

ERSE'S DECISION

concerning the request for a derogation from the application in 2022 of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade

28 December 2021

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 9 November 2021, ERSE received from REN - Rede Eléctrica Nacional (REN), as the transmission system operator in Portugal, a request for a one-year derogation to comply in 2022 with the requirement set out in Article 16 of Regulation (EU) 2019/943, on the obligation transmission system operators to make available, from 1 January 2020, at least 70% of transmission capacity for interzonal trade, respecting the operational security limits after deduction of emergencies.

The request for derogation sent by REN was subject to consultation during the period from 9 November to 6 December 2021 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 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. Mid-term review compliance with the derogation approved for 2021

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 2020, REN had already requested a derogation from the application of this obligation during 2021, which was approved by ERSE Decision of 22 December 2020.

During this period, the following actions were carried out by the NRA and CCR SWE's Regional Security Coordinator¹ (RSC)⁽²⁾:

- The methodology and capacity calculation practices currently approved at CCR SWE were applied to the operational process of calculating coordinated capacity for the following day, thus ensuring that operational safety was maintained at CCR SWE.
- The development of a regional validation tool was initiated, enabling the RSC to identify cases in which the corrective actions available are sufficient to fulfil the capacity requirements guaranteeing security of supply.
- The regional monitoring of the 70 per cent compliance required by Article 16(8) of Regulation 2019/943 and Recommendation no. 1/2019 of ACER.

¹¹ Regional Security (RSC) responsible for calculating interconnection capacity in the SWE region.

² CCR SWE: Southwest Europe (SWE) Capacity Calculation Region, made up of Portugal, Spain and France.

- A proposal for a change to the current Capacity Calculation methodology in SWE has been finalised and is being approved by SWE's NRAs, taking into account Regulation 2019/943.
- The development of the Intraday Capacity calculation was finalised and put into service in an experimental phase, as were the implementations related to the data collection provided for in Article 82(4)³ of the CACM Regulation³.

3. Evaluation of the derogation request for 2022

On 9 November 2021, REN formally sent ERSE a request for a one-year derogation, during 2022, from the obligation not to have to comply with the 70% of transmission capacity for interzonal trade, respecting operational safety limits 100% of the time, but only 75% of the time.

In addition to the lack of the corrective action validation tool mentioned above, REN also makes the following references in its request for derogation that, during 2022, it should:

- Finalise the proposal to amend the current Capacity Calculation methodology in SWE, for approval by the SWE NRAs, taking into account Regulation (EU) 2019/943;
- Make operational the tool being developed by CCR SWE's RSC to assess whether the minimum capacity is reached and, therefore, to what extent capacity should be increased to reach this minimum limit, in line with the capacity calculation methodology to be approved;
- Adapting the other tools to the methodology to be approved and gathering the relevant experience in order ensure effective use with guaranteed operational safety.

The analysis carried out by ERSE allowed it to consider that the request submitted by REN fulfils the requirement set out in Article 16(9) of Regulation (EU) 2019/943, regarding the need to maintain the

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

operational security and the proposed solutions that will enable the minimum 70 per cent of 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 75 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 2022 of the provisions of Article 16(8) of Regulation (EU) 2019/943 on minimum levels of available capacity for cross-zonal trade, with REN having undertaken to make at least 70 per cent of transmission capacity available during 75 per cent of the hours.

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)

November 2021

Whereas

(1) REN is the Portuguese Transmission System Operator. REN belongs to South West Europe capacity calculation region (hereinafter, "SWE CCR").

(2) 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.

(3) Article 16(4) of the Regulation 2019/943 provides that, in order to maximise available capacities to reach the minimum capacity requirements provided for in Article 16 (8), Transmission System Operators (hereinafter, "TSOs") shall use countertrading and redispatch, including cross-border redispatch, via "*a coordinated and non-discriminatory process*".

(4) Article 16(9) of the Regulation 2019/943 provides regulatory authorities with the possibility of granting a derogation from Article 16(8) upon TSO request on foreseeable grounds where necessary for maintaining operational security.

(5) 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.

(6) 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 a method to monitor the margin available for cross-zonal trade in accordance with Article 16(9).

