

DECISION No 08/2023
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 31 March 2023

on the amendment to the determination of capacity calculation regions

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, Articles 5(2)(b) and (6) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Articles 9(6)(b), 9(13) and 15(1) thereof,

Having regard to the outcome of the public consultation and the consultation of the regulatory authorities, the transmission system operators ('TSOs') and the European Network of Transmission System Operators for Electricity ('ENTSO-E'),

Having regard to the outcome of the consultation with ACER's Electricity Working Group ('AEWG'),

Having regard to the favourable opinion of the Board of Regulators of 29 March 2023, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

¹ [OJ L 158, 14.6.2019, p. 22.](#)

² [OJ L 197, 25.7.2015, p. 24](#), as amended by Commission Implementing Regulation (EU) 2021/280 of 22 February 2021, [OJ L 62, 23.2.2021, p. 24](#)

- (1) Commission Regulation (EU) 2015/1222 ('the CACM Regulation') defines capacity calculation regions ('CCRs') as geographic areas in which coordinated capacity calculation is applied.³ Article 15(1) of the CACM Regulation requires all TSOs to jointly develop a common proposal regarding the determination of CCRs. ACER has approved such proposal of all TSOs in its Decision 04/2021 of 7 May 2021⁴.
- (2) The present Decision follows from the TSOs' proposal to amend the ACER Decision 04/2021 of 7 May 2021. Annex I to this Decision sets out the amendments of the determination of CCRs methodology, pursuant to Article 15(1) of the CACM Regulation, as approved by ACER.
- (3) This Decision is issued following ACER's revision of the Proposal and it amends ACER Decision 04/2021 of 7 May 2021. This Decision includes the following annexes:
 - Annex I sets out the amendments of the determination of CCRs, as amended and approved by ACER.
 - Annex Ia provides a tracked changes version of the Determination of CCRs, reflecting ACER's amendments, for information.
 - Annex II provides the results of ACER's public consultation, for information.
 - Annex III provides the consolidated version of the determination of CCRs, for information

2. PROCEDURE

- (4) On 10 November 2021, 'ENTSO-E', on behalf of all TSOs having obligations pursuant to the CACM Regulation, published an 'All TSOs' proposal for amendment of Determination of capacity calculation regions' for public consultation. The consultation lasted from 10 November until 10 December 2021 and 'ENTSO-E' received one comment that supported TSOs' proposal.
- (5) On 13 October 2022, 'ENTSO-E', on behalf of all TSOs, submitted for ACER's approval its proposal for amendment of the Determination of CCRs ('the Proposal').
- (6) Between 28 October and 25 November 2022, ACER held a public consultation⁵ on the Proposal, seeking views from all interested parties in the EU and EEA⁶. Annex II

³ Article 2(3) of the CACM Regulation.

⁴ ACER Decision 04/2021 of 7 May 2021 on the Determination of Capacity Calculation Regions

⁵ PC/2022/E/11, see ACER's consultation page: [PC_2022_E_11 - Public Consultation on amendments to the definition of capacity calculation regions to include Norway | www.acer.europa.eu](https://www.acer.europa.eu/PC_2022_E_11_-_Public_Consultation_on_amendments_to_the_definition_of_capacity_calculation_regions_to_include_Norway)

⁶ European Economic Area

provides a summary of comments received along with ACER's responses to these comments.

- (7) Between 1 and 16 February 2023, ACER consulted all TSOs and all regulatory authorities on its preliminary position, by sharing an updated version of the Proposal setting out its suggested amendments and reasoning for these amendments. The consulted parties provided their views by 16 February 2023. These views are summarised in section 5.2.
- (8) ACER considered all the written comments received and introduced further editorial amendments to the Proposal to take some of the points raised by the consulted parties into account.
- (9) The AEWG provided its advice on 10 March 2023 (see section 5.3).
- (10) On 29 March 2023, ACER's Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (11) Pursuant to Article 5(2)(b) of Regulation (EU) 2019/942 and Article 9(6)(b) of the CACM Regulation, as amended⁷, the proposal for CCRs in accordance with Article 15(1) of the CACM Regulation, shall be subject to approval by ACER.
- (12) According to Article 9(13) of the CACM Regulation, the TSOs responsible for developing a proposal for methodologies may request amendments of these methodologies. The proposal for amendments shall, according to Article 9(13) read jointly with Articles 9(1), 9(6)(b) and 15(1) of the CACM Regulation, be submitted to ACER for approval.
- (13) On 13 October 2022, ENTSO-E, on behalf of all TSOs, submitted the Proposal to ACER for approval. Therefore, ACER is competent to decide on the Proposal based on Article 5(2)(b) of Regulation (EU) 2019/942, Article 9(6)(b), Article 9(13) and Article 15(1) of the CACM Regulation.

4. SUMMARY OF THE PROPOSAL

- (14) The Proposal submitted to ACER on 13 October 2022 includes a 'Whereas' section and the following titles:

Title 1 setting out the proposed amendments; and

Title 2 setting out the final provisions.

