

**DECISION No 13/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 24 June 2020

**on the Implementation framework for the European platform for the
imbalance netting process**

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 ('Regulation (EU) 2019/942'), and, in particular, point (b) of the second subparagraph of Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Article 5(2)(a) and Article 6(2) thereof,

Having regard to the outcome of the consultation with the concerned regulatory authorities and transmission system operators ('TSOs'),

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

Having regard to the favourable opinion of the Board of Regulators of 28 May 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of

¹ OJ L158, 14.6.2019, p. 22.

² OJ L312, 23.11.2017, p. 6.

requirements for electricity balancing, platforms for the exchange of balancing energy, as well as pricing and settlement of balancing energy. These requirements include the development of an implementation framework for a European platform for the imbalance netting process ('INIF').

- (2) Pursuant to Articles 4(1) and 5(2)(a) of the EB Regulation, all transmission system operators ('TSOs') are required to develop a common proposal for the INIF in accordance with Article 22 of the EB Regulation and submit it to all regulatory authorities for approval. In turn, according to Article 5(6) of the EB Regulation, all regulatory authorities shall reach an agreement and take a decision on the proposal for the INIF within six months after the receipt of the proposal by the last regulatory authority. In addition, all regulatory authorities can require an amendment to the proposal in accordance with Article 6(1) of the EB Regulation where all TSOs have two months to submit an amended proposal to all regulatory authorities. Then, all regulatory authorities have two months to decide on the amended proposal. When all regulatory authorities fail to reach an agreement within the six-month period after the submission of the initial proposal or the two-month period after the submission of the amended proposal or upon their joint request, ACER, pursuant to Article 5(7) or Article 6(2) of the EB Regulation, shall adopt a decision concerning the TSOs' proposal in accordance with point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (3) The present Decision of ACER follows from the request of all regulatory authorities that ACER adopts a decision on the proposal for the INIF, which all TSOs submitted to all regulatory authorities for approval and on which all regulatory authorities could not agree on. Annex I to this Decision sets out the INIF pursuant to Article 22(1) of the EB Regulation as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (4) Article 22(1) of the EB Regulation requires all TSOs to submit a proposal for the INIF no later than six months after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, all TSOs were required to submit a proposal for the INIF by 18 June 2018.
- (5) On 15 January 2018, all TSOs published for public consultation the draft 'All TSOs' proposal for the imbalance netting process in accordance with Article 22 of

Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing³. The consultation lasted from 15 January 2018 until 15 March 2018.

- (6) On 18 June 2018, all TSOs submitted to all regulatory authorities an ‘All TSOs’ proposal for the implementation framework for a European platform for the imbalance netting process in accordance with Article 22 of Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing⁴. The last regulatory authority received the INIF on 21 November 2018.
- (7) All regulatory authorities jointly agreed on 9 November 2018 to request an amendment to the INIF and sent this request to all TSOs. The last regulatory authority issued the request for amendment nationally on 15 January 2019. All TSOs resubmitted to all regulatory authorities an amended INIF on 23 January 2019.
- (8) The last regulatory authority received the amended INIF on 19 March 2019. ACER Decision No 06/2019 granted a two months extension to the period for reaching an agreement on the amended INIF and on 19 July 2019 all regulatory authorities reached an agreement to request to all TSOs a second amendment to the INIF.
- (9) All TSOs resubmitted the amended INIF on 10 September 2019 to all regulatory authorities and the last regulatory authority received the amended INIF (hereafter referred to as the ‘Proposal’) on 28 October 2019. Therefore, the new deadline for approval by all regulatory authorities was 28 December 2019.

2.2. Proceedings before ACER

- (10) In an email⁵ dated 14 January 2020 and received by ACER on the same day, the Chair of the Energy Regulators Forum⁶, on behalf of all regulatory authorities informed ACER that they were not able to reach an agreement within the two-month deadline. Therefore, the INIF can be considered referred to ACER, as of 28 December 2019, and ACER shall adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation.
- (11) In the email, it was explained that since the second amended Proposal had been submitted after the entry into force of the Commission Regulation (EU) 2019/942 on 4 July 2019, establishing a European Union Agency for the Cooperation of Energy

³ https://consultations.entsoe.eu/markets/implementation-framework-imbalance-netting-process/supporting_documents/Proposal%20for%20implementation%20framework%20for%20the%20imbalance%20netting%20process.pdf

⁴ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/06%20aFRR%20IF/Action%201%20-%20aFRR%20IF%20proposal.pdf>

⁵ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/06%20aFRR%20IF/Action%202%20-%20aFRR%20IF%20referral%20to%20ACER%20letter.pdf>

⁶ The all regulatory authorities’ platform to consult and cooperate for reaching a unanimous agreement on NEMO’s and TSO’s proposals.

Regulators, some regulatory authorities consider that they are not competent anymore to issue a decision on the Proposal. Therefore, all regulatory authorities were not able to reach an agreement within the deadline of two months and, according to the Article 6(2) of the EB Regulation, from 28 December 2019 the Proposal is to be considered as referred to ACER.

