ERSE
ENTIDADE REGULADORA
DOS SERVIÇOS ENERGÉTICOS

BOARD OF DIRECTORS

ERSE'S DECISION

concerning the request for a derogation from the application in 2026 of the provisions of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade

27 May 2026

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 for electricity, the Energy Services Regulatory Authority (ERSE) adopts the following decision:

Framework

On 21 November 2025, 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 2026 with the requirement set out in Article 16 of Regulation (EU) 2019/943, concerning the obligation of transmission system operators to make available, from 1 January 2020, at least 70% of transmission capacity for cross-zonal trade, whilst respecting operational security limits after deduction of emergencies.

This request follows six previous requests from REN, relating to the years 2020 to 2025, on which ERSE issued a favourable decision[1] .

[1] ERSE's decision on REN's derogation requests

Legal grounds

1. Competence

Article 16(8) of Regulation (EU) 2019/943 stipulates that European transmission system operators shall not limit the interconnection capacities available for commercial purposes as a means of solving congestion arising from internal transactions and, to that end, requires operators to provide at least 70% of the available exchange capacity for cross-zonal 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:
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> (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% interconnection capacity offered, upon request by transmission system operators and for foreseeable reasons, where necessary to maintain operational security. It also stipulates that such a derogation shall be granted for one year at a time or for up to two years at most, and that it shall be limited to what is strictly necessary for maintaining operational security and avoiding 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 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 2025

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 2024, REN had requested a derogation from the application of this obligation during 2025, which was approved by ERSE Decision of 30 December 2024.

During this period, the following actions were carried out by the TSOs and the Regional Coordination Centre (RCC) [2] of SWE CCR [3] :

- The final adjustments to RCC's new capacity calculation software, based on a different technology, were completed.
- The implementation of the second Intraday Capacity Calculation was completed.
- Work continued on the implementation of the Long-Term Capacity Calculation.
- Work continued on the development of the Coordinated Security Analysis and Capacity Calculation processes for the Balancing Period.

As part of its activity to supervise the TSO's performance in this area, ERSE produces annual reports on the "Analysis of the Portugal-Spain interconnection capacity and monitoring of compliance with the minimum

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[2] RCC (Regional Coordination Centre) – Regional Coordination Centre responsible for interconnection capacity calculation in the SWE region.

[3] SWE CCR (from the English acronym Capacity Calculation Region) – South-West Europe (SWE) Capacity Calculation Region, comprising Portugal, Spain and France.

levels of available capacity for cross-zonal trade", with compliance standing at 37.1% in 2020[4], 55.9% in 2021[5], 79.4% in 2022[6], 83.8% in 2023[7] and 85.2% in 2024[8].

These results indicate a gradual improvement in the performance of the Portugal-Spain interconnector with regard to compliance with this indicator.

3. Assessment of the request for a derogation for 2026

On 21 November 2025, REN formally submitted a request to ERSE for a one-year exemption, during 2026, from the obligation to comply with the 70% of transmission capacity for cross-zonal trade, whilst respecting operational security limits, 100% of the time, proposing to meet this requirement 87.5% of the time, disregarding cases where: i) the fallback procedure is used; ii) the limiting CNEC is located in Spain; and iii) the minimum MACZT levels are not achieved due to capacity reductions not introduced by REN.

In addition, REN, together with the other TSOs and RCCs in the SWE, further undertakes to:

- Continue the implementation of the Long-Term Capacity Calculation.
- Continue the development of the Coordinated Security Analysis and Capacity Calculation processes for the Balancing Period.

The analysis carried out by ERSE concluded that, from a technical standpoint, the application submitted by REN complies with the requirement set out in Article 16(9) of Regulation (EU) 2019/943, regarding the need to maintain operational security and the solutions proposed to comply at all times with the provisions of Article 16(8)(a) of Regulation (EU) 2019/943.

Nevertheless, Article 15(2) of Regulation (EU) 2019/943, in its current wording, provides as follows:

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4 Report on Interconnection Analysis and MACZT Monitoring 2020
5 Report on Interconnection Analysis and MACZT Monitoring 2021
6 Report on Interconnection Analysis and MACZT Monitoring 2022
7 Report on Interconnection Analysis and MACZT Monitoring 2023
8 Report on Interconnection Analysis and MACZT Monitoring 2024

> "2. Irrespective of the concrete progress of the action plan, Member States shall ensure that without prejudice to derogations granted under Article 16(9) or deviations under Article 16(3), the cross-zonal trade capacity is increased on an annual basis until the minimum capacity provided for in Article 16(8) is reached. That minimum capacity shall be reached by 31 December 2025.
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> (...)"

It follows from a reading of this provision that, irrespective of the establishment of action plans for this purpose or the granting of derogations by regulatory authorities, the minimum capacity level provided for in Article 16(8) of Regulation (EU) 2019/943 must be guaranteed annually from 31 December 2025.

Thus, a combined reading of Article 15(2) and Article 16(8) and (9) of Regulation (EU) 2019/943 leads to the conclusion that measures to ensure progressive compliance with this minimum level may only be implemented until 31 December 2025, whether they be derogations or action plans, and full compliance must be achieved from that date onwards.

Decision

In view of the above facts and grounds, the ERSE Board of Directors has decided not to grant this seventh derogation requested by REN, for 2026, regarding the minimum levels of available capacity for cross-zonal trade, in accordance with the provisions of Article 15(2) of Regulation (EU) 2019/943, and REN is urged to make every effort to ensure ongoing compliance with Article 16(8) of that Regulation from 1 January 2026, under penalty of non-compliance.