

**DECISION No 21/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 5 August 2020

**on the application of the Nordic CCR market-based allocation process for
the Nordic LFC Block**

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, point (b) of the second subparagraph of Article 6(10) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Article 5(3)(g) and Article 6(2) thereof,

Having regard to the outcome of the public consultation and consultation with the concerned regulatory authorities and transmission system operators,

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

Having regard to the favourable opinion of the Board of Regulators of 16 July 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of requirements for electricity balancing, for the exchange of balancing capacity, as well

¹ OJ L158, 14.6.2019, p. 22.

² OJ L312, 23.11.2017, p. 6.

as pricing and settlement of balancing capacity. These requirements include the possibility for the transmission system operators of a capacity calculation region to develop a methodology for a market-based allocation process of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves, and the possibility for two or more transmission system operators to develop a proposal on the application of this allocation process.

- (2) Pursuant to Articles 4(1), 5(3)(g) and 38(1)(b) of the EB Regulation, two or more TSOs may at their initiative or at the request of their relevant regulatory authorities set up a proposal for the application of a market-based allocation process pursuant to Article 41 of the EB Regulation and submit it for regulatory approval. In accordance with Article 5(6) of the EB Regulation, the concerned regulatory authorities shall reach an agreement and take a decision on the proposal within six months after the receipt of the proposal by the last regulatory authority.
- (3) Regulatory authorities can require an amendment to the proposal in accordance with Article 6(1) of the EB Regulation where transmission system operators have two months to submit an amended proposal to regulatory authorities. Then, regulatory authorities have two months to decide on the amended proposal. When regulatory authorities fail to reach an agreement within the six-month period after the submission of the initial proposal or the two-month period after the submission of the amended proposal or upon their joint request, ACER, pursuant to Articles 5(7) and 6(2) of the EB Regulation, shall adopt a decision concerning the Proposal in accordance with point (b) of the second subparagraph Article 6(10) of Regulation (EU) 2019/942.
- (4) This Decision of ACER follows from the request of the regulatory authorities of the Nordic Capacity Calculation Region ('CCR') that ACER adopts a decision on the proposals for a Nordic capacity market for frequency restoration reserves with automatic activation ('aFRR'), which includes the proposal for the application of a market-based allocation process, which the transmission system operators of the Nordic CCR (hereafter referred to as 'the TSOs') submitted to the regulatory authorities of the Nordic CCR (hereafter referred to as 'the regulatory authorities') for approval and on which regulatory authorities could not agree on. Annex I to this Decision sets out the methodology pursuant to Article 38(1)(b) of the EB Regulation as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (5) Article 38(1)(b) of the EB Regulation allows TSOs to submit a proposal for the application of a market-based allocation process pursuant to Article 41(1) of the EB Regulation. Article 41(1) of the EB Regulation allows TSOs to submit a proposal for a market-based allocation process of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves methodology by two years after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, the deadline to submit a proposal under Article 41(1) of the EB Regulation was 18 December 2019.

- (6) On 3 September 2018, the TSOs published for public consultation the draft proposal³ for a methodology for a market-based allocation process of cross-zonal capacity for the exchange of aFRR balancing capacity in accordance with Article 38(1) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing. The consultation lasted from 3 September 2018 to 4 October 2018.
- (7) On 15 April 2019, the TSOs submitted to the regulatory authorities a proposal in accordance with Article 33(1) and Article 38(1)(b) of the EB Regulation⁴. The last regulatory authority received the Proposal on 17 April 2019.
- (8) All regulatory authorities of the Nordic CCR jointly requested an amendment to the proposals and sent this request to the TSOs. The last regulatory authority issued the request for amendment nationally on 17 October 2019.
- (9) On 17 December 2019, the TSOs resubmitted the amended proposal⁵ to their regulatory authorities and the last regulatory authority received the amended Proposal on 17 December 2019 (hereafter referred to as the 'Proposal'). Therefore, the new deadline for approval by all regulatory authorities was 17 February 2020.

