

**DECISION No 20/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 5 August 2020

**on the exemption to the obligation to allow transfer of aFRR balancing
capacity for the Nordic LFC Block**

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, 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(3)(d) and Article 6(2) thereof,

Having regard to the outcome of the public consultation and consultation with the concerned regulatory authorities and transmission system operators,

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 16 July 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 requirements for electricity balancing, for the exchange of balancing capacity, as well

¹ OJ L158, 14.6.2019, p. 22.

² OJ L312, 23.11.2017, p. 6.

as pricing and settlement of balancing capacity. Pursuant to Article 34 of the EB Regulation, these requirements include, within the geographical area in which the procurement of balancing capacity has taken place, allowing balancing service providers to transfer their obligations to provide aFRR capacity.

- (2) Pursuant to Articles 4(1) and 5(3)(d) of the EB Regulation, the concerned TSO or TSOs may request an exemption from this requirement where contracting periods for balancing capacity pursuant to Article 32(2)(b) of the EB Regulation are strictly less than one week and submit it for approval to the regulatory authorities of the concerned region. In accordance with Article 5(6) of the EB Regulation, the concerned regulatory authorities shall reach an agreement and take a decision on the exemption within six months after the receipt of the proposal by the last regulatory authority.
- (3) Regulatory authorities can require an amendment to the proposal in accordance with Article 6(1) of the EB Regulation where transmission system operators have two months to submit an amended proposal to regulatory authorities. Then, regulatory authorities have two months to decide on the amended proposal. When 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 Articles 5(7) and Article 6(2) of the EB Regulation, shall adopt a decision concerning the proposal in accordance with point (b) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (4) The present Decision follows from the request of the regulatory authorities of the Nordic Capacity Calculation Region ('Nordic CCR') that ACER adopts a decision on the proposals for a Nordic capacity market for frequency restoration reserves with automatic activation ('aFRR'), which includes the proposal for an exemption pursuant to Article 34 of the EB Regulation, which the transmission system operators of the Nordic CCR (hereafter referred to as 'the TSOs') submitted to the regulatory authorities of the Nordic CCR (hereafter referred to as 'the regulatory authorities') for approval and on which regulatory authorities could not agree. Annex I to this Decision sets out the exemption pursuant to Article 34 of the EB Regulation as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (5) On 3 September 2018, the TSOs published for public consultation the draft proposal³ for exemption for not allowing balancing service providers to transfer their obligations

³ https://consultations.entsoe.eu/markets/nordic-tsos-proposals-for-establishment-of-common/supporting_documents/Legal%20Proposal%20to%20article%2033.pdf

to provide aFRR capacity in accordance with Article 34(1) of the EB Regulation⁴. The consultation lasted from 3 September 2018 to 4 October 2018.

- (6) On 17 April 2019, the TSOs submitted to the regulatory authorities a proposal⁵ in accordance with Article 34(1) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing. The last regulatory authority received the Proposal on 17 April 2019.
- (7) The regulatory authorities jointly agreed to request an amendment to this proposal and the other proposals for establishing a common Nordic aFRR market and sent this request to the TSOs. The regulatory authorities issued the request for amendment on 17 October 2019.
- (8) On 21 October 2019, the TSOs published for public consultation the draft proposal for exemption for not allowing balancing service providers to transfer their obligations to provide aFRR capacity in accordance with Article 34(1) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing⁶. The consultation lasted until 24 November 2019.
- (9) On 17 December 2019, the TSOs submitted the Proposal to the regulatory authorities and the last regulatory authority received the amended Proposal on 17 December 2019. Therefore, the deadline for approval by the regulatory authorities was 17 February 2020.

