

Tämä on Energiaviraston sähköisesti allekirjoittama asiakirja.

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Esittelijä / Föredragande / Referendary

Nimi / Namn / Name: Jori Sääntti
Pvm / Datum / Date: 20.09.2022

Ratkaisija / Beslutsfattare / Decision-maker

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Pvm / Datum / Date: 20.09.2022

Tämä asiakirja koostuu seuraavista osista:

- Kansilehti (tämä sivu)
- Alkuperäinen asiakirja tai alkuperäiset asiakirjat [Allekirjoitettu asiakirja alkaa seuraavalta sivulta. >](#)

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Fingrid Oyj
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Suomen ja Viron rajaa koskevan kahdenvälisen osittamismenetelmän vahvistaminen

Asianosainen

Fingrid Oyj

Vireilletulo

6.7.2022

Ratkaisu

Energiavirasto vahvistaa Fingrid Oyj:n tämän päätöksen liitteenä olevan Suomen ja Viron rajaa koskevan kahdenvälisen osittamismenetelmän.

Päätös on voimassa toistaiseksi.

Päätöstä on noudatettava muutoksenhausta huolimatta.

Selostus asiasta

Komission asetus (EU) 2016/1719 pitkän aikavälin kapasiteetin jakamista koskevista suuntaviivoista (jäljempänä FCA -suuntaviivat) astui voimaan 17.10.2016. Asetuksen tavoitteena on edistää tehokasta alueiden välistä pitkän aikavälin kauppaa, joka tarjoaa markkinaosapuolille alueiden välisiä pitkän aikavälin suojausmahdollisuuksia.

FCA -suuntaviivojen 30 artiklan 1 kohdan mukaisesti Energiaviraston tulee tehdä päätöksiä koskien pitkän aikavälin siirto-oikeuksien käyttöönottoa Suomen tarjousalueen rajoilla. Viranomaisten päätösten on perustuttava erilliseen arviointiin sekä markkinaosapuolten kuulemiseen heidän tarpeistaan alueiden välisille suojausmahdollisuuksille. Siirto-oikeuksien käyttöönottoa koskevat päätökset on koordinoitava tarjousaluerajalla toimivaltaisten viranomaisten kesken ja arviointi tulee tehdä vähintään neljän vuoden välein.

Energiavirasto katsoi 7.6.2021 annetussa päätöksessään (2338/400/2020), että Viron tarjousalueella ei ole riittäviä suojausmahdollisuuksia ja pyysi Fingridiä myöntämään Suomen ja Viron tarjousalueiden rajalle pitkän aikavälin siirto-oikeustuotteita. FCA -suuntaviivojen 16 artiklan mukaisesti kapasiteetin laskenta-alueen



siirtoverkonhaltijoiden tulee yhdessä laatia ehdotus myönnettävien pitkän aikavälin siirto-oikeuksien osittamisesta. Osittamismenetelmän tulee olla yhtenäinen pitkän aikavälin kapasiteetin laskentamenetelmän kanssa. Suomen ja Viron rajaa koskevan FCA-asetuksen mukaisen pitkän aikavälin kapasiteetin laskentamenetelmän kehittäminen ja käyttöönotto edellyttää Baltian alueen sähköjärjestelmän synkronointia Manner-Euroopan sähköjärjestelmään, minkä arvioidaan toteutuvan vuonna 2025. Siirtokapasiteetin osittaminen FCA-asetuksen mukaisella osittamismenetelmällä Suomen ja Viron rajalla on siten mahdollista toteuttaa vasta synkronoinnin jälkeen.

Energiavirasto pyysi yhdessä Viron kansallisen sääntelyviranomaisen Konkurensiametin kanssa Euroopan unionin energia-alan sääntelyviranomaisten yhteistyövirasto ACER:lta lausuntoa koskien pitkän aikavälin siirto-oikeuksien käyttöönottoa Suomen ja Viron tarjousalueiden rajalle. ACER katsoi lausunnossaan (*Opinion No 03/2022 of the European Union Agency for the Cooperation of Energy Regulators of 8 March 2022 relating to the implementation of long-term transmission rights on the FI-EE bidding zone border*), että Suomen ja Viron tarjousalueiden rajalla FCA-asetuksen mukainen osittamismenetelmä voidaan korvata väliaikaisesti kahdenvälisellä menetelmällä, jota asianomaiset viranomaiset valvovat.

Fingrid toimitti Energiavirastoon 6.7.2022 tämän päätöksen liitteenä olevan ehdotuksen kahdenväliseksi menetelmäksi, jota sovelletaan pitkän aikavälin siirtokapasiteetin määrittämiseen ja osittamiseen Suomen ja Viron tarjousalueiden rajalla siihen saakka, kunnes kyseisellä rajalla voidaan ottaa käyttöön FCA-asetuksen mukainen osittamismenetelmä. Fingrid järjesti ehdotuksesta kuulemisen 10.6.2022 – 26.6.2022 ja kuulemisen aikana saadut kommentit on arvioitu ja otettu huomioon ehdotuksen viimeistelyssä.

Energiavirasto järjesti julkisen kuulemisen 19.8.2022 – 4.9.2022 välisenä aikana markkinaosapuolille Suomen ja Viron rajaa koskevan osittamismenetelmän ehdotuksesta. Energiavirastoon ei toimitettu yhtään lausuntoa kuulemisen aikana.

Asiaan liittyvä lainsäädäntö, oikeuskäytäntö, mietinnöt ja raportit

Komission asetus (EU) 2016/1719 pitkän aikavälin kapasiteetin jakamista koskevista suuntaviivoista

FCA -suuntaviivojen 3 artiklan mukaan:

Pitkän aikavälin kapasiteetin jakamisen tavoitteet

Tämän asetuksen tavoitteena on

- a) edistää tehokasta alueiden välistä pitkän aikavälin kauppaa, joka tarjoaa markkinaosapuolille alueiden välisiä pitkän aikavälin suojausmahdollisuuksia;
- b) optimoida alueiden välisen pitkän aikavälin kapasiteetin laskenta ja jakaminen;
- c) tarjota syrjimätön pääsy alueiden väliseen pitkän aikavälin kapasiteettiin;
- d) varmistaa siirtoverkonhaltijoiden, viraston, sääntelyviranomaisten ja markkinaosapuolten oikeudenmukainen ja syrjimätön kohtelu;



- e) ottaa huomioon tarve taata oikeudenmukainen ja säännönmukaisesti toimiva pitkän aikavälin kapasiteetin jakaminen sekä säännönmukainen hinnanmuodostus;
- f) varmistaa pitkän aikavälin kapasiteetin jakamista koskevien tietojen avoimuus ja luotettavuus ja parantaa niitä;
- g) edistää Euroopan sähkönsiirtoverkon ja sähköalan tehokasta toimintaa ja kehittämistä pitkällä aikavälillä;

FCA-suuntaviivojen 16 artiklan mukaan:

1. Kunkin kapasiteetin laskenta-alueen siirtoverkonhaltijoiden on 10 artiklassa tarkoitetun kapasiteetin laskentamenetelmää koskevan ehdotuksen antamiseen mennessä laadittava yhdessä ehdotus menetelmäksi, jonka avulla alueiden välinen pitkän aikavälin kapasiteetti ositetaan koordinoitusti eri pitkien aikavälien kesken asianomaisella alueella. Ehdotuksesta on järjestettävä kuuleminen 6 artiklan mukaisesti.

2. Alueiden välisen pitkän aikavälin kapasiteetin osittamista koskevan menetelmän on täytettävä seuraavat edellytykset:

- a) se vastaa markkinaosapuolten suojaustarpeita;
- b) se on yhtenäinen kapasiteetin laskentamenetelmän kanssa;
- c) se ei saa johtaa kilpailunrajoitukseen varsinkaan pitkän aikavälin siirto-oikeuksien saannissa.

Sähkömarkkinalaki (2013/588)

Sähkömarkkinalain 45 §:n 1 momentin mukaan järjestelmävastaava kantaverkonhaltija vastaa Suomen sähköjärjestelmän teknisestä toimivuudesta ja käyttövarmuudesta sekä huolehtii valtakunnalliseen tasevastuuseen kuuluvista tehtävistä ja valtakunnallisesta taseselvityksestä tarkoituksenmukaisella ja sähkömarkkinoiden osapuolten kannalta tasapuolisella ja syrjimättömällä tavalla (*järjestelmävastuu*). Järjestelmävastaavan kantaverkonhaltijan tulee ylläpitää ja kehittää järjestelmävastuun piiriin kuuluvia toimintojaan ja palveluitaan sekä ylläpitää, käyttää ja kehittää sähköverkkoaan ja muita järjestelmävastuun hoitamiseen tarvittavia laitteistojaan sekä yhteyksiä toisiin verkkoihin siten, että ne toimivat tehokkaasti ja että edellytykset tehokkaasti toimiville kansallisille ja alueellisille sähkömarkkinoille sekä Euroopan unionin sähkön sisämarkkinoille voidaan turvata.

Sähkömarkkinalain 45 §:n 2 momentin mukaan järjestelmävastaava kantaverkonhaltija voi asettaa järjestelmävastuun toteuttamiseksi tarpeellisia ehtoja sähkön siirtojärjestelmän sekä siihen liitettyjen voimalaitosten ja kuormien käyttämiselle. Ehtoja voidaan soveltaa yksittäistapauksissa sen jälkeen, kun Energiavirasto on ne vahvistanut sähkö- ja maakaasumarkkinoiden valvonnasta annetun lain 10 §:n



mukaisesti. Vahvistettuja ehtoja voidaan soveltaa muutoksenhausta huolimatta, jollei valitusviranomainen toisin määrää.

Sähkömarkkinalain 18 §:n mukaan verkonhaltijan on tarjottava sähköverkkonsa palveluita sähkömarkkinoiden osapuolille tasapuolisesti ja syrjimättömästi. Palveluiden tarjonnassa ei saa olla perusteettomia tai sähkökaupan kilpailua ilmeisesti rajoittavia ehtoja.

Laki sähkö- ja maakaasumarkkinoiden valvonnasta (590/2013, jäljempänä valvontalaki)

Valvontalain 10 §:n 1 momentin mukaan:

”Energiaviraston tulee päätöksellään (vahvistuspäätös) vahvistaa verkonhaltijan, järjestelmävastaavan kantaverkonhaltijan ja järjestelmävastaavan siirtoverkonhaltijan sekä nesteytetyn maakaasun käsittelylaitoksen haltijan noudatettaviksi seuraavat palvelujen ehdot ja palvelujen hinnoittelua koskevat menetelmät ennen niiden käyttöönottamista:

...

