

DECISION No 15/2023
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 20 December 2023

on the request of the regulatory authorities of the Core capacity calculation region to extend the period for reaching an agreement on the proposal for an amendment to the Day-Ahead Capacity Calculation Methodology in the Core region

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, Articles 5(3) and 6(10) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Articles 9(5), 9(7)(a), 9(10) and 9(13) 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 13 December 2023, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Pursuant to Articles 9(1) and 9(7)(a) as well as Article 20(2) of Commission Regulation (EU) 2015/1222 of 24 July 2015 ('the CACM Regulation'), transmission system operators ('TSOs') of each capacity calculation region ('CCR') are required

¹ OJ L158, 14.6.2019, p. 22.

² OJ L 197, 25.7.2015, p. 24, as amended by Commission Implementing Regulation (EU) 2021/280 of 22 February 2021, OJ L 62, 23.2.2021, p. 24.

to develop a common proposal for a common coordinated capacity calculation methodology within the respective region and submit it to the concerned regulatory authorities for approval. In accordance with Article 9(10) of the CACM Regulation, the regulatory authorities shall reach an agreement and take a decision within six months after the receipt of the proposal by the last regulatory authority concerned. According to Article 9(11) of the CACM Regulation, where the regulatory authorities fail to reach an agreement within the six-month period, ACER is called upon to adopt the required decision in accordance with the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

- (2) The present Decision follows from the request of the regulatory authorities of the Core CCR, namely of Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia, to extend the period for reaching an agreement with regard to the Core CCR TSOs' proposal for a second amendment to the Day-Ahead Capacity Calculation Methodology in the Core region ('Core DA CCM') in accordance with Article 9(13) of the CACM Regulation ('the Proposal'), by three months pursuant to Article 6(10), subparagraph three, of Regulation (EU) 2019/942.³

2. PROCEDURE

- (3) By letter dated 24 October 2023, the Core Energy Regional Regulatory Forum, submitted, on behalf of the regulatory authorities of the Core CCR, to ACER a joint request to grant a three-month extension according to Article 6(10), subparagraph three, of Regulation (EU) 2019/942, to decide upon the Proposal.
- (4) According to this letter, the last regulatory authority of the Core CCR received the TSOs' Proposal on 4 May 2023, and hence, a respective Core CCR regulatory authorities agreement within 6 months would be due by 6 November 2023.
- (5) In support of the request for extension, the letter explains that:

'Core NRAs thoroughly assessed the proposal and identified a number of elements to be amended, which Core NRAs unanimously decided to amend themselves. The draft version of the Core NRA decision on this 2nd amendment of the Core DA CCM was circulated amongst Core NRAs in September 2023 and was also sent to Core TSOs with the request to provide their feedback on the proposed changes.'

³ The TSOs' proposal for amendment follows from Article 13(3) of the Core DA CCM which requires that the TSOs, no later than six months after the implementation of the Core DA CCM in accordance with Article 28(3) of the CACM Regulation, jointly develop a proposal for the implementation of the advanced hybrid coupling ('AHC') and submit it to the Core regulatory authorities in accordance with Article 9(13) of the CACM Regulation.

On the content-related points, informal alignment between Core TSOs and Core NRAs has been reached and Core NRAs will integrate the result of this alignment process in their decision.

Core NRAs strive to meet the deadline for submission of the Core DA CCM 2nd amendment to CERRF on 6th of November. However, Core NRAs may need a few more days or weeks to finalise their decision.'

- (6) On 10 November 2023, a proposed draft of the present decision was submitted to ACER's Electricity Working Group for consultation in accordance with Article 24(2) of Regulation (EU) 2019/942.
- (7) On 22 November 2023, ACER's Electricity Working Group endorsed the draft ACER Decision on the request of the regulatory authorities of the Core CCR to extend the period for reaching an agreement on the proposal for an amendment to the Core DA CCM.
- (8) On 13 December 2023, ACER's Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

- (9) 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.
- (10) 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.
- (11) 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.
- (12) According to Article 9(7)(a) of the CACM Regulation (which initially was adopted as a guideline before 4 July 2019), the regulatory authorities of the capacity calculation

region shall review and approve the TSOs' proposal for the common capacity calculation methodology and any amendments thereof.

