

ERSE'S DECISION

concerning the request for a derogation from the application in 2023 of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade

28 December 2022

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 28 November 2022, 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 2023 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 deduction of emergencies.

The request for derogation sent by REN was subject to consultation during the period from 30 November to 21 December 2022 within the working group where all the 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 the same article, in relation to the minimum interconnection capacity of 70 per cent 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 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 2022

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 2021, REN had already requested a derogation from the application of this obligation during 2022, which was approved by ERSE Decision of 28 December 2021.

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

- The necessary developments were made to the regional validation IT tool in order to adapt it to the capacity calculation methodology;
- The developments and publication of information on the *Joint Allocation Office* platform provided for in the change to the capacity calculation methodology for the region have been completed, as have the implementations related to data collection provided for in Article 82(4) of Regulation (EU) 2015/1222 (CACM³ - *Capacity Allocation and Congestion Management*), and the developments of the Long-Term Capacity Calculation have also begun;

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.

³ Commission Regulation (EU) 2015/1222 of 24 July establishing guidelines for capacity allocation and congestion management.

- The necessary developments have begun to implement the migration from the current IT tool for calculating RCC capacity to a new IT tool based on a different technology;
- The implementation of first Intraday Capacity calculation at the end of day D-1 was completed;
- Developments have begun for the second Intraday Capacity calculation, during the intraday period, as well as the Long-Term Capacity calculation and the Coordinated Safety Analyses.

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 capacity limits available for cross-zonal trade", with 37.1 per cent compliance in 2020⁴ and 55.9 per cent in 2021⁵.

In view of the quarterly figures available for 2022, with compliance figures of 78 per cent, 78 per cent and 80 per cent, respectively for the 1st, 2nd and 3rd quarters, it is possible to anticipate a clear improvement in the total figure for 2022 compared to the compliance figures recorded in previous years.

3. Evaluation of the request for derogation for 2023

On 28 November 2022, REN formally sent ERSE a request for a one-year derogation, during 2023, 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 82.5% of the time.

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

⁴ https://www.erse.pt/media/ibxb1g1v/monitoring-of-the-compliance-with-maczt-minimum-levels_report_2020_en.pdf

⁵ https://www.erse.pt/media/jyaf3vje/monitoring-of-the-compliance-with-maczt-minimum-levels_report_2021_en.pdf

- 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, during the intraday period;
- Continue to develop the calculation of Long-Term Capacity and Coordinated Safety Analyses.

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 82.5 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 facts and grounds mentioned above, ERSE's Board of Directors decides to grant for a period of one year the derogation requested by REN regarding the application in 2023 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 82.5 per cent of the hours.

REN's request for a derogation from the application of the minimum margin available for cross-zonal trade in 2023

pursuant to 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 (recast)

November 2022

Whereas:

