

**DECISION No 32/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 2 December 2020

**approving the SEE CCR TSOs' proposal for the methodology for splitting
long-term cross-zonal capacity**

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 July 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, Articles 6(10)(b) thereof,

Having regard to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation², and, in particular, Article 4(10) thereof,

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

Having regard to the favourable opinion of the Board of Regulators of 18 November 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (the 'FCA Regulation') laid down a range of requirements on cross-zonal capacity allocation in the forward markets. These requirements include the development of the methodology for splitting cross-zonal capacity for the long-term time frames (the 'splitting methodology') in each capacity

¹ OJ L158, 14.6.2019, p. 22.

² OJ L259, 27.9.2016, p. 42.

calculation region ('CCR') in accordance with Article 16 et seq. of the FCA Regulation.

- (2) Pursuant to Article 4(1) and (7)(b), as well as Article 16(1) of the FCA Regulation, transmission system operators ('TSOs') of each CCR are required to develop a proposal for a common coordinated splitting methodology within the respective CCR and submit it to the competent regulatory authorities for approval. Then, those regulatory authorities should reach an agreement and take a decision on the proposal for the splitting methodology within six months after the receipt of the proposal by the last regulatory authority, according to Article 4(9) of the FCA Regulation. When the regulatory authorities fail to reach an agreement within the six-month period or upon their joint request, ACER, pursuant to Article 4(10) of the FCA Regulation, is called upon to adopt a decision concerning the TSOs' proposal in accordance with Article 6(10)(b) of Regulation (EU) 2019/942.
- (3) The present Decision of ACER follows from the request of all the regulatory authorities of the South East Europe CCR ('SEE regulatory authorities') that ACER adopts a decision on the proposal for the splitting methodology, which the TSOs of the South East Europe CCR ('SEE TSOs') submitted to all SEE regulatory authorities for approval, and which those regulatory authorities could not agree on. Annex I to this Decision sets out the splitting methodology pursuant to Article 16(1) of the FCA Regulation, as decided by ACER.

2. PROCEDURE

2.1. Proceedings before regulatory authorities

- (4) Article 16 of the FCA Regulation requires all TSOs in each CCR to submit a proposal for a common coordinated splitting methodology for the long-term timeframes for their region, no later than the submission of the capacity calculation methodology ('CCM') for the long-term timeframes referred to in Article 10 of the FCA Regulation ('LT CCM'). Article 10 of the FCA Regulation requires that all TSOs in each CCR submit a proposal for a common coordinated LT CCM six months after the approval of the common CCM referred to in Article 9(7)(a) of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the 'CACM Regulation') within the specific region. As the SEE CCM according to Article 20(2) of the CACM Regulation was approved by the last regulatory authority of the SEE CCR on 11 April 2019, the SEE TSOs were required to submit a proposal for a common coordinated LT CCM by 11 October 2019.
- (5) On 29 July 2019, the SEE TSOs published for public consultation the draft 'South East Europe (SEE) TSOs proposal for a methodology for splitting long-term cross-zonal capacity in accordance with Article 16 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation'. The consultation lasted from 29 July 2019 until 2 September 2019.

- (6) By 1 October 2019, the SEE TSOs submitted to the SEE regulatory authorities a ‘South East Europe (SEE) TSOs proposal for a methodology for splitting long-term cross-zonal capacity in accordance with Article 16 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation’ (hereafter referred to as the ‘Proposal’).

2.2. Proceedings before ACER

- (7) In a letter dated 26 May 2020 and received by ACER on the same day, the president of RAE³, on behalf of all regulatory authorities from the SEE CCR, informed ACER that they jointly agreed to request ACER to adopt a decision on the Proposal pursuant to Article 4(10) of the FCA Regulation.
- (8) The letter explained in particular the diverging views among SEE regulatory authorities. According to the letter, the main reason of disagreement on the Proposal related to diverging technical interpretations on the necessity and implications of the inclusion in the splitting methodology of a provision allowing SEE TSOs to reserve capacity for day-ahead allocation.
- (9) On 6 August 2020, ACER launched a public consultation on the Proposal, inviting all market participants to provide their comments by 30 August 2020. The consultation document asked stakeholders to provide views on the topic, which was deemed the most relevant – whether the splitting methodology should offer the possibility to set aside some of the long-term capacity for the day-ahead timeframe – as the main issue that may require amending the Proposal. The summary and evaluation of the responses received are presented in Annex II to this Decision.
- (10) Moreover, ACER closely cooperated with all SEE regulatory authorities and SEE TSOs and further consulted on the amendments to the Proposal during teleconferences and meetings and through exchanges of draft amendments. In particular, the following procedural steps were taken:
- 2 July 2020: teleconference with all SEE regulatory authorities;
 - 17 July 2020: teleconference with all SEE TSOs and SEE regulatory authorities;
 - 27 July 2020: ACER circulated a draft of the proposed amendments to the methodology for splitting long-term cross-zonal capacity to all SEE regulatory authorities and SEE TSOs;
 - 3 August 2020: teleconference with all SEE TSOs and SEE regulatory authorities;
 - 3 September 2020: discussion with all regulatory authorities in the framework of the AEWG;

³ RAE, the Regulatory Authority for Energy, is the regulatory authority from Greece.

