

**DECISION No 14/2020**  
**OF THE EUROPEAN UNION AGENCY**  
**FOR THE COOPERATION OF ENERGY REGULATORS**

**of 14 July 2020**

ON THE REQUEST OF REGULATORY AUTHORITIES OF THE HANSA  
CAPACITY CALCULATION REGION TO EXTEND THE PERIOD FOR  
REACHING AN AGREEMENT ON THE PROPOSALS FOR THE  
COMMON CAPACITY CALCULATION METHODOLOGY AND FOR THE  
METHODOLOGY FOR COORDINATED 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 5(3) and 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 outcome of the consultation with ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 1 July 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

**1. INTRODUCTION**

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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.

- (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 common capacity calculation methodology, in accordance with Article 20(2) of that Regulation, however including the possibility to request an exemption from the capacity calculation methodology using the flow-based approach by applying instead the coordinated net transmission capacity in accordance with Article 20(7) of that Regulation, and the development of a methodology for the coordination of redispatching and countertrading, pursuant to Article 35 of the same Regulation.
- (2) Pursuant to Articles 9(1), 9(7)(a), 9(7)(b), 9(7)(c), 20(2), 20(7) and 35(1) of the CACM Regulation, transmission system operators (‘TSOs’) of each capacity calculation region (‘CCR’) are required to develop a proposal for a common capacity calculation methodology, may propose an exceptional application of the coordinated net transmission capacity, and have to develop a proposal for a common methodology for coordinated redispatching and countertrading within the respective region; those proposals are to be approved by the regulatory authorities of the concerned region. If the regulatory authorities fail to reach an agreement and to take decisions on these proposals within six months, ACER is mandated to decide on the proposals. The competent regulatory authorities may jointly request that the six-month period is extended by a period of up to six months, in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (3) The regulatory authorities of Denmark, Germany, Poland, and Sweden issued coordinated decisions on a common capacity calculation methodology in the Hansa CCR according to Article 20(2) of the CACM Regulation as well as on the application of the coordinated net transmission capacity in the Hansa CCR according to Article 20(7) of that Regulation by 17 December 2018 respectively, and on a methodology for the coordination of redispatching and countertrading in the Hansa CCR according to Article 35 of the same Regulation by 20 February 2019. By ACER Decision No04/2019 of 19 April 2019, the Hansa CCR has been changed to include also the Netherlands.<sup>3</sup>

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<sup>3</sup> Following Article 4 of Annex I of ACER Decision No 06/2016 on CCR, “The CCR Hansa shall include the bidding zone borders listed below [...]: a) Denmark 1 -Germany/Luxembourg (DK1-DE/LU), Energinet.dk and TenneT TSO GmbH; b) Denmark 2 - Germany/Luxembourg (DK2-DE/LU), Energinet.dk and 50Hertz Transmission GmbH; and c) Sweden 4 -Poland (SE4 — PL), Svenska Kraftnät and PSE S.A.”; Following Article 1 of Annex I of ACER Decision No 04/2019 on CCR amending ACER Decision No 06/2016, “The Hansa CCR as defined in Article 4 of the Determination of CCRs shall be amended as follows: (a) The Denmark 1 - The Netherlands (DK1 - NL), bidding zone border is included in the Hansa CCR; (b) The Denmark 1 - The Netherlands (DK1 - NL) bidding zone border is attributed to following TSOs: Energinet.dk, and TenneT TSO B.V”

- (4) The present Decision follows from the request of the regulatory authorities of the Hansa CCR<sup>4</sup> (Denmark, Germany, Netherlands, Poland, Sweden) to extend the periods for reaching an agreement on proposals, submitted by the Dutch TSO, for a common capacity calculation methodology, an exceptional application of the coordinated net transmission capacity, and a methodology for coordinated redispatching and countertrading in the Hansa CCR (the ‘Proposals’) by six months pursuant to Article 6(10) of Regulation (EU) 2019/942.

## **2. PROCEDURE**

- (5) In a letter dated 6 March 2020 and received by ACER on the same day, the team manager of the energy department of the Dutch Energy Regulatory Authority submitted, on behalf of all regulatory authorities of the Hansa CCR, a joint request to grant a six-month extension of the periods for reaching an agreement on the Proposals, according to Article 6(10) of Regulation 2019/942, thereby postponing the deadlines to 6 September 2020.
- (6) According to this letter, the regulatory authority of the Netherlands had received the Proposals from the Dutch TSO by 6 September 2019.
- (7) In support of the request for extension, the letter states in particular the following:

*‘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 deadline for approval.*

*Consequently, all Hansa NRAs view that for adopting the currently submitted proposals for CCR Hansa, there has to be more clarity with regard to the KF CGS issue. Hansa NRAs do not expect that this clarity will be reached within the current legal deadline and consider that there will be a significantly*