5) ylikuormituksen hallintaa ja siirtokapasiteetin jakamista kantaverkossa ja siirtoverkossa koskevat ehdot sekä menetelmät ylikuormituksesta perittävien maksujen määrittämiseksi ja menetelmät ylikuormituksen hallinnasta saatujen tulojen käyttämiseksi;”

Energiaviraston toimivalta

Energiavirastosta annetun lain (870/2013) 1 §:n 2 momentin mukaan Energiavirasto hoitaa kansalliselle sääntelyviranomaiselle kuuluvat tehtävät, joista säädetään:

3) sähkön sisämarkkinoita koskevista yhteisistä säännöistä ja direktiivin 2012/27/EU muuttamisesta annetun Euroopan parlamentin ja neuvoston direktiivin (EU) 2019/944, jäljempänä *sähkömarkkinadirektiivi*, nojalla annetuissa delegoiduissa säädöksissä; Euroopan Komission asetus (EU) 2016/1719 pitkän aikavälin kapasiteetin jakamista koskevista suuntaviivoista on Energiavirastosta annetun lain 1 §:n 2 momentin neljänteen kohtaan perustuvaa sääntelyä.

Lain sähkö- ja maakaasumarkkinoiden valvonnasta (2013/590) 6 pykälän mukaan:

Euroopan unionin sähkö- ja maakaasualaa koskevassa lainsäädännössä tarkoitettuna kansallisena sääntelyviranomaisena toimiessaan Energiaviraston tehtävänä on erityisesti:

2) varmistaa, että sähkö- ja maakaasuverkkojen haltijat sekä muut sähkö- ja maakaasualan yritykset noudattavat kansallisesta ja unionin lainsäädännöstä johtuvia velvollisuuksiaan, ja päättää toimivaltansa mukaisesti tarvittavista ja



oikeasuhtaisista toimenpiteistä sähkö- ja maakaasumarkkinoiden kilpailun edistämiseksi ja markkinoiden moitteettoman toiminnan varmistamiseksi.

Sähkö- ja maakaasumarkkinoiden valvonnasta annetun lain (590/2013) 10 §:n kohdan 5 mukaisesti Energiaviraston tulee päätöksellään vahvistaa järjestelmävastaavan kantaverkonhaltijan noudatettavaksi ylikuormituksen hallintaa ja siirtokapasiteetin jakamista kantaverkossa ja siirtoverkossa koskevat ehdot sekä menetelmät ylikuormituksesta perittävien maksujen määrittämiseksi ja menetelmät ylikuormituksen hallinnasta saatujen tulojen käyttämiseksi ennen niiden käyttöönottamista

Perustelut

Energiaviraston FCA -suuntaviivojen 30 (8) artiklan perusteella Suomen ja Viron tarjousalueiden rajalla toteuttaman suojausmahdollisuuksien uudelleenarvioinnin ja sen seurauksena 7.6.2021 annetun siirto-oikeustuotteiden myöntämistä koskevan velvoitepäätöksen johdosta siirtoverkonhaltijalle syntyi velvoite ryhtyä toimenpiteisiin siirto-oikeustuotteiden myöntämisen mahdollistamiseksi FCA -suuntaviivojen vaatimukset täyttävällä tavalla. Siirto-oikeuksien toteuttaminen täysin FCA -suuntaviivojen vaatimusten mukaisesti ei ole kuitenkaan Baltic kapasiteetinlaskenta-alueella mahdollista johtuen FCA -suuntaviivojen artiklan 10 täytäntöönpanoa koskevasta poikkeuksesta. Sääntelyn tavoitteiden toteuttamiseksi ACER antoi asiassa Energiaviraston ja Konkurentsiametin pyynnöstä Euroopan parlamentin ja neuvoston asetus (EU) 2019/942 Euroopan unionin energia-alan sääntelyviranomaisten yhteistyöviraston perustamisesta (jäljempänä myös ACER -asetus) 6 (7) artiklan mukaisen lausunnon. Energiavirasto on ottanut FCA -suuntaviivojen artiklan 4(9) mukaisesti ACER:n lausunnon huomioon ja ryhtynyt toimenpiteisiin, jotta Suomen ja Viron tarjousalueella voidaan ottaa käyttöön FCA -suuntaviivojen edellyttämin tavoin pitkän aikavälin siirto-oikeustuotteet FCA -suuntaviivojen 10 artiklan mukaisen menetelmän puuttumisesta huolimatta.

Fingrid on määritelty Energiaviraston päätöksellä järjestelmävastaavaksi kantaverkonhaltijaksi. Siirtojen hallinta kuuluu järjestelmävastaavan kantaverkonhaltijan tehtäviin. Riittävien suojausmahdollisuuksien toteuttaminen rajakohtaisesti valitsevassa tilanteessa edellyttää Suomen osalta, että Energiavirasto vahvistaa Fingridin noudatettavaksi FCA -suuntaviivojen 16 artiklan väliaikaisesti korvaavan menetelmän sähkömarkkinalain 45 §:n edellyttämin tavoin valvontalain 10 §:n nojalla.

Energiavirasto on tutustunut Fingridin ehdotukseen ja katsoo, että Fingridin toimitama ehdotus vastaa markkinaosapuolten suojaustarpeisiin FCA -suuntaviivojen 16 artiklan edellytyksen mukaisesti, sillä ehdotettu menetelmä varmistaa, että tarjolla on pitkän aikavälin suojausmahdollisuuksia vuosi- ja kuukausitason siirto-oikeuksilla. Energiavirasto katsoo myös, että ehdotus toteuttaa saman artiklan edellytyksen siitä, että se ei saa johtaa kilpailunrajoituksiin, sillä pitkän aikavälin suojaustuotteet tuodaan markkinoiden saataville huutokauppamenettelyllä, samalla varmistuen kapasiteetin allokoinnin vuosi- sekä kuukausitason siirto-oikeustuotteille. Näillä perusteilla ehdotus täyttää myös sähkömarkkinalain 18 §:n verkkopalveluiden tarjoamisen vaatimukset.



Energiavirasto katsoo, että Fingridin toimittama ehdotus kahdenvälisestä osittamismenetelmästä noudattaa mahdollisuuksien rajoissa FCA -suuntaviivojen 16 artiklan vaatimuksia sekä ACER:n lausunnon mukaista ohjeistusta, ja voidaan siten vahvistaa käyttöön otettaviksi Suomen ja Viron tarjousalueiden rajalla, kunnes kyseisellä rajalla voidaan ottaa käyttöön FCA-asetuksen mukainen osittamismenetelmä.

Sovelletut säännökset

Komission asetus (EU) 2016/1719 pitkän aikavälin kapasiteetin jakamista koskevista suuntaviivoista, artikla 16

Laki Energiavirastosta (870/2013) 1 § 2 momentti.

Sähkömarkkinalaki 18 §, 45 §

Laki sähkö- ja maakaasumarkkinoiden valvonnasta (590/2013) 10 §, 36 §, 38 §.

Muutoksenhaku

Muutoksenhakua koskeva ohjeistus liitteenä.

Liitteet Valitusosoitus Markkinaoikeuteen

Bilateral methodology for determining and splitting the long-term cross-zonal capacity for the purpose of allocating long-term transmission rights on the Finnish-Estonian bidding zone border, 4 July 2022

Opinion No 03/2022 of the European Union Agency for the Cooperation of Energy Regulators of 8 March 2022 relating to the implementation of long-term transmission rights on the FI-EE bidding zone border

Jakelu Fingrid Oyj



VALITUSOSOITUS

Valitusoikeus hallintopäätöksestä

Energiaviraston antamaan hallintopäätökseen saa hakea muutosta valittamalla siten kuin laissa oikeudenkäynnistä hallintoasioissa (808/2019) säädetään. Valituskelpoisella hallintopäätöksellä tarkoitetaan päätöstä, jolla asia on ratkaistu tai jätetty tutkimatta.

Hallintopäätökseen saa hakea muutosta valittamalla se, johon päätös on kohdistettu tai jonka oikeuteen, velvollisuuteen tai etuun päätös välittömästi vaikuttaa ja se, jonka valitusoikeudesta laissa erikseen säädetään.

Valitusviranomainen

Valitusviranomainen Energiaviraston päätökseen on markkinaoikeus.

Valituksen tekeminen ja valitusaika

Valituksen saa tehdä sillä perusteella, että päätös on lainvastainen.

Valitus on tehtävä kirjallisesti 30 päivän kuluessa päätöksen tiedoksisaannista.

Jos tiedoksianto on toimitettu tavallisena tiedoksiantona postitse kirjeellä vastaanottajalle, katsotaan hänen saaneen asiasta tiedon seitsemäntenä päivänä kirjeen lähettämisestä, jollei muuta näytetä. Mikäli päätös annetaan hakijalle tiedoksi sähköisenä viestinä, päätös katsotaan annetuksi tiedoksi kolmantena päivänä viestin lähettämisestä, jollei muuta näytetä. Jos päätös on postitettu saantitodistusta vastaan, vastaanottajan katsotaan saaneen asiasta tiedon saantitodistuksen osoittamana aikana. Valitusaikaa laskettaessa tiedoksiantopäivää ei oteta lukuun.

Milloin kysymyksessä on sijaistiedoksianto, tiedoksisaannin katsotaan tapahtuneen kolmantena päivänä sijaistiedoksiantoa koskevan tiedoksiantotodistuksen osoittamasta päivästä. Viranomaisen tietoon asian katsotaan tulleen kirjeen saapumispäivänä.

Kun valituksen tekemisen määräajan viimeinen päivä on pyhäpäivä, itsenäisyyspäivä, vapunpäivä, joului- tai juhannusaatto tai arkilauantai, saa valituksen toimittaa ensimmäisenä arkipäivänä sen jälkeen. Valitus on toimitettava valitusviranomaiselle viimeistään valitusajan viimeisenä päivänä ennen valitusviranomaisen aukioloajan päättymistä.

Valituksen tekemisestä säädetään lisäksi sähköisestä asioinnista viranomaistoiminnassa annetussa laissa (13/2003). Määräaikojen laskemisesta säädetään säädettyjen määräaikain laskemisesta annetussa laissa (150/1930).