- 21 September 2020: teleconference with all SEE TSOs and SEE regulatory authorities;
- 18 November 2020: discussion with all regulatory authorities at the ACER Board of Regulators' meeting.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (11) Pursuant to Article 4(10) of the FCA 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(12)(a) of Regulation (EU) 2019/942.
- (12) According to the letter of the President of RAE dated 26 May 2020 and received by ACER on the same day, SEE regulatory authorities did not reach an agreement on the Proposal within six months after SEE TSOs submitted the Proposal to the SEE regulatory authorities. This letter was sent by all SEE regulatory authorities after the expiry of the six-month deadline after receiving the Proposal (i.e. 1 April 2020).
- (13) Therefore, under the provisions of Article 4(10) of the FCA 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 all regulatory authorities on 1 April 2020 and communicated to ACER on 26 May 2019.

4. SUMMARY OF THE PROPOSAL

- (14) The Proposal consists of the following elements:
- a) A 'Whereas' section and Articles 1 and 2, which include general provisions, the scope of application and the definitions;
 - b) Articles 3 to 5, which set regional principles, methodological principles and requirements applied to the splitting of long term cross-zonal capacity;
 - c) Article 6 and 7 which are dedicated to the publication of the splitting methodology, its subsequent implementation steps and timeline;
 - d) Article 8, which includes provisions on language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Initial observations of all regulatory authorities

- (15) The letter of the President of RAE dated 26 May 2020 states that despite their close cooperation, regulatory authorities were not able to reach an agreement over the Proposal within the deadline of six months.
- (16) Regulatory authorities could not agree on one main aspect of the Proposal, related to diverging technical interpretations on the necessity and implications of the inclusion in the splitting methodology of a provision allowing SEE TSOs to reserve capacity for day-ahead allocation.

5.2. Consultation of all regulatory authorities and TSOs

- (17) ACER, in close cooperation and consultation with SEE regulatory authorities and SEE TSOs as detailed in paragraph (10) above, and beyond the above-mentioned issues:
- a) discussed with SEE TSOs and SEE regulatory authorities the comments received during the public consultation (see Section 5.3 below) and the views of SEE regulatory authorities expressed in the aforementioned letter of SEE regulatory authorities;
 - b) revised the Proposal to define monitoring provisions for the level of cross-zonal capacities following the implementation of the single day ahead coupling ('SDAC').

5.3. Public consultation

- (18) On 6 August 2020, ACER launched a public consultation on the Proposal, inviting all stakeholders to provide their views by 30 August 2020.
- (19) With regard to the Proposal, the consultation document asked stakeholders to provide their views on two topics: (i) the approach suggested by SEE TSOs in the Proposal to split all (100%) of the calculated long-term capacity over long-term timeframes, and (ii) the inclusion of a monitoring provision, whereby SEE TSOs will observe and report on levels of cross-border capacity across all timeframes after the implementation of the SDAC. The report will be submitted to SEE regulatory authorities ahead of the implementation of the long-term splitting rules, in order to support a possible amendment to those rules if necessary.
- (20) The three respondents to the public consultation supported the approach to split all (100%) of the calculated long-term capacity over long-term timeframes, and the inclusion of a monitoring provision.
- (21) The detailed responses received and their evaluation by ACER are presented in Annex II to this Decision.

5.4. Hearing phase

- (22) ACER initiated a hearing phase on 30 September 2020, by providing SEE TSOs and SEE 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 14 October 2020. ACER did not receive any comment during this time.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (23) Articles 4(1) and (7)(b) of the FCA Regulation require TSOs to provide a proposal for a common splitting methodology pursuant to Article 16 of the FCA Regulation to all regulatory authorities of the concerned region for their approval.