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<sup>4</sup> Following Article 4 of Annex I of ACER Decision No 06/2016 on CCR, “The CCR Hansa shall include the bidding zone borders listed below [...]: a) Denmark 1 -Germany/Luxembourg (DK1-DE/LU), Energinet.dk and TenneT TSO GmbH; b) Denmark 2 - Germany/Luxembourg (DK2-DE/LU), Energinet.dk and 50Hertz Transmission GmbH; and c) Sweden 4 -Poland (SE4 — PL), Svenska Kraftnät and PSE S.A.”; Following Article 1 of Annex I of ACER Decision No 04/2019 on CCR amending ACER decision No 06/2016, “The Hansa CCR as defined in Article 4 of the Determination of CCRs shall be amended as follows: (a) The Denmark 1 - The Netherlands (DK1 - NL), bidding zone border is included in the Hansa CCR; (b) The Denmark 1 - The Netherlands (DK1 - NL) bidding zone border is attributed to following TSOs: Energinet.dk, and TenneT TSO B.V”

*increased possibility that this clarity may be reached in a case of a 6-month extension of the deadline.*

*The proposals for applying CNTC, for RDCT and for RDCTCS are strongly linked to the proposal for CCMs and all Hansa NRAs agree that no decision on these proposals can be taken without taking a decision on the proposal for the CCMs.*

*Consequently, [...] all Hansa NRAs will not be able to adopt a decision on the RDCTCS Hansa TSOs proposal by the deadline of 30 March 2020 and, therefore, unanimously agree to jointly request the Agency to grant a 6-month extension according to Article 6(10) of Regulation (EU) 942/2019 of the European Parliament and of the Council of 5 June 2019 establishing an Agency for the Corporation of Energy Regulators.*

*Within 6 months following the extension, if granted by ACER, Hansa NRAs will strive to reach a unanimous agreement on the proposals or on a possible Request for Amendment of these proposals.'*

- (8) During the consultation, the regulatory authorities of the Hansa CCR, i.e. of Denmark, Germany, Netherlands, Poland, and Sweden, clarified that the Proposals submitted by the Dutch TSO are exactly the same as the proposals which the regulatory authorities of Denmark, Germany, Poland, and Sweden approved for the Hansa CCR by 17 December 2018 and by 20 February 2019 (see above paragraph 3). Given these approvals, the TSOs of Denmark, Germany, Poland, and Sweden did not formally submit the Proposals to the regulatory authorities of those Member States.
- (9) ACER informed the TSOs of the Hansa CCR of the present requests for extension and invited them for comments. The TSOs did not provide any comments by the time given.
- (10) On 15 June 2020, a proposed draft of the present decision was submitted ACER's Electricity Working Group for consultation in accordance with Article 24(2) of Regulation (EU) 2019/942.

### **3. ASSESSMENT OF THE REQUEST**

#### **3.1. Legal framework**

- (11) According to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942, all regulatory authorities of the region concerned shall unanimously agree on proposals for terms and condition or methodologies for the implementation of those network codes or guidelines that were adopted before 4 July 2019 and, where no unanimous agreement has been reached, shall refer the relevant proposal to ACER for approval in accordance with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

- (12) According to point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, ACER shall decide on regulatory issues having effects on cross-border trade or cross-border system security which require a joint decision by at least two regulatory authorities, where such competences have been conferred on the regulatory authorities under network codes and guidelines adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines and where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from the referral of the case to the last of those regulatory authorities. 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.
- (13) According to Article 9(7)(a), 9(7)(b) and Article 9(7)(c) of the CACM Regulation (which has been adopted as a guideline before 4 July 2019), the proposals for a common capacity calculation methodology in accordance with Article 20(2) of that Regulation, for an exceptional application of the coordinated net transmission capacity in accordance with Article 20(7) of that Regulation, and for a common methodology for coordinated redispatching and countertrading in accordance with Article 35(1) of the same Regulation shall be subject to approval by all regulatory authorities of the concerned region(s).
- (14) 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.
- (15) 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**

- (16) Article 5(3) in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Article 9(10) and (11) of the CACM Regulation requires the concerned regulatory authorities to take the decision and to reach an agreement on the proposals for a common capacity calculation methodology, for the exceptional application of the coordinated net transmission capacity and for a common methodology for coordinated redispatching and countertrading within six months after receipt of the submission.
- (17) Those provisions do not explicitly provide for the possibility to extend the six-month period. However, they do condition ACER's competence on the expiry of the six-

month period referred to in point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