- (12) On 10 February 2020, ACER started the consultation phase on the Proposal, inviting parties concerned, here all TSOs and all regulatory authorities, to send their comments on the Proposal. ACER did not launch a public consultation on the Proposal because the directly concerned stakeholders were TSOs and regulatory authorities and they have been already consulted.
- (13) ACER cooperated closely with all regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposals suggested by ACER. In particular, the following procedural steps were taken and, in general, before each interaction, ACER shared with the regulatory authorities and TSOs a new version of amendments proposed by ACER to the Proposal:
- 22 and 23 January 2020: discussion with all regulatory authorities in the framework of ACER's Electricity Balancing Taskforce ('EB TF');
 - 14 February 2020: teleconference with all regulatory authorities and TSOs;
 - 26 and 27 February 2020: discussion with all regulatory authorities in the framework of the Agency's Electricity Balancing Taskforce ('EB TF');
 - 28 February 2020: teleconference with all regulatory authorities and TSOs;
 - 13 March 2020: telephone conference call with all regulatory authorities and TSOs;
 - 17 March 2020: discussion with all regulatory authorities in the framework of the EB TF;
 - 27 March 2020: teleconference with all regulatory authorities and TSOs;
 - 23 April 2020: discussion with all regulatory authorities in the framework of ACER's Electricity Working Group ('AEWG');
 - 13 May 2020: discussion with all regulatory authorities at the Board of Regulators' meeting.

3. THE AGENCY'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (14) Pursuant to Article 6(2) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement or upon their joint request, ACER shall adopt a decision concerning the submitted terms and conditions or methodologies within six months in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (15) According to the email of the Chair of the all Energy Regulators Forum dated 14 January 2020, all regulatory authorities did not reach an agreement on the Proposal

and therefore ACER became competent to adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation. This email, was sent by all regulatory authorities after the expiry of the two-month deadline after receiving the amended Proposal (i.e. 28 December 2019).

- (16) Therefore, in accordance with Article 6(2) of the EB Regulation and Article 6(10) of Regulation (EU) 2019/942, ACER became responsible to adopt a decision concerning the Proposal by the expiry of the deadline for all regulatory authorities on 28 December 2019 and communicated to ACER on 14 January 2020.

4. SUMMARY OF THE PROPOSAL

- (17) The Proposal consists of the following elements:
- (a) the ‘Whereas’ section and Articles 1 and 2, which include general provisions, the scope of application and the definitions;
 - (b) Article 3, which includes the high-level design of the IN-Platform;
 - (c) Article 4, which describes the limits for IN balancing borders, including the determination of the cross-zonal capacity;
 - (d) Article 5, which provides the timeline for the implementation of the IN-Platform;
 - (e) Articles 6 and 7, which specify the functions and fall-back procedures for the IN-Platform;
 - (f) Articles 8 and 9, which describe the governance of the platform and the decision-making process;
 - (g) Article 10, which covers the designation of the entity that will perform all the functions of the IN-Platform;
 - (h) Articles 11 and 12, which describe the categorisation and sharing of the costs and the framework for harmonisation of terms and conditions related to balancing;
 - (i) Article 13, which includes the requirements of the optimisation algorithm;
 - (j) Article 14, which describes the publication as well as the implementation;
 - (k) Article 15, which includes provisions on language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of all regulatory authorities

- (18) According to the email of the Chair of the all Energy Regulators Forum of 14 January 2020, all regulatory authorities were not able to reach an agreement within the deadline of two months because some regulatory authorities consider that they are not competent to issue a decision. In the email, all regulatory authorities were silent about possible shortcomings of the Proposal.

5.2. Consultation of all regulatory authorities and TSOs

- (19) ACER, in close cooperation and consultation with all regulatory authorities and TSOs as detailed in Recital (13) above:
- a) discussed the alignment of the Proposal with the implementation framework for an aFRR-Platform⁷ adopted pursuant to ACER Decision No 02/2020⁸ because the two platforms for imbalance netting and aFRR will be intertwined and interacting closely;
 - b) with respect to updating cross-zonal capacities, further discussed the whole process, the possible efficient design of such a process and the responsibilities of the parties involved, as well as the evolution of this process to a capacity management function;
 - c) regarding the interaction with the aFRR process, clarified the process and the sequence of the optimisation steps;
 - d) regarding the proposed designation of a single entity to perform the functions of the IN-Platform, ensured the legal compliance with the EB Regulation.

5.3. Public consultation

- (20) The Agency decided not to launch a public consultation because the current Decision would only have a direct impact on regulatory authorities and TSOs and not on other stakeholders. During the European consultation by TSOs stakeholders expressed limited interest in the Proposal and the issues mentioned during that consultation were taken into account by TSOs for the final submission for approval. After the initial submission by all TSOs, two sequential requests for amendment were made by all regulatory authorities and TSOs took them into account for resubmitting the Proposal.

5.4. Hearing phase

- (21) ACER initiated a hearing phase on 6 April 2020 by providing all TSOs and all regulatory authorities with a near final draft of Annex I to this Decision, as well as the reasoning for the introduced changes to the Proposal. The hearing phase lasted until 17 April 2020. During this time, ACER received a written response from ENTSO-E⁹, on behalf of all TSOs.
- (22) ENTSO-E disagrees with the ACER proposal on two major points. The first point is, that ENTSO-E does not see the capacity management function as a function needed for the operation of the IN-Platform and that ACER has no competence to define such

⁷ frequency restoration reserve with automatic activation

⁸

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2002-2020%20on%20the%20Implementation%20framework%20for%20aFRR%20Platform.pdf