- (24) As a general requirement, Article 4(8) of the FCA Regulation requires that the proposal provided by TSOs pursuant to Articles 4(1) and (7)(b) of the FCA Regulation include a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.
- (25) Article 16(1) of the FCA Regulation sets general requirements regarding the development of a proposal for a common splitting methodology for the long-term time frames. TSOs in each capacity calculation region are required to submit such proposal no later than the submission of the LT CCM referred to in Article 10 of the FCA Regulation. This proposal must be consulted in accordance with Article 6 of the FCA Regulation.
- (26) Article 16(2) of the FCA Regulation sets out general conditions for splitting long-term cross-zonal capacity and its required compatibility with the LT CCM, namely:
- ‘(a) it shall meet the hedging needs of market participants;
 - (b) it shall be coherent with the capacity calculation methodology;
 - (c) it shall not lead to restrictions in competition, in particular for access to long-term transmission rights.’
- (27) Article 17(2) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity ⁴ (the ‘Electricity Regulation’) sets general rules that TSOs must respect when proposing a structure for the allocation of cross-zonal capacity across timeframes, namely:
- ‘Transmission system operators shall propose an appropriate structure for the allocation of cross-zonal capacity across timeframes, including day-ahead, intraday and balancing. That allocation structure shall be subject to review by the relevant regulatory authorities. In drawing up their proposal, the transmission system operators shall take into account:
- (a) the characteristics of the markets;
 - (b) the operational conditions of the electricity system, such as the implications of netting firmly declared schedules;
 - (c) the level of harmonisation of the percentages allocated to different timeframes and the timeframes adopted for the different cross-zonal capacity allocation mechanisms that are already in place.’

⁴ OJL 158, 14.6.2019, p. 54

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development of the splitting methodology, its implementation and its impact

6.2.1.1. Development of the proposal for a methodology for splitting long-term cross-zonal capacity

(28) The Proposal fulfils the requirements of Articles 4(1) and 4(7)(b) of the FCA Regulation, as all SEE TSOs jointly developed a proposal for a common splitting methodology for the SEE CCR.

(29) The Proposal fulfils the requirements of Article 16(1) of the FCA Regulation, as all SEE TSOs submitted a proposal for a common splitting methodology for the SEE CCR for approval to all SEE regulatory authorities on 1 October 2020, which is no later than their submission of a proposal for a common LT CCM for the SEE CCR for approval to all SEE regulatory authorities by 17 October 2020.

6.2.1.2. Proposed timescale for implementation

(30) The Proposal fulfils the requirements of Article 4(8) of the FCA Regulation with regard to the proposed timescale for implementation of the splitting methodology, as Article 7 of the Proposal includes a timescale for implementation.

(31) Article 7 of the Proposal states that the SEE TSOs shall implement the splitting methodology immediately after the implementation of the capacity calculation methodology in accordance with Article 10 of the FCA Regulation.

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

(32) The Proposal generally fulfils the requirements of Article 4(8) of the FCA Regulation with regard to the description of the expected impact of the splitting methodology on the objectives of the FCA Regulation.

(33) Recital (9) of the Proposal describes the expected impact of the splitting methodology on the objectives listed in Article 3 of the FCA Regulation. All the objectives set in Article 3 of the FCA Regulation are addressed in the recital.

6.2.2. Assessment of the requirements for the content for the splitting methodology:

(34) The Proposal fulfils the requirements of Article 16 of the FCA Regulation regarding the content of the splitting methodology.

(35) The Proposal fulfils the general requirement of Article 16(1) as it is a methodology for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the SEE CCR.

(36) The Proposal fulfils the requirement of Article 16(2)(a) of the FCA Regulation, for the long-term timeframe, as the splitting methodology ensures the availability of the

products over the yearly and monthly timeframe for market participants, thereby meeting the hedging needs of market participants.

- (37) The Proposal fulfils the requirement of Article 16(2)(b) as up to the referral of the Proposal to ACER, SEE TSOs have developed the two methodologies jointly to ensure consistency on the various processes of the long-term allocation. After the referral of the Proposal, SEE regulatory authorities approved a long-term capacity calculation methodology on 22 October 2020. ACER assessed that the splitting methodology is coherent with the approved long-term capacity calculation methodology. In particular, the Proposal guarantees that the capacity allocated on yearly and monthly timeframe does not exceed the capacity values provided by the long-term capacity calculation methodology.
- (38) The Proposal fulfils the requirements of Article 16(2)(c) as the splitting methodology 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 time frames thus allowing the market participant to access hedging opportunities in both time frames. Further, long-term products determined based on the splitting methodology are publicly auctioned. Thereby, the splitting methodology does not lead to restrictions in competition, in particular for access to long-term transmission rights.
- (39) The Proposal partially fulfils the requirements of Article 17(2) of the Electricity Regulation as it does not take account of all the characteristics of the market.
- (40) During the development of the Proposal, SEE TSOs have submitted the proposal to the SEE regulatory authorities for a review. SEE regulatory discussed and could not agree on the extent to which SEE TSOs took account of the characteristics of the markets.
- (41) In order to fulfil the requirements of Article 17(2) of the Electricity Regulation, ACER deemed necessary to amend the Proposal as detailed in Section 6.3 below.
- (42) Besides the explicitly mentioned amendments, ACER provided some additional amendments to improve the wording, clarity and structure of the splitting methodology. ACER deleted sections that were out of scope.