⁷ See footnote 2.

- (15) The proposal includes an Appendix with the maps of the proposed CCRs.
- (16) The Proposal is accompanied by a submission letter from ENTSO-E and a document with the contact details of the TSOs responsible for the development of the proposal and its submission and a consolidated version with tracked changes for information.

5. OBSERVATIONS RECEIVED BY ACER

5.1. Public consultation on the Proposal

- (17) Responses to ACER's public consultation⁸ are summarised in Annex II to this Decision.

5.2. Consultation on ACER's preliminary position

- (18) The regulatory authority of Denmark provided a written comment with editorial corrections to Annex I. They remarked that in Article 1(2)(d) the correct reference to the bidding zone should be Denmark 1 and not Denmark as written in Annex I and they remarked that Map 2 in the Appendix should include the NO2 bidding zone together with the additional bidding zone border NO2-NL and NO2-DK/LU.
- (19) The regulatory authority of Germany provided a written comment with an editorial correction regarding the legislative process according to the EEA Agreement.
- (20) ENTSO-E, on behalf of all TSOs, provided a written response to the hearing phase. All TSOs gave remarks regarding the list of TSOs subject to the approved CCR methodology that ACER has included. They also commented that Map 2 in the Appendix should include the bidding zone borders NO2-NL and NO2-DE/LU. In addition to this, they commented that they understand that Article 4 should not be included in Annex I as there are no changes proposed to the article.
- (21) The regulatory authority of Norway provided feedback, including a proposed editorial amendment to Article 3 of Annex I.

5.3. Consultation of the AEWG

- (22) The AEWG provided its advice on 10 March 2023.
- (23) The regulatory authority of Sweden expressed a preference that, to achieve full transparency, all criteria set out in Article 15(2) of the CACM Regulation should be included under point 6.1, the legal framework, in the Decision.

⁸ See footnote 5.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (24) Article 15(1) of the CACM Regulation requires all TSOs to jointly develop a common proposal regarding the determination of CCRs and, pursuant to Article 5(2)(b) of Regulation (EU) 2019/942 and Article 9(6)(b) of the CACM Regulation, as amended⁹, submit it to ACER for approval. According to article 9(13) of the CACM Regulation, the TSOs responsible for developing a proposal for methodologies may request amendments of these methodologies, which also shall be approved by ACER.
- (25) Article 9(13) in joint reading with Article 12 of the CACM Regulation requires that the proposal for amendments is subject to a consultation at Union level for a period of not less than one month before it is submitted for approval to ACER. The consulted stakeholders shall include the relevant authorities of each Member State, and its results shall be duly taken into consideration by all TSOs. The TSOs are required to develop in their submission a justification for including or not the views resulting from the consultation and publish it in a timely manner before or simultaneously with the publication of the proposal.
- (26) According to Article 15(2) of the CACM Regulation, each bidding zone border shall be assigned to one CCR and TSOs shall be assigned to all CCRs in which they have bidding zone borders.
- (27) According to Article 15(3) of the CACM Regulation, CCRs applying flow-based capacity calculation shall be merged into one CCR if their transmission systems are directly linked to each other, they participate in the same single day-ahead or intraday coupling area and merging them is more efficient than keeping them separate. The competent regulatory authorities may request a joint cost-benefit analysis from the TSOs concerned to assess the efficiency of the merger.
- (28) Pursuant to Article 9(9) of the CACM Regulation, all proposals for terms and conditions or methodologies, shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of the CACM Regulation. These objectives are listed in Article 3 of the CACM Regulation.
- (29) Pursuant to Article 5(6) of Regulation (EU) 2019/942 and Article 9(5) of the CACM Regulation, before approving the proposal for amendments to the determination of CCRs, ACER shall revise it where necessary, after consulting the respective TSOs and ENTSO-E, in order to ensure that it is in line with the purpose of the CACM Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.

⁹ See footnote 2.

6.2. ACER's assessment and amendments

(30) This section outlines ACER's assessment and amendments to the Proposal, taking into account the legal requirements (see section 6.1), comments on ACER's preliminary position (see section 5.2) and AEWG advice (see section 5.3).

6.2.1. Assessment of the Proposal in view of the legal requirements

(31) The Proposal fulfils the requirements of Article 9(6)(b), Article 9(13) and Article 15(1) of the CACM Regulation, as all TSOs jointly developed the Proposal and submitted it to ACER for revision and approval.

(32) The Proposal assigns each additional bidding zone border to a specific CCR and extends the list of TSOs in a CCR where relevant. The Proposal therefore fulfils the requirements of Article 15(2) of the CACM Regulation.

(33) The Proposal was publicly consulted via ENTSO-E's web-based consultation between 10 November and 10 December 2021 and received one response in support of the proposal. Therefore, ACER considers that the Proposal meets the requirements of Article 12 of the CACM Regulation and complies with Article 9(13) of the same Regulation.