⁹ European Network of Transmission System Operators for Electricity

a function. Secondly, ENTSO-E does not agree with the changes on the entity designation in Article 12 and argues that a company owned by TSOs would not be more efficient as the designated entity to operate the IN-Platform. ACER has no legal competence to restrict TSOs' choice to a single entity because the EB Regulation allows also several entities for the designation. To support the above arguments, ENTSO-E mentions that regulatory authorities have not asked ACER to make changes in Article 12 on the entity designation. ENTSO-E expressed also concerns that ACER has requested TSOs to submit an amendment to the Proposal if TSOs change the single entity approach and go for the option with several entities that shall perform the functions of the IN-Platform.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (23) Articles 4(1), 4(2) and 5(2)(a) of the EB Regulation require all TSOs to provide the proposal for the INIF in accordance with Article 22(1) of the EB Regulation. This proposal must be submitted to all regulatory authorities for their approval.
- (24) Article 22 of the EB Regulation sets out the requirements for the development of a proposal for an IN-Platform and its implementation. In this context, all TSOs are required to develop a proposal for the INIF no later than six months after the entry into force of the EB Regulation. TSOs must consult the Proposal in accordance with Article 10 of the EB Regulation.
- (25) Article 18 of the EB Regulation contains all the requirements for terms and conditions related to balancing at a Member State level. These national terms and conditions on balancing need to respect the framework for the establishment of the IN-Platform pursuant to Article 18(3) of the EB Regulation.
- (26) Article 23 of the EB Regulation covers the cost-sharing principles for establishing, amending and operating the IN-Platform pursuant to Article 22 of the EB Regulation.
- (27) Article 28 of the EB Regulation lays down the rules for fall-back procedures to be followed when, for example, the coordination of balancing energy fails.
- (28) Articles 36 and 37 of the EB Regulation list the requirements for using and updating the cross-zonal capacity for the exchange of balancing energy.
- (29) Article 58 of the EB Regulation contains provisions for balancing algorithms, which will be operated by the activation optimisation function for the IN-Platform.
- (30) Article 62 of the EB Regulation describes the possibilities for derogations and especially the derogation from the deadline for joining the IN-Platform.
- (31) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

6.2.1.1. *Development of the Proposal*

- (32) The Proposal fulfils the requirements of Articles 4(1), 4(2) and 5(2)(a) of the EB Regulation, as all TSOs jointly developed a proposal for the INIF and submitted it for approval to all regulatory authorities.
- (33) The procedure for the development of the Proposal did not respect the requirements of Article 22(1) of the EB Regulation, as the Proposal, while submitted by most TSOs by 18 June 2018, which is within six months after entry into force of the EB Regulation, was submitted by the last TSO on 10 July 2018. This is in breach of the six month-submission deadline. The Proposal was subject to consultation as described in Section 2.1 above.

6.2.1.2. *Proposed timescale for implementation*

- (34) The Proposal fulfils the requirements of Article 5(5) of the EB Regulation with regard to the proposed timescale for implementation in Article 5 of the INIF.

6.2.1.3. *Description of the expected impact on the objectives of the EB Regulation*

- (35) The Proposal does not fully fulfil the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation. The recitals in the Proposal provide a description of the expected impact of the INIF on the objectives set in Article 3 of the EB Regulation. The Agency added some specific sub-paragraphs (b), (g) and (h) under the recital (20) of the Proposal to address the expected impact on each of the objectives of the EB Regulation in more detail and aligned the wording of the other sub-paragraphs with the implementation framework for an aFRR-Platform adopted pursuant to ACER Decision No 02/2020.

6.2.2. Assessment of the high-level requirements of the IN-Platform

- (36) Pursuant to Article 22(2) of the EB Regulation, the IN-Platform, operated by TSOs or by means of an entity the TSOs would create themselves, should be based on common governance principles and business processes and should consist of at least the imbalance netting process function and the TSO-TSO settlement function. This European platform should apply a multilateral TSO-TSO model. The assessment of the Proposal with regard to these requirements is addressed in sections 6.2.7 on the entity operating the IN-Platform, 6.2.6 on the governance, (56) on the functions of the IN-Platform and 6.2.3 on high-level design.

6.2.3. Assessment of the requirements for the high-level design of the IN-Platform

- (37) Pursuant to Article 22(3)(a) of the EB Regulation, the Proposal should include the high-level design of the IN-Platform, which is provided in Article 3 of the Proposal.

The Proposal does not fulfil the requirement, as described in section 6.2.3.1 below, and the Agency made the necessary amendments including also some small editorial clarifications and alignment of the wording with Article 3 of the implementation framework for an aFRR-Platform adopted pursuant to ACER Decision No 02/2020¹⁰.

6.2.3.1. *Updating of cross-zonal capacities*

- (38) Article 3 of the Proposal describes the main processes executed by the IN-Platform, presenting an overview of the inputs and outputs of the functions, as well as the main procedures. However, Article 4 also describes an essential process of the platform, which is the updating of the capacities, which are limiting the balancing energy exchanges on IN balancing borders. ACER changed the definition of these limits from ‘IN cross-border capacity limits’ to ‘IN balancing border capacity limits’. This change was necessary because the reference to ‘cross-border’ is usually used for borders between Member States, but, in the context of the IN-Platform, the IN balancing borders do not always correspond to borders between Member States.
- (39) Furthermore, ACER amended Article 4 to clarify the difference between the IN balancing border capacity limits and cross-zonal capacities. The two definitions are the same on IN balancing borders, which correspond to a bidding zone border and the IN balancing border capacity limits are equal to cross-zonal capacities, whose definition and updating is further defined in the subsequent paragraphs of Article 4 of the Proposal. In case an IN balancing border does not correspond to a bidding zone border, the IN balancing border capacity limits should be in principle infinite, but, nevertheless, a limit still needs to be defined for the purpose of the technical implementation of the algorithm and for the possibility to impose limitations on balancing energy exchanges between TSOs, which are possible pursuant to Articles 146(3)(c), 147(3)(c), 148 (3)(c), 149(3) and 150(3)(b) of the Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation (‘SO Regulation’). Thus, ACER, in consultation with TSOs and regulatory authorities, defined this technical exchange limit to be 99,999 MW.
- (40) Article 37(1) of the EB Regulation requires that, after the intraday-cross-zonal gate closure time, TSOs shall continuously update the availability of cross-zonal capacity for the exchange of balancing energy, and that cross-zonal capacity shall be updated every time a portion of cross-zonal capacity has been used or when cross-zonal capacity has been recalculated. Additionally, Article 37(2) of the EB Regulation requires that TSOs use the cross-zonal capacities remaining after the intraday cross-zonal gate closure time.