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

6.2.3.1. *Assessment of the requirements for consultation and stakeholders' involvement*

- (43) The draft Proposal was consulted with stakeholders from 29 July to 2 September 2019.
- (44) The documentation supporting the Proposal includes an evaluation of the responses received from stakeholders, which assesses them and explains why SEE TSOs have taken comments into account or not. The evaluation of responses was submitted and together with the Proposal.

- (45) Therefore, the Proposal has been subject to a public consultation in accordance with Article 6 of the FCA Regulation and complies with Article 4(12) of the FCA Regulation.

6.2.3.2. Assessment of requirements regarding transparency and the publication of information

- (46) The Proposal achieves the objective set in Article 3(f) of the FCA Regulation of ensuring and enhancing the transparency and reliability of information.

- (47) Article 7 of the Proposal addresses the objective of ensuring and enhancing the transparency and reliability of information as defined by Article 3(f) of the FCA Regulation. Article 7 of the Proposal defines the requirements for the information to be published by the SEE TSOs.

6.3. Monitoring the need for a transitional solution for splitting long-term cross-zonal capacity

- (48) The main reason of the referral of the Proposal to ACER is related to diverging technical interpretations on the necessity and implications of the inclusion in the splitting methodology of a provision allowing SEE TSOs to reserve capacity for day-ahead allocation, in the context of possible scarcity of cross-zonal capacity for the SDAC.

- (49) As a general principle, ACER acknowledges that an adequate level of cross-zonal capacities is required for the proper functioning of the single day-ahead coupling that promotes market liquidity and competition in the day-ahead market.

- (50) Following a proper design of capacity calculation in day-ahead and long-term timeframes, the day-ahead capacity calculation should in principle almost always produce significantly more capacities compared to the long-term capacity calculation. This is because the long-term capacity calculation is by nature more conservative than the day-ahead one, as it takes into account additional uncertainties, resulting in a reliability margin, outages considered in the long-term timeframes, etc. In such context, there should be no explicit need to set aside a percentage of the calculated long-term capacity for the SDAC.

- (51) In a context of scarcity of cross-zonal capacity, in the event of an improper design of the long-term and day-ahead capacity calculation methodologies which could result in little or no available capacity for the SDAC, rather than reserving some of the long-term capacity for day-ahead allocation, TSOs and NRAs can opt for the offer of financial transmission rights (FTRs) over physical transmission rights. This would ensure that all physically available cross-zonal capacities are available for the SDAC.

- (52) However, a prerequisite for the introduction of FTRs is the implementation of the SDAC. ACER acknowledges that there could be a time gap between the implementation of the SDAC and the time when FTRs could be introduced. During such time gap, scarcity of cross-zonal capacities for the SDAC would have negative

effect on the SDAC. ACER therefore acknowledges, in such context, as a measure of last resort that some of the calculated long-term capacity could be set aside for daily allocation. Such measure would need to be justified and limited in time.

- (53) To assess the existence of such context after the implementation of the SDAC, ACER deemed necessary to introduce specific monitoring provisions in Article 8 requesting that SEE TSOs monitor and communicate to SEE regulatory authorities the levels of cross-zonal capacity following the implementation of the SDAC and ahead of the implementation of the LT CCM. If relevant, this monitoring and reporting will inform a future amendment of the splitting methodology pursuant to Article 4(12) of the FCA Regulation.

7. CONCLUSION

- (54) For all the above reasons, ACER considers the Proposal in line with the requirements of the FCA Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I to this Decision.

- (55) Therefore, ACER approves the Proposals subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision set out the Proposal as amended and as approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The methodology for splitting long-term cross-zonal capacity of the South East Europe capacity calculation region, developed pursuant to Article 16 of Regulation (EU) 2016/1719, is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to ADMIE, ESO EAD and Transelectrica.

Done at Ljubljana, on 2 December 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – methodology for splitting long-term cross-zonal capacity of the South East Europe capacity calculation region

Annex Ia – methodology for splitting long-term cross-zonal capacity of the South East Europe capacity calculation region (track-change version, for information only)

Annex II – Evaluation of responses to the public consultation on the proposal for methodology for splitting long-term cross-zonal capacity of the South East Europe capacity calculation region

In accordance with Article 28 of Regulation (EC) No 942/2019, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of ACER within two months of the day of notification of this Decision.