2.2. Proceedings before ACER

- (10) In a letter dated 28 February 2020, the Finnish Energy Authority, on behalf of the regulatory authorities, informed ACER that they were not able to reach an agreement within the two-month deadline and requested ACER to adopt a decision on the Proposal pursuant to Article 6(10) of Regulation 2019/942.
- (11) On 24 March 2020, ACER started the consultation phase on the Proposal, inviting the concerned parties, here TSOs and regulatory authorities of the Nordic CCR, to send their comments on the Proposal.
- (12) ACER cooperated closely with the regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposal suggested by ACER. In particular, the following procedural steps were taken and, in general, before each interaction, ACER shared with the regulatory authorities and the TSOs a new version of amendments proposed by ACER to the Proposal:
 - 24 March 2020: teleconference with regulatory authorities;

³ https://consultations.entsoe.eu/markets/nordic-tsos-proposals-for-the-methodology-for-a-ma/supporting_documents/Legal%20Proposal%20to%20article%2038.pdf

⁴ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/03%20FCR%20Co/Action%207%20-%20Nordic%20Co%20proposal.pdf>

⁵ <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/03%20FCR%20Co/Action%2011%20-%20Nordic%20Co%20amended%20proposal.pdf>

- 27 March 2020: teleconference with regulatory authorities and TSOs;
- 30 March 2020: teleconference with regulatory authorities;
- 8 April 2020: teleconference with regulatory authorities and TSOs;
- 14 April 2020: teleconference with regulatory authorities and TSOs;
- 21 April 2020: teleconference with regulatory authorities and TSOs;
- 29 April 2020: teleconference with regulatory authorities and TSOs;
- 6 May 2020: teleconference with regulatory authorities and TSOs;
- 13 May 2020: discussion with all regulatory authorities in the framework of the Electricity Balancing Task Force (EB TF);
- 14 May 2020: teleconference with all regulatory authorities and TSOs;
- 20 May 2020: teleconference with regulatory authorities and TSOs;
- 25 May 2020: teleconference with regulatory authorities and TSOs;
- 27 May 2020: teleconference with regulatory authorities and TSOs;
- 27 May 2020: discussion with all regulatory authorities in the framework of the AEWG;
- 5 June 2020: teleconference with TSOs;
- 9 June 2020: discussion with all regulatory authorities in the framework of the EB TF;
- 12 June 2020: discussion with all regulatory authorities individually following their hearing phase input;
- 15 June 2020: teleconference with regulatory authorities;
- 17 June 2020: discussion with all regulatory authorities at the ACER Board of Regulators' meeting.
- 24 June 2020: discussion with all regulatory authorities in the framework of the AEWG;
- 16 July 2020: discussion with all regulatory authorities at the ACER Board of Regulators' meeting.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (13) Pursuant to Article 6(2) of the EB Regulation, where the regulatory authorities have not been able to reach an agreement or upon their joint request, ACER shall adopt a decision concerning the submitted terms and conditions or methodologies within six months in accordance with Article 6(10) of Regulation (EU) 2019/942.
- (14) According to the letter of the Finnish Energy Authority dated 28 February 2020, the regulatory authorities did not reach an agreement on the Proposal and therefore ACER became competent to adopt a decision on the Proposal pursuant to Article 6(2)

of the EB Regulation. This letter was sent by the regulatory authorities after the expiry of the two-month deadline after receiving the Proposal (i.e. 17 February 2020).

- (15) Therefore, in accordance with Article 6(2) of the EB Regulation and Article 6(10) of Regulation (EU) 2019/942, ACER became responsible to adopt a decision concerning the Proposal by the expiry of the deadline for regulatory authorities on 17 February 2020 and communicated to ACER on 28 February 2020.