10

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2002-2020%20on%20the%20Implementation%20framework%20for%20aFRR%20Platform.pdf

- (41) Following these requirements, Article 4 of the Proposal describes a process for the update of cross-zonal capacities. This process entails:
- (a) defining the initial cross-zonal capacities, which are either the cross-zonal capacities remaining after the single intraday coupling or cross-zonal capacities calculated in accordance with the methodologies pursuant to Article 37(3) of the EB Regulation;
 - (b) updating the initial values to reflect additional cross-zonal capacities allocated to the RR¹¹, mFRR¹² and aFRR process pursuant to Article 38(1) of the EB Regulation;
 - (c) updating cross-zonal capacities based on the already allocated capacities in the balancing timeframe, which can be capacities already allocated in other EU balancing platforms and capacities allocated by other local or regional TSOs processes (e.g. remedial actions); and
 - (d) updating cross-zonal capacities to reflect different legally possible limitations pursuant to Articles 146(3), 147(3), 148(3)(c), 149(3), 150(3)(b) and 171(1) of the SO Regulation.
- (42) The process of updating cross-zonal capacities therefore entails the updating of cross-zonal capacities:
- (a) during the operation of the IN-Platform (intra-platform level): e.g. due to balancing energy exchanges determined by the IN-Platform or other cross-zonal exchanges or limitations occurring during the operation of the IN-Platform;
 - (b) before the operation of the IN-Platform (inter-platform level): e.g. due to balancing energy exchanges determined by the platforms preceding the IN-Platform or other cross-zonal exchanges or limitations occurring before the operation of the IN-Platform.
- (43) As explained in Recital (11) above, regulatory authorities did not include information on the points of disagreement on the content of the Proposal. Therefore, the regulatory authorities did not in their email to ACER ask that the Proposal should be amended with respect to the coordination of the sequential allocation of cross-zonal capacities, as was done in the accompanying non-paper¹³ for the referral leading to ACER Decision No 02/2020. Nevertheless, ACER took this request from the aFRR-Platform also into account for the IN-Platform and made the same changes in Article 4 of the Proposal in order to align with Article 4 from the implementation framework adopted pursuant to ACER Decision No 02/2020.

¹¹ Replacement reserve

¹² Frequency restoration reserve with manual activation

¹³ <https://www.ceer.eu/documents/104400/-/-/8821e98e-8de0-8565-5b51-c36d51b19cc9>

- (44) Therefore, ACER agreed with the request (expressed in the non-paper for the aFRR-Platform) of all regulatory authorities and questioned the whole design of a decentralised and non-coordinated updating of cross-zonal capacities as proposed by TSOs. It suggested instead that TSOs should adopt a centralised approach, which would be more efficient and more transparent for the process of updating cross-zonal capacities. Following these suggestions, the TSOs acknowledged the need for a coordinated and centralised updating of cross-zonal capacities at the intra platform level, as well as inter-platform level.
- (45) In the above context, ACER also questioned how the whole process of updating cross-zonal capacities fits into the structure of the IN-Platform. ACER understands that all platform processes must be accommodated within the functions of the platform. However, the Proposal does not make clear which function of the platform will perform the process of updating cross-zonal capacities. The introduction of this function is needed to comply with Article 22(3)(c) of the EB Regulation, which requires that the INIF defines the functions, which are required to operate the European platform.
- (46) Therefore, ACER defined a requirement for the capacity management function to perform the updating of cross-zonal capacities needed as an input to the activation optimisation function. However, since TSOs originally did not plan to organise the updating of cross-zonal capacities as a central platform function, ACER finds it reasonable to provide TSOs some additional implementation time for implementing this process as a centralised platform function. This transition period aims to prevent any delays in the implementation of the platforms, since meeting the implementation deadline should have a higher priority than implementing this function in a centralised manner.
- (47) Since the technical analysis of the process of updating cross-zonal capacities revealed that this process requires both intra-platform and inter-platform updating, ACER considers that the capacity management function should be a central function that serves not only the IN-Platform, but also other platforms, which require the same process of updating cross-zonal capacities. As the implementation frameworks for the other platforms and the functions defined therein are not within the legal scope of this INIF, ACER provided this obligation conditionally, i.e. if the same obligation for the capacity management function is also imposed in other implementation frameworks.
- (48) However, the ACER Decisions No 02/2020 and 03/2020 on the two other European-wide platforms actually include the same provision for a capacity management function, which makes the capacity management function a cross-platform function. TSOs explained during the hearing, that they intend to launch one project, including IT requirements that would deliver the capacity management function to all three European-wide platforms at the same point in time. The reasoning behind the timeline can be explained with the requirement to design a capacity management function that will deliver cross-zonal capacities on a cross-platform level. Therefore, the capacity management function should best be implemented for the relevant three platforms at the same point in time to make use of synergies and ensure a consistent cross-platform design. For this reason, ACER provided some additional years for implementing the

capacity management function, i.e. two years after the deadline for implementation of the aFRR-Platform. This results in a delay for the capacity management function implementation compared to the implementation of the IN-Platform of approximately three years (the capacity management function implementation for aFRR-Platform is required by 24.07.2024, pursuant to ACER Decision No 02/2020).