(7) Complying with the minimum requirements set in Article 16(8) would require an intensive use of costly remedial actions that undermines the operational security of the Portuguese grid especially if Recommendation No 01/2019 is applied for setting the minimum requirements for Portuguese interconnections.

(8) 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.

(9) A first derogation for the South West Europe (SWE) capacity calculation region had already been submitted and approved by the Portuguese regulatory authority ERSE on the 31st of December 2019 for the year 2020 (from 1st January 2020 to 31st December 2020).

(10) A second derogation for the SWE capacity calculation region has been submitted and approved by the Portuguese regulatory authority ERSE on the 31st of December 2020 for the year 2021 (from 1st January 2021 to 31st December 2021).

(11) This document hereby constitutes a request for derogation for the year 2022 (from 1st January 2022 to 31st December 2022).

(11) 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").

(12) The term Regional Coordination Centre (hereafter "RCC") shall be understood as the Regional Security Coordinator (hereafter "RSC") in charge of the capacity calculation for SWE CCR, as at the time of this request the RCCs, in terms of article 35 of Regulation (EU) 2019/943, are not established yet.

REN SUBMITS THE FOLLOWING REQUEST FOR DEROGATION

Article 1. Subject matter and scope

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

Article 2. Definitions

All the terms used in this request for a third 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, which means that applying the necessary remedial actions from the Required Date would lead to operational security risks;

ii. the likelihood a more extensive application remedial actions is higher in Member States where no action plan is applied, as it is the case of Portugal;

iii. the amendment to the current capacity calculation methodology has not yet been approved.

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 Centre to use all the available remedial actions provided by TSOs to reach the minimum capacity requirement.

As from the 1st of January 2022, it will not be possible to ensure that the tool being developed by the SWE RCC to assess whether this minimum capacity is reached and thus to what extent the capacity should be increased to reach this threshold will be in line with the capacity calculation methodology that will be approved;

ii. in line with Article 16(3) of Regulation 2019/943, it should be possible for RCCs to identify the cases where available remedial actions provided by TSOs are sufficient to reach the capacity requirements while guaranteeing security of supply.

As from January 1st 2022, SWE' capacity calculation methodology will probably be pending approval and consequently it will not be possible to guarantee that the SWE RCC will have the necessary tools to assess the availability of such remedial actions to reach the capacity requirements in line with Article 16(3) of Regulation 2019/943 in line with the criterion that will be defined in the mentioned methodology. Due to this possible temporary lack of regional tools, SWE RCC will operate the Day-Ahead capacity calculation process according to the SWE amendment proposal for the capacity calculation methodology. However, SWE RCC may not be able to assess the availability of remedial actions following what will be established in the capacity calculation methodology to be approved by the SWE NRAs in order to reach the capacity requirements in line with Article 16(3) of Regulation 2019/943 and thus provide maximum capacity to the TSOs and the Day-Ahead market, which is one of the main objectives of Regulation 2019/943;

iii. As from the 1st of January 2022, REN will not have the necessary tools to assess and validate the availability of such remedial actions in line with the methodology to be approved. Due to this temporary lack of internal tools, REN will not be able to operate the process and thus provide affordable energy to the final customers, which is one of the main objectives of Regulation 2019/943 (see whereas (2)).

- (2) To mitigate the identified operational security risks, REN requests this derogation for 1 year to adapt the tools mentioned to the methodology to be approved and to gather relevant experience from the processes and to complete the tools mentioned, in order to ensure an effective usage while guaranteeing operational security.

Article 4. Summary of accomplishments after the first and second derogation and justification for this third derogation request

- (1) A first derogation (from 1st of January 2020 to 31st of December 2020) was submitted and approved by ERSE. This first derogation granted 1 year for the definition, development and implementation of new tools enabling the fulfilment of Article 16(8) while ensuring operational security.
- (2) During this period the SWE TSOs and RCC:
- a. Finalised the implementation of the D-2 Capacity Calculation as provided in the methodology approved by SWE NRAs, using the CGMES format as defined in the European guidelines.
 - b. Initialized the developments associated with the Intraday Capacity Calculation, the study to optimize TRM, which is expected by the end of 2020, and the new developments related to data collection taking into consideration the dispositions of Article 82 (4) of CACM.
 - c. Finalised the Business Requirements for the implementation of 70% compliance regional monitoring set forth in Article 16(8) of the Regulation 2019/943 and the ACER Recommendation No. 1/2019, after discussion with the national regulators.