(34) The Proposal meets the requirements of Article 9(9) on the inclusion of a proposed timescale for implementation, as Article 3 of the Proposal specifies the timeline for its implementation. ACER amended Article 3 on the implementation date of the amendments to align the implementation to the procedure according to the EEA Agreement required for the determination of CCRs to become applicable in Norway. The recitals of the Proposal describe the expected impact of the CCRs on the objectives listed in Article 3 of the CACM Regulation. However, they do not explicitly mention the impact of the proposed amendments to include the Norwegian bidding zone borders. For this reason, and to meet the requirements of Article 9(9) of the CACM Regulation, ACER included this in the 'Whereas' section clarifying that the amendments does not harm any of those objectives.

6.2.2. ACER's revision to the proposal

(35) ACER has introduced several editorial amendments to improve the wording, clarity and readability of the Proposal, while preserving the intended meaning of the content. ACER has introduced editorial amendments under Article 1 and 2 in order to improve the clarity of the methodology.

(36) ACER has removed several recitals in the 'Whereas' section. The removed recitals relate mainly to previous submissions and decisions concerning the determination of CCRs, which ACER does not consider to be relevant for this amendment. ACER has amended recital (2) in order to better reflect the legislative process on how the CACM Regulation entered into force in Norway.

- (37) ACER introduced Annex 1 to the methodology, containing a list of all the TSOs who are subject to this methodology. In view of this list, ACER has deleted the reference to the submitting TSOs in recital (24) of the proposal for amendment. Recital (24) containing the list of submitting TSOs included the Norwegian TSO, Statnett. Pursuant to the procedure under point 47(d) of Annex IV to the EEA Agreement, as established by EEA Joint Committee Decision No. 93/2017, ACER does not have the competence to address the decision to Statnett. This decision therefore only applies to the TSOs listed in Annex I.

6.2.3. Considerations

- (38) ENTSO-E provided in the hearing phase a comment that they understand that Article 4 in Annex I should not be included, as there are no changes proposed to the article. ACER considers that Article 4 of Annex I is relevant for the amendment decision and has therefore kept the article under title 2 with the final provisions. ACER has taken the other input provided by ENTSO-E into account.
- (39) ACER has taken into account the proposed editorial amendments and clarifications provided by the regulatory authority of Denmark and the regulatory authority of Germany in the hearing phase.
- (40) With consideration to the comment received by the regulatory authority of Sweden, ACER only includes the essential content of the Article that is relevant for this decision. All criteria set out in Article 15(2) of the CACM Regulation is therefore not included under point 6.1, the legal framework, in the Decision. This is done in the same way as it has been done in the ACER Decision 04/2021.

7. CONCLUSION

- (41) For the above reasons, ACER considers that the amendments detailed in section 6 are necessary in order to ensure that the Proposal is in line with the requirements and the objectives of the CACM Regulation, as well as to improve the editorial quality.
- (42) Therefore, ACER approves the Proposal for amendment subject to the necessary substantive and editorial amendments. Annex I to this Decision sets out the amendments to the determination of CCRs as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The determination of the capacity calculation regions pursuant to Article 15 of Regulation (EU) 2015/1222 shall be amended as set out in Annex I of this Decision.

Article 2

This Decision is addressed to:

APG – Austrian Power Grid AG
VÜEN – Voralberger Übertragungsnetz GmbH
Elia – Elia System Operator S.A
ESO – Electroenergien Sistemen Operator EAD
HOPS d.d – Croatian Transmission System Operator Plc
ČEPS - ČEPS, a.s.
Energinet – Energinet
Elering – Elering AS
Fingrid – Fingrid OyJ
Kraftnät Åland Ab
RTE - Réseau de Transport d'Electricité, S.A
Amprion – Amprion GmbH
Baltic Cable AB
TransnetBW – TransnetBW GmbH
TenneT GER – TenneT TSO GmbH
50Hertz – 50Hertz Transmission GmbH
IPTO - Independent Power Transmission Operator S.A.
MAVIR ZRt. - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság ZRt.
EirGrid – EirGrid plc
Terna – Terna SpA
Augstsprieguma tikls - AS Augstsprieguma tikls
LITGRID – LITGRID AB
CREOS Luxembourg – CREOS Luxembourg S.A.
TenneT TSO – TenneT TSO B.V.
PSE – PSE S.A
REN – Rede Eléctrica Nacional, S.A.
Transelectrica – C.N. Transelectrica S.A.
SEPS – Slovenská elektrizačná prenosová sústava, a.s.
ELES – ELES, d.o.o.
REE – Red Eléctrica de España S.A.U.
Svenska Kraftnät – Affärsverket Svenska Kraftnät
SONI System Operator for Northern Ireland Ltd.

Done at Ljubljana, on 31 March 2023.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Amendment of the determination of capacity calculation regions

Annex Ia – Amendment of the determination of capacity calculation regions (track-change version, for information only)

Annex II – Evaluation of responses to the public consultation on the proposal for the amendment of the determination of capacity calculation regions

Annex III – The consolidated version of the determination of capacity calculation regions (for information only)

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressees may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.