GmbH; d) Netherlands - Germany/Luxembourg (NL - DE/LU), TenneT TSO B.v. and TenneT TSO GmbH and Amprion GmbH; and e) Belgium - Germany/Luxembourg (BE-DE/LU), Elia System Operator NV/SA and Creos Luxembourg S.A. f) Germany/Luxembourg - Poland (DE/LU - PL), 50Hertz Transmission GmbH and PSE S.A.; g) Germany/Luxembourg - Czech Republic (DE/LU - CZ), TenneT TSO GmbH, 50Hertz Transmission GmbH and CEPS, a.s. h) Austria - Czech Republic (AT - CZ), Austrian Power Grid AG and CEPS, a.s.; i) Austria - Hungary (AT - HU), Austrian Power Grid AG and MAVIR Hungarian Independent Transmission Operator Company Ltd.; j) Austria - Slovenia (AT - SI), Austrian Power Grid AG and ELES, d.o.o.; k) Czech Republic - Slovakia (CZ - SK), CEPS, a.s. and Slovenská elektrizačná prenosová sústava, a.s.; l) Czech Republic - Poland (CZ - PL), CEPS, a.s. and PSE S.A.; m) Hungary - Slovakia (HU - SK), MAVIR Hungarian Independent Transmission Operator Company Ltd. and Slovenská elektrizačná prenosová sústava, a.s.; n) Poland - Slovakia (PL - SK), PSE S.A. and Slovenská elektrizačná prenosová sústava, a.s.; o) Croatia - Slovenia (HR - SD), Croatian Transmission System Operator Ltd. (HOPS d.o.o.), ELES, d.o.o.; p) Croatia - Hungary (HR - HU), Croatian Transmission System Operator Ltd. (HOPS d.o.o.), MAVIR Hungarian Independent Transmission Operator Company Ltd.; q) Romania - Hungary (RO - HU), Compania Natională de Transport al Energiei Electrice "Transelectrica" S.A., MAVIR Hungarian Independent Transmission Operator Company Ltd.; r) Hungary - Slovenia (HU - SD), MAVIR Hungarian Independent Transmission Operator Company Ltd., ELES, d.o.o.; and s) Germany/Luxembourg - Austria (DE/LU - AT), Austrian Power Grid AG, TransnetBW GmbH, TenneT TSO GmbH and Amprion GmbH.'

sharing (the ‘Proposals’) by six months, pursuant to Article 6(10) of Regulation (EU) 2019/942.

## 2. PROCEDURE

- (4) In a letter dated 3 July 2019 and received by the Agency on the same day, the Chair of the Core Energy Regulators’ Regional Forum<sup>4</sup> submitted, on behalf of all regulatory authorities of the Core CCR, a joint request for a six-month extension of the period for reaching an agreement on the Proposals, according to Article 8(1) of Regulation (EC) No 713/2009, thereby postponing the deadline to 27 March 2020.
- (5) With effect of 4 July 2019, Regulation (EU) 2019/942 has replaced Regulation (EC) No 713/2009. According to Article 46 of Regulation (EU) 2019/942, references to Regulation (EC) No 713/2009 shall be construed as references to Regulation (EU) 2019/942 and shall be read in accordance with the correlation table in Annex II of the same Regulation. Thus, the reference to Article 8(1) of Regulation (EC) No 713/2009 in the letter of 3 July 2019 of the Chair of the Core Energy Regulators’ Regional Forum as well as in the CACM Regulation is to be understood as a reference to Article 6(10) of Regulation (EU) 2019/942.
- (6) According to this letter, the regulatory authorities of the Core CCR had received from all TSOs of the Core CCR the Proposals by 27 March 2019. As the Proposals explain that these are proposals from all TSOs of the Core CCR, the Agency understands that those TSOs are the TSOs of Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia, and the relevant regulatory authorities are those of the same countries.
- (7) In support of the request for extension, the letter states in particular the following: *‘The last Core NRA received these first draft proposals on the 27th of March 2019. The legal deadline to reach an agreement on these proposals is therefore the 27th of September 2019. Such draft proposals however are largely incomplete as Core TSOs expected the experimentation to provide solid ground to build the final RDCT proposals. Consequently, the draft proposals are not sufficiently developed to be implemented as such and cannot be approved by Core NRAs in their current form. At the same time, Core NRAs consider that it is not preferable to try to bring any change to these proposals in the absence of the experimentation. Therefore, all Core NRAs unanimously request the Agency to extend the initial period to assess the proposal by another period of six months (postponing the deadline to reach an agreement to 27<sup>th</sup> of March 2020) - according to Article 8(1) of Regulation (EC) n° 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators - to accommodate the time necessary for TSOs*

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<sup>4</sup> The Core regulatory authorities’ platform to consult and cooperate for reaching a unanimous agreement on Core TSOs’ proposals

*to start conducting the experimentation and submit an updated version of their proposals.'*