2.2. Proceedings before ACER

- (10) In a letter dated 28 February 2020, the Finnish Energy Authority, on behalf of the regulatory authorities, informed ACER that they were not able to reach an agreement within the two-month deadline and requested ACER to adopt a decision on the Proposal pursuant to Article 6(10) of Regulation 2019/942.
- (11) On 24 March 2020, ACER started the consultation phase on the Proposal, inviting parties concerned, here TSOs and regulatory authorities of the Nordic CCR, to send their comments on the Proposal.
- (12) ACER cooperated closely with the regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposal suggested by ACER. In

⁴ https://consultations.entsoe.eu/markets/nordic-tsos-proposals-for-establishment-of-common/supporting_documents/Legal%20Proposal%20to%20article%2033.pdf

⁵ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/03%20FCR%20Co/Action%208%20-%20Nordic%20Co%20exemption%20proposal.pdf>

⁶ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/03%20FCR%20Co/Action%2012%20-%20Nordic%20Co%20exemption%20amended%20proposal.pdf>

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:

- 27 March 2020: teleconference with regulatory authorities and TSOs;
- 30 March 2020: teleconference with regulatory authorities;
- 8 April 2020: teleconference with regulatory authorities and TSOs;
- 14 April 2020: teleconference with regulatory authorities and TSOs;
- 21 April 2020: teleconference with regulatory authorities and TSOs;
- 29 April 2020: teleconference with regulatory authorities and TSOs;
- 6 May 2020: teleconference with regulatory authorities and TSOs;
- 13 May 2020: discussion with all regulatory authorities in the framework of the Electricity Balancing Task Force (EB TF);
- 14 May 2020: teleconference with all regulatory authorities and TSOs;
- 20 May 2020: teleconference with regulatory authorities and TSOs;
- 25 May 2020: teleconference with regulatory authorities and TSOs;
- 27 May 2020: teleconference with regulatory authorities and TSOs;
- 27 May 2020: discussion with all regulatory authorities in the framework of the AEWG;
- 5 June 2020: teleconference with TSOs;
- 9 June 2020: discussion with all regulatory authorities in the framework of the EB TF;
- 9 June 2020: teleconference with TSOs;
- 12 June 2020: discussion with all regulatory authorities individually following their hearing phase input
- 15 June 2020: teleconference with regulatory authorities;
- 17 June 2020: discussion with all regulatory authorities at the Board of Regulators' meeting.
- 24 June 2020: discussion with all regulatory authorities in the framework of the AEWG;
- 16 July 2020: discussion with all regulatory authorities at the Board of Regulators' meeting.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (13) 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.

- (14) According to the letter of the Finnish Energy Authority dated 28 February 2020, the regulatory authorities requested ACER to adopt a decision and therefore ACER became competent to adopt a decision on the Proposal pursuant to Article 6(2) of the EB Regulation. This letter was sent by regulatory authorities after the expiry of the two-month deadline after receiving the amended Proposal (i.e. 17 February 2020).
- (15) 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 regulatory authorities on 17 February 2020 and communicated to ACER on 28 February 2020.

4. SUMMARY OF THE PROPOSAL

- (16) The Proposal consists of the following elements:
- (a) the ‘Whereas’ section and Articles 1 and 2, which include general provisions on subject matter and scope and definitions and interpretation;
 - (b) Article 3, which covers the exemption to transfer bids between bidding zones;
 - (c) Articles 4 and 5, which include the final provisions on publication and implementation of the proposal and language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of the regulatory authorities

- (17) The letter of the Finnish Energy Authority dated 28 February 2020 states that the Nordic regulatory authorities closely cooperated among each other to agree on approving the Nordic aFRR Balancing Capacity Market proposals, which includes the exemption request pursuant to Article 34(1) of the EB Regulation, and that however, after extensive discussion, it became evident that the regulatory authorities were not able to reach an agreement within the deadline.
- (18) Whilst the regulatory authorities could have agreed on the specific exemption request pursuant to Article 34(1) of the EB regulation, they decided to refer the whole package (i.e. the Nordic aFRR Balancing Capacity Market proposals) to ACER for a decision.