(3) The roadmaps of the works mentioned before were affected by the Covid-19 pandemic situation, namely developments, test and training had to be put on hold for several weeks, in order to focus on critical activities.

(4) A second derogation (from 1st of January 2021 to 31st of December 2021) was submitted and approved by ERSE. This second derogation granted 1 (one) year for the definition, development and implementation of new tools enabling the fulfilment of Article 16(8) while ensuring operational security.

(5) During this period the SWE TSOs and RCC:

- a. Applied the current approved capacity calculation methodology and practices in the SWE CCR for the operational day-ahead coordinated capacity calculation process, insuring in this way the maintenance of the operational security in the SWE CCR. REN offered this process the minimum levels of capacity in accordance with article 16(8)(a) of Regulation 2019/943 established in the previous derogation. The minimum levels were provided in accordance with article 16(8)(a) of Regulation 2019/943 and with paragraphs 4.2 and 5.1 of ACER Recommendation 01/2019 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 on the limiting CNECs.
- b. Started the developments of a regional validation tool, which enabled the RCC to identify the cases where available remedial actions are sufficient to reach the capacity requirements while guaranteeing security of supply. The validation system shall assess the available remedial actions and apply these in order to provide margins available for cross-zonal trade aligned with the provisions of Regulation 2019/943, always with a view to providing affordable capacity to the final customers.
- c. Finished and put in service the regional monitoring of the 70 % compliance as set forth in Article 16(8) of the Regulation 2019/943 and the Recommendation no. 1/2019 by ACER.
- d. Finished the developments and put in service the Intraday Capacity calculation, first run, as well as starting the implementations related to the data collection foreseen in the article 82 (4) of the CACM.
- e. Finished an amendment proposal for the current SWE Capacity Calculation methodology under agreement with SWE NRAs, taking into consideration Regulation 2019/943...
- f. Studied the technical and regulatory framework to enable, if necessary, the use of costly remedial actions, namely counter trading and coordinated redispatching.

(6) A new one year period will be set up for the day ahead capacity calculation process in SWE:

- a. During this period, REN will apply the amendment capacity calculation methodology proposed in the SWE CCR for the operational day-ahead coordinated capacity calculation process, insuring in this way the maintenance of the operational security in SWE CCR. REN will offer to this process at least the minimum levels of capacity in accordance with article 16(8)(a) of Regulation 2019/943 during 75 % of the hours on which the 1-year derogation applies. The minimum levels will be provided in accordance with article 16(8)(a) of Regulation 2019/943 and with paragraphs 4.2 and 5.1 of ACER Recommendation 01/2019 on the limiting CNECs.
- b. During this period, RCC and SWE TSOs will:
 - i. Introduce the necessary developments in the regional validation tool to align it with the capacity calculation methodology to be approved.
 - ii. Finish the developments and put in service the publication of information in the JAO platform foreseen in the capacity calculation amendment as well as the implementations related to the data collection foreseen in article 82 (4) of the CACM and start the Long Term Capacity Calculation developments.
 - iii. Start the migration from the current RCC capacity calculation tool to a new one with different technology.
 - iv. Start the developments of the Intraday Capacity calculation, second run, as well as the Long Term Capacity Calculation and the Coordinated Security Analyses.

(7) REN will continue to train the operators for them to gain enough experience with new processes and tools to ensure operational security.

(8) REN will assess the possibility to implement, in operations, new measures to offer higher values of minimum margins for cross-zonal trades provided that the tools and processes are sufficiently developed to ensure operational security with these levels of minimum margins.

(9) The assessment stated in the previous paragraph will be conducted by REN with the ERSE every three months.

Article 5: Reporting

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

- a. Average % of margin available for cross zonal-trades on most limiting CNECs¹ compared to the capacity of the line;

¹ As per 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, 'CNEC' means a Critical Network Element associated with a contingency used in capacity calculation. For the purpose of the said Recommendation, the term CNEC also covers the case where a CNE is used in capacity calculation without a specified contingency.

- b. Number of hours where the minimum capacity requirement set forth in Regulation 2019/943 is reached on the most limiting CNECs.