4. SUMMARY OF THE PROPOSAL

- (16) The Proposal consists of the following elements:
- (a) the ‘Whereas’ section and Articles 1 and 2, which include general provisions on subject matter and scope and definitions and interpretation;
 - (b) Article 3, which covers the notification process for the use of a market-based allocation process;
 - (c) Article 4, which describes the market timeframe for application of the allocation process and duration of application;
 - (d) Article 5, on the prequalification of aFRR capacity;
 - (e) Article 6, covering the high-level design of the aFRR capacity market;
 - (f) Article 7, which describes the characteristics of products and bids;
 - (g) Article 8, which sets the requirements for aFRR capacity bid submission;
 - (h) Article 9, which defines the settlement of procured aFRR capacity;
 - (i) Article 10, which covers the methodology for allocating CZC for Nordic aFRR capacity market;
 - (j) Article 11, on the demanded volume of aFRR capacity;
 - (k) Article 12, which defines the requirements for the procurement optimisation function and bid selection for aFRR capacity;
 - (l) Article 13, covering the TSO-TSO settlement in the aFRR capacity market;
 - (m) Article 14, describing the publication of information for the exchange of aFRR capacity; and
 - (n) Articles 15 and 16, which include the final provisions on publication and implementation of the proposal and language.
- (17) The Proposal jointly addressed the methodologies pursuant to Articles 33(1) and 38(1)(b) of the EB Regulation, which ACER has divided into two separate Decisions. The present Decision focuses solely on the requirements defined for the methodology pursuant to Article 38(1)(b) of the EB Regulation and has taken Articles 1, 2, 4, 10 and 14-16 of the Proposal as relevant for a proposal for this Decision.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of the regulatory authorities

- (18) The letter of the Finnish Energy Authority dated 28 February 2020 states that the regulatory authorities closely cooperated among each other to agree on approving the Nordic aFRR Balancing Capacity Market proposals, which includes the Proposal pursuant to Article 33(1) and 38(1)(b) of the EB Regulation, and that however, after extensive discussion, it became evident that the regulatory authorities were not able to reach an agreement within the deadline of two months.
- (19) Regulatory authorities could not agree on one main aspect of the Proposal pursuant to Article 33(1) and 38(1)(b) of the EB Regulation, namely on the proposed way to accept a legally compliant interim solution with regard to Article 38(5) of the EB Regulation.

5.2. Consultation of the regulatory authorities and TSOs

- (20) ACER, in close cooperation and consultation with the regulatory authorities and TSOs as detailed in Recital (12) above, and beyond the above-mentioned issues:
- a) Discussed with TSOs and regulatory authorities the comments received during the public consultation (see Section 5.3.) and the views of regulatory authorities expressed in the aforementioned letter of the regulatory authorities;
 - b) Revised the structure of the methodologies separating the combined proposal pursuant to Articles 33(1) and 38(1)(b) of the EB Regulation in two separate methodologies;
 - c) Reviewed the condition under which cross-zonal capacity can be allocated to the exchange of balancing capacity with respect to Article 38(5) of the EB Regulation;
 - d) Improved the definition of the market timeframe and the balancing capacity gate closure time.

5.3. Public consultation

- (21) On 30 April 2020, ACER launched a public consultation on the Nordic aFRR Balancing Capacity Market proposals, inviting all stakeholders to provide their views on the four proposals included in this package by 20 May 2020. With regard to this methodology, the consultation document asked stakeholders to provide views on one topic, which was deemed as the most relevant: (i) the setting of balancing capacity market timeframe and balancing capacity gate closure time; respondents were also invited to submit their views on other topics (ii):
- (i) Regarding the preferred solution on the setting of the market timeframe and balancing capacity gate closure time, the market participants input was balanced, six to six, between defining both the timeframe and the gate closure time, on one hand, and the TSO proposal on the other. Only one respondent agreed with the proposed approach where the market timeframe is defined with allowing the gate closure time required to be within that timeframe. A couple of respondents

mentioned also that the market based approach is a second best solution and should preferably be replaced by the co-optimisation approach and that, if more markets are developed, coherence between these markets should be ensured.