- (49) During the hearing, all TSOs explained that the update of cross-zonal capacities will be handled with a capacity management module and it shall be accommodated within the optimisation function. ENTSO-E also explained that the capacity management module will be a cross-platform module to increase transparency and robustness and that it is seen as beneficial. Nevertheless, TSOs argue that the IN-Platform could function without the capacity management function (as defined by ACER) because the update of cross-zonal capacities can be done efficiently by each TSO individually as well. In addition, according to TSOs' view, the starting solution for the IN-Platform without the capacity management function provides proof that the capacity management function is not needed for the IN-Platform operation.
- (50) ACER sees no contradiction in allowing a later capacity management function implementation and declaring it to be a function needed for the operation of the IN-Platform at the point of implementation. The Proposal in Article 4 describes a decentralised process for the update of cross-zonal capacities, which is not regarded as part of the optimisation, hence it is clearly distinct from the other two functions of the IN-Platform, and yet necessary for the operation of the IN-Platform. However, as argued also by the TSOs the most efficient implementation of such process is the centralised approach; therefore the capacity management function, which is the centralised update of the cross-zonal capacities, is necessary for the efficient operation of the IN-Platform, in spite of the additional time, which is provided for its implementation. The TSOs¹⁴ state specifically on this topic, that: "The TSOs propose a separate TSO for the capacity management function to maximise the efficiency across all platforms;" Regulatory authorities argue in the non-paper¹⁵ submitted for the ACER Decision No 02/2020 for an aFRR-Platform: "Therefore, all Regulatory Authorities therefore suggest to replace the wording "each TSO" in article 4.2 with "All TSO shall continuously update and provide ..." in order to reflect this centralization."
- (51) Finally, Article 4 on the updating of cross-zonal capacities did not provide clarity on which requirement of the EB Regulation it addresses. After the clarification that this process is actually a description of a platform function, ACER understands that the amended Article 4 aims to address the requirement to provide the high-level design of the IN-Platform in accordance with Article 22(3)(a) of the EB Regulation. To reflect this understanding, ACER made the necessary amendments in Articles 3, 4 and 6 to

¹⁴ See page 10 bottom in '191218-TSOs_proposal_entity_and_clarifications.pdf'

¹⁵ <https://www.ceer.eu/documents/104400/-/-/8821e98e-8de0-8565-5b51-c36d51b19cc9>

reflect the introduction of the capacity management function as an IN-Platform function.

- (52) Furthermore, Article 4 of the Proposal defines a number of cases linked to operational security limits that should be taken into account when updating cross-zonal capacities. ACER, during the consultation with the regulatory authorities and the TSOs, clarified the cases linked to the HVDC¹⁶ interconnectors, hence added the required references to the SO Regulation in the amended Article 4 of the Proposal.
- (53) ACER added Recital (14) to the ‘Whereas’ section of the Proposal to clarify the interaction with the aFRR-Platform and to explain the specifics for the capacity management function of the IN-Platform.
- (54) ACER also made a few minor amendments to Article 3 of the Proposal, which are reflecting the amendments required pursuant to the assessment of the legal requirements as described in section (56) with respect to the reference to the capacity management function.

6.2.4. Assessment of the requirements for the roadmap and timelines for implementation

- (55) The Proposal fulfils the requirements of Article 22(3)(b) of the EB Regulation by including a roadmap, as well as timelines for the implementation of the IN-Platform in Article 5 of the Proposal.
- (56) Article 5 of the Proposal lays down the implementation deadlines for the IN-Platform and respects the deadlines in accordance with Articles 22(4) and (5) of the EB Regulation. Yet, ACER made some changes in Article 5 to align the wording with the implementation framework for an aFRR-Platform adopted pursuant to ACER Decision No 02/2020¹⁷ to clarify the wording and the meaning of the provisions.
- (57) Many changes in paragraphs (1), (3) and (4) were made to improve the legal consistency with the text from the EB Regulation. ACER also clarified in paragraph (3) the relation between the early implementation project IGCC¹⁸ and the future IN-Platform after the approval of the Proposal.
- (58) The TSOs publish and update regularly the accession roadmap¹⁹ for the implementation of the IN-Platform to provide more transparency to stakeholders on the state of progress.

¹⁶ High Voltage Direct Current

¹⁷

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%202002-2020%20on%20the%20Implementation%20framework%20for%20aFRR%20Platform.pdf

¹⁸ ‘IGCC’ means ‘International Grid Control Cooperation’ and is the implementation project that shall evolve into the IN-Platform

¹⁹ https://www.entsoe.eu/network_codes/eb/imbalance-netting/

6.2.5. Assessment of the requirements for the functions of the IN-Platform

- (59) Article 22(3)(c) of the EB Regulation requires that the Proposal includes the definition of the functions needed for the operation of the IN-Platform. Moreover, Article 22(2) of the EB Regulation specifies that the IN-Platform should consist of at least the imbalance netting process function and the TSO-TSO settlement function. Article 6 of the Proposal provides a high-level description of these two functions. Article 6 of the Proposal also mentions that a third optional function may be added in the future, if deemed efficient, when implementing the methodology for cross-zonal capacity calculation, pursuant to Article 37(3) of the EB Regulation.
- (60) As explained in Section 6.2.3.1, during ACER's consultation with the regulatory authorities and TSOs, it was commonly agreed that the update of cross-zonal capacities should be defined as a separate function. Therefore, the requirement of Article 22(3)(c) of the EB Regulation is not fulfilled in its entirety, since the Proposal does not define the function needed for the updating of cross-zonal capacities, which is required for the operation of the IN-Platform. ACER added the capacity management function to the functions needed for the IN-Platform in Article 6 of the Proposal, and amended Article 4 of the Proposal to introduce the capacity management function and describe the processes. Further changes related to the introduction of the capacity management function were introduced in Articles 3(3), 3(4)(b), 11(1)(c), recital (10) and recital (12) of the Proposal.