Valituksen sisältö

Valituksessa on ilmoitettava:

- päätös, johon haetaan muutosta (*valituksen kohteena oleva päätös*);
- miltä kohdin päätökseen haetaan muutosta ja mitä muutoksia siihen vaaditaan tehtäväksi (*vaatimukset*);
- vaatimusten perustelut; sekä
- mihin valitusoikeus perustuu, jos valituksen kohteena oleva päätös ei kohdistu valittajaan.

Valituksessa on lisäksi ilmoitettava valittajan nimi ja yhteystiedot. Jos puhevaltaa käyttää valittajan laillinen edustaja tai asiamies, myös tämän yhteystiedot on ilmoitettava. Yhteystietojen muutoksesta on valituksen vireillä ollessa ilmoitettava viipymättä tuomioistuimelle.

Valituksessa on ilmoitettava myös se postiosoite ja mahdollinen muu osoite, johon oikeudenkäyntiin liittyvät asiakirjat voidaan lähettää (*prosessiosoite*). Mikäli valittaja on ilmoittanut enemmän kuin yhden prosessiosoitteen, voi tuomioistuin valita, mihin ilmoitetuista osoitteista se toimittaa oikeudenkäyntiin liittyvät asiakirjat.

Oikaisuvaatimuksen tekijä saa valittaessaan oikaisuvaatimuspäätöksestä esittää vaatimuksilleen uusia perusteluja. Hän saa esittää uuden vaatimuksen vain, jos se perustuu olosuhteiden muutokseen tai oikaisuvaatimuksen tekemisen määräajan päättymisen jälkeen valittajan tietoon tulleeseen seikkaan.

Valituksen liitteet

Valitukseen on liitettävä:

- valituksen kohteena oleva päätös valitusosoituksineen;
- selvitys siitä, milloin valittaja on saanut päätöksen tiedoksi, tai muu selvitys valitusajan alkamisen ajankohdasta; sekä
- asiakirjat, joihin valittaja vetoaa vaatimuksensa tueksi, jollei niitä ole jo aikaisemmin toimitettu viranomaiselle.
- asiamiestä käytettäessä valtakirja, sen mukaan kuin oikeudenkäynnistä hallintoasioissa annetun lain 32 §:ssä säädetään.

Valituskirjelmän toimittaminen valitusviranomaiselle

Valituskirjelmä on toimitettava valitusajan kuluessa markkinaoikeuteen, jonka osoite on:

**Sörnäistenkatu 1
00580 HELSINKI**



faksi: 029 56 43314

sähköposti: markkinaoikeus@oikeus.fi

Valituskirjelmä voidaan toimittaa valitusviranomaiselle myös postitse.

Valituksen voi tehdä myös hallinto- ja erityistuomioistuinten asiointipalvelussa osoitteessa <https://asiointi2.oikeus.fi/hallintotuomioistuimet>

Kun valituskirjelmä toimitetaan hallinto- ja erityistuomioistuinten asiointipalvelun kautta, liitteet voi toimittaa skannattuna asiointipalvelussa tai kirjeitse. Kirjeitse toimitettaessa mainitse asiasta asiointipalvelun Viesti-kentässä.

Valituskirjelmän lähettäminen postitse tai sähköisesti tapahtuu lähettäjän omalla vastuulla.

Oikeudenkäyntimaksu

Valittajalta peritään markkinaoikeudessa oikeudenkäyntimaksu 2120 euroa. Tuomioistuinmaksulaissa (1455/2015) on erikseen säädetty tapauksista, joissa maksua ei peritä.

Bilateral methodology for determining
and splitting the long-term cross-zonal
capacity for the purpose of allocating
long-term transmission rights on the
Finnish–Estonian bidding zone border

4 July 2022

Elering AS and Fingrid Oyj, taking into account the following:

Whereas

(1) This document is a common proposal of Elering AS (hereinafter “Elering”) and Fingrid Oyj (hereinafter “Fingrid”) for a bilateral methodology for determining and splitting the long-term cross-zonal capacity for the purpose of allocating long-term transmission rights on the Finnish–Estonian bidding zone border (hereinafter “BSM”). This BSM follows the requirements of the Commission regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (hereinafter the “FCA Regulation”) to the extent possible.

(2) This BSM takes into account, to the extent possible, the requirements of Article 16 of the FCA Regulation, and the Opinion No 03/2022 of the European Union Agency for the Cooperation of Energy Regulators of 8 March 2022 relating to the implementation of long-term transmission rights on the FI-EE bidding zone border according to which “FCA Regulation does not expressly condition the allocation of LTTRs on the use of a specific capacity calculation methodology” and “cross-zonal capacity may be split according to a methodology bilaterally agreed by the relevant TSOs, subject to regulatory oversight, until the splitting methodology according to Article 16 of the FCA Regulation has been implemented”.

(3) The BSM fulfils the requirement of Article 16(2)(a) of the FCA Regulation, for the long-term timeframe, as the bilateral splitting methodology ensures the availability of the products at least over the yearly and monthly timeframe for market participants, thereby meeting the hedging needs of market participants.

(4) The BSM makes use of the existing principles to determine the cross-zonal capacities for the long-term timeframe and guarantees that the capacity allocated on yearly and monthly timeframe does not exceed the determined capacity values.

(5) The BSM fulfils the requirements of Article 16(2)(c) as the BSM ensures that yearly capacity shall not be allocated for the entire volume in the yearly auction, in order to allow market participants to cover their hedging needs on both yearly and monthly timeframes thus allowing the market participant to access hedging opportunities in both timeframes. Further, long-term products determined based on the bilateral splitting methodology are publicly auctioned. Thereby, the BSM does not lead to restrictions in competition, in particular for access to long-term transmission rights.

SUBMIT THE FOLLOWING BILATERAL METHODOLOGY FOR DETERMINING AND SPLITTING THE LONG-TERM CROSS-ZONAL CAPACITY FOR THE PURPOSE OF ALLOCATING LONG-TERM TRANSMISSION RIGHTS ON THE FINNISH–ESTONIAN BIDDING ZONE BORDER TO THE ESTONIAN AND FINNISH REGULATORY AUTHORITIES:

Article 1

Subject matter and scope

1. This BSM sets the rules for the bilateral methodology for determining and splitting the long-term cross-zonal capacity for the purpose of allocating long-term transmission rights on the Finnish–Estonian bidding zone border.

Article 2

Definitions and interpretation

1. For the purpose of this BSM, the terms used shall have the meaning given to them in Article 2 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (hereinafter “Regulation (EU) 2019/943”), Article 2 of the FCA Regulation, Article 2 of the CACM Regulation, Article 2 of the Harmonised Allocation Rules for long-term transmission rights developed in accordance with Article 51 of FCA Regulation, and Article 2 of Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council (hereinafter “Transparency Regulation”).

2. In addition, in this BSM, the following terms shall have the meaning below:

- a) “LTTR” means long-term transmission right in accordance with Article 2 point 2 of the FCA Regulation;
- b) “HAR” means the Harmonised Allocation Rules developed in accordance with Article 51 of the FCA Regulation;
- c) “SAP” means the Single Allocation Platform established in accordance with Article 48 of the FCA Regulation;
- d) “NTC” means Net Transfer Capacity, where the NTC is defined as the value obtained by deducting the transmission reliability margin from the total transfer capacity. The transmission reliability margin for the HVDC interconnectors on the Finnish-Estonian bidding zone border is zero.

3. In this BSM, unless the context requires otherwise:

- a) the singular indicates the plural and vice versa;
- b) headings are inserted for convenience only and do not affect the interpretation of this BSM; and
- c) any reference to legislation, regulations, directives, orders, instruments, network codes or any other enactment shall include any modification, extension, or re-enactment of it when in force.

Article 3

Determining the long-term cross-zonal capacity

1. Elering and Fingrid shall determine the long-term cross-zonal capacities to be used as input in the splitting of the long-term cross-zonal capacity for the purpose of allocating LTTRs in accordance with Article 4 of this BSM as follows:
 - a) yearly long-term cross-zonal capacity shall be determined with a monthly granularity and published once a year;
 - b) monthly long-term cross-zonal capacity shall be determined with a daily granularity and published once a month.
2. When determining the long-term cross-zonal capacities in accordance with paragraph 1 of this Article, the following shall apply:
 - a) the point of departure for determining the yearly and monthly long-term cross-zonal capacities shall be the NTC values for relevant period of the relevant interconnectors between Finnish and Estonian bidding zone borders;
 - b) the long-term cross-zonal capacities shall respect the operational security limits of the interconnectors between the Finnish and Estonian bidding zone borders;
 - c) Reduction Periods may be defined in accordance with HAR Article 30.
3. Elering and Fingrid shall validate the results of the determination of the long-term cross-zonal capacity. When performing the validation, the TSOs shall consider operational security, taking into account new and relevant information obtained during or after the most recent capacity calculation.
4. Elering and Fingrid may curtail the long-term cross-zonal capacities in accordance with Article 53 of the FCA Regulation.

Article 4

Splitting of long-term cross-zonal capacity for the purpose of allocating LTTRs

1. The TSOs shall split the calculated long-term cross-zonal capacity for each forward capacity allocation by applying the methodology for splitting cross-zonal capacity pursuant to paragraph 4 of this Article 4.
2. The amount of long-term cross-zonal capacity provided for the purpose of allocating the LTTRs on the Finnish–Estonian bidding zone border shall be the minimum NTC value of the relevant timeframe of the long-term cross-zonal capacity determined in accordance with Article 3(1) of this BSM.
3. The amount of long-term cross-zonal capacity provided for the purpose of allocating the LTTRs for the yearly timeframe shall not exceed the technical capability of ESTLINK 1 and the sum of the yearly and monthly capacities shall not exceed the technical capability of ESTLINK 2. Elering and Fingrid shall monitor the difference of LTTRs auction price and day-ahead price difference on FI-EE bidding zone border, and in case the amount of the offered LTTRs exceeds the market participants' hedging needs and the LTTRs prices are systematically significantly lower, then the amount of offered LTTRs may be reduced in order to avoid the shift of welfare from grid users to LTTR holders.
4. The following splitting rules shall be applied when calculating yearly and monthly split of the long-term cross-zonal capacity (in MW):

$$\text{LTCZC}_{Y(n)} = \min(\text{minNTC}_{\text{long-term}(MY(n))}; 350)$$

$$\text{LTCZC}_{M(n)} = \min(\text{minNTC}_{\text{long-term}(DM(n))} - \text{LTCZC}_{Y(n)}; 650 - \text{LTCZC}_{Y(n)})$$

Where:

$\text{minNTC}_{\text{long-term}(MY(n))}$ – the minimum forecasted monthly NTC value in MW of the long-term cross-zonal capacity for Finnish-Estonian bidding zone border and for respective year (n);
 $\text{minNTC}_{\text{long-term}(DM(n))}$ – the minimum forecasted daily NTC value in MW of the long-term cross-zonal capacity for Finnish-Estonian bidding zone border and for respective month n, taking into account, if applicable, the Reduction Periods in accordance with Art 30 of the HAR;
 $\text{LTCZC}_{Y(n)}$ – long-term cross-zonal capacity in yearly timeframe for year n;
 $\text{LTCZC}_{M(n)}$ – long-term cross-zonal capacity in monthly timeframe for year n.