- (18) Therefore, the transfer of the decision-making competence from the regulatory authorities to ACER under Article 5(3) of Regulation (EU) 2019/942 and Article 9(11) of the CACM Regulation may be subject also to an extension of the six-month period to reach an agreement, in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (19) The third subparagraph of Article 6(10) of Regulation (EU) 2019/942 allows for an extension of the prescribed period within which the competent regulatory authorities have to reach an agreement. The competent regulatory authorities should submit the respective request before the end of the period for reaching an agreement. The maximum period of an extension is six months.
- (20) The present request for extension relates to the proposals for a common capacity calculation methodology in the Hansa CCR according to Article 20(2) of the CACM Regulation, for the application of the coordinated net transmission capacity in the Hansa CCR according to Article 20(7) of that Regulation, and for a common methodology for coordinated redispatching and countertrading in the Hansa CCR according to Article 35(1) of the same Regulation, which have been submitted for approval in accordance, respectively, with Article 9(7)(a), Article 9(7)(b) and Article 9(7)(c) of the CACM Regulation. Although the Proposals have been formally submitted only to the Dutch regulatory authority by the Dutch TSO, the decisions on the Proposals have to be coordinated with the regulatory authorities of the other countries within the Hansa CCR, i.e. of Denmark, Germany, Poland, and Sweden. In fact, this coordination could result in a request for amendment by all regulatory authorities of the Hansa CCR affecting not only the Proposals but also the approved proposals of the Danish, German, Polish and Swedish TSOs on which the present Proposals are based. The requesting regulatory authorities are therefore competent according to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942 Article 9(7)(a), Article 9(7)(b) and Article 9(7)(c) of the CACM 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 5(3) and Article 6(10) of Regulation (EU) 2019/942 and Article 9(10) and (11) of the CACM Regulation.
- (21) Given the initial submission of the Proposals by 6 September 2019, the competent regulatory authorities have to decide on those Proposals, in accordance with Article 5(3) and Article 6(10) of Regulation (EU) 2019/942 and Article 9(10) and (11) of the CACM Regulation, by 6 March 2020. Their request for extension was received by ACER on 6 March 2020. Thus, it was received before the expiry of the six-month deadline on 6 March 2020.
- (22) 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 in the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.

(23) Therefore, ACER considers the request for extension admissible.

### **3.3. Substance**

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

(25) The requesting regulatory authorities of Denmark, Germany, Netherlands, Poland, and Sweden consider the extension justified as, in their views, (i) the regulatory framework of the interconnector between the bidding zones between Denmark and Germany, the so-called Kriegers Flak Combined Grid Solution (“KF CGS”), poses legal concerns over the existing day-ahead and intraday capacity calculation methodologies, to which the Proposals are linked, and (ii) absent the necessary legal clarity over the issue of the KF CGS, the requesting regulatory authorities lack the clarity to decide on the Proposals. The requesting regulatory authorities also refer to on-going discussions over a solution in collaboration with the European Commission.

(26) ACER notes that the requested extension of the deadlines to reach an agreement would inevitably lead to a delay in the adoption of the common capacity calculation methodology, the decision on the exceptional application of the coordinated net transmission capacity, and the common methodology for coordinated redispatching and countertrading, as well as their implementation. However, ACER also understands that such delays are unavoidable under the current circumstances, as the legal situation of the KF CGS must be solved before the adoption of the two methodologies and the exemption decision at issue. On balance, ACER finds it reasonable and proportionate that the regulatory authorities of the Hansa CCR first strive for a legal solution for the KF CGS and, for that purpose, their agreement on the Proposals could be deferred for up to six months.

(27) Therefore, ACER considers an extension of six months justified.

## **4. CONCLUSION**

(28) For the above reasons, ACER accepts the request for an extension submitted by the regulatory authorities of the Hansa CCR, competent according to point (b) of the first subparagraph of Article 5(3) of Regulation (EU) 2019/942 and Article 9(7)(a), Article 9(7)(b) and Article 9(7)(c) of the CACM Regulation, i.e. the regulatory authorities of Denmark, Germany, Netherlands, Poland, and Sweden, and extends the period for those regulatory authorities to reach an agreement on the Proposals by six months, i.e. until 6 September 2020.

HAS ADOPTED THIS DECISION:

### *Article 1*

The period within which the regulatory authorities of the Hansa CCR (Denmark, Germany, Netherlands, Poland, and Sweden), competent according to point (b) of the

first subparagraph of Article 5(3) of Regulation (EU) 2019/942 and Article 9(7)(a), Article 9(7)(b) and Article 9(7)(c) of Commission Regulation (EU) 2015/1222, shall reach an agreement on the proposal for a common capacity calculation methodology in accordance with Article 20(2) of that Regulation, on the proposal for the application of the coordinated net transmission capacity in accordance with Article 20(7) of that Regulation, and on the proposal for a common methodology for coordinated redispatching and countertrading in accordance with Article 35(1) of the same Regulation, respectively submitted by the Dutch transmission system operator by 6 September 2019, is extended, in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942, by six months, until 6 September 2020.

*Article 2*

This Decision is addressed to:

Forsyningstilsynet (Denmark)  
Bundesnetzagentur (Germany)  
Autoriteit Consument & Markt (the Netherlands)  
Urząd Regulacji Energetyki (Poland)  
Energimarknadsinspektionen (Sweden)

Done at Ljubljana, on 14 July 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 ACER within two months of the day of notification of this Decision.*

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