6.2.6. Assessment of the requirements on governance

- (61) The Proposal fulfils the requirements of Article 22(3)(d) of the EB Regulation by containing rules on governance and operation of the IN-Platform. Article 8 of the Proposal includes the governance structure, while Article 9 of the Proposal includes the rules for the decision-making process. These rules comply with the principle of non-discrimination between TSOs as all member TSOs have a vote in the changes to the IN-Platform and participate in both the decision-making body (i.e. the steering committee) and the expert group. The voting rules for the decisions taken by the steering committee regarding the operation of the IN-Platform are based on the provisions from Article 4 of the EB Regulation and comply with the principle of non-discrimination and equitable treatment of all member TSOs.

6.2.7. Assessment of the requirements for the proposed designation of the entity

- (62) Article 10 of the Proposal specifies clearly that all TSOs shall appoint one entity entrusted to operate all the functions of the IN-Platform. Therefore, the Proposal fulfils the requirement of the first sentence of Article 22(3)(e) of the EB Regulation to the extent that it includes a proposal for an entity to perform the functions of the IN-Platform.
- (63) In addition, Article 22(2) of the EB Regulation specifies that the IN-Platform should be operated by TSOs or by means of an entity the TSOs would create themselves. The Proposal specifies that the IN-Platform will be operated by one entity, and that this entity shall be a single TSO.

- (64) ACER agrees that, in principle, a single entity that shall perform all the functions of the IN-Platform is compliant with the EB Regulation. Nevertheless, ACER added the option of a company owned by TSOs for a single entity, next to the option of a single TSO. Both options are considered as a single entity and are compliant with the EB regulation. ACER does not want to limit the available options for TSOs with the present Decision, and in addition the actual designation will happen in accordance with Article 22(4) of the EB Regulation only six month after approval.
- (65) However, as outlined in the analysis in Section 6.2.3.1, the process executed by the capacity management function is indispensable for the IN-Platform, as the imbalance netting process function requires continuously updated cross-zonal capacities for its operation, and, since this updating of cross-zonal capacities is most efficiently done through a central function, the capacity management function is an essential function required for efficient operation of the IN-Platform and.²⁰ Especially, once the IN-Platform is no longer the only balancing platform using cross-zonal capacities during the balancing timeframe a coordinated and centralised approach is needed. In this respect, the TSO-TSO settlement function (which is considered as the platform function by TSOs) is a much less essential function for the operation of the IN-Platform since the imbalance netting process function can operate equally efficient without such a function. Given that the capacity management function is a function required to operate the IN-Platform, the proposal from TSOs²¹ is therefore clearly proposing the multiple entities framework, because it proposes that the capacity management function would be operated by one TSO, while the imbalance netting process function and the TSO-TSO settlement function would be operated by another TSO. Therefore, this proposal does not meet the requirements of the second sentence of Article 22(3)(e) of the EB Regulation at the moment.
- (66) Therefore, ACER accepted the part of the TSOs' proposal, which defines that the imbalance netting process function and TSO-TSO settlement function shall be operated by a single entity.
- (67) As described in Recital (48) ACER decided that by two years after the deadline for the implementation of the aFRR-Platform the capacity management function shall be considered as a function required for the operation of the IN-Platform. This means that the exact designation of the entity that will perform this function is not required in this Decision and can be postponed in order to give TSOs more time for discussion, analysis and identification of the most efficient solution for the designation of the entity for this function. Therefore, instead of defining the entity for the operation of the capacity management function, ACER provided an obligation on TSOs to develop a proposal for amendment of the INIF in which they should propose the designation

²⁰ This conclusion is independent from the transition period of two year referred to in paragraph (46), which the Agency provided to TSOs to implement the capacity management function in order not to delay the implementation of the IN-Platform and the aFRR-Platform.

²¹ ACER is referring to the proposal from TSOs made during the consultation phase for ACER Decision No 02/2020.

of the entity that will perform the capacity management function in accordance with Article 22(3)(e) of the EB Regulation. This proposal for amendment needs to be submitted for regulatory approval no later than eighteen months before the deadline for the implementation of the capacity management function, which is two years after the implementation of the aFRR-Platform. However, in case TSOs intend to implement the capacity management function earlier, the TSOs should develop a proposal for the designated entity to operate this function sufficiently before the implementation date. The amendment process should follow the rules from Article 6 of the EB Regulation.

- (68) The final provisions on the entity adopted in this Decision therefore allow the imbalance netting process function and TSO-TSO settlement function of the IN-Platform to be operated by a single TSO or by means of an entity that the TSOs would create themselves in accordance with Article 22(2) of the EB Regulation. It further complies with Article 22(3)(e) of the EB Regulation as it clearly proposes a single entity and, therefore, the requirements of the second sentence of Article 22(3)(e) of the EB Regulation do not need to be met. Finally, this Decision leaves the decision on the entity performing the capacity management function open and requires from TSOs to develop a proposal in which they need to propose the designation of the entity performing this function in accordance with Article 22(3)(e) of the EB Regulation.
- (69) Without prejudice to the legally possible options referred to in Article 22(2) of the EB Regulation that the IN-Platform can be operated by TSOs or by means of an entity TSOs would create themselves, ACER considers that the proposal for the IN-Platform operated by TSOs does not sufficiently address the concerns raised by ACER in Recital (70) below. ACER is of the opinion that, in the long run, there are considerable arguments in favour of all the functions of the IN-Platform being operated by an entity that the TSOs would create themselves and that this entity would operate also other European balancing platforms.
- (70) ACER provided an opinion at the beginning of the consultation phase and during hearing phase, that the IN-Platform operated by an entity that TSOs would create themselves would be a more efficient solution to implement the platform. ACER provided the following main reasons:
- (a) **Operation of cross-platform functions.** During the proceedings, the technical analysis showed that the process of updating cross-zonal capacities is most efficiently facilitated by a capacity management function that is the same across different platforms. Hence, designating the same entity across different platforms would enable that a central capacity management function can support the operation of all platforms. Furthermore, future development of the IN-Platform may likely require other cross-platform functions, such as the capacity calculation function, which is already foreseen in Article 6 of the Proposal, and amendments in imbalance netting process function, which will in future be upgraded to optimise both platforms related to aFRR with the same activation optimisation function (under the condition that both aFRR- and IN-Platform have the same geographical scope). Therefore, a joint entity for all platforms may better facilitate future development and evolution of all