- 1) REN is the Portuguese Transmission System Operator. REN belongs to the South West Europe capacity calculation region (hereinafter "SWE CCR").
- 2) Pursuant to Article 16(8) of Regulation (EU) 2019/943 of 5 June 2019 on the internal electricity market (hereinafter "Regulation 2019/943"), REN must guarantee minimum levels of available capacity for cross-zonal trade from 1 January 2020.
- 3) Article 16(4) of Regulation 2019/943 stipulates that, in order to maximise available capacities to achieve the minimum capacity levels Article 16(8), Transmission System Operators (hereinafter "TSOs") shall use coordinated balancing actions and redispatch, including cross-border redispatch, through "*a coordinated and non-discriminatory process*".
- 4) Article 16(9) of Regulation 2019/943 provides for the possibility for regulatory authorities to grant a derogation from Article 16(8) at the request of TSOs, for foreseeable reasons, where this is necessary to maintain operational security.
- 5) Article 7(2) of Regulation 2019/943 establishes, among other objectives, that day-ahead and intraday markets must guarantee operational security and allow maximum utilisation of transport capacity.
- 6) Recommendation No 01/2019 of the Agency for the Cooperation of Energy Regulators of the European Union of 8 August 2019 on the application of the minimum margin available for cross-zonal trade pursuant to Article 16(8) of Regulation (EU) 2019/943 proposes a method for monitoring the margin available for cross-zonal trade pursuant to Article 16(9).
- 7) Complying with the minimum requirements set out in Article 16(8) would entail adopting excessively costly corrective measures, which would jeopardise the operational security of the Portuguese network, particularly if Recommendation 01/2019 is applied to establish the minimum requirements for Portuguese interconnectors.
- 8) This document is a request for a derogation, in accordance with Article 16(9) of Regulation 2019/943, which sets out the foreseeable reasons with regard to the operational security of the Portuguese network, justifying the request for a derogation.
- 9) A first derogation had already been presented to the Portuguese regulator ERSE and approved by it regarding the South West Europe (SWE) capacity calculation region on 31 December 2019, for the year 2020 (from 1 January 2020 to 31 December 2020).
- 10) A second derogation was presented to and approved by the Portuguese regulator ERSE regarding region for calculating SWE capacity on 31 December 2020, for the year 2021 (from 1 January 2021 to 31 December 2021).
- 11) A third derogation regarding the region for calculating SWE's capacity on 28 December 2021, for the year 2022 (from 1 January 2022 to 31 December 2022), was submitted to and approved by the Portuguese regulator ERSE.
- 12) This document is a request for a derogation for the year 2023 (from 1 January 2023 to 31 December 2023).

13) REN will find a long-term solution to the issue that this derogation aims to resolve, in coordination with the TSOs of the affected capacity calculation regions (hereinafter "CCRs").

(14) The CORESO Regional Coordination Centre (hereinafter "RCC") is the entity responsible for calculating the capacity of the SWE RCC.

REN SUBMITS THE FOLLOWING REQUEST FOR DEROGATION

Article 1 Object and scope

This document is a request for a fourth derogation from the application of the minimum margin available for interzonal trade, pursuant to Article 16(9) of Regulation 2019/943, to be applied in the Portuguese system.

Article 2 Definitions

All terms used in this request for a fourth derogation shall have the meaning attributed to them in Article 2 of Regulation 2019/943 and Article 2 of Regulation 2015/1222.

Article 3 Operational safety reasons justifying the request for a derogation

(1) New processes aimed at providing higher capacities to the market and the introduction of new instruments to fulfil the minimum capacity requirements set out in Article 16(8) have introduced new risks to operational safety:

a. regarding the risk related to new processes to provide higher capacities:

i. the implementation of the minimum capacity requirement provided for in Article 16 of Regulation 2019/943 leads to more capacity being provided to the market, with a tendency to require a more extensive application of costly corrective measures, pursuant to Article 16(4) of the same Regulation. Operational experience of processes with extensive application of costly corrective measures has been increasing, although it is currently still very low, which means that applying the necessary corrective measures from the Target Date would entail operational security risks;

ii. the likelihood of a more extensive application of corrective measures is greater in member states where action plan is applied, as is the case in Portugal;

b. regarding the risks related to the RCC's IT tool:

i. As of 1 January 2023, the RCC will still be working on the process migrating from the current IT tool for calculating capacity to a new IT tool based on a different technology. This migration

technology is necessary to finalise the alignment of the IT tool with the SWE capacity calculation methodology.

- (2) In order to mitigate the operational safety risks identified, REN is requesting this derogation for one (1) year, to allow the RCC's IT tool to be adapted (as part of the technological migration process) to SWE's capacity calculation methodology and to obtain the necessary experience in the processes, so as to ensure effective utilisation and guarantee operational safety.