5. The long-term cross-zonal capacities that are made available for the allocation of LTTRs in accordance with paragraph 1 of this Article shall be submitted as input to the SAP in accordance with article 38 of the FCA Regulation. For the allocation of these LTTRs, the HAR shall apply.

6. Elering and Fingrid shall validate the splitting of the long-term cross-zonal capacity.

Article 5

Monitoring data to the national regulatory authorities

1. All technical and statistical information related to this BSM shall be made available upon request to the relevant NRAs.

2. Any data requirements should be managed in line with confidentiality requirements pursuant to national legislation.

Article 6

Publication of data

1. Elering and Fingrid shall publish the amount of long-term cross-zonal capacity available in the LTTR auctions as follows:

- a) The amount of capacity available for the yearly LTTRs shall be published to the market no later than one (1) week before the relevant auction.
- b) The amount of capacity available for the monthly LTTRs shall be published to the market no later than two (2) working days before to the relevant auction.

2. Market information shall be published in accordance with Article 47 of the FCA Regulation.

3. TSOs shall, where relevant, in compliance with national legislation and in accordance with Article 3(f) of the FCA Regulation, and in addition to the data items and definitions of Transparency Regulation, publish the following information on a regular basis and as soon as possible:

- a) The marginal auction price for each time frame;
- b) The demand curve for LTTRs for each time frame.

4. The information referred to in paragraph 3 of this Article shall be published in the SAP.

Article 7

Publication and Implementation

1. Elering and Fingrid shall publish this BSM without undue delay after the Finnish regulatory authority has approved the BSM and the Estonian regulatory authority has given positive opinion on the BSM, or a decision has been taken by the Agency for the Cooperation of Energy Regulators.
2. This BSM shall be implemented without undue delay after the after the Finnish regulatory authority has approved the BSM and the Estonian regulatory authority has given positive opinion on the BSM, or a decision has been taken by the Agency for the Cooperation of Energy Regulators.
3. The rules set out in this BSM shall apply until the splitting methodology in accordance with Article 16 of the FCA Regulation is implemented in the Baltic Capacity Calculation Region as defined in accordance with Article 15 of Commission Regulation (EU) establishing a guideline on capacity allocation and congestion management (hereinafter “CACM Regulation“). In case amendments are made in the Baltic CCR Regional Design developed in accordance with Article 31(2) of the FCA Regulation, this BSM shall be amended accordingly. Such amendments in the Baltic CCR Regional Design may concern inter alia the introduction of new timeframes for which LTTRs are issued.

Article 8

Language

The reference language for this BSM shall be English. For the avoidance of doubt, where TSOs need to translate this BSM into their national language(s), in the event of inconsistencies between the English version published by TSOs in accordance with Article 4(13) of the FCA Regulation and any version in another language, the relevant TSOs shall be obliged to dispel any inconsistencies by providing a revised translation of this BSM to the relevant NRAs.

OPINION No 03/2022
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 8 March 2022

**relating to the implementation of long-term transmission rights on the
FI-EE bidding zone border**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

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, Article 6(7) thereof,

Having regard to the outcome of the consultation with the European Commission, pursuant to Article 6(7) of Regulation (EU) 2019/942,

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 2 March 2022, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) By email of 11 November 2021, the regulatory authority of Finland, Energiavirasto, and the regulatory authority of Estonia, Konkurentsiamet, requested ACER to provide an opinion, pursuant to Article 6(7) of Regulation (EU) 2019/942, with regard to difficulties which they were encountering in the application of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation² (the 'FCA Regulation').

¹ OJ L 158, 14.6.2019, p. 22.

² OJ L 259, 27.9.2016, p. 42.

- (2) The difficulties with the application of the FCA Regulation relate to the implementation of long-term transmission rights (LTTRs) on the border between the Finish and the Estonian bidding zone in accordance with Article 30 of the FCA Regulation, requested by Energiavirasto and Konkurentsiamet from the TSOs Fingrid Oyj (Fingrid) and Elering AS (Elering). In essence, those difficulties concern the procedural requirements for the approval of methodologies in particular under Articles 4(6), 49, 51, 57, 59 and 61 of the FCA Regulation, in order to make those methodologies applicable to Fingrid, and the requirements on the splitting of long-term cross-zonal capacity under Articles 16, 24, 29, 31, 38 and 39 of the FCA Regulation in the absence of an approved capacity calculation methodology for long-term time frames in the Baltic capacity calculation region.

2. LEGAL CONTEXT

- (3) The FCA Regulation lays down rules on cross-zonal capacity allocation in the forward markets, in particular on the establishment of various terms and conditions or methodologies and on the offering of LTTRs.
- (4) With regard to the adoption of terms and conditions or methodologies, Article 4 of the FCA Regulation establishes a general procedural framework, requiring the transmission system operators (TSOs) to develop the terms and conditions or methodologies, subject to specific voting requirements to reach their decisions, and tasking the regulatory authorities or ACER to approve them. Article 4 distinguishes between Union-wide terms and conditions or methodologies and those of a regional scope, and in that respect has been amended first by Article 5(2) of Regulation (EU) 2019/942 and then by Commission Implementing Regulation (EU) 2021/280 of 22 February 2021³ with effect from 15 March 2021.
- (5) Initially, Article 4 provided, inter alia:

‘1. TSOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO, the participating TSOs shall closely cooperate. [...]

2. TSOs deciding on proposals for terms and conditions or methodologies in accordance with Article 4(6) shall decide with qualified majority if no consensus could be reached among them. [...]

3. TSOs deciding on proposals for terms and conditions or methodologies in accordance with Article 4(7) shall decide with qualified majority if no

³ OJ L 62, 23.2.2021, p. 24.

consensus can be reached amongst them and where the regions concerned are composed of more than five Member States. [...] TSOs deciding on proposals for terms and conditions or methodologies in accordance with Article 4(7) in relation to regions composed of five Member States or less shall decide based on consensus. [...]

'5. Each regulatory authority shall be responsible for approving the terms and conditions or methodologies referred to in paragraphs 6 and 7.

6. The proposals for the following terms and conditions or methodologies [i.e. pursuant to Articles 17, 18, 49, 51, 57, 59, 61] shall be subject to approval by all regulatory authorities: [...]

7. The proposals for the following terms and conditions or methodologies [i.e. pursuant to Articles 10, 16, 31, 42, 52, 55] shall be subject to approval by all regulatory authorities of the concerned region: [...]

'12. TSOs responsible for developing a proposal for terms and conditions or methodologies or regulatory authorities responsible for their adoption in accordance with paragraphs 6 and 7, may request amendments of these terms and conditions or methodologies.

The proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedure set out in Article 6 and approved in accordance with the procedure set out in this Article.

(6) As of 4 July 2019, Article 5 of Regulation (EU) 2019/942 provides, inter alia:

'2. Where one of the following legal acts provides for the development of proposals for common terms and conditions or methodologies for the implementation of network codes and guidelines which require the approval of all regulatory authorities, those proposals for common terms and conditions or methodologies shall be submitted to ACER for revision and approval:

(a) a legislative act of the Union adopted under the ordinary legislative procedure;

(b) network codes and guidelines adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines; or

(c) network codes and guidelines adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council'.

(7) Since 15 March 2021, Article 4 states, inter alia:

'1. TSOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the Agency or the competent regulatory authorities within the respective deadlines set out in this Regulation. [...] Where a proposal for terms and conditions or

methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO, the participating TSOs shall closely cooperate. [...]

2. Where TSOs deciding on proposals for terms and conditions or methodologies listed in paragraph 6 are not able to reach an agreement, they shall decide by qualified majority voting. [...]

3. Where TSOs deciding on proposals for terms and conditions or methodologies listed in paragraph 7 are not able to reach an agreement and where regions concerned are composed of more than five Member States, they shall decide by qualified majority voting. [...] TSOs deciding on proposals for terms and conditions or methodologies listed in paragraph 7 in relation to regions composed of five Member States or less shall decide by consensus. [...]

'5. Each regulatory authority or where applicable the Agency, as the case may be, shall be responsible for approving the terms and conditions or methodologies referred to in paragraphs 6 and 7. [...]

6. The proposals for the following terms and conditions or methodologies [i.e. pursuant to Articles 17, 18, 49, 51, 57, 59, 61] and any amendments thereof shall be subject to approval by the Agency: [...]

7. The proposals for the following terms and conditions or methodologies [i.e. pursuant to Articles 10, 16, 31, 42, 52, 55] and any amendments thereof shall be subject to approval by all regulatory authorities of the concerned region: [...]

'12. The Agency or the regulatory authorities jointly, where they are responsible for the adoption of terms and conditions or methodologies in accordance with paragraphs 6 and 7, may respectively request proposals for amendments of those terms and conditions or methodologies and determine a deadline for the submission of those proposals. TSOs responsible for developing a proposal for terms and conditions or methodologies may propose amendments to regulatory authorities and the Agency.

The proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedure set out in Article 6 and approved in accordance with the procedure set out in this Article.'

- (8) With regard to the offering of LTTRs, Article 30 of the FCA Regulation defines the conditions under which LTTRs have to be issued and the provisions of the FCA Regulation which do not apply where TSOs do not issue LTTRs, in particular:

'1. TSOs on a bidding zone border shall issue long-term transmission rights unless the competent regulatory authorities of the bidding zone border have adopted coordinated decisions not to issue long-term transmission rights on the bidding zone border. [...]'