European platforms, whereas distributed allocation of different functions could become a barrier for future development.

- (b) **Direct management control.** Designating a single TSO to operate the IN-Platform is based on a contractual framework between all TSOs and the designated TSO by which the designated TSO is obliged to implement decisions and instructions of all TSOs. However, this framework does not enable all TSOs the management control over the IN-Platform. Namely, any management failure to implement the decisions or requests from all TSOs or a disagreement between all TSOs and the TSO designated as the entity may create significant risk for interruption in the implementation or operation of the IN-Platform and thereby may endanger the integration of EU balancing markets. In case the IN-Platform would be operated by a company that TSOs would create themselves, any management failure or disagreement could be easily resolved by exercising management control as TSOs would be the owners of the entity.
 - (c) **Separating, monitoring, auditing and approving the costs.** Designating a single TSO to operate the IN-Platform makes it difficult to clearly establish the costs for operating the platform and separate them from the costs related to national TSO obligations. In particular, all TSOs will have difficulty to monitor and audit the costs attributed to the IN-Platform, and to assess whether they have been appropriately separated from other costs of the designated TSO, since all TSOs have no visibility in a designated TSO's financial sheets.
 - (d) **Maintaining a national responsibility for balancing.** All TSOs claimed that some of the tasks of the IN-Platform are part of the national operations under the responsibility of each TSO, performed to balance their system. While the Agency cannot assess whether this is really the case, it notes that delegating such tasks to an entity, without management control over that entity, limits the TSOs' ability to maintain responsibility for these tasks. On the other hand, if these tasks were to be delegated to an entity that TSOs would create and own, TSOs would be able to more effectively maintain national responsibility for these tasks, as they would be able to exert management control over such entity.
- (71) During the hearing phase, ENTSO-E on behalf of all TSOs disagreed with the ACER approach and argued that ACER, through the introduction of the capacity management function, is forcing TSOs to designate a single entity for all European-wide platforms. They also argue that regulatory authorities were in agreement with the governance structure proposed by TSOs after the second request for amendment to the INIF and that ACER has therefore no competence to make changes. They also propose that the capacity management function shall not be a function but a separate IT module that shall serve all European-wide platforms and one entity separate from the IN-Platform entity will perform the cross-zonal capacity management. ENTSO-E expressed the fear that when all TSOs propose an amendment where several entities will be designated to perform all three functions of the IN-Platform, ACER would not approve such a proposal.

- (72) ACER disagrees with TSOs' claim that the capacity management function is not a function required to operate the IN-Platform as explained in Recital (65). Given that the capacity management function is a function required to operate the IN-Platform, the proposal from TSOs is therefore clearly proposing the multiple entities framework, because it proposes that the capacity management function would be operated by one TSO, while the imbalance netting process function and the TSO-TSO settlement functions would be operated by another TSO. Therefore, this proposal does not meet the requirements of the second sentence of Article 22(3)(e) of the EB Regulation.
- (73) ACER evaluated that it cannot amend the proposal from TSOs to provide the requirements of the second sentence of Article 22(3)(e) of the EB Regulation, because such amendments would require significant revision and additions of the Proposal and ACER is not able to draft most of the elements required by the second sentence of Article 22(3)(e) of the EB Regulation. For example, ACER is not in a position to draft the rules for effective coordination and decision-making process to resolve any conflicting positions between entities operating the IN-Platform. Although ACER expressed the preference for one single entity, being a company owned by TSOs, to perform all functions of the IN-Platform, ACER could not discard all TSOs' proposal, where the requirements of Article 22(3)(e) of the EB Regulation are clearly met.
- (74) The proposal from TSOs therefore neither proposes a multiple entity framework compliant with Article 22(3)(e) of the EB Regulation nor a single entity framework which would encompass all functions of the IN-Platform, including the capacity management function. For this reason, ACER accepted the part of the TSOs proposal, which defines that the imbalance netting process function and TSO-TSO settlement function shall be operated by a single entity. However, as regards the capacity management function, for which all TSOs propose to be performed by another entity, ACER cannot accept the solution as submitted, as it would imply a multiple entity framework that would need to be compliant with Article 22(3)(e) of the EB Regulation.

6.2.8. Assessment of the requirements for the harmonisation of the terms and conditions

- (75) The Proposal fulfils the requirements of Article 22(3)(f) of the EB Regulation regarding the framework for the harmonisation of the terms and conditions related to balancing. Article 11 of the Proposal states that no further harmonisation is needed for the establishment of the IN-Platform.

6.2.9. Assessment of the requirements for cost-sharing

- (76) The Proposal fulfils the requirements of Article 22(3)(g) of the EB Regulation by including in Article 12 of the Proposal the rules on cost-sharing and categorisation of costs. As required by Article 23 of the EB Regulation, regarding the categorisation of the costs into common, regional and national ones, Article 12(1) of the Proposal follows the same rule for splitting them into three categories, and the paragraphs 2, 6 and 10 of Article 12 of the Proposal further specify these categories. Additionally,

pursuant to Article 23(3) of the EB Regulation, the paragraphs 3, 5, 7 and 9 of Article 12 of the Proposal define the sharing of the common and regional costs.