(ii) Under the other topics, no comments were relating to this methodology.

(22) The summary and evaluation of the responses received are presented in Annex II to this Decision. It presents the summary of stakeholders' concerns regarding some of the above mentioned issues and in particular on the questions made by ACER.

5.4. Hearing phase

(23) ACER initiated a hearing phase on 27 May 2020, by providing the TSOs and the regulatory authorities with a near final draft of Annex I to this Decision, as well as the reasoning for the introduced changes to the Proposal. The hearing phase lasted until 11 June 2020.

(24) During this time, ACER received one written response from the TSOs, one from the Finnish regulatory authority, one from the Danish regulatory authority and one from the Swedish regulatory authority.

(25) As agreed with the TSOs and regulatory authorities during the consultation, their feedback was submitted in two parts: one focusing on wording suggestions (submitted at the end of the first week), and one on content issues. In general, the TSOs and regulatory authorities appreciated the content clarifications and improvements added to the methodology, but they also raised a few topics, where they disagree with the approach proposed by ACER.

(26) The TSOs commonly submitted a written hearing response including concerns on the ongoing ACER decisions on the terms and conditions and methodologies pursuant to Article 33(1), 38(1)(b) and 41(1) of the EB Regulation. This response contained feedback within the scope of this Proposal on: a) Article 38(5) of the EB Regulation, b) inconsistency in implementation articles and related to the participation of non-Union TSOs and c) Geographic scope.

(27) The Swedish regulatory authority submitted comments concerning the requirement pursuant to Article 38(5) of the EB Regulation.

(28) The Danish regulatory authority submitted comments concerning the requirement pursuant to Article 38(5) of the EB Regulation.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

(29) Articles 4(1) and 5(3)(g) of the EB Regulation provide that two or more TSOs may at their initiative or at the request of their relevant regulatory authorities in accordance with Article 37 of Directive 2009/72/EC set up a proposal for the application of a market-based allocation process pursuant to Article 38(1)(b) of the EB Regulation.

This proposal must be submitted to the concerned regulatory authorities for their approval. Additionally, Article 6(1) of the EB Regulation requires TSOs to submit an amended proposal for the market-based allocation process for approval to regulatory authorities, following a request for amendment of the initial proposal by regulatory authorities.

- (30) Article 38(2)(a) of the EB Regulation defines the general requirements that shall be included in the proposal for the application of the allocation process being the bidding zone borders, the market timeframe, the duration of application and the methodology to be applied.
- (31) Article 38(5) of the EB Regulation requires that TSOs may only allocate cross-zonal capacity for the exchange of balancing capacity or sharing of reserves if cross-zonal capacity is calculated in accordance with the capacity calculation methodologies developed pursuant to Regulations (EU) 2015/1222 and (EU) 2016/1719.
- (32) Article 38(6) of the EB Regulation requires that TSOs shall include cross-zonal capacity allocated for the exchange of balancing capacity or sharing of reserves as already allocated cross-zonal capacity in the calculations of cross-zonal capacity.
- (33) Article 38(8) of the EB Regulation requires that TSOs exchanging balancing capacity or sharing of reserves shall regularly assess whether the cross-zonal capacity allocated for the exchange of balancing capacity or sharing of reserves is still needed for that purpose. When cross-zonal capacity allocated for the exchange of balancing capacity or sharing of reserves is no longer needed, it shall be released as soon as possible and returned in the subsequent capacity allocation timeframes and such cross-zonal capacity shall no longer be included as already allocated cross-zonal capacity in the calculations of cross-zonal capacity.
- (34) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

6.2.1.1. Development of the Proposal

- (35) The Proposal partly fulfils the requirements of Articles 4(1) and 5(3)(g) of the EB Regulation, as the TSOs willing to exchange balancing capacity jointly developed a proposal for the application of the allocation process of cross-zonal capacity for the exchange of balancing capacity or sharing of reserves and submitted it for approval to relevant regulatory authorities.
- (36) Article 5(3) of the EB Regulation lists individual terms and conditions or methodologies for approval by all regulatory authorities of the concerned region.