5.2. Consultation of the regulatory authorities and TSOs

- (19) ACER, in close cooperation and consultation with the regulatory authorities and TSOs as detailed in Recital (12) above, and beyond the above-mentioned issues, discussed with TSOs and the regulatory authorities the comments received during the public consultation (see Section 5.3.) and the views of the regulatory authorities expressed in the letter referred to in recital (17).

5.3. Public consultation

- (20) On 29 April 2020, ACER launched a public consultation on the Nordic aFRR Balancing Capacity Market proposals, inviting all stakeholders to provide their views on the four proposals included in this package by 20 May 2020. With regard to the exemption request, the consultation document did not ask any specific questions but invited stakeholders to raise any concern they would deem relevant.
- (21) In their responses, some stakeholders considered that also transfer across bidding zone borders should be allowed. The summary and evaluation of the responses received are presented in Annex II to this Decision.

5.4. Hearing phase

- (22) ACER initiated a hearing phase on 27 May 2020, by providing the TSOs and the 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 11 June 2020.
- (23) During this time, ACER did not receive any response in relation to this exemption.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (24) Pursuant to Article 34(1) of the EB Regulation, within the geographical area in which the procurement of balancing capacity has taken place, the TSOs shall allow balancing service providers to transfer their obligations to provide balancing capacity. Articles 4(1) and 5(3)(b) of the EB Regulation require that the concerned TSO or TSOs may request an exemption where contracting periods for balancing capacity pursuant to Article 32(2)(b) of the EB Regulation are strictly less than one week. This proposal must be submitted to the concerned regulatory authorities for their approval. Additionally, Article 6(1) of the EB Regulation requires the concerned TSOs to submit an amended proposal for the market-based allocation process for approval to the concerned regulatory authorities, following a request for amendment of the initial proposal by the concerned regulatory authorities.
- (25) 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*

- (26) The Proposal fulfils the requirements of Articles 4(1) and 5(3)(d) of the EB Regulation, as the TSOs from Nordic LFC Block jointly developed a proposal for the exemption for the geographical area in which the procurement of balancing capacity has taken place and for not allowing balancing service providers to transfer their obligations to provide balancing capacity pursuant to Article 34(1) of the EB Regulation and submitted it for approval to the relevant regulatory authorities.

6.2.1.2. *Proposed timescale for implementation*

- (27) The Proposal fulfils the requirements of Article 5(5) of the EB Regulation with regard to proposing a timescale for implementation.
- (28) Article 4 of the Proposal lays down the implementation timeline for the exemption. The TSOs proposed to implement the exemption at the same time than the implementation of the common and harmonised rules and processes for the exchange and procurement of aFRR capacity in the Nordic LFC block, in accordance with Article 33(1) of the EB Regulation. The proposed implementation timeline does not include any reference to the maximum period of 12 months after a decision is made, nor does it include a reference to the calculation of cross-zonal capacity on all bidding zone borders of the Nordic CCR in accordance with the capacity calculation methodologies developed pursuant to CACM regulation and FCA regulation.
- (29) Hence, the Proposal does not fully fulfil the requirements of Article 5(5) of the EB Regulation with regard to the proposed timescale for implementation of the exemption. ACER deemed it necessary to amend paragraph (2) under Article 4 of the Proposal allowing the application of the exemption in maximum 12 months after ACER's decision or as soon as the cross-zonal capacity is calculated pursuant to the CACM and FCA regulation.

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

- (30) The Proposal partly fulfils the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation. Recitals (7) to (11) of the Proposal describe this expected impact, however, ACER deemed that the objectives were not sufficiently addressed in some cases or the description was out of scope of the Proposal, while other objectives were not explicitly mentioned. Therefore, ACER amended these recitals to correctly address all the objectives of the EB Regulation.