'5. In case the assessment referred to in paragraph 3 shows that there are insufficient hedging opportunities in one or more bidding zones, the competent regulatory authorities shall request the relevant TSOs:

(a) to issue long-term transmission rights; [...]'

'7. Where regulatory authorities decide that long-term transmission rights shall not be issued by the respective TSOs or that other long-term cross-zonal hedging products shall be made available by the respective TSOs, Articles 16, 28, 29, 31 to 57, 59 and 61 shall not apply to the TSOs of the bidding zone borders.'

- (9) With regard to the splitting of long-term cross-zonal capacity, Article 16 of the FCA Regulation provides for the establishment of a methodology for each capacity calculation region, subject to regulatory approval according to Article 4(7)(b) of the FCA Regulation:

'1. No later than the submission of the capacity calculation methodology referred to in Article 10, the TSOs of each capacity calculation region shall jointly develop a proposal for a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the respective region. [...] proposal shall be subject to consultation in accordance with Article 6.

2. The methodology for splitting long-term cross-zonal capacity shall comply with the following conditions:

(a) it shall meet the hedging needs of market participants;

(b) it shall be coherent with the capacity calculation methodology; [...]'

- (10) As regards its validation, the splitting of long-term cross-zonal is dealt with specifically in Articles 24, 29, 28 and 39 of the FCA Regulation.

- (11) Article 24, concerning validation and delivery of cross-zonal capacity and split cross-zonal capacity, provides:

'2. Each TSO shall validate the results of the calculation for splitting of long-term cross-zonal capacity on its bidding zone borders or critical network elements pursuant to Article 16.

3. Each TSO shall send its capacity validation and validated splitting of this capacity for each forward capacity allocation to the relevant coordinated capacity calculators and to the other TSOs of the relevant capacity calculation regions.

4. Validated splitting of long-term cross-zonal capacity shall be provided by each coordinated capacity calculator for the execution of forward capacity allocation pursuant to Article 29.'

(12) Article 29, concerning the inputs and results of forward capacity allocation, provides:

'1. The single allocation platform shall use the following inputs for determining the allocation of forward capacity in accordance with paragraph 2:

(a) validated splitting of long-term cross-zonal capacity submitted by each coordinated capacity calculator and capacities associated with returned long-term transmission rights pursuant to Article 43;'

(13) Article 38, concerning the submission of input data to the single allocation platform, provides:

'Each TSO shall ensure that validated splitting of long-term cross-zonal capacity is submitted to the single allocation platform prior to the publication of the auction specification in accordance with Article 39.'

(14) Article 39, concerning the operation of the forward capacity allocation, provides:

'1. No later than the time specified in the harmonised allocation rules for each forward capacity allocation, an auction specification containing at least the following information shall be defined and published on the single allocation platform:

[...]

(b) validated splitting of long-term cross-zonal capacity and type of the long-term transmission rights that will be auctioned;'

(15) With regard to the regional design of LTTRs, Article 31 of the FCA Regulation requires, inter alia:

'2. All TSOs issuing long-term transmission rights shall offer long-term cross-zonal capacity, through the single allocation platform, to market participants for at least annual and monthly time frames. All TSOs in each capacity calculation region may jointly propose to offer long-term cross-zonal capacity on additional time frames.'

(16) With regard to harmonised allocation rules for LTTRs, Article 51 of the FCA Regulation requires the establishment of such rules for Union-wide application, subject to regulatory approval according to Article 4(6)(d) of the FCA Regulation, and allows to include regional and bidding zone border specific requirements, which are subject to regulatory approval according to Article 4(7)(e) of the FCA Regulation:

'1. Within six months after the entry into force of this Regulation, all TSOs shall jointly develop a proposal for harmonised allocation rules for long-term transmission rights pursuant to Article 52(2). The proposal shall be

subject to consultation in accordance with Article 6. This proposal shall include regional and bidding zone border specific requirements if developed by the TSOs of each capacity calculation region pursuant to Article 52(3).

2. Once the regional requirements have entered into force, they shall prevail over the general requirements defined in the harmonised allocation rules. In case the general requirements of the harmonised allocation rules are amended and submitted to all regulatory authorities' approval, the regional requirements shall also be submitted to regulatory authorities' approval of the concerned capacity calculation region.'

3. DIFFICULTIES WITH THE APPLICATION OF THE FCA REGULATION

- (17) The difficulties described by Energiavirasto and Konkurentsiamet can be summarised as follows:
- (18) The Baltic capacity calculation region includes the border between the Finish and the Estonian bidding zone that is attributed to Fingrid and Elering (FI-EE bidding zone border).
- (19) On 6 April 2017, Energiavirasto and Konkurentsiamet agreed that there are sufficient hedging opportunities in the Finish and Estonian bidding zones and decided in accordance with Article 30(1) of the FCA Regulation that no LTTRs need to be issued on the FI-EE bidding zone border.
- (20) Because of this decision, Articles 16, 28, 29, 31 to 57, 59 and 61 of the FCA Regulation did not apply to the TSOs on the FI-EE bidding zone border, namely Fingrid and Elering⁴, in accordance with Article 30(7) of the FCA Regulation.
- (21) As a consequence, Fingrid did not submit and Energiavirasto did not approve for Fingrid terms and conditions or methodologies subsequently developed according to these articles.
- (22) The methodologies listed under Article 4(6) of the FCA Regulation were subject to approval of all regulatory authorities until the entry into force of Regulation (EU) 2019/942. Since entry into force of Regulation (EU) 2019/942 the proposals listed under Article 4(6) of the FCA Regulation are subject to approval of ACER.
- (23) On 28 May 2021, Energiavirasto and Konkurentsiamet, after a new assessment of the hedging opportunities in the concerned Finish and Estonian bidding zones, concluded

⁴ Elering is exempted from issuing LTTRs on the FI-EE bidding zone border but does issue LTTRs on the EE-LV bidding zone border. Fingrid does not issue LTTRs on other bidding zone borders. Therefore, Article 30(7) of the FCA Regulation does exempt Fingrid but not Elering from the Articles listed under Article 30(7) of the FCA Regulation.

that the market did not provide sufficient hedging opportunities in those bidding zones and agreed to request, in accordance with Article 30(5) of the FCA Regulation, Fingrid and Elering to issue LTTRs on the FI-EE bidding zone border.

- (24) In June 2021, Energiavirasto and Konkurentsiamet requested Fingrid and Elering, as the respective TSOs, to issue LTTRs on the FI-EE bidding zone border in accordance with Article 30 of the FCA Regulation.
- (25) Because of this decision, the exemption under Article 30(7) of the FCA Regulation is no longer applicable and Articles 16, 28, 29, 31 to 57, 59 and 61 of the FCA Regulation do apply to Fingrid and Elering for the FI-EE bidding zone border.
- (26) The application of those articles, in particular with regard to the terms and conditions methodologies to be adopted thereunder, seems however not free from uncertainty to Energiavirasto and Konkurentsiamet.
- (27) In their view, there is uncertainty about the approval procedures for the methodologies, which have been developed according to these articles and approved by all regulatory authorities⁵ or ACER, but not by Energiavirasto.
- (28) In that regard they mention specifically:
- Article 4(6) of the FCA Regulation;
 - five Union-wide terms/conditions and methodologies, namely the harmonised allocation rules pursuant to Article 51 of the FCA Regulation, the methodologies related to the single allocation platform pursuant to Articles 49 and 59 of the FCA Regulation, the congestion income distribution methodology pursuant to Article 57 of the FCA Regulation, and the methodology for sharing costs incurred to ensure firmness and remuneration of LTTRs pursuant to Article 61 of the FCA Regulation; and
 - one set of regional terms/conditions, namely the regional and bidding zone specific requirements of the harmonised allocation rules pursuant to Article 51 of the FCA Regulation.
- (29) According to Energiavirasto and Konkurentsiamet, there is also uncertainty about the implications which the lack of an approved long-term capacity calculation methodology, according to Article 10 of the FCA Regulation, in the Baltic capacity calculation region has for the legal requirements on the splitting of cross-zonal capacity in that region.
- (30) In that context, they wonder in particular about the interpretation of:

⁵ Except those where the exemption of Article 30(7) of the FCA Regulation applied.

- the requirement under Article 16 of the FCA Regulation for a regional methodology for splitting long-term cross-zonal capacity which is coherent with the long-term capacity calculation methodology; especially whether in the absence of an approved long-term capacity calculation methodology the methodology pursuant to Article 16 of the FCA Regulation, instead, a bilateral TSOs' methodology can be implemented;
- the requirement for 'validated splitting of long-term cross-zonal capacity' under Articles 24, 29, 38 and 39 of the FCA Regulation; especially whether the splitting of long-term cross-zonal capacity can be calculated without the splitting methodology developed pursuant to Article 16 of the FCA Regulation; and
- the requirement under Article 31(2) of the FCA Regulation for offering long-term cross-zonal capacity for at least annual and monthly time frames; especially whether long-term cross-zonal capacity can be offered only for one time frame, as an interim regional design solution, as long as the splitting methodology pursuant to Article 16 of the FCA Regulation has not been implemented.

(31) To illustrate the relevance of a capacity calculation methodology for the related requirements, Energiavirasto and Konkurentsiamet refer to Article 38 of Commission Regulation (EU) 2017/2195 of 23 November establishing a guideline on electricity balancing ('EB Regulation') and to Article 13 of Annex I to ACER Decision No 22/2020 of 5 August 2020 on the market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the Nordic capacity calculation region, 'according to which the market-based allocation process of cross-zonal capacity for the exchange of balancing capacity for the Nordic capacity calculation region is possible *only when the cross zonal capacity on all bidding zone borders of the Nordic CCR is calculated in accordance with the capacity calculation methodologies developed pursuant to the CACM Regulation.*'

4. THE REQUEST

(32) Energiavirasto and Konkurentsiamet request ACER's opinion on the abovementioned difficulties with the application of the FCA Regulation, and specifically, but not limited to, the following questions:

'Question 1: During years 2016 – 2019, Energiavirasto has not made decisions on the proposals developed pursuant to Articles 49, 51 and 57 because these articles did not apply to Fingrid. The proposals under these articles are 'all TSOs' proposals. Shall all TSOs (ENTSO-E) start the process to get these proposals approved by ACER in order to be applied to Fingrid?'