Article 5(3)(b) of the EB Regulation requires an approval for a proposal in accordance with Article 33(1) of the EB Regulation. Article 5(3)(g) of the EB Regulation is the legal basis for an approval for a proposal in accordance with Article 38(1)(b) of the EB Regulation. The proposals pursuant to Article 33(1) and 38(1)(b) are linked by the requirement from Article 34(4)(b) of the EB Regulation which requires TSOs to ensure availability of cross zonal capacity for the exchange of balancing capacity by means of a methodology for allocating cross zonal capacity pursuant to Chapter 2 of Title IV of the EB Regulation.

- (37) TSOs submitted a combined proposal for the Articles 33(1) and 38(1)(b) of the EB Regulation to the regulatory authorities. Therefore, ACER divided the Proposal into two separate methodologies to address the legal basis: one covering the aspects of the application of a cross-zonal capacity allocation methodology, pursuant to Article 38(1)(b) of the EB Regulation, and one covering the common rules and processes for the exchange and procurement of aFRR balancing capacity, pursuant to Article 33(1) of the EB Regulation.

6.2.1.2. Proposed timescale for implementation

- (38) The Proposal partly fulfils the requirements of Article 5(5) of the EB Regulation requiring that the Proposal includes a proposed timescale for its implementation.
- (39) As described in recital (4) of the Proposal, the TSOs will use market-based allocation with the cross-zonal capacity calculated in accordance with the capacity calculation methodologies pursuant to the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management ('CACM Regulation') and that when flow-based approach is implemented the allocation will be done in accordance with this methodology. The recital also states that TSOs intend to use a transitional method until the flow-based method is implemented.
- (40) Article 15 of the Proposal lays down the implementation timeline for the methodology for the application of the market-based allocation methodology. The TSOs proposed an implementation timeline of twelve months after the approval by the relevant regulatory authorities. The Proposal does not include a conditionality of implementing this methodology linked to the requirement of Article 38(5) of the EB Regulation. Hence, the Proposal does not fully fulfil the requirements of Article 5(5) of the EB Regulation with regard to the proposed timescale for implementation of the methodology for the application of an allocation process for cross zonal capacity. ACER deemed it necessary to amend paragraph (2) under Article 15 of the Proposal allowing the application of the market based allocation only when cross-zonal capacity is calculated pursuant to the CACM and FCA Regulations.

6.2.1.3. Description of the expected impact on the objectives of the EB Regulation

- (41) The Proposal does not fully fulfil the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation. Recitals (10) and (11) of the Proposal provide a description of the expected impact of the

methodology for application for market-based allocation on the objectives of the EB Regulation. However, ACER deemed that the objectives were not sufficiently addressed in some cases or the description was out of scope of the Proposal while other objectives were not explicitly mentioned. Therefore, ACER amended these recitals to correctly address all objectives of the EB Regulation.

6.2.2. Assessment of the requirements from Article 38 of the EB Regulation for the application of a cross-zonal allocation process

6.2.2.1. *Requirements on the content of the application of a market-based allocation process*