- (77) Furthermore, pursuant to Article 23(6) of the EB Regulation, in case the INIF proposes that an existing project will evolve into the IN-Platform, all TSOs participating in the existing project may propose that a share of the costs, incurred before the approval of the Proposal directly related to the development and implementation of this project, and assessed as reasonable, efficient and proportionate, is considered as part of the common costs pursuant to Article 23(2)(a) of the EB Regulation. Article 12 of the Proposal specifies that any costs from the IGCC project – which will evolve into the IN-Platform pursuant to Article 5 of the Proposal – are not considered as historical costs, but only the costs after the approval of the Proposal may be regarded as common or regional costs.
- (78) The Agency added a clarification in Article 12 of the Proposal that the cost-sharing rules apply to member TSOs and third countries to align it with Article 23(3) and (5) of the EB Regulation.

6.2.10. Assessment of the requirements for the description of the algorithm

- (79) The Proposal does fulfil the requirements of Article 22(3)(h) and Article 58 of the EB Regulation regarding the description of the optimisation algorithm for the operation of the imbalance netting process function of the IN-Platform.
- (80) Article 58(2) of the EB Regulation requires this algorithm to minimise the counter activation of balancing resources by performing the imbalance netting process pursuant to Part IV of SO Regulation. Additionally, Article 58(4) of the EB Regulation requires this algorithm to: (a) respect operational security constraints; (b) take into account technical and network constraints; (c) if applicable, take into account the available cross-zonal capacity.
- (81) Article 3 of the Proposal provides a high-level description of the IN-Platform, hence also of the algorithm, while Article 13 of the Proposal describes the optimisation algorithm, i.e. the inputs, the objective functions and the constraints. Additionally, Article 4 of the Proposal describes the update of cross-zonal capacities that serves as one of the constraints (i.e. inputs) to the algorithm.
- (82) ACER added paragraph (4) in Article 13 on the algorithm description to also describe the outputs of the optimisation algorithm in order to align the wording with ACER Decision No 02/2020.

6.2.11. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.11.1. *Consultation and involvement of stakeholders*

- (83) When drafting the Proposal, all TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.

- (84) As indicated in Recital (5) above, all TSOs fulfilled the requirements of Article 10 of the EB Regulation, since stakeholders were consulted on the draft Proposal pursuant to Article 10(1) of the EB Regulation. This involvement took place during a public consultation, which ran from 15 January 2018 until 15 March 2018. In addition, all regulatory authorities were regularly informed and consulted pursuant to Article 10(1) of the EB Regulation. The justifications regarding the consideration given to the views expressed by stakeholders during the public consultation in the drafting of the Proposal were provided in a separate document²² dated 18 June 2018 and submitted to all regulatory authorities.

6.2.11.2. Publication and transparency

- (85) Article 7 of the EB Regulation requires that TSOs should publish the INIF. Article 14(1) of the Proposal includes this requirement. Therefore, the Proposal fulfils the requirements on publication.
- (86) Article 12(3)(k) of the EB Regulation requires that the description of the requirements of any developed algorithm referred to in Article 58 of the EB Regulation is published by each TSO at least one month before its application. The Proposal did not include this requirement, therefore ACER added a new paragraph 3 in Article 14, with this requirement.

7. CONCLUSION

- (87) For all the above reasons, ACER considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.
- (88) Therefore ACER approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The implementation framework for a European platform for the imbalance netting process in accordance with Article 22 of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

²² <https://eepublicdownloads.blob.core.windows.net/public-cdn-container/clean-documents/Network%20codes%20documents/NC%20EB/180618-ENTSO-E-response-to-public-consultation-on-INIF-Art-22.1-of-the-EBGL.PDF>

Article 2

This Decision is addressed to all TSOs

50Hertz Transmission GmbH,
Amprion GmbH,
AS Augstsprieguma tīkls,
APG Austrian Power Grid AG,
ČEPS a.s.,
Creos Luxembourg S.A.,
EirGrid plc,
ESO Elektroenergien Systemen Operator EAD,
Elering AS,
ELES, d.o.o.,
Elia - Elia Transmission Belgium SA/NV,
Energinet,
Fingrid Oyj,
HOPS Croatian Transmission System Operator Ltd,
IPTO Independent Power Transmission Operator S.A.,
Kraftnät Åland Ab,
Litgrid AB,
MAVIR ZRt - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen
Működő Részvénytársaság ZRt.,
NG ESO - National Grid ESO,
PSE Polskie Sieci Elektroenergetyczne S.A.,
REE Red Eléctrica de España S.A.,
REN Rede Eléctrica Nacional, S.A.,
RTE Réseau de Transport d'Electricité S.A.,
SEPS Slovenská elektrizačná prenosová sústava, a.s.,
Svenska kraftnät,
SONI System Operator for Northern Ireland Ltd,
TenneT TSO B.V.,
TenneT TSO GmbH,
Terna Rete Elettrica Nazionale S.p.A.,
Transelectrica - National Power Grid Company Transelectrica S.A.,
TransnetBW GmbH, and
VÜEN-Vorarlberger Übertragungsnetz GmbH.

Done at Ljubljana, on 24 June 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Implementation framework for the European platform for the imbalance netting process in accordance with Article 22 of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

Annex Ia (for information only) – Implementation framework for the European platform for the imbalance netting process in accordance with Article 22 of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing – with track changes

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 the Agency 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.