



COMMENTS TO REQUEST BY TENNET NETHERLANDS FOR A DEROGATION ACCORDING TO ARTICLE 16(9) OF REGULATION 2019/943 FROM THE MINIMUM LEVEL OF CAPACITY TO BE MADE AVAILABLE FOR CROSS- ZONAL TRADE FOR 2022

20 August 2021

INTRODUCTION

On 23 July 2021, Autoriteit Consument & Markt (ACM) informed all National Regulatory Authorities (NRAs) that on 20 July 2021, ACM had received from TenneT Netherlands (TenneT NL) a request for a derogation in accordance with Article 16(9) of Regulation 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (Regulation 2019/943) for the period 2022.

The reasons for the present derogation request are,

- (i) loop flows, affecting bidding zone borders (BZBs) within and or between the CCRs CWE and Core, and
- (ii) possible lack of redispatching potential in case of planned or unplanned outages, affecting BZBs within and or in-between the CCRs CWE, Core, and Hansa.

The BZBs DK1-NL, DK1-DE/LU, and DK2-DE/LU are located in CCR Hansa. Thus, the Danish Utility Regulator (DUR) is an affected NRA.

Affected NRAs may by 27 August 2021 at the latest, express a formal disagreement to extend the derogation for the year of 2022. DUR has carried out an assessment of the conditions for granting the extension.

For the time being, DUR does not expect to express formal disagreement.

CONCERNS IN RESPECT OF THE REQUEST FOR DEROGATION

As the competent NRA for the Netherlands, ACM is obliged to ensure that TenneT NL is compliant with EU law. DUR has a number of concerns, which DUR kindly requests ACM to take into consideration before adopting a decision on the extension of the derogation:

TenneT NL's derogation request refers to two main reasons:

The first reason is solely applicable to BZBs within and or between CCRs Core and CWE, and concerns loop flows, primarily deriving from Germany. As such, the reasons

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do not relate to DUR as a regulator forming part of these CCRs and, consequently, DUR has no comments to this reason. Similarly, DUR did not have any comments to TenneT NL's earlier derogation requests for a derogation in accordance with Article 16(9) of Regulation 2019/943, as it did not relate to a BZB, where DUR is an affected NRA.

The second reason is applicable to BZBs within and or between CCRs Core, CWE and Hansa, and concerns internal outages on the background of the actual and legal circumstances. The relevant regional methodologies on countertrading and redispatch, and on the sharing of costs of countertrading and redispatch, have yet to be implemented. These methodologies have been adopted pursuant to Articles 20, 35, and 74 of Regulation 2015/1222 (CACM), and Article 76 of Regulation 2017/1485 (SOGL),

OUTAGES

There have been outages on the Cobra Cable since it went into operation on 6 September 2019, according to the information available to DUR.

DUR has compared the average available capacity for 2019 and 2020 to the nominal capacity, i.e. not taking into account the reasons for lacking capacity.

From 6 September 2019 and until the end of 2019, the average available capacity was 87 percent in the direction DK1 to NL, and 88 percent in the direction NL to DK1.

During 2020, there were two major occasions, leading to a significant decrease of capacity. From June to Mid-July 2020, the decrease was a result of a planned outage in the course of operational maintenance. In September 2020, an unplanned outage occurred, entailing that the cable was out of operation until 8 January 2021. For the year 2020, the average available capacity was 62 percent in the direction DK1 to NL, and 73 percent in the direction NL to DK1.

So far in 2021, there has been only one occasion, where the cable has been out of operation for a significant period of time. From 15 July to 7 August 2021, the cable was out of operation due to a planned outage because of operational maintenance.

In DUR's view, planned or unplanned operational outage of an interconnector, decreasing the level of cross-flow below 70 percent, does not in itself constitute non-compliance with Article 16(8) of Regulation 2019/943.

THE USE OF REDISPATCH AND COUNTERTRADE TO MITIGATE OUTAGES

DUR finds it relevant to consider the validity of TenneT NL's reasoning for a derogation in connection with planned or unplanned outages in the case that the outage redirects internal flows to other internal critical network elements with contingencies (CNECs) and the new internal flow on these CNECs surpasses 30 percent.

