

## ERSE'S DECISION

on the request for an exemption from the application of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade

19 December 2019

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 14 November 2019, ERSE received from REN - Rede Eléctrica Nacional (REN), as the transmission system operator in Portugal, a request for a one-year derogation to comply with the requirement set out in Article 16 of Regulation (EU) 2019/943 on the obligation of transmission operators to make available, as of 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 22 November to 6 December 2019 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 basis

### 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 for no more than one year at a time, 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. Evaluation of the derogation request

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.

REN's request for a derogation is based on the fact that today the system cannot guarantee that 70 per cent of interconnection capacity is made available for cross-border transactions under secure conditions, for three reasons:

**a)** Article 16(4) of Regulation (EU) 2019/943 states that transmission system operators must use all possibilities for coordinated redispatch in order to achieve the established minimum of 70 per cent of interconnection capacity. The current level of coordination European transmission system operators is insufficient to be able to optimally activate all the available redispatches needed to guarantee the minimum value of 70% of capacity.

**b)** Recommendation 01/2019 of 8 August 2019 from the Agency for the Cooperation of Energy Regulators (ACER) states that the 70% requirement should be understood as applying to the daily and intraday horizons and should be checked on each of the network elements limiting the capacity calculation. This approach harmonises the method of monitoring the minimum capacity limit in different capacity calculation regions in Europe, regardless of the calculation methodology used (flow-based or capacity-based).

However, it has the disadvantage of requiring an analysis and recording of the situation of each network element potentially limiting the capacity of the interconnection, which is not currently implemented.

c) In the first months of 2020, the new methodology for the coordinated calculation of interconnection capacity in the South-West Europe (SWE) region will begin to be implemented, which will make it possible to more safely maximise the interconnection capacity made available for commercial purposes.

Likewise, according to what REN indicated in its request for derogation, the application of ACER Recommendation 01/2019 on 1 January 2020, without an adequate tool for monitoring the hourly capacity made available, would mean increasing the interconnection capacity offered to the market by around 50%, which would imply the intensive use of redispatches that are not always available and, consequently, would put system security at risk.

In accordance with the above, the derogation request submitted by REN is deemed to fulfil the requirement set out in Article 16(9) of Regulation (EU) 2019/943 with regard to its impact on operational security.

In addition, it is considered that the request for derogation submitted by REN will allow, during 2020, the implementation of capacity calculation tools and the optimisation of available redispatches, as well as the monitoring of the capacity actually made available, so that in 2021 it will be possible to comply with the minimum figure of 70% of interconnection capacity required by Regulation (EU) 2019/943.

#### 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 of the provisions of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade.

# REN request for derogation on the implementation of the minimum margin available for cross-zonal trade

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 (recast)

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October 2019

## Whereas

- (1) REN is required, by Article 16(8) of the Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity (hereinafter, the "Regulation 2019/943"), to offer minimum levels of available capacity for cross-zonal trade as of the 1st of January 2020
- (2) Article 16(4) of the Regulation 2019/943 provides that, in order to maximise available capacities to reach the minimum capacity requirements provided for by Article 16 (8), Transmission System Operators (hereinafter, "TSOs") shall use counter-trading and redispatch, including cross-border redispatch, via "*a coordinated and non-discriminatory process*".
- (3) Article 16(9) of the Regulation 2019/943 provides regulatory authorities with the possibility granting a derogation from Article 16(8) upon TSO request on foreseeable grounds where necessary for maintaining operational security.
- (4) Article 7(2) of Regulation 2019/943 establishes among other objectives that both day-ahead and intraday market shall ensure operational security while allowing for maximum use of transmission capacity.
- (5) Recommendation No 01/2019 of the European Union Agency for the Cooperation of Energy Regulators of 08 August 2019 on the implementation of the minimum margin available for cross-zonal trade pursuant to Article 16(8) of Regulation (EU) 2019/943 proposes that in NTC framework the minimum capacity requirement shall be established for every Critical Network Element regardless whether it is a limiting element or not. As shown in the first indicative starting points calculated by ACER in application of this recommendation for the period 2016- 2018, this interpretation would have required increasing offered capacity more than 50% in Portuguese interconnections.
- (6) Complying with the minimum requirements set in Article 16(8) would require an intensive use of costly remedial actions that and undermines the operational security of the Portuguese grid especially if Recommendation No 01/2019 is applied for setting the minimum requirements for Portuguese interconnections.
- (7) This document constitutes a request for derogation in accordance with Article 16(9) of the Regulation 2019/943 and addresses the foreseeable grounds, related to the operational security of the Portuguese grid, justifying the request for a derogation.
- (8) REN will provide a long-term solution to the issue that this derogation seeks to address, in coordination with the TSOs of the affected capacity calculation regions (hereinafter "CCR").

