

ERSE'S DECISION

concerning the request for a derogation from the application in 2024 of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade

14th December 2023

In accordance with Article 16(9) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market in electricity, the Energy Services Regulatory Authority (ERSE) approves the following decision:

Framework

On 1 November 2023, ERSE received from REN - Rede Eléctrica Nacional (REN), as the transmission system operator (TSO) in Portugal, a request for a one-year derogation to comply in 2024 with the requirement set out in Article 16 of Regulation (EU) 2019/943, on the obligation of transmission system operators to make available, from 1 January 2020, at least 70% of transmission capacity for interzonal trade, respecting operational security limits after deducting emergencies.

The request for derogation sent by REN was subject to consultation during the period from 3 November to 23 November 2023, within the working group where all national regulatory authorities are represented (ARAWG), in compliance with the second subparagraph of Article 16(9) of Regulation (EU) 2019/943, which establishes that requests for derogation must be subject to consultation between the regulatory authorities of other Member States that are part of a region affected by the capacity calculation.

Once the consultation was concluded, no regulatory authority stated that it did not agree with the proposed derogation presented by REN, so it is not necessary to forward the approval of this derogation to ACER, as established in the same paragraph of Article 16.

Legal grounds

1. Competence

Article 16(8) of Regulation (EU) 2019/943 states that European transmission system operators must not limit the interconnection capacities available for commercial purposes to resolve congestion arising from internal transactions and, to this end, obliges operators to provide at least 70 per cent of the exchange capacity available for interzonal trade:

"8. Transmission system operators shall not limit the volume of interconnection capacity to be made available to market participants as a means of solving congestion inside their own bidding zone or as a means of managing flows resulting from transactions internal to bidding zones. Without prejudice to the application of the derogations under paragraphs 3 and 9 of this Article and to the application of Article 15(2), this paragraph shall be considered to be complied with where the following minimum levels of available capacity for cross-zonal trade are reached:

(a) for borders using a coordinated net transmission capacity approach, the minimum capacity shall be 70 % of the transmission capacity respecting operational security limits after deduction of contingencies, as determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) No 714/2009;"

Article 16(9) of Regulation (EU) 2019/943 allows regulatory authorities to grant a derogation from the requirement set out in paragraph 8 of that article, in relation to the minimum 70 per cent interconnection capacity offered, at the request of transmission system operators and for foreseeable reasons, where necessary to maintain operational security. It also stipulates that this derogation shall be granted one year at a time or up to a maximum of two years, and that it shall be limited to what is strictly necessary to maintain operational security and avoid discrimination between internal exchanges and between zones:

"9. At the request of the transmission system operators in a capacity calculation region, the relevant regulatory authorities may grant a derogation from paragraph 8 on foreseeable grounds where necessary for maintaining operational security. Such derogations, which shall not relate to the curtailment of capacities already allocated pursuant to paragraph 2, shall be granted for no more than one-year at a time, or, provided that the extent of the derogation

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decreases significantly after the first year, up to a maximum of two years. The extent of such derogations shall be strictly limited to what is necessary to maintain operational security and they shall avoid discrimination between internal and cross-zonal exchanges.”

2. Mid-term review of compliance with the derogation approved for 2023

In accordance with Article 16(8) of Regulation (EU) 2019/943, the transmission system operator must offer at least 70% of the available interconnection capacity for cross-border exchanges from 1 January 2020.

In 2022, REN had requested a derogation from the application of this obligation during 2023, which was approved by ERSE Decision of 28 December 2022.

During this period, the following actions were carried out by the TSOs and the Regional Coordination Centre¹ (RCC) of CCR SWE²:

- Developments have been finalised and the publication of information on the *Joint Allocation Office* platform provided for in the change to the capacity calculation methodology for the region has begun, as well as implementations related to the data collection provided for in Article 82(4) of Regulation 2015/1222, CACM (*Capacity* Allocation and Congestion Management);
- Developments continued in order to implement the migration from the current IT tool for calculating RCC capacity to a new IT tool based on a different technology;

¹ RCC (from the English acronym Regional Coordinator Centre) - Regional Coordination Centre responsible for calculating interconnection capacity in the SWE region.

² CCR SWE (Capacity Calculation Region) - South-West Europe (SWE) Capacity Calculation Region, made up of Portugal, Spain and France.

- Work continued on the second Intraday Capacity calculation, as well as the Long-Term Capacity calculation and the Coordinated Safety Analyses;
- Work has begun on the calculation of Capacity for the Balancing Period.

As part of its activity to supervise the TSO's performance in this area, ERSE draws up annual reports on "Analysing Portugal-Spain interconnection capacity and monitoring compliance with the minimum levels of capacity available for cross-zonal trade", and compliance was 37.1 per cent in 2020³, 55.9 per cent in 2021⁴ and 79.4 per cent in 2022⁵.

In view of the quarterly figures available for 2023, with compliance figures of 88 per cent and 81 per cent respectively for the 1st and 2nd quarters, it is possible to anticipate an improvement in the total figure for 2023 compared to the compliance figures recorded in previous years.

3. Evaluation of the request for derogation for 2024

On 1 November 2023, REN formally sent ERSE a request for a one-year derogation, during 2024, from the obligation to comply with the 70% of transmission capacity for interzonal trade, respecting operational safety limits, during 100% of the time, proposing to comply only during 85% of the time.

In addition, REN, together with the other SWE TSOs and CCRs, undertakes to:

- Complete the migration process from the current RCC capacity calculation IT tool to a new IT tool with different technology;
- Complete the implementation of the second Intraday Capacity calculation;

³ https://www.erse.pt/media/ibxb1g1v/monitoring-of-the-compliance-with-maczt-minimum-levels_report_2020_en.pdf

⁴ https://www.erse.pt/media/jyaf3vje/monitoring-of-the-compliance-with-maczt-minimum-levels_report_2021_en.pdf

⁵ https://www.erse.pt/media/bjxbkcoj/monitoring-of-the-compliance-with-maczt-minimum-levels_report_2022_en.pdf

- Continue implementing the Long-Term Capacity Calculation;
- Continuing the development of the Coordinated Safety Analyses processes and the calculation of Capacity for the Balancing Period.

The analysis carried out by ERSE allowed us to consider that the request submitted by REN fulfils the requirement set out in Article 16(9) of Regulation (EU) 2019/943, in terms of the need to maintain operational security and in terms of the proposed solutions that will allow the minimum value of 70% of the interconnection capacity required by Regulation (EU) 2019/943 to be met in the short term.

The commitment made in the derogation request to reach the capacity threshold 70 per cent in the limiting elements of the calculation during 85 per cent of the hours is also considered positive, as it represents an increase in the level of demand from the previous derogation.

Decision

Taking into account the aforementioned facts and grounds, ERSE's Board of Directors decides to grant for a period of one year the derogation requested by REN regarding application in 2024 of the provisions of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade, with REN committing to making at least 70 per cent of transmission capacity available during 85 per cent of the hours.