Question 2: Shall the TSOs follow the process and timelines set in FCA guideline when providing proposals (European and regional) for approval?'

Question 3: The ACER decision ACER 25/2020 addresses also to Fingrid although at time of the decision Article 59 did not apply to Fingrid. Can this decision be considered valid or not? If not, which actions are needed from Fingrid / all TSOs to make the decision valid and addressing Fingrid?

Question 4: Through which kind of procedure would the new regional requirements be annexed to the HAR? When adding new regional and bidding zone specific requirements to the HAR, should the whole HAR be put for a public consultation and sent for ACER's approval or may the concerned TSOs hold the public consultation on regional requirements only and submit them for approval of the concerned capacity calculation region NRAs only? An alternative process could also be that the relevant regional TSOs or ENTSO-e would organize a public consultation on the regional BZ -specific requirements, after which ACER would handle the approval process.'

'Question 5: Shall Article 16(2)(b) of the FCA guideline be interpreted as precluding the implementation of the splitting methodology until long-term capacity calculation methodology has been implemented? And if so, could the issue be solved for instance with bilateral TSOs' methodology regarding the capacity splitting, that would be used until Article 16 methodology can be implemented.'

'Question 6: Can the definition of 'validated splitting of long-term cross-zonal capacity' in Articles 24(4), 29(1)(a), 38 and 39(1)(b) be interpreted as to not require that the splitting of long-term capacity is calculated using the methodology developed pursuant to Article 16 of the FCA guideline?'

'Question 7: Does Article 31(2) preclude an interim regional design, where long-term cross-zonal capacity would be offered only for one time frame until the relevant regional splitting methodology pursuant to Article 16 of the FCA guideline is implemented.'

(33) In essence, these questions concern two areas:

- Questions 1, 2, 3 and 4 deal with the procedural requirements for applying to Fingrid those terms and conditions or methodologies which were adopted under Articles 16, 28, 29, 31 to 57, 59 and 61 of the FCA Regulation for either all capacity calculation regions or the Baltic capacity calculation region, however not approved by Energiavirasto.
- Questions 5, 6 and 7 relate to the requirements on the splitting of long-term cross-zonal capacity under Articles 16, 24, 29, 31, 38 and 39 of the FCA Regulation in the absence of an approved capacity calculation methodology for long-term time frames.

5. PROCEDURE

- (34) On 11 November 2021, ACER received the request of Energiavirasto and Konkurentsiamet for an opinion, according to Article 6(7) of Regulation (EU) 2019/942, on the application of the FCA Regulation with regard to the implementation of LTTRs on the FI-EE bidding zone border.
- (35) Between 24 November 2021 and 9 February 2022, ACER engaged in discussions with the European Commission, the regulatory authorities, and the TSO of Finland, Fingrid. These discussions focused in particular on:
- (a) the approval status of the terms, conditions and methodologies relevant for issuing LTTRs on the FI-EE bidding zone border and the ways of making those terms, conditions and methodologies applicable to Fingrid which were not yet approved for it;
 - (b) the requirement for the methodology for splitting long-term cross-zonal capacity under Article 16 of the FCA Regulation, and the requirements related thereto, with regard to the issuing of LTTRs; and
 - (c) the actions (and related timelines) to be followed by Fingrid in order to issue LTTRs.
- (36) More specifically, on 8 and 15 December 2021, ACER consulted the European Commission through calls with the Directorate-General for Energy. With regard to the approval of Union-wide terms and conditions and methodologies not yet approved for Fingrid, the services of the Directorate-General for Energy supported a process in accordance with Article 4(6) of the FCA Regulation (proposals by all TSOs, approval by ACER), e.g. via an amendment of the personal scope of application of the relevant terms and conditions or methodologies. According to them, a decision pursuant to Article 30(5)(a) of the FCA Regulation might also provide a context for making the relevant terms and conditions or methodologies applicable to the respective TSO. With regard to splitting long-term cross-zonal capacity, they deemed it permissible to issue LTTRs before the implementation of the methodology according to Article 16 of the FCA Regulation.
- (37) On 13 December 2021, ACER discussed with Energiavirasto available options for making the relevant terms and conditions or methodologies applicable to Fingrid. According to Energiavirasto, issuing a decision pursuant to Article 30(5)(a) of the FCA Regulation would not provide the necessary clarity on the applicability of the respective terms and conditions or methodologies to Fingrid.
- (38) On 21 December 2021, ACER and Energiavirasto discussed with Fingrid the required steps and related required timings for allowing Fingrid to issue LTTRs on the FI-EE bidding zone border together with the Estonian TSO (which is already issuing LTTRs on the Estonian-Latvian bidding zone border and is therefore already ready to issue LTTRs).

- (39) By email of 7 January 2022, the Konkurentsiamet emphasized that LTTRs are needed as soon as possible to provide the market participants in Estonia (and the other Baltic states) with the necessary hedging opportunities. According to Konkurentsiamet, bilateral agreements can be applied in the absence of a splitting methodology implemented according to Article 16 of the FCA Regulation.
- (40) On 15 February 2022, the draft of an opinion replying to the present request of Energiavirasto, and Konkurentsiamet was submitted to the AEWG for consultation. In its advice of 18 February 2022, the AEWG invited ACER to take note of the comments raised by the German, the Finish, the Dutch and the Danish regulatory authority and broadly endorsed the draft opinion. Those comments concerned mainly the approval process for terms and conditions and methodologies which are identical with those already approved for other TSOs of the region or all TSOs in the EU. In essence, the German, the Dutch and the Danish regulatory authority considered it sufficient that the concerned TSO submits such identical proposal for regional terms and conditions or methodologies only to its regulatory authority for approval; should the respective regulatory authority disagree with the proposal, an amended proposal by all TSOs of the region would be necessary and would require approval by all regulatory authorities of the region. Regarding such disagreement, the Finish regulatory authority mentioned the option of involving ACER or rather first the other TSOs and regulatory authorities of the region. In addition, the German regulatory authority also considered that a single TSO could submit to ACER for approval a proposal which is identical with Union-wide terms and conditions or methodologies earlier approved by the regulatory authorities, and that ACER could approve such proposal without involving the other TSOs.
- (41) On 2 March 2022 ACER's BoR issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

6. ASSESSMENT

6.1. The procedural requirements for the approval of the methodologies under Articles 16, 28, 29, 31 to 57, 59 and 61 of the FCA Regulation with regard to Fingrid

- (42) Article 30 of the FCA Regulation sets out the conditions under which TSOs on a bidding zone border must issue LTTRs, thereby also specifying whether or not certain provisions of the FCA Regulation and the related terms and conditions or methodologies apply.
- (43) According to Article 30(7) of the FCA Regulation, where TSOs do not issue LTTRs, Articles 16, 28, 29, 31 to 57, 59 and 61 of the same Regulation do not apply to those TSOs. In that event, the requirements for terms and conditions or methodologies under Articles 16, 31, 42, 49, 51, 52, 55, 57, 59 and 61 of the FCA Regulation do also not apply.
- (44) However, in accordance with Article 30(5)(a) of the FCA Regulation, following an assessment of the hedging opportunities, the competent regulatory authorities may

request the relevant TSOs to issue LTTRs. If they do so, the prerequisite for the exemption under Article 30(7) of the FCA Regulation ceases to exist and Articles 16, 28, 29, 31 to 57, 59 and 61 of the FCA Regulation become applicable to the previously exempted TSOs.

- (45) The applicability of Articles 16, 28, 29, 31 to 57, 59 and 61 of the FCA Regulation does not mean that the terms and conditions or methodologies earlier adopted under those Articles for other TSOs are automatically adopted also for the TSOs that are no longer exempted. In particular, it does not imply that the terms and conditions or methodologies have been adopted for these TSOs in accordance with Article 4 of the FCA Regulation.
- (46) For the adoption of terms and conditions or methodologies, Article 4 of the FCA Regulation distinguishes between those of Union-wide scope and the regional ones. Union-wide terms and conditions or methodologies are developed and submitted for regulatory approval by all TSOs in the EU, regional terms and conditions or methodologies by all TSOs of the region concerned. Until 3 July 2019, the responsibility for approving the terms and conditions or methodologies submitted by the TSOs rested for the Union-wide ones with all national regulatory authorities in the EU and for regional ones with all national regulatory authorities of the concerned region (subject to a subsidiary competence of ACER where the regulatory authorities could not agree). Since 4 July 2019, following the entry into force of Article 5(2) of Regulation (EU) 2019/942, Union-wide terms and conditions or methodologies are approved by ACER, whereas regional terms and conditions or methodologies are still approved by all regulatory authorities of the region concerned in first place (while ACER becomes competent in case of disagreement).
- (47) Under this framework, the adoption of the terms and conditions or methodologies is linked to a specific proposal submitted by the TSOs and to the regulatory approval of that proposal. By approving the proposed terms and conditions or methodologies for specific TSOs, the respective regulatory decision makes the terms and conditions or methodologies binding for those TSOs.
- (48) Consequently, where regulatory authorities were responsible for approving the TSOs' proposal and a regulatory authority did not approve a specific methodology for the TSO(s) under its jurisdiction, because the relevant provisions of the FCA Regulation were not applicable to the TSO(s), the respective methodology has not been adopted with regard to such TSO(s). If, subsequently, the respective methodology is to be approved also for the TSO(s) not yet covered, in principle the adoption process according to Article 4 of the FCA Regulation needs to be followed. This means, in principle, all relevant TSOs, including those for which the methodology has already been approved and the TSO(s) not yet covered, should develop and submit a proposal for the methodology to ACER (in case of a Union-wide methodology) or to the competent regulatory authorities of the region (in case of a regional methodology) for approval. A simplification of the process in terms of development/submission and approval could be considered where the relevant proposal is identical with the methodology already approved for the 'other' TSOs by, as the case may be, ACER or the competent regulatory authorities.