6.2.2. Assessment of the requirements from Article 34 on procurement and exchange of balancing capacity

6.2.2.1. Requirement for the exemption on short-term basis procurement process being strictly less than one week.

- (31) Article 34(1) of the EB Regulation requires that the concerned TSO or TSOs may request an exemption where the contracting periods for balancing capacity pursuant to Article 32(2)(b) of the EB Regulation are strictly less than one week.
- (32) The Proposal fulfils the requirement of Article 34(1) of the EB Regulation as the contracting period for aFRR capacity in the methodology pursuant to Article 33(1) of the EB Regulation on the common rules for procurement and exchange of balancing capacity in the Nordic LFC block, which complies with the requirement of Article 32(2)(b) of the EB Regulation, is at maximum one day. This Proposal therefore complies with the requirement to receive an exemption from the obligation to allow transfer.
- (33) In the response to the public consultation a number of market participants requested not allowing an exemption for transfer across bidding zone borders. ACER assessed this request against the legal requirements of Article 34 paragraph (3) and (4) of the EB Regulation. From these requirements it clearly follows that a transfer should not endanger operational security and that for transfer across bidding zone borders, cross-zonal capacity allocated to the exchange of balancing capacity is necessary. As the allocation of cross-zonal capacity allocated to the exchange of balancing capacity is always equal to what is necessary to exchange balancing capacity, there is no remaining cross-zonal capacity left for additional transfers. If transfer in the opposite direction would be allowed, then this would either result in netting of cross-zonal capacity or in an amount of unused cross-zonal capacity. Due to the short-term procurement of balancing capacity right before the day ahead market, ACER sees no need to further add complexity to the cross-zonal allocation process and thereby agreed with the TSO proposal to allow transfer only within bidding zones and not across bidding zone borders.

6.2.3. Amendments necessary to ensure legal clarity and consistency with existing legal provisions

- (34) ACER amended Article 1 of the Proposal to improve the wording, clarify the scope of this methodology and how this methodology can be applied.
- (35) Besides some general improvements of wording, ACER amended Article 2 of the Proposal by:
- clarifying the reference to cross-zonal capacities; and
 - allowing more efficient document internal cross references to improve the structure of the Proposal.
- (36) The Proposal foresees that the exemption shall cover the bidding zone borders of the Nordic synchronous area, which correspond to the Nordic LFC block. For clarity, ACER made changes throughout the document to refer to the TSOs of the Nordic LFC block instead of the bidding zones.

- (37) Besides the explicitly mentioned amendments, ACER provided some additional amendments to improve the wording, clarity and structure of the Proposal as well as to delete out of scope passages.

6.2.4. Assessment of the requirements for consultation, publication and stakeholder involvement

6.2.4.1. *Consultation and involvement of stakeholders*

- (38) As indicated in Recital (5) above, stakeholders were consulted on the draft Proposal pursuant to Article 10(1) of the EB Regulation. In addition, the regulatory authorities were regularly informed and consulted. 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 document and submitted to the regulatory authorities. Therefore, the requirements of Article 10(4) of the EB Regulation can be considered as fulfilled.

6.2.4.2. *Publication and transparency*

- (39) The Proposal fulfils the requirements on publication and transparency in accordance with Article 7 of the EB Regulation.

7. CONCLUSION

- (40) 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.
- (41) 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 exemption, for the Nordic LFC Block, to the obligation to allow balancing service providers to transfer their obligations to provide aFRR balancing capacity in accordance with Article 34(1) of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to the TSOs of the Nordic LFC Block

Energinet

Fingrid, and

Svenska kraftnät

Done at Ljubljana, on 5 August 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I –the exemption to the obligation to allow transfer of aFRR balancing capacity for the Nordic LFC Block pursuant to Article 34(1) of the Electricity Balancing Regulation

Annex Ia (for information only) – Annex I –the exemption to the obligation to allow transfer of aFRR balancing capacity for the Nordic LFC Block pursuant to Article 34(1) of the Electricity Balancing Regulation– with track changes

Annex II (for information only) – Evaluation of responses to the public consultation on the Nordic aFRR Balancing Capacity Market

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.