- (42) Article 38(2)(a) of the EB Regulation sets the requirements for the content of the methodology for the application of a market-based allocation process. Following these requirements, the application methodology for a market-based allocation process shall address the bidding zone borders, the market timeframe, the duration of application and the methodology to be applied.
- (43) Article 4 of the Proposal includes the duration and methodology to be applied but only addresses the market timeframe and the bidding zone borders in a non-descriptive manner. Therefore, the Proposal does not fulfil the general requirement of Article 38(2)(a) of the EB Regulation. Hence, ACER deemed it necessary to amend Article 4 of Annex I and added the specific bidding zone borders and a definition of the market timeframe where this methodology is to be applied.
- (44) Article 1 of the Proposal further describes the scope of application to be on the TSOs of the Nordic LFC Block as the TSOs willing to exchange balancing capacity. As the proposal pursuant to Article 38(1)(b) of the EB Regulation joins the allocation process of cross zonal capacity for the exchange of balancing capacity with the procurement process of balancing capacity (including the exchange) ACER considers the geographic scope of this methodology and the methodology pursuant to Article 33(1) of the EB Regulation to be the same and that it should be ensured that each bidding zone border within this geographic scope is only subject to one methodology for the application of cross-zonal allocation pursuant to Article 38(1)(b). ACER therefore deemed it necessary to generalise the scope for balancing capacity to include all possible products within the same scope and to make Article 4 of the Proposal specific for the exchange of aFRR balancing capacity as currently proposed.

6.2.2.2. *Requirements on the method for the calculation of cross zonal capacity*

- (45) The Proposal only partly fulfils the requirement from Article 38(5) of the EB Regulation providing that TSOs may only allocate cross-zonal capacity for the exchange of balancing capacity or sharing of reserves if cross-zonal capacity is calculated in accordance with the capacity calculation methodologies developed pursuant to the CACM Regulation and FCA Regulation. ACER understands that this requirement ensures that allocation of cross zonal capacity for the exchange of balancing capacity is only allowed when cross-zonal capacity in a capacity calculation region is calculated in a harmonised way compliant with the capacity calculation methods developed pursuant to the respective regulations. As this methodology

intends to apply the market-based methodology in the period just before the day-ahead market timeframe, the calculation pursuant to the capacity calculation methodology for the day-ahead market is considered to be the most relevant. Therefore, ACER deemed it necessary to remove the transitory provisions on capacity calculation by amending Article 15 of the Proposal.

- (46) In the feedback referred to in Recital (27), the TSOs expressed their concerns with the possible outcome of the current draft methodologies and ACER decisions, as, in the TSOs view, these decisions would result in a situation where the establishment of the regional aFRR balancing capacity market is delayed. TSOs consider that the reason for such delay is that the legal interpretation of the EB Regulation that results in implementing the aFRR capacity market only when cross-zonal capacity is calculated with the flow-based capacity calculation methodology. TSOs further state that delaying the implementation of a common Nordic aFRR capacity market due to the interpretation of the EB Regulation will cause a socio-economic loss for the Nordic society of approximately 50 million euros per year.
- (47) In the feedback referred to in Recital (27) the Swedish regulatory authority repeated the message referred to in recital (18) that they see no immediate and reasonable link between the proposed allocation process and the flow-based capacity calculation method and that they encourage ACER to consider whether a strict reading of Article 38(5) of the EB Regulation supports the objectives of the EB Regulation which i.e. aim to integrate balancing markets and enable exchange of balancing reserves and to assess whether it could be legally possible to accept an interim period where the capacity is calculated with the capacity calculation methodologies applied in the CCR Nordic today.
- (48) In the feedback referred to in Recital (28) the Danish regulatory authority referred to the message referred to in recital (18) on the limitations posed by Article 38(5) of the EB Regulation and as such, they still see unfortunate consequences of a strict reading of this article. Further, this regulatory authority highlights that references to the requirements of Article 38(5) of the EB Regulation should be rather in the recitals than in the articles and sees no need to specify in the articles on implementation of the methodology how Article 38(5) of the EB Regulation is to be applied by the TSOs.
- (49) Following the remarks in the hearing phase on the interpretation of Article 38(5) of the EB Regulation as reflected in recitals (48) to (50), ACER did not deem it necessary to amend the Proposal. The text of Annex I concisely reflects the requirements following from the EB Regulation to only allow allocation of cross zonal capacity to the exchange of balancing capacity when this cross zonal capacity is calculated in accordance with relevant capacity calculation methodologies. ACER amended Annex I Article 4 and 5 to clarify that the day-ahead capacity calculation methodology is the one relevant for this methodology.