- (13) 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 paragraph (7) of the same Article within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (14) According to Article 9(11) of the CACM Regulation, where the regulatory authorities have not been able to reach an agreement within the six-month period, ACER shall adopt a decision concerning the submitted proposal for terms and conditions or methodologies within six months, in accordance with Article 5(3) and the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.

3.2. Admissibility

- (15) Article 5(3) in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Articles 9(7)(a) and 9(10) of the CACM Regulation require the concerned regulatory authorities to take the decision and to reach an agreement on the Proposal within six months from the receipt of the submission but does not explicitly provide for the possibility to extend that period.
- (16) Although the possibility to extend the six-month period is not explicitly indicated, ACER's competence is made contingent upon the expiry of the six-month period referred to in point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (17) Therefore, the transfer of the decision-making competence from the regulatory authorities to ACER under Article 5(3) and point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and 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), subparagraph three, of Regulation (EU) 2019/942.
- (18) For an extension of this six-month period, the joint request by the competent regulatory authorities should be submitted before the end of the period for reaching an agreement, and the maximum requested extension should not exceed the period of six months in accordance with Article 6(10), third subparagraph, of Regulation (EU) 2019/942.
- (19) The Proposal to which the request for extension is related falls under the competence of the requesting regulatory authorities pursuant to Articles 9(7)(a) and 9(10) of the CACM Regulation. Accordingly, they are also the competent regulatory authorities that may request an extension of the six-month period for reaching an agreement under

Article 5(3) and point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942 and Articles 9(10) and 9(11) of the CACM Regulation.

- (20) Since the last competent regulatory authority received the Proposal on 4 May 2023, the competent regulatory authorities were required to agree on it by 6 November 2023, in accordance with Article 9(10) of the CACM Regulation and point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942. The request for extension was received by ACER on 24 October 2023, hence before the expiry of the six-month deadline.
- (21) In their request, the competent regulatory authorities ask for an extension of three months, which, given the initial deadline of 6 November 2023, would defer the final deadline to 6 February 2024. As such, the requested extension does not exceed the maximum limit of six months as provided for in Article 6(10), subparagraph three, of Regulation (EU) 2019/942.
- (22) In light of the above, ACER considers the request for extension as admissible.

3.3. Substance

- (23) Article 6(10), subparagraph three, of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (24) The justification provided by the requesting regulatory authorities, as reported at paragraph (5) above, indicates the need for more time to finalise the decision. In that regard, they point in particular to the need to amend the Proposal and to align with the Core TSO's.
- (25) ACER understands from this justification that the additional period of three months would allow sufficient time for the regulatory authorities of the Core CCR to reach an agreement and complete their approval proceedings with regard to the Proposal.
- (26) ACER considers that continuing and completing the regulatory authorities' ongoing assessment can contribute to the efficient conclusion of the pending approval proceedings. In ACER's view, this continuation and completion would not unduly impact the fulfilment of the objective of the CACM Regulation. Under those circumstances, ACER deems it reasonable to enable the regulatory authorities to conclude the pending approval proceedings.
- (27) Furthermore, ACER considers that the request for extension for a total of three months is proportionate in light of the activities to be performed by the competent regulatory authorities to adopt a decision on the Proposal in accordance with Article 9(10) of the CACM Regulation.
- (28) However, ACER also notes that the amendment to the Core DA CCM regarding the implementation of the advanced hybrid coupling has already been significantly delayed. Any unnecessary further delay should therefore be avoided.

- (29) For these reasons, ACER considers an extension until 6 February 2024 justified, but urges the regulatory authorities of the Core CCR to take the necessary actions to reach an agreement as soon as possible to avoid any unnecessary delay in the amendment of the Core DA CCM.

4. CONCLUSION

- (30) For the above reasons, ACER accepts the request for an extension submitted by the regulatory authorities of the Core CCR and extends the period for those regulatory authorities to reach an agreement on the Proposal, until 6 February 2024,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of the Core Capacity Calculation Region, i.e. of Austria, Belgium, Croatia, Czech Republic, France, Germany, Hungary, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia, shall reach an agreement on the proposal for the second amendment to the Day-Ahead Capacity Calculation Methodology in the Core region is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by three months, until 6 February 2024.

Article 2

This Decision is addressed to:

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

Done at Ljubljana, on 20 December 2023.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.

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