### **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 9(7)(c) and Article 9(7)(h) of the CACM Regulation (which has been adopted as a guideline before 4 July 2019), the proposal for a common methodology for coordinated redispatching and countertrading in accordance with Article 35(1) of that Regulation and the proposal for a common methodology for redispatching and countertrading cost sharing in accordance with Article 74(1) of the same Regulation shall be subject to approval by all regulatory authorities of the concerned region(s).
- (10) According to Article 9(10) of the CACM 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 9(11) of the CACM 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 9(11) of the CACM Regulation requires the concerned regulatory authorities to take the decision and to reach an agreement on the proposal for a common methodology for coordinated redispatching and countertrading and the proposal for a common methodology for redispatching and countertrading cost sharing 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 9(11) of the CACM 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 9(11) of the CACM 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 Proposals for a common methodology for coordinated redispatching and countertrading, in accordance with Article 35(1) of the CACM Regulation, and for a common methodology for redispatching and countertrading cost sharing, in accordance with Article 74(1) of the same Regulation. Both Proposals have been submitted by TSOs of the Core CCR in accordance respectively with Article 9(7)(c) and (h) of the CACM Regulation to the regulatory authorities of the Core CCR (Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia). The requesting regulatory authorities, i.e. the regulatory authorities of those countries within the Core CCR, are therefore competent to decide on the Proposals according to Article 9(7)(c) of the CACM Regulation (for the methodology for coordinated redispatching and countertrading) and according to Article 9(7)(h) of the same Regulation (for the methodology for redispatching and countertrading cost sharing). Accordingly, they are also the competent regulatory authorities which may request an extension of the six-month period for reaching an agreement under Article 9(10) and (11) of the CACM Regulation.
- (17) Given the submission of the Proposals on 27 March 2019, the competent regulatory authorities have to decide on both Proposals, in accordance with Article 9(10) and (11) of the CACM Regulation, by 27 September 2019. The request for extension was received by the Agency on 3 July 2019. Thus, it was received before the expiry of the six-month deadline on 27 September 2019.
- (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 (Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia) consider the extension justified as, in their views, (i) the Proposals are currently largely incomplete and not sufficiently developed to be approved and implemented in their current form, and (ii) it is not preferable to try to bring any change to the Proposals in the absence of an experimentation that is expected to provide solid ground to build the final proposals. According to the regulatory authorities of the Core CCR, the extension would provide the TSOs with the time necessary to conduct the necessary experimentation and complement their Proposals.
- (22) The Agency notes that the adoption of these two methodologies is already significantly delayed. Therefore, the extension of the deadline will inevitably lead to further delay in the adoption of these two methodologies and their implementation. However, the Agency also understands that such delays are, at present, unavoidable, as these methodologies cannot be established without adequate analyses and testing. Under those circumstances, the Agency accepts the above assessment of the Core regulatory authorities.
- (23) With regard to the expected experimentation and submission of updated versions of the Proposals, the Agency notes that it seems possible that the Core TSOs fail to submit adequate updates of the Proposals in such a timely manner that the Core regulatory authorities are in a position to approve them by 27 March 2020. Similarly, it seems possible that the Core regulatory authorities require amendments to the Proposals according to Article 9(12) of the CACM Regulation and the Core TSOs fail timely to resubmit the Proposals with the requested amendments. In case the Core regulatory authorities identify the risk of such failures or of other grounds endangering the approval, by 27 March 2020, of the common methodologies for coordinated redispatching and countertrading as well as for redispatching and countertrading cost sharing in the Core CCR, the Agency advises the Core regulatory authorities to refer both Proposals to the Agency for a decision, in order to avoid further delay.
- (24) The above considerations are without prejudice to the third subparagraph of Article 5(3) of Regulation (EU) 2019/942. An extension of the regulatory authorities' deadline to reach an agreement, as requested, does not affect the right of the Director and the Board of Regulators to require the regulatory authorities of the Core CCR to refer the Proposals to ACER for approval if it is concluded that the Proposals have a tangible impact on the internal energy market or on security of supply beyond the region.

(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 Core CCR competent according to Article 9(7)(c) and (h) of the CACM Regulation, i.e. the regulatory authorities of Core CCR (Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia), and extends the period for those regulatory authorities to reach an agreement on the Proposals by six months, i.e. until 27 March 2020,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The period within which the regulatory authorities of the Core CCR (Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia), competent according to Article 9(7)(c) and (h) of Commission Regulation (EU) 2015/1222, shall reach an agreement on the proposal for a common methodology for coordinated redispatching and countertrading in accordance with Article 35(1) of that Regulation and the proposal for a common methodology for redispatching and countertrading cost sharing in accordance with Article 74(1) of the same Regulation, submitted by the transmission system operators by 27 March 2019, is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 27 March 2020.

#### *Article 2*

This Decision is addressed to:

Energie-Control Austria (Austria)  
Commission de Régulation de l'Électricité et du Gaz (Belgium)  
Hrvatska energetska regulatorna agencija (Croatia)  
Energetický regulační úřad (the Czech Republic)  
Commission de régulation de l'énergie (France)  
Bundesnetzagentur (Germany)  
Magyar Energetikai És Közmű-Szabályozási Hivatal (Hungary)  
Institut Luxembourgeois de Régulation (Luxembourg)  
Autoriteit Consument & Markt (the Netherlands)  
Urząd Regulacji Energetyki (Poland)  
Autoritatea Națională de Reglementare în Domeniul Energie (Romania)  
Úrad pre reguláciu sieťových odvetví (Slovakia)  
Agencija za Energijo (Slovenia)

Done at Ljubljana on 26 September 2019.

**- SIGNED -**

*For the Agency*  
*Director ad interim*  
Alberto POTOTSCHNIG

*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.*