6.2.2.3. *Requirements on the use of cross zonal capacity allocated to the exchange of balancing capacity*

(50) Article 38(6) of the EB Regulation requires that cross-zonal capacity allocated for the exchange of balancing capacity or sharing of reserves shall be included as already allocated cross-zonal capacity in the calculation of cross-zonal capacity. Article 4(3) of the Proposal includes this requirement. The Proposal is therefore deemed compliant with the EB Regulation.

(51) Article 38(8) of the EB Regulation requires that all TSOs exchanging balancing capacity or sharing of reserves shall regularly assess whether the cross-zonal capacity allocated for the exchange of balancing capacity or sharing of reserves is still needed for that purpose. Article 4(4) of the Proposal includes this requirement. The Proposal is therefore deemed compliant with the EB Regulation.

6.2.3. Amendments necessary to ensure legal clarity and consistency with existing legal provisions

(52) ACER amended Article 1 of the Proposal to improve the wording, clarify the scope of this methodology and clarify how this methodology can be applied.

(53) Besides some general improvements of wording, ACER amended Article 2 of the Proposal by:

- deleting the definition for market time unit, which is already covered under Article 2 of the 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;
- deleting the definition of prequalified balancing service provider as it follows from Article 16(1) of the EB Regulation that only a prequalified market participant can become a balancing service provider;
- clarified the reference to cross-zonal capacities; and
- allowing more efficient document internal cross references to improve the structure of the Proposal.

(54) Besides the explicitly mentioned amendments, ACER provided some additional amendments to improve the wording, clarity and structure of the Proposal and amended the ‘Whereas’ section through improving the wording and deleting out of scope passages.

6.2.4. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.4.1. *Consultation and involvement of stakeholders*

(55) When drafting the Proposal, TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.

- (56) As indicated in Recital (6) above, TSOs fulfilled the requirements of Article 10(4) of the EB Regulation, since stakeholders were consulted on the draft Proposal pursuant to Article 10(1) of the EB Regulation. This involvement took place during a public consultation, which ran from 3 September 2018 until 4 October 2018. In addition, all regulatory authorities of the Nordic LFC Block were regularly informed and consulted pursuant to Article 10(1) of the EB Regulation. The justifications regarding the consideration given to the views expressed by stakeholders during the public consultation in the drafting of the Proposal were provided in a separate document and submitted to all regulatory authorities.

6.2.4.2. Publication and transparency

- (57) The Proposal fulfils the requirements on publication and transparency in accordance with Article 7 of the EB Regulation.
- (58) Article 9 of the Proposal summarises the publication requirements related to the market-based allocation. The provided deadlines and timings in this article are meeting the requirements of Article 12 of the EB Regulation. ACER introduced amendments to this article to improve the wording, provide more clarity on publication processes and delete a paragraph which is out of scope.

7. CONCLUSION

- (59) For all the above reasons, ACER considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.
- (60) Therefore ACER approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The application of the Nordic CCR market-based allocation process for the exchange of balancing capacity for the Nordic LFC Block pursuant to Article 38(1)(b) of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to the TSOs of the Nordic LFC Block

Energinet

Fingrid, and

Svenska kraftnät

Done at Ljubljana, on 5 August 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Methodology on the application of the Nordic CCR market-based allocation process for the exchange of balancing capacity for the Nordic LFC Block pursuant to Article 38(1)(b) of the Electricity Balancing Regulation

Annex Ia (for information only) – Methodology on the application of the Nordic CCR market-based allocation process for the exchange of balancing capacity for the Nordic LFC Block pursuant to Article 38(1)(b) of the Electricity Balancing Regulation – with track changes

Annex II (for information only) – Evaluation of responses to the public consultation on the Nordic aFRR Balancing Capacity Market

In accordance with Article 28 of Regulation (EU) 2019/942, the addressee 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 addressee 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.