In this case, Article 16(4) of Regulation 2019/943 states that countertrading and redispatch shall be used in order to maximise available capacities.

The specific use of countertrading and redispatch in order to maximise available capacities is governed by the regional methodologies pursuant to CACM Articles 20, 35, and 74, as well as SOGL Article 76.

DUR finds that a delayed implementation of methodologies, which the TSOs are responsible for, should in general not be a valid reason for the TSOs' non-fulfilment of other regulatory requirements, i.a. requirements following from Article 16(8) of Regulation 2019/943 that was adopted by the European Parliament and the Council after the European Commission adopted CACM and SOGL.

DUR notes that the foreseen implementation dates for the relevant methodologies, even the CCR Hansa methodologies, are to a large extent dependent of the dynamic realities for the meeting of milestones for the development of the IT systems to support flow based in CCRs Core and Nordic.

DUR views that Article 16(4) of Regulation 2019/943 does not prevent the possibility to use countertrading and redispatch prior to the implementation of, notably, the methodology for the sharing of costs for countertrading and redispatch pursuant to CACM Article 74.

DUR acknowledges that sometimes, the resources to perform countertrading and redispatch may not be available. However, in the case of too high internal flows, there are resources generating these internal flows and thereby resources to be used for countertrading and or redispatch.

It is the experience of DUR based on information from the Danish TSO, Energinet, on countertrade and redispatch on the DK1-DE BZB that as soon as TSOs inform market participants of a clear demand of these resources, market participants will offer them. Both consumption and generation participate significantly and the demand of the TSO has a positive effect on the supply side, and thus on the liquidity of such a market for redispatch and countertrade.

ADDITIONAL COMMENTS ON LEGAL ASPECTS

In the following, DUR will try to elaborate further on its reading of the Article 16(4) in Regulation 2019/943 outlined above.

The third sentence in Article 16(4) of Regulation 2019/943 refers to "the implementation of a redispatching and counter-trading cost-sharing methodology". The use of the term within the grammatical indefinite singular, "a...methodology", indicates that any given methodology on the sharing of costs for countertrading and redispatch, possibly adopted on a bilateral basis and or on ad hoc basis, may be used between the concerned TSOs.

Also, Article 16(8)(a) and (b) of Regulation 2019/943 both refer specifically to CACM, whereas a similar reference to CACM and any of the other network guidelines is not contained in Article 16(4) of Regulation 2019/943.

In addition, Article 13 of Regulation 2019/943 contains substantial provisions for overall principles for redispatch, independent of e.g. CACM Article 35, relating to coordinated redispatch and countertrading. Article 13(7) of Regulation 2019/943 provides for financial compensation between TSOs for non-market based redispatch, independent of CACM Article 74 governing a redispatching and countertrading cost sharing methodology.

Finally, if Article 16(4) of Regulation 2019/943 on the one hand, and CACM Articles 20, 35, and 74 and SOGL Article 76 on the other, may be considered provisions, which are conflicting with each other, then Regulation 2019/943 has the status of being both *lex superior* and *lex posterior vis-à-vis* CACM, whereas CACM Articles 20, 35, and 74 And SOGL Article 76 are solely to be considered *lex specialis vis à vis* Regulation 2019/943.

CONCLUDING REMARKS

DUR would like to stress that the lack of sufficient cross-zonal capacity is one of the main barriers to electricity market integration. Regulation 2019/943 aims to set fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal market for electricity. The DK1-NL BZB is an important element in a well-functioning market in Denmark.

Consequently, DUR finds that ACM, as the competent NRA vis-à-vis TenneT NL should consider making it clear to TeneT NL that the use of redispatch and countertrade is not contingent upon the implementation of the regional methodologies pursuant to CACM Articles Articles 20, 35, and 74 and SOGL Article 76. In other words, the fact that these methodologies have not yet been implemented cannot serve as an excuse for non-compliance with the 70 percent criterion set out in article 16(8) of Regulation 2019/943.

If DUR is an affected NRA in a possible derogation request from TenneT NL for 2023 DUR will also assess how TenneT NL has made use of redispatch and countertrade in order to comply with the 70 percent criterion.