- (49) This approach applies also to TSOs which are no longer exempted under Article 30(7) of the FCA Regulation and therefore have to comply with the requirements for terms and conditions or methodologies under Articles 16, 31, 42, 49, 51, 52, 55, 57, 59 and 61 of the FCA Regulation.
- (50) Notwithstanding the above, it is also to note that Article 30(5)(a) of the FCA Regulation does not prescribe the exact scope of a decision by which the regulatory authority requests the relevant TSO to issue LTTRs. In ACER's view, this might allow the regulatory authority to request in the same context the TSO to comply with terms and conditions or methodologies which have been adopted for the relevant region, though not formally approved for that TSO.
- 6.1.1. The approval of Union-wide terms and conditions or methodologies under Articles 49, 51, 57, 59 and 61 of the FCA Regulation (Questions 1, 2 and 3)
- (51) Following the expiry of the exemption under Article 30(7) of the FCA Regulation, the Union-wide terms and conditions or methodologies under Articles 49, 51, 57, 59 and 61 of the FCA Regulation need to be applicable to Fingrid.
- (52) The current approval status of these terms and conditions or methodologies is as follows:
- (53) The harmonised allocation rules according to Article 51 of the FCA Regulation were approved by ACER with Decision No 15/2021 of 29 November 2021⁶. ACER Decision No 15/2021 was adopted at a time when Article 51 of the FCA Regulation has been applying to Fingrid for more than four months, and is addressed to Fingrid. Thus, ACER Decision No 15/2021 and the approved harmonised allocation rules are valid for and applicable to Fingrid, no further regulatory approval being required.
- (54) The methodology for sharing costs incurred to ensure firmness and remuneration of LTTRs according to Article 61 of the FCA Regulation was approved by ACER with Decision No 12/2021 of 4 October 2021⁷, which repeals ACER Decision No 25/2020 of 23 October 2020. ACER Decision No 12/2021 was adopted at a time when Article 61 of the FCA Regulation has been applying to Fingrid for more than three months, and is addressed to Fingrid. Thus, ACER Decision No 12/2021 and the approved methodology are valid for and applicable to Fingrid, no further regulatory approval being required.

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https://extranet.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2015-2021%20on%20the%20Harmonised%20Allocation%20Rules%20for%20Long-term%20Transmission%20Rights.pdf

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https://extranet.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2012-2021%20on%20the%20Harmonised%20Allocation%20Rules%20for%20Long-term%20Transmission%20Rights.pdf

- (55) The requirements for the single allocation platform according to Article 49 of the FCA Regulation and the methodology for sharing costs of establishing, developing and operating the single allocation platform according to Article 59 of the FCA Regulation were approved by the competent regulatory authorities, however not by Energiavirasto for Fingrid. Thus, those requirements and this methodology have not been adopted with regard to Fingrid and are not directly applicable to it. They still need to be approved for Fingrid in accordance with Article 4(6) of the FCA Regulation.
- (56) The methodology for sharing congestion income from forward capacity allocation according to Article 57 of the FCA Regulation was approved by the competent regulatory authorities, however not by Energiavirasto for Fingrid. Thus, this methodology has not been adopted with regard to Fingrid and is not directly applicable to it. It still needs to be approved for Fingrid in accordance with Article 4(6) of the FCA Regulation.
- (57) For this approval under Article 4(6) of the FCA Regulation, the responsibility is now with ACER. Accordingly, all TSOs to which Articles 49 and 59 and Article 51 of the FCA Regulation apply, including Fingrid, have to develop and submit a proposal for the respective terms and conditions or methodology to ACER for approval. When submitting such proposal, the TSOs should follow the procedures of Article 4 of the FCA Regulation and the related other provisions of the FCA Regulation. Where such proposal would only replicate the existing terms and conditions or methodology approved by the regulatory authorities, it could be feasible to simplify the proposal with a mere amendment of the personal scope of application of the relevant terms and conditions or methodology, specifying that they apply also to Fingrid.
- 6.1.2. Additional considerations with regard to the terms and conditions or methodologies to be adopted for Fingrid under Article 4(6) of the FCA Regulation and to the issuing of LTTRs on the FI-EE bidding zone border
- (58) In order to avoid further delays in the provision of the required hedging opportunities to market participants on the FI-EE bidding zone border, the proposals for the Union-wide terms and conditions or methodologies under Articles 49, 57 and 59 of the FCA Regulation should be kept as simple as possible (e.g. amending the scope of application of the existing terms and conditions or methodologies and amending their content only where necessary) and be submitted to ACER as soon as possible.⁸

⁸ Such process with very limited amendments should be done in parallel to the ongoing amendment process to amend several methodologies under the FCA Regulation in order to allow long-term flow-based allocation (see ACER Decision No 14/2021 of 3 November 2021: https://extranet.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2014-2021%20on%20the%20long-term%20capacity%20calculation%20methodology%20of%20the%20Core%20capacity%20calculation%20region.pdf)

- (59) Regarding other necessary steps which would allow Fingrid and Elering to issue LTTRs on the FI-EE bidding zone border, ACER understands that approximately five months are necessary to introduce a new TSO and a new bidding zone border on the single allocation platform. Though ACER also understands that it takes some time to establish the transitional bilateral agreements needed to issue LTTRs on the FI-EE bidding zone border (see section 6.2), it should still be possible to deploy such transitional solution that allows a timely provision of the required hedging opportunities to market participants.
- 6.1.3. The approval of regional terms and conditions terms and conditions or methodologies under Articles 16 and 31 of the FCA Regulation (Question 2)
- (60) Following the expiry of the exemption under Article 30(7) of the FCA Regulation, the regional terms and conditions or methodologies under Articles 16 and 31 of the FCA Regulation need to be applicable to Fingrid.
- (61) The current approval status of these terms and conditions or methodologies is as follows:
- (62) The methodology for splitting long-term cross-zonal capacity according to Article 16 of the FCA Regulation was approved for the Baltic capacity calculation region by the competent regulatory authorities, however not by Energiavirasto for Fingrid. Thus, this methodology has not been adopted with regard to Fingrid and is not directly applicable to it. It still needs to be approved for Fingrid in accordance with Article 4(7) of the FCA Regulation.
- (63) The regional design of LTTRs according to Article 31 of the FCA Regulation was approved for the Baltic capacity calculation region by the competent regulatory authorities, however not by Energiavirasto for Fingrid. Thus, this methodology has not been adopted with regard to Fingrid and is not directly applicable to it. It still needs to be approved for Fingrid in accordance with Article 4(7) of FCA Regulation.
- (64) For this approval under Article 4(7) of the FCA Regulation, the responsibility is with the competent regulatory authorities of the Baltic capacity calculation region. Accordingly, all TSOs of that region to which Articles 16 and 31 of the FCA Regulation apply, including Fingrid, have to submit a proposal for the respective terms and conditions or methodology to the respective regulatory authorities for approval. When submitting such proposal, the TSOs should follow the procedures of Article 4 of the FCA Regulation and the related other provisions of the FCA Regulation. Where such proposal would only replicate the existing terms and conditions or methodology approved by the other competent regulatory authorities, it could be feasible to simplify the proposal in terms of scope (see above recital 57) or to simplify the process by which the TSOs develop and submit the proposal and the regulatory authorities provide their approval. For instance, where Fingrid proposes, in agreement with the other TSOs of the Baltic capacity calculation region, a methodology replicating the methodology approved already for those TSOs by the respective regulatory authorities, such proposal could be submitted to and approved by Energiavirasto only. If in such case Energiavirasto were to conclude that amendments to the proposal are

required, a respective proposal would have to be submitted by all TSOs of the region to all respective authorities for their approval.

6.1.4. The approval of regional and bidding zone specific requirements of the harmonised allocation rules pursuant to Article 51 of the FCA Regulation (Question 4)

- (65) According to Articles 51 and 52 of the FCA Regulation, the harmonised allocation rules must include specific general requirements and may contain also regional and bidding zone border specific requirements. The general part of the harmonised allocation rules is to be developed by all Union TSOs and approved by ACER, according to Article 4(6)(d) of the FCA Regulation. For the regional part, the development lies on the TSOs of the concerned capacity calculation region and the approval on all regulatory authorities of that region, according to Article 4(7)(e) of the FCA Regulation. The same allocation of responsibilities applies for the amendment of approved harmonised allocation rules, according to Article 4(12) of the FCA Regulation.
- (66) As regards the amendment of approved harmonised allocation rules, Article 51(2) of the FCA Regulation provides that if the general requirements are amended and submitted for regulatory approval, then the regional requirements need also to be submitted for approval, namely by the regulatory authorities of the concerned capacity calculation region. This specific obligation for an ‘all-inclusive’ revision and approval of the harmonised allocation rules does however not imply that regional requirements can be amended only together with the general requirements. Neither follows such limitation explicitly from any other provision of the FCA Regulation. Therefore, regional and border specific requirements of the harmonised allocation rules can be amended separately, without putting the general requirements of those rules also to regulatory review.
- (67) Thus, where harmonised allocation rules are to be amended only with regard to their regional and bidding zone border specific requirements, the amendment process is governed by Article 4(7)(e) and Article 4(12) of the FCA Regulation: all TSOs of the concerned capacity calculation region develop the regional amendment proposal, consult on it in accordance with Article 6 of the FCA Regulation, and submit it for approval to all regulatory authorities of that capacity calculation region, the latter then decide on the proposal.

6.2. The requirements on the splitting of long-term cross-zonal capacity under Articles 16, 24, 29, 31, 38 and 39 of the FCA Regulation in the absence of an approved capacity calculation methodology for long-term time frames

- (68) First it is to note that unlike Article 38(5) of the EB Regulation, which allows cross-zonal capacity to be allocated for the exchange of balancing capacity or sharing of reserves only if the cross-zonal capacity is calculated in accordance with the capacity calculation methodology developed pursuant to Commission Regulation (EU) 2015/1222 (CACM Regulation) and the FCA Regulation, the FCA Regulation does not expressly condition the allocation of LTTRs on the use of a specific capacity calculation methodology.