Article 4 Summary of results after previous derogations and justification for this fourth derogation request

- (1) A first derogation (from 1 January 2020 to 31 December) was submitted to and approved by ERSE. This first derogation granted 1 (one) year for the definition, development and implementation of new IT tools to fulfil Article 16(8), guaranteeing operational security.
- (2) A second derogation (from 1 January 2021 to 31 December) was submitted to and approved by ERSE. This second derogation granted 1 (one) year for the definition, development and implementation of new IT tools to fulfil Article 16(8), guaranteeing operational security.
- (3) A third derogation (from 1 January 2022 to 31 December 2022) was submitted to and approved by ERSE. This third derogation granted one (1) year to continue the process of defining, developing and implementing new IT tools to fulfil Article 16(8), guaranteeing operational security.
 - a. During this period, REN applied the methodology for calculating capacity in the SWE CCR in the process of calculating the operational coordinated capacity for the following day, thus ensuring the maintenance of operational security in the SWE CCR. As part of this process, REN undertook to provide at least the minimum levels of capacity in accordance with Article 16(8)(a) of Regulation 2019/943 for 75 per cent of the hours to which the 1-year derogation applies.
 - b. During this period, the RCC and the SWE TSOs:
 - i. They implemented the necessary developments in the regional validation IT tool in order to adapt it to the capacity calculation methodology.
 - ii. Completed the developments and began publishing information on the *Joint Allocation Office* platform provided for in the amendment to the methodology for calculating capacity for the region, as well as implementations related to data collection provided for in Article 82(4) of the Regulation.

No. 2015/1222, CACM (*Capacity Allocation and Congestion Management*) and started the development of the Long-Term Capacity Calculation.

- iii. Developments have begun 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.
- iv. They have completed the implementation of the first Intraday Capacity Calculation.
- v. Work has begun on the second Intraday Capacity Calculation, as well as the Long-Term Capacity Calculation and the Coordinated Safety Analyses.

(4) A new one-year period will be established for the day-ahead capacity calculation process in SWE:

- a. During this period, REN will apply the proposed capacity calculation methodology in the SWE CCR for the day-ahead operational coordinated capacity calculation process, thus ensuring that operational security is maintained in the SWE CCR. With this process, REN will provide at least the minimum capacity levels in accordance with Article 16(8)(a) of Regulation 2019/943 for 82.5 per cent of the hours for which the 1-year derogation applies. The minimum levels shall be ensured in accordance Article 16(8)(a) of Regulation 2019/943 and paragraphs 4.2 and 5.1 of ACER (*Agency for the Cooperation of Energy Regulators*) Recommendation 01/2019 on limiting CNECs (Critical Network Elements and Contingencies).
- b. During this period, the RAC and the SWE TSOs will:
 - i. Complete the process of migrating the current IT tool for calculating the RCC's capacity to a new IT tool with different technology.
 - ii. Complete the implementation of the second Intraday Capacity Calculation.
 - iii. Continue the development of the Long-Term Capacity Calculation and the Coordinated Safety Analyses.

(5) REN will continue to train its operators so that they acquire sufficient experience with the new processes and IT tools to ensure operational safety.

(6) REN will assess the possibility of adopting new measures in the operation to provide higher values of minimum margins for cross-zonal trade, provided that the instruments and processes are sufficiently developed to ensure operational security with these levels of minimum margins.

- (7) The assessment referred to in the previous paragraph will be carried out quarterly by REN in conjunction with ERSE.

Article 5: Reporting

The results achieved during this period will be reported regularly to ERSE, including at least the following indicators:

- a. Average percentage of margin available for inter-zonal trade in the most restrictive CNECs¹ compared to their capacity;
- b. Number of hours in which the minimum capacity requirement laid down in Regulation 2019/943 in the most limiting CNECs is met.

¹ Pursuant to Recommendation No 01/2019 of the Agency for the Cooperation of Energy Regulators of the European Union of 8 August 2019 on the application of the minimum margin available for cross-zonal trade, "CNEC" means a

Critical Network Element associated with a contingency used in the capacity calculation. For the purposes of that Recommendation, the term CNEC also covers the situation where a CNE (*Critical Network Element*) is used in the capacity calculation without a specified contingency.