

ERSE'S DECISION

concerning the request for a derogation from the application in 2025 of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade

30th December 2024

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 26 November 2024, ERSE received from REN - Rede Eléctrica Nacional, S.A. (REN), as the transmission system operator (TSO) in Portugal, a request for a one-year derogation to comply in 2025 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 inter-zonal trade, respecting operational security limits after deduction of emergencies.

The request for derogation sent by REN was subject to consultation during the period from 26 November to 17 December 2024, within the working group where all the national regulatory authorities are represented, 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 decreases significantly after the first year, up to a maximum of two years. The extent of such derogations

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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 2024

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 2023, REN had requested a derogation from the application of this obligation during 2024, which was approved by ERSE Decision of 14 December 2023.

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

- Developments continued in order to implement the migration from the current IT tool for calculating the RCC's capacity to a new IT tool based on a different technology.
- Work continued on the second Intraday Capacity Calculation, as well as the Long-Term Capacity Calculation and the Coordinated Safety Analyses.
- The development of the Capacity Calculation for the Balancing Period continued.

¹ RCC (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.

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, 79.4 per cent in 2022⁵ and 93.8 per cent in 2023⁶.

3. Evaluation of the request for derogation for 2025

On 26 November 2024, REN formally sent ERSE a request for a one-year derogation, for 2025, from the obligation to comply with the 70% of transmission capacity for interzonal trade, respecting operational safety limits, for 100% of the time, proposing to comply only for 87.5% of the time.

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

- Finalise adjustments to the new computer tool for calculating RCC capacity using different technology.
- Complete the implementation of the second Intraday Capacity Calculation.
- Complete the implementation of the Long-Term Capacity Calculation.
- Continue the development of the Coordinated Safety Analyses and the Capacity Calculation for the Equilibrium Period processes.

The analysis carried out by ERSE made it possible to consider that the request submitted by REN fulfils the requirement laid down in Article 16(9) of Regulation (EU) 2019/943, in terms of the need to maintain operational security and the solutions proposed to comply at all times with Article 16(8)(a) of Regulation (EU) 2019/943.

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

⁶ <https://www.erse.pt/media/v3uhkv5j/final-report-on-maczt-2023-en.pdf>

Decision

Taking into account the facts and grounds mentioned above, ERSE's Board of Directors decides to grant this sixth derogation requested by REN, for 2025, on the minimum levels of capacity available for interzonal trade in accordance with the provisions of Article 16(9) of Regulation (EU) 2019/943, and urges REN to make every effort to ensure compliance with Article 16(8) of the aforementioned Regulation from 1 January 2026, under penalty of non-compliance.

This Derogation does not interfere with the application of the Incentive to Improve the Technical Performance of the RNT in 2025.