6.2.1. The requirement under Article 16 of the FCA Regulation for a methodology for splitting long-term cross-zonal capacity which is coherent with the capacity calculation methodology according to Article 10 of the FCA Regulation (Question 5)

- (69) According to Article 16(1) of the FCA Regulation, a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the respective region has to be developed no later than the submission of the capacity calculation methodology referred to in Article 10 of the FCA Regulation; and according to Article 16(2)(b) of the FCA Regulation, this splitting methodology has to *'be coherent with the capacity calculation methodology'*, i.e. with the long-term capacity calculation methodology according to Article 10 of the FCA Regulation.
- (70) In ACER's view, this coherence requirement implies that the splitting methodology according to Article 16 of the FCA Regulation can only be implemented when the long-term capacity calculation methodology under Article 10 of the FCA Regulation has been implemented for the respective region. In that sense, also Article 10(2) of the methodology for splitting long-term cross-zonal capacity in the Baltic capacity calculation region, proposed by and approved for the Estonian and Latvian TSOs, provides: *'The [splitting] methodology will be implemented at the same time of the implementation of [the] methodology for long term capacity calculation [...].'*
- (71) On the other hand, in ACER's view, the coherence requirement does not necessarily imply that cross-zonal capacity may not be split at all without a long-term capacity calculation methodology under Article 10 of the FCA Regulation and without a splitting methodology according to Article 16 of the FCA Regulation. In fact, such splitting may be needed to continue offering LTTRs which existed on a bidding zone border at the entry into force of the FCA Regulation, i.e. before the implementation of those methodologies, or to introduce LLTRs. Indeed, Article 30 of the FCA Regulation does prescribe that LTTRs must be issued, however it does not condition their issuing on the use of the methodologies according to Articles 10 and 16 of the FCA Regulation. Nor are such conditions established by Articles 31 to 35 of the FCA Regulation, which define the regional design of LTTRs, physical transmission rights and financial transmission rights.
- (72) Therefore, in ACER's view, cross-zonal capacity may be split according to a methodology bilaterally agreed by the relevant TSOs, subject to regulatory oversight, until the splitting methodology according to Article 16 of the FCA Regulation has been implemented.
- (73) As regards the implementation of the splitting methodology according to Article 16 of the FCA Regulation in the Baltic capacity calculation region, it is to note that until today a respective methodology has been adopted only for the Estonian and Latvian TSOs. In order to implement a splitting methodology in accordance with Article 16 of the FCA Regulation in the Baltic capacity calculation region, such methodology will however have to be proposed by and approved for all relevant TSOs of the Baltic capacity calculation region, i.e. the Estonian TSO, the Latvian TSO, and Fingrid (see above section 6.1).

6.2.2. The requirement of ‘validated splitting of long-term cross-zonal capacity’ in Articles 24, 29, 38 and 39 of the FCA Regulation (Question 6)

- (74) Article 24(4), Article 29(1)(a), Article 38 and Article 39(1)(b) of the FCA Regulation refer to ‘*validated splitting of long-term cross-zonal capacity*’.
- (75) According to Article 24(2) and (3) of the FCA Regulation, ‘*[e]ach TSO shall validate the results of the calculation for splitting of long-term cross-zonal capacity on its bidding zone borders or critical network elements pursuant to Article 16*’ and ‘*send its capacity validation and validated splitting of this capacity for each forward capacity allocation to the relevant coordinated capacity calculators and to the other TSOs of the relevant capacity calculation regions*’. Subsequently, Article 24(4) of the FCA Regulation states that ‘*[v]alidated splitting of long-term cross-zonal capacity shall be provided by each coordinated capacity calculator for the execution of forward capacity allocation pursuant to Article 29*’.
- (76) Those provisions describe sequential steps in the capacity calculation process which start with the splitting of long-term cross-zonal capacity according to Article 16 of the FCA Regulation and the validation of those results. Therefore, in ACER’s view, ‘*validated splitting of long-term cross-zonal capacity*’ in Article 24(4) of the FCA Regulation should be understood as a reference to the starting point of long-term cross-zonal capacity splitting as defined by Article 16 of the FCA Regulation.
- (77) According to Article 29(1) of the FCA Regulation, ‘*[t]he single allocation platform shall use the following inputs for determining the allocation of forward capacity in accordance with paragraph 2: (a) validated splitting of long-term cross-zonal capacity submitted by each coordinated capacity calculator*’.
- (78) The ‘*validated splitting of long-term cross-zonal capacity*’ at this stage of the capacity allocation has been explicitly linked to Article 24(4) of the FCA Regulation. As such, in ACER’s view, its meaning follows, in line with Article 24 of the FCA Regulation, from the splitting of long-term cross-zonal capacity according to Article 16 of the FCA Regulation.
- (79) According to Article 38 of the FCA Regulation, ‘*[e]ach TSO shall ensure that validated splitting of long-term cross-zonal capacity is submitted to the single allocation platform prior to the publication of the auction specification in accordance with Article 39*’. And, according to Article 39(1)(b) of the FCA Regulation, the following information shall be defined and published on the single allocation platform: ‘*validated splitting of long-term cross-zonal capacity and type of the long-term transmission rights that will be auctioned*’.
- (80) Here, the ‘*validated splitting of long-term cross-zonal capacity*’ is also part of the capacity allocation process defined by Article 29 of the FCA Regulation and stems from the TSOs. This connection, in ACER’s view, links the validated splitting of long-term cross-zonal capacity to the results of the calculation for splitting of long-term cross-zonal capacity according to Article 16 of the FCA Regulation which the respective TSO validated.

- (81) For these reasons, in ACER's view, the expression '*validated splitting of long-term cross-zonal capacity*' in Article 24(4), Article 29(1)(a), Article 38 and Article 39(1)(b) of the FCA Regulation refers to a calculation for the splitting of long-term cross-zonal capacity which uses the methodology developed pursuant to Article 16 of the FCA Regulation. However, since the requirements of Article 24(4), Article 29(1)(a), Article 38 and Article 39(1)(b) of the FCA Regulation on the validation for the splitting of long-term cross-zonal capacity are also relevant where the calculation cannot be based on the splitting methodology pursuant to Article 16 of the FCA Regulation, ACER considers it in such cases of splitting appropriate to apply those requirements analogously.
- 6.2.3. The requirement of offering long-term cross-zonal capacity for at least annual and monthly time frames in Article 31(2) of the FCA Regulation (Question 7)
- (82) Article 31 of the FCA Regulation defines requirements for the regional design of LTTRs. Amongst other, according to Article 31(2) of the FCA Regulation, '*[a]ll TSOs issuing long-term transmission rights shall offer long-term cross-zonal capacity, through the single allocation platform, to market participants for at least annual and monthly time frames.*'
- (83) Article 31 of the FCA Regulation, including its paragraph 2, does not contain any reference to the long-term capacity calculation methodology or the splitting methodology according to Articles 10 and 16 of the FCA Regulation. In particular, it does not condition the required offering of long-term cross-zonal capacity at annual and monthly time frames on those methodologies. Moreover, the implementation of those methodologies is also not a prerequisite for offering long-term cross-zonal capacity at annual and monthly time frames. In such context, the wording of Article 31(2) of the FCA Regulation covers in principle all LTTRs which are issued after the entry into force of the FCA Regulation, regardless of the methodologies used for the calculation and splitting of long-term cross zonal capacity.
- (84) Therefore, in ACER's view, Article 31(2) of the FCA Regulation precludes a regional design where long-term cross-zonal capacity is offered for only one time frame as an interim solution, until the splitting methodology pursuant to Article 16 of the FCA Regulation is implemented,

HAS ADOPTED THIS OPINION:

Regulation (EU) 2016/1719 can be interpreted to the following effect:

1. The terms and conditions or methodologies under Articles 51 and 61 of Regulation (EU) 2016/1719 have been approved for Fingrid. The terms and conditions or methodologies under Articles 49 and 59 as well as Article 57 of Regulation (EU) 2016/1719 need to be approved for Fingrid in accordance with Article 4(6) of Regulation (EU) 2016/1719, i.e. upon a respective proposal of all TSOs and with a decision of ACER.

2. When submitting proposals for terms or conditions or methodologies for regulatory approval according to Article 4(6) or Article 4(7) of Regulation (EU) 2016/1719, the TSOs should follow the procedures of that Article and the related other provisions of Regulation (EU) 2016/1719, subject to simplifications where possible.
3. ACER Decision No 25/2020 of 23 October 2020 was repealed by ACER Decision No 12/2021 of 4 October 2021. ACER Decision No 12/2021 was adopted at a time when Article 61 of Regulation (EU) 2016/1719 applied to Fingrid, and is addressed to Fingrid. ACER Decision No 12/2021 and the approved methodology are valid for and applicable to Fingrid.
4. The regional and border specific requirements of the harmonised allocation rules under Articles 51 and 52 of Regulation (EU) 2016/1719 can be amended separately, without putting the general requirements of those rules also to regulatory review. The process for amending the harmonised allocation rules only with regard to their regional and bidding zone border specific requirements is governed by Article 4(7)(e) and Article 4(12) of Regulation (EU) 2016/1719, according to which all TSOs of the concerned capacity calculation region develop the regional amendment proposal, consult on it in accordance with Article 6 of Regulation (EU) 2016/1719, and submit it for approval to all regulatory authorities of that capacity calculation region.
5. The requirement of Article 16(2)(b) of Regulation (EU) 2016/1719 for a methodology that is coherent with the capacity calculation methodology implies that the splitting methodology according to Article 16 of Regulation (EU) 2016/1719 can only be implemented when the long-term capacity calculation methodology under Article 10 of Regulation (EU) 2016/1719 has been implemented for the respective region. Until the splitting methodology according to Article 16 of Regulation (EU) 2016/1719 has been implemented, cross-zonal capacity may be split according to a methodology bilaterally agreed by the relevant TSOs, subject to regulatory oversight.
6. The expression '*validated splitting of long-term cross-zonal capacity*' in Article 24(4), Article 29(1)(a), Article 38 and Article 39(1)(b) of Regulation (EU) 2016/1719 refers to a calculation for the splitting of long-term cross-zonal capacity which uses the methodology developed pursuant to Article 16 of Regulation (EU) 2016/1719. Since the requirements of Article 24(4), Article 29(1)(a), Article 38 and Article 39(1)(b) of Regulation (EU) 2016/1719 on the validation for the splitting of long-term cross-zonal capacity are also relevant where the calculation cannot be based on the splitting methodology pursuant to Article 16 of Regulation (EU) 2016/1719, applying in such case those requirements analogously seems appropriate.
7. Article 31(2) of Regulation (EU) 2016/1719 precludes a regional design where long-term cross-zonal capacity is offered for only one time frame as an interim solution, until the splitting methodology pursuant to Article 16 of Regulation (EU) 2016/1719 is implemented.

This Opinion is addressed to the regulatory authority of Finland, Energiavirasto, and the regulatory authority of Estonia, Konkurentsiamet.

Done at Ljubljana, on 8 March 2022.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN