

DECISION No 19/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 5 August 2020

on the common and harmonised rules and processes for procurement and exchange of aFRR balancing capacity 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, Articles 5(3)(b), 5(3)(o) and 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

¹ OJ L158, 14.6.2019, p. 22.

² OJ L312, 23.11.2017, p. 6.

requirements for electricity balancing, for the exchange of balancing capacity, as well as pricing and settlement of balancing capacity. These requirements include the possibility of establishing common and harmonised rules and processes for the exchange and procurement of balancing capacity.

- (2) Pursuant to Articles 4(1) and 5(3)(b) of the EB Regulation, two or more transmission system operators exchanging or mutually willing to exchange balancing capacity shall develop a proposal for the establishment of common and harmonised rules and processes for the exchange and procurement of balancing capacity pursuant to Article 33(1) of the EB Regulation and submit it for approval to all the regulatory authorities of the concerned region. In accordance with Article 5(6) of the EB Regulation, the regulatory authorities shall reach an agreement and take a decision 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 of 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 on common market rules for procurement and exchange of balancing capacity, 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 33(1) of the EB Regulation as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (5) On 3 September 2018, the TSOs published for public consultation the draft proposal³ for the establishment of common and harmonised rules and processes for the exchange and procurement of aFRR balancing capacity in accordance with Article 33(1) of the

³ https://consultations.entsoe.eu/markets/nordic-tsos-proposals-for-establishment-of-common/supporting_documents/Legal%20Proposal%20to%20article%2033.pdf

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.

- (6) On 17 April 2019, the TSOs submitted to regulatory authorities a proposal⁴ in accordance with Article 33(1) and Article 38(1) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing. The last regulatory authority received the Proposal on 17 April 2019.
- (7) The regulatory authorities jointly agreed to request an amendment to this proposal and the other proposals for establishing a common Nordic aFRR market and sent this request to the TSOs. The regulatory authorities issued the request for amendment on 17 October 2019.
- (8) On 17 December 2019, the TSOs resubmitted the amended Proposal⁵ to 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 regulatory authorities was 17 February 2020.

2.2. Proceedings before ACER

- (9) 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.
- (10) On 24 March 2020, ACER started the consultation phase on the Proposal, inviting parties concerned, here TSOs and regulatory authorities, to send their comments on the Proposal.
- (11) 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 TSOs a new version of amendments proposed by ACER to the Proposal:
 - 24 March 2020: teleconference with regulatory authorities;
 - 27 March 2020: teleconference with regulatory authorities and TSOs;

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>

- 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;
- 9 June 2020: teleconference with TSOs;
- 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

- (12) 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.
- (13) 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 amended Proposal.

- (14) 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

- (15) 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 cross-zonal capacity 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.
- (16) 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 for the methodology pursuant to Article 33(1) of the EB Regulation and has taken Articles 1, 2, 3, 5 to 9 and 14-16 as proposal for this decision.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of the regulatory authorities

- (17) The letter of the Finnish Energy Authority dated 28 February 2020 states that the Nordic 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) 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.
- (18) Regulatory authorities could not agree on one main aspect of the Proposal pursuant to Article 33(1) of the EB Regulation, mainly whether or not to include a cross-zonal capacity reservation cost component in the balancing capacity settlement scheme for settlement with balancing service providers ('BSPs') and the TSO-TSO settlement scheme.

5.2. Consultation of the regulatory authorities and TSOs

- (19) ACER, in close cooperation and consultation with regulatory authorities and TSOs as detailed in Recital (11) 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 Article 33(1) and 38(1) in two separate methodologies;
 - c) revised the structure of the proposals and separated the algorithm principles for market based allocation and for balancing capacity procurement;
 - d) discussed the removal of the cross-zonal capacity reservation cost component from the balancing capacity settlement scheme; and
 - e) setting the market timeframe & the balancing capacity gate closure time.

5.3. Public consultation

- (20) 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 the Proposal pursuant to Article 33(1) of the EB Regulation, the consultation document asked stakeholders to provide views on three topics, which were deemed as the most relevant: (i) the principles for pricing of balancing capacity and the inclusion of reservation costs, (ii) the setting of balancing capacity market timeframe and balancing capacity gate closure time and (iii) the approach that should be followed for the optimisation of the market-based allocation and balancing capacity procurement; respondents were also invited to submit their views on other topics(iv):

- (i) Regarding the principles for pricing of balancing capacity and the inclusion of reservation costs, a large majority of respondents supported the ACER legal assessment and proposal to remove the reservation cost component from the pricing method. Four stakeholders explicitly supported the TSOs' proposal to include the cross-zonal capacity reservation costs. Regarding the reflection of congestion in balancing capacity prices, the respondents provided input mainly referring to the price difference between the highest selected bids on either side of the bidding zone border.
 - (ii) 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 TSOs' proposal allowing TSOs to set the exact gate closure time on the other hand. Only one respondent agreed with the proposed approach where the market timeframe is defined with the gate closure time required to be within. A couple of respondents also highlighted, that the market based approach is a second best solution which should preferably be replaced by the co-optimisation approach and that if more markets are developed, coherence between these markets should be ensured.
 - (iii) Regarding the approach to the optimisation of the market-based allocation and balancing capacity procurement, most respondents reasoned towards an approach in which the optimisation is performed together. Seven stakeholders replied to the question with another solution but these were mostly understood to support the one-run approach where optimisation is performed together. Four stakeholders emphasised the choice of the one-run approach explicitly clarifying that it is simpler, more transparent, selects the best orders and brings the same result. A couple of respondents also replied that the market based approach is a second best solution and should preferably be replaced by the co-optimisation approach.
 - (iv) Regarding the other topics, some respondents considered that countertrading is the best solution to identify the real-time value of cross zonal capacity and/or a use of explicit capacity products as an alternative. Further input related to a number of concerns with respect to the market design was also provided. Some stakeholders emphasised that there is a need to monitor the cross-zonal capacity allocation and to apply the 10% maximum limit to the exchange of balancing capacity and further emphasised the importance of transparency and publication of results.
- (21) 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

- (22) 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.

- (23) During this time, ACER received one written response from the TSOs, one from the Danish regulatory authority and one from the Swedish regulatory authority.
- (24) 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 disagreed with the approach proposed by ACER.
- (25) The TSOs jointly submitted a written hearing response including concerns on the ongoing ACER decisions on the terms and conditions and methodologies pursuant to Articles 33(1), 38(1) and 41(1) of the EB Regulation. This response contained feedback within the scope of this Proposal on: a) the inclusion in the decisions of non-Union TSOs, b) Geographic scope, c) Pricing based on cross-zonal marginal pricing/Pay-as-cleared, d) Optimisation function and pricing of linked bids.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (26) Articles 4(1) and 5(3)(b) of the EB Regulation provide that two or more TSOs exchanging or mutually willing to exchange balancing capacity may develop a proposal for the establishment of common and harmonised rules and processes for the exchange and procurement of balancing capacity pursuant to Article 33(1) of the EB Regulation while respecting the requirements set out in Article 32 of the EB Regulation. Articles 4(1) and 5(3)(o) of the EB Regulation provide that two or more TSOs exchanging balancing capacity may develop a proposal for the principles for balancing algorithms pursuant to Article 58(3) of the EB Regulation. Article 58(3) provides that two or more TSOs exchanging balancing capacity shall develop algorithms to be operated by the capacity procurement optimisation functions for the procurement of balancing capacity bids in the proposal pursuant to Article 33. This proposal must be submitted to the concerned regulatory authorities for their approval. Additionally, Article 6(1) of the EB Regulation requires concerned TSOs to submit an amended proposal for the market-based allocation process for approval to the concerned regulatory authorities, following a request for amendment of the initial proposal by the concerned regulatory authorities.
- (27) Article 32(1) of the EB Regulation requires that all TSOs of an LFC block shall regularly and at least once a year review and define the reserve capacity requirements for the LFC block or scheduling areas of the LFC block pursuant to dimensioning rules as referred in Articles 127, 157 and 160 of Regulation (EU) 2017/1485 ('SO Regulation'). Furthermore, each TSO shall perform an analysis on optimal provision of reserve capacity aiming at minimisation of costs associated with the provision of

reserve capacity and this analysis shall take into account the following options for the provision of reserve capacity:

- (a) procurement of balancing capacity within control area and exchange of balancing capacity with neighbouring TSOs, when applicable;
 - (b) sharing of reserves, when applicable;
 - (c) the volume of non-contracted balancing energy bids which are expected to be available both within their control area and within the European platforms taking into account the available cross-zonal capacity.
- (28) Article 32(2) of the EB Regulation requires that each TSO procuring balancing capacity shall define the rules for the procurement of balancing capacity in the proposal for the terms and conditions related to balancing service providers developed pursuant to Article 18 of the EB Regulation and that these rules shall comply with the following principles:
- (a) the procurement method shall be market-based for at least the frequency restoration reserves and the replacement reserves;
 - (b) the procurement process shall be performed on a short-term basis to the extent possible and where economically efficient;
 - (c) the contracted volume may be divided into several contracting periods.
- (29) Article 32(3) of the EB Regulation then requires that the procurement of upward and downward balancing capacity for at least the frequency restoration reserves and the replacement reserves shall be carried out separately.
- (30) Article 33(2) of the EB Regulation requires that the exchange of balancing capacity shall always be performed based on a TSO-TSO model whereby two or more TSOs establish a method for the common procurement of balancing capacity taking into account the available cross-zonal capacity and the operational limits defined in Chapters 1 and 2 of Part IV Title VIII of the SO Regulation.
- (31) Article 33(3) of the EB Regulation requires that all TSOs exchanging balancing capacity shall submit all balancing capacity bids from standard products to the capacity procurement optimisation function and that TSOs shall not modify or withhold any balancing capacity bids and shall include them in the procurement process, except under conditions set out in Article 26 and Article 27.
- (32) Article 33(4) of the EB Regulation requires that all TSOs exchanging balancing capacity shall ensure both the availability of cross-zonal capacity and that the operational security requirements set out in Regulation (EU) 2017/1485 are met, either by:
- (a) the methodology for calculating the probability of available cross-zonal capacity after intraday cross-zonal gate closure time pursuant to paragraph 6;

- (b) the methodologies for allocating cross-zonal capacity to the balancing timeframe pursuant to Chapter 2 of Title IV.
- (33) Article 34 of the EB Regulation requires within the geographical area in which the procurement of balancing capacity has taken place, that the TSOs shall allow balancing service providers to transfer their obligations to provide balancing capacity and that the transfer of balancing capacity shall be allowed at least until one hour before the start of the delivery day and what conditions need to be fulfilled when transfer of balancing capacity shall be allowed.
- (34) Article 12 of the EB Regulation sets out the requirements for publication of information. Article 12(4) of the EB Regulation provides that, subject to approval pursuant to Article 18 of the EB Regulation, a TSO may withhold the publication of information on offered prices and volumes of balancing capacity or balancing energy bids if justified for reasons of market abuse concerns and if not detrimental to the effective functioning of the electricity markets.
- (35) Article 44 of the EB Regulation defines the general principles for the settlement processes, namely that these shall:
- (...)
 - (e) provide incentives to TSOs to fulfil their obligations pursuant to Article 127, Article 153, Article 157 and Article 160 of Regulation (EU) 2017/1485;
 - (f) avoid distorting incentives to balance responsible parties, balancing service providers and TSOs;
 - (g) support competition among market participants;
 - (h) provide incentives to balancing service providers to offer and deliver balancing services to the connecting TSO;
- (36) Articles 56 and 57 of the EB Regulation define the settlement of balancing capacity for procurement within a scheduling area and procurement outside a scheduling area, respectively.
- (37) Article 58(3) of the EB Regulation defines that in the proposal pursuant to Article 33(1) of the EB Regulation, two or more TSOs exchanging balancing capacity shall develop algorithms to be operated by the capacity procurement optimisation functions for the procurement of balancing capacity bids, which shall minimise the overall procurement costs of all jointly procured balancing capacity and if applicable, take into account the availability of cross-zonal capacity including possible costs for its provision. Paragraph 4 of Article 58 of the EB Regulation further specifies that the algorithms developed shall:
- (a) respect operational security constraints;
 - (b) take into account technical and network constraints;

(c) if applicable, take into account the available cross-zonal capacity.

- (38) 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*

- (39) The Proposal partly fulfils the requirements of Articles 4(1) and 5(3)(b) of the EB Regulation, as all TSOs from the Nordic CCR jointly developed a proposal for the establishment of common and harmonised rules and process for the exchange and procurement of balancing capacity in accordance with Article 33(1) of the EB Regulation and submitted it for approval to the regulatory authorities.
- (40) 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) of the EB Regulation.
- (41) 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) 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.
- (42) The Proposal fulfils the requirements of Articles 4(1) and 5(3)(o) of the EB Regulation, as all TSOs from the Nordic CCR jointly developed within the proposal for the establishment of common and harmonised rules and process for the exchange and procurement of balancing capacity in accordance with Article 33(1) of the EB Regulation, the principles for balancing algorithms pursuant to Article 58(3) of the EB regulation and submitted it for approval to the regulatory authorities. Pursuant to Article 58(3) of the EB regulation these principles are to be developed within the methodology pursuant to Article 33(1) of the EB regulation.

6.2.1.2. *Proposed timescale for implementation*

- (43) The Proposal fulfils the requirements of Article 5(5) of the EB Regulation with regard to proposing a timescale for implementation.

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

(44) The Proposal fulfils the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation, as Recitals (11) to (16) of the Proposal provide a description of the expected impact of the common and harmonised rules and processes for the exchange and procurement of balancing capacity on the objectives of the EB Regulation. To improve the descriptions, wording and structure and avoid out of scope content, ACER amended these recitals.

6.2.2. Assessment of the requirements for exchange of balancing capacity from Article 33 of the EB Regulation

(45) The Proposal fulfils the requirement of Article 33(1) of the EB Regulation and establishes common and harmonised rules and processes for the exchange and procurement of aFRR balancing capacity within the Nordic CCR. This Proposal establishes the aforementioned common rules.

(46) The Proposal partly fulfils the requirement of Article 33(2) of the EB Regulation by using a TSO-TSO model for the exchange of aFRR balancing capacity in the Nordic CCR. This provision was however only included in Recital (4) of the ‘Whereas’ section of the Proposal but not in the main body of the Proposal. Since this provision is a fundamental basis for exchanging balancing capacity, ACER included it also in paragraph (3) of Article 6 of the Proposal on the high-level design of the aFRR capacity market.

(47) The proposal fulfils the requirement of Article 33(2) of the EB Regulation on taking into account the available cross-zonal capacity for the exchange of balancing capacity by defining this as an input to the procurement optimisation function in Article 12 of the Proposal. Since the determination of the value for the cross-zonal capacity is subject to Article 41 of the EB Regulation and the allocation is in accordance with Article 38 of the EB Regulation, which are both out of scope of this Decision, ACER changed Article 12 of the Proposal by only including the provision on cross-zonal capacity as a constraining input for the procurement optimisation function.

(48) The Proposal fulfils the requirement of Article 33(2) of the EB Regulation by taking into account the operational limits defined in Chapters 1 and 2 of Part IV Title VIII of the SO Regulation and specifically refers to Article 165(3)(g) of the SO Regulation. Nevertheless, ACER removed this specific reference to the SO Regulation because the process for the calculation and allocation of cross-zonal capacity is out of scope of this Proposal. The requirement pursuant to Article 33(2) of the EB Regulation is still fulfilled since all relevant operational security limits are taken into account within the cross-zonal capacity which is made available for the procurement optimisation function via the market-based allocation process pursuant to Article 41(1) of the EB Regulation.

(49) The Proposal fulfils the requirement of Article 33(3) of the EB Regulation because TSOs use a standard balancing capacity product from the list of the methodology in

accordance with Article 25(2) of the EB Regulation. In addition, all bids from this standard balancing capacity product are submitted to the procurement optimisation function, as stated in Article 12(1)(d) of the Proposal. The submitted bids serve as an input to the procurement optimisation function. Nevertheless, ACER made an editorial change in Article 7 of the Proposal on characteristics of bids and replaced the bid individual characteristics with a specific reference to the list of the methodology in accordance with Article 25(2) of the EB Regulation. In the feedback referred to in recital (26) the TSOs requested flexibility with respect to the use of the relevant standard balancing capacity product as to correspond with the day ahead market time unit in Annex 1 to the methodology pursuant to Article 25(2) of the EB Regulation. ACER adjusted Article 4 paragraph 1 of Annex I to provide this flexibility.

- (50) The Proposal fulfils the requirement of Article 33(4) of the EB Regulation and makes reference to the methodology for a market-based allocation process for cross-zonal capacity in accordance with Article 41 of the EB Regulation. However, ACER split the Nordic TSOs' proposal on Articles 33(1) and 38(1) of the EB Regulation into two separate methodologies: one in accordance with Article 33(1) of the EB Regulation and one in accordance with Article 38 of the EB Regulation. The methodology in accordance with Article 33(1) of the EB Regulation refers to the methodology in accordance with Article 38(1) of the EB Regulation for the application of a methodology for the allocation of cross-zonal capacity. Most references to the market-based allocation process in accordance with Article 41(1) of the EB Regulation are under the scope of a proposal in accordance with Article 38(1) of the EB Regulation and were therefore removed from the main part and left only in the 'Whereas' section.

6.2.3. Assessment of the requirements from Article 32 of the EB Regulation on procurement of balancing capacity

- (51) The Proposal fulfils the requirement of Article 32(1) of the EB Regulation because it links the demanded capacity volume for aFRR in Article 11 of the Proposal with the dimensioning rules as referred to in Articles 127, 157 and 160 of the SO Regulation. However, ACER made a structural change and replaced the reference to Article 32(1) of the EB Regulation for the demanded volume of each TSO to procure balancing capacity with a definition of TSO demand including the same references, together with the proposed reference to the Nordic System Operation Agreement including the synchronous area operational agreement in accordance with Article 118 of the SO Regulation and the LFC block operational agreement in accordance with Article 119 of the SO Regulation for Nordic synchronous area. The Nordic System Operation Agreement includes the dimensioning rules for reserve capacity requirements for the Nordic LFC block. Therefore, the TSOs of the Nordic CCR define the demand for aFRR capacity in accordance with the relevant rules from the SO Regulation while complying with Article 32(1) of the EB Regulation.
- (52) The Proposal fulfils the requirements in Articles 32(2)(b) and (c) of the EB Regulation, since the procurement is done on a daily basis (short-term basis) and the contracted volume is divided into contracting periods equal to the market time unit in day-ahead markets. The procurement on a daily basis is described in Article 6(2) of

the Proposal and the contracting periods equal to the market time unit in day-ahead are defined in Article 2(2)(a) of the Proposal.

- (53) Yet, ACER deleted the definition in Article 2(2)(a) of the Proposal on market time unit, because this term is already defined under Article 2(19) 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. Instead, ACER amended the Proposal to use the term ‘day-ahead market time unit’ throughout to describe the contracting period for aFRR balancing capacity.
- (54) The Proposal included aspects for setting gate closure time for BSPs to submit aFRR balancing capacity bids in paragraphs (4) and (6) of Article 6 of the Proposal. The Proposal states that, between a timeframe of 00:00 and 12:00 CET D-1, the TSOs should set the balancing capacity gate closure time.
- (55) However, ACER believes that the description of the gate closure time for BSPs shall be further defined within the framework and legal basis of a proposal in accordance with Article 38 of the EB Regulation. ACER understands that Article 38(2)(a) of the EB Regulation requires the market timeframe for the application of the market-based allocation method to be set in the methodology in accordance with Article 38(1) of the EB Regulation.
- (56) As summarised in recital (20)(ii) of the public consultation, several stakeholders commented on the process and timing for the balancing capacity gate closure time. Based on this input, ACER further improved specifics detailing the gate closure time and included a description of the process to set a gate closure time by the Nordic CCR TSOs. This description is included in new paragraphs (9) and (10) of Article 6 of Annex I. ACER further explained in a new paragraph (4) of the same Article that the gate closure time shall be defined in accordance with the methodology pursuant to Article 38(1) of the EB Regulation. Therefore, Annex I now includes clear limits to the timing of the balancing capacity gate closure time and the process by which the TSOs are required to set the actual balancing capacity gate closure time.
- (57) The Proposal does not fulfil the requirement in the first sentence of Article 32(3) of the EB Regulation on separate procurement for upward and downward balancing capacity for aFRR. Although, in Article 6(1) of the Proposal, TSOs propose separate procurement for upward and downward aFRR capacity, they also propose linking between an upward and downward bid of the same day-ahead market time unit in Article 7(3) of the Proposal.
- (58) In the feedback referred to in Recital (26), TSOs raised the issue that simultaneous optimisation of the procurement in both directions serves two different purposes. Partly, it enables a mathematically coherent selection of upward and downward linked bids and it creates the market clearing with the most socio-economic benefit. In addition, TSOs said that the simultaneous optimisation enables netting for allocated cross-zonal capacity. Netting increases socio-economic benefit, and it does so without affecting the bids chosen or the procurement of aFRR capacity. Without the possibility

of netting, the system could over allocate cross-zonal capacity and potentially increase prices both in the day-ahead market and in the balancing capacity market.

- (59) ACER believes that this possibility of linking upward and downward bids in Article 7(3) of the Proposal is a combined procurement of upward and downward capacity and therefore in contradiction with the TSOs' proposed wording in Article 6(1) of the Proposal and not compliant with the first sentence of Article 32(3) of the EB Regulation.
- (60) ACER understands that, through this possibility of linking, the procurement of upward and downward bids is not separate anymore but takes place at the same point in time within the same procurement optimisation function. This could give a competitive advantage to BSPs with a technology which could make this linking economically efficient and therefore potentially discriminates other technologies and BSPs that cannot provide upward and downward capacity at the same time. This is in contradiction to the objectives of the EB Regulation pursuant to Articles 3(1)(a), 3(1)(e), 3(1)(f) and 3(1)(g) which require to ensure a fair, objective, transparent and market based procurement of balancing services that facilitates the participation of renewable energy sources and does not discriminate between different types of balancing service providers. For the above reasoning, ACER considers that if TSOs want to use the linking of an upward and downward bid, they need the approval of an exemption in accordance with Article 32(3) of the EB Regulation. This requirement for an exemption to procure balancing capacity separately is included in a new paragraph (3) in Article 7 of the Proposal.

6.2.3.1. Pricing principles for TSO-BSP settlement

- (61) The Proposal partly fulfils the requirement of Article 32(2)(a) of the EB Regulation because the procurement method for aFRR balancing capacity is based on auctions with a common clearing price organised within a common market for the TSOs of the Nordic LFC block. The auction is described in Article 6(2) of the Proposal and Article 9 of the Proposal describes the establishment of a clearing price for the common market for aFRR balancing capacity.
- (62) TSOs proposed to include in the settlement for procured balancing capacity the forecasted market value of cross-zonal capacity for the exchange of energy as a part of the pricing for BSPs for an importing bidding zone.
- (63) During the public consultation the majority of stakeholders raised concerns with such an approach. They explained that the balancing capacity price should be based on bids and not on a cost component included in the pricing method.
- (64) ACER assessed the legal requirements for cross-border exchange in Articles 32(2)(a) and 33(3) of the EB Regulation and pricing of congestion following from Article 16 and 19 of the Electricity Regulation. ACER considers the TSOs' approach not to be in line with Electricity Regulation as the pricing is not fully market-based and includes an estimated cost component based on a forecast. Therefore, ACER decided to change the respective provisions in Articles 9 and 13 of the Proposal by removing any costs

related to the value of cross-zonal capacity, which were added to the cross-border marginal price received by a BSP. The removal of this cost component should also provide more transparency for the pricing rules for BSPs and for the settlement of balancing capacity procurement costs between TSOs.

- (65) In addition, ACER split Article 9 of the Proposal on settlement of procured aFRR capacity into two separate articles. The first new article on TSO-BSP settlement rules of procured balancing capacity is based on new definitions for a cross-zonal marginal price and uncongested area. The new definitions on cross-zonal marginal price and uncongested area were included as new subparagraphs (b) and (c) in Article 2(2) of the Proposal.
- (66) The second new article on settlement contains now solely the TSO-TSO settlement rules. These contain separate rules for importing and exporting TSO(s) and define the balancing congestion income to be shared in accordance with the methodology pursuant to Article 41(1) of the EB Regulation.
- (67) In the feedback referred to in Recital (26), TSOs raised concerns that the pricing principles suggested by ACER might lead to wrong incentives if a cross-zonal capacity price is not included. Nevertheless, TSOs also recognise that the amendments proposed by ACER are implementable for the Nordic TSOs. ACER disagrees that such principles would lead to wrong incentives and remains with the reasoning as described in Recital (64).

6.2.4. Assessment of the requirements on transfer of balancing capacity

- (68) The Proposal fulfils the requirements of the first sentence of Article 34(1) of the EB Regulation by allowing BSPs to transfer their obligations to provide balancing capacity. The description is included in Article 6 of the Proposal on the high-level design. The definition of the geographical scope for BSPs to transfer their obligations to provide balancing capacity is defined subject to an exemption pursuant to the second sentence of Article 34(1) of the EB Regulation.

6.2.5. Assessment of the requirements from Articles 56 and 57 of the EB Regulation on settlement of balancing capacity

- (69) The Proposal generally fulfils the requirements of Article 56 and 57 of the EB Regulation because the TSOs have proposed common rules that require them to settle the procured aFRR balancing capacity with BSPs and settle the exchanged balancing capacity between TSOs including the allocated cross-zonal capacity for the exchange of balancing capacity. As explained in Recitals (64) and (65), ACER split Article 9 of the Proposal into two separate articles on TSO-BSP and TSO-TSO settlement providing clarity around the requirement on separate settlement rules pursuant to the EB Regulation.

6.2.6. Assessment of the requirements from Article 58 of the EB Regulation on capacity procurement algorithms

- (70) The Proposal partly fulfils the requirements from Article 58(3) of the EB Regulation and includes in Article 12 of the Proposal a description of the algorithm for the procurement optimisation function which also includes the algorithm principles for the market-based allocation process.
- (71) ACER amended the description of the algorithm requirements included in the Proposal to limit the description to what falls within the scope of the common and harmonised rules and processes for the exchange of balancing capacity in accordance with Article 33(1) of the EB Regulation, while the algorithm requirements covering market based allocation of cross-zonal capacity across timeframes are included the proposal in accordance with 41(1) of the EB Regulation. Therefore, the description of the algorithm was divided into two parts and placed in a process-wise order, starting with a) the allocation process across timeframes – deciding on the amount of cross-zonal capacity to be allocated to the exchange of balancing capacity in the decision pursuant to Article 41(1) of the EB Regulation – and b) using, among others, this available cross-zonal capacity as input in the description of the algorithm for the procurement (and exchange) of balancing capacity – within Annex I of this Decision.
- (72) For the above reason, ACER removed subparagraphs (b), (c), (e) and (f) in Article 12(1) of the Proposal. Maximum and minimum procurement volume, as well as forecasted market value for cross-zonal capacity and mark-ups for cross-zonal capacity are not part of the procurement optimisation function for aFRR capacity but related to the market-based allocation method for cross-zonal capacity. These aspects on cross-zonal capacity are out of scope of the present Decision, since Article 32 of the EB Regulation on procurement rules asks only for a market based procurement and Article 38 of the EB Regulation set the basic requirements for cross-zonal capacity to be allocated for the exchange of balancing capacity. The changed algorithm description for the capacity procurement optimisation function now clearly describes the two inputs (TSO demands per bidding zone and aFRR capacity bids per bidding zone), the constraint (available cross zonal capacity), the objective and the outputs separately.
- (73) Due to the changes made to the pricing of balancing capacity, as described in section 6.2.3.1, ACER removed the costs for cross-zonal capacity reservation completely from the Proposal and also from the algorithm description in Article 12(2) of the Proposal on the objectives.
- (74) In addition, ACER added a new paragraph 6 to Article 12 of the Proposal to explain the fall-back process in case the capacity procurement optimisation function fails to provide the needed outputs. In such a case, a second round for the capacity procurement optimisation shall be executed for the relevant bidding zones where the TSO demand for aFRR capacity shall be reduced.

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

- (75) 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.
- (76) Besides some general improvements of wording, ACER amended Article 2 of the Proposal by:
- (i) introducing a definition for TSO demand;
 - (ii) clarifying the reference to cross-zonal capacities; and
 - (iii) allowing more efficient document internal cross references to improve the structure of the Proposal.
- (77) In order to define the TSOs which participate in the common procurement of balancing capacity in the Proposal in accordance with Article 33(1) of the EB Regulation, TSOs proposed that the Proposal shall cover the bidding zones of the Nordic synchronous area, which correspond to the Nordic LFC block. For clarity,, ACER made changes throughout the document to refer to the Nordic LFC block instead of the bidding zones. With this change ACER considers the issue in the feedback referred to in Recital (26) on the geographic scope of the decision to be adequately solved.
- (78) Besides the explicitly mentioned amendments, ACER provided some additional amendments to improve the wording, clarity and structure of the Proposal and to delete out of scope passages.

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

6.2.8.1. *Consultation and involvement of stakeholders*

- (79) When drafting the Proposal, TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.
- (80) As indicated in Recital (5) 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 to 4 October 2018. In addition, regulatory authorities 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.

6.2.8.2. Publication and transparency

- (81) The Proposal fulfils the requirements on publication and transparency in accordance with Article 7 of the EB Regulation.
- (82) 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

- (83) 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.
- (84) 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 methodology on common market and harmonised rules and processes for the procurement and exchange of aFRR balancing capacity for the Nordic CCR in pursuant to Article 33(1) 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 common and harmonised rules and processes for the procurement and exchange of aFRR balancing capacity for the Nordic CCR pursuant to Article 33(1) of the Electricity Balancing Regulation

Annex Ia (for information only) – Methodology on common and harmonised rules and processes for procurement and exchange of aFRR balancing capacity for the Nordic CCR pursuant to Article 33(1) 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.