## REN SUBMITS THE FOLLOWING REQUEST FOR DEROGATION

### Article 1. Subject matter and scope

This document constitutes a request for derogation from the implementation of the minimum margin available for cross-zonal trade in accordance with Article 16(9) of Regulation 2019/943.

### Article 2. Definitions

All the terms used in this request for derogation shall have the meaning provided by Article 2 of Regulation 2019/943 and Article 2 of Regulation 2015/1222.

### Article 3. Operational Security grounds justifying the request for a derogation

- (1) The development of new processes aiming at offering higher capacities to the market, and the introduction of new tools enabling the fulfilment of Article 16(8) minimum capacity requirements introduce new risks to Operational security :
  - a. with regards to the risk related to new processes to offer higher capacities:
    - i. the implementation of the minimum capacity requirement set forth in Article 16(8) of the Regulation 2019/943 should lead to more capacity given to the market which may require a more extensive application of costly remedial actions, in accordance with Article 16(4) of the same Regulation. The operational experience for processes with an extensive application of costly remedial actions is currently very low;
    - ii. the likelihood of a more extensive application of remedial actions is higher in Member States where no action plan is applied, as it is the case for Portugal;
  - b. with regards to the risks related to new tools:
    - i. in line with Article 16(8) of Regulation 2019/943, it should be possible for Regional Coordination Centres (hereinafter, "RCCs") to use all the available remedial actions to reach the minimum capacity requirement.  
As of 1<sup>st</sup> of January 2020, RCCs will not have the tools necessary to assess whether this minimum capacity is reached and thus to what extent the capacity should be increased to reach this threshold;
    - ii. in line with Article 16(3) of Regulation 2019/943, it should be possible for RCCs to identify the cases where remedial actions are sufficient to guarantee the security of supply.  
As of 1<sup>st</sup> of January 2020, RCCs will not have the tools necessary to assess and validate the availability of such remedial actions. Furthermore, RCCs will not have common tools to do it efficiently and thus provide affordable energy to the final customers, which is one of the main objective of Regulation 2019/943;

- iii. As of 1st of January 2020, REN will not have the tools necessary to assess and validate the availability of such remedial actions. Furthermore, REN does not have internal tools to do it efficiently and thus provide affordable energy to the final customers, which is one of the main objectives of Regulation 2019/943 (see whereas (2)).
  - iv. While the definition of the necessary new tools is ongoing at the time of the submission of this request for derogation, the limited amount of time between the publication of Regulation 2019/943 (June 2019) and the entry into force of its provisions (January 2020), together with the discussions related to the interpretation of this Regulation at national, regional and European level, did not provide sufficient time to develop and implement these tools. Consequently, the tools will only benefit from a very limited testing period during which the operators are to be trained as well. An additional testing period is in turn necessary to guarantee operational security.
- (2) To mitigate the identified operational security risks, REN requests a transition period of 1 year to gather relevant experience from the processes and to complete the testing of the tools.

#### **Article 4: Description of transition period justifying derogation request**

A 1 year transition period will be set up for the day ahead capacity calculation process in SWE,: a.

- (1) During the transition period, REN will apply the current approved capacity calculation methodology and practices in the SWE region for the operational day-ahead coordinated capacity calculation process foreseen to go live in January 2020.
- (2) During the transition period, REN will develop processes and tools that will allow REN to:
  - a. monitor the margin for cross-zonal trades for all the Portuguese limiting CNECs as defined by ACER guidance n°01/2019 or by an updated SWE CCM;
  - b. validate the availability of remedial actions in order to ensure the minimum capacity requirement set forth in Regulation 2019/943.
- (3) REN will train the operators in order for them to gain enough experience with new processes and tools to ensure the operational security.
- (4) REN will assess the possibility to implement, in operations, higher values of minimum margins for cross-zonal trades provide that the tools and processes are sufficiently developed to ensure operational security with these levels of minimum margins.
- (5) The assessment of new values of minimum margins and the implementation of new values of minimum margins will be conducted by REN with the Entidade Reguladora dos Serviços Energéticos (hereinafter, "ERSE") every three months.

#### **Article 5: Reporting**

The results of this transition period will be communicated regularly to ERSE including at least the following indicators:



- a. until a proper computation is available,
  - i. Average % of used capacity and reliability margin on limiting cross-border elements at 0 cross-zonal exchange
  - ii. Number of hours where the minimum capacity requirement set forth in Regulation 2019/943 is reached based on the above indicator.
- b. as soon as a proper computation is available,
  - i. Average % of margin for cross zonal-trades on limiting CNECs;
  - ii. Number of hours where the minimum capacity requirement set forth in Regulation 2019/943 is reached on limiting CNECs.

#### **Article 6: Renewal of the derogation**

If at the expiry of the derogation period, the reasons described in Article (3) of the current derogation are not tackled, REN may request a justified renewal of this derogation in accordance with Article 16(9) of the Regulation 2019/943.