

**DECISION No 01/2021
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 17 February 2021

on the request of the regulatory authorities of the Nordic system operation region to extend the period for reaching an agreement on the proposal for a regional coordination centre

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, Article 6(10) thereof,

Having regard to Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, and, in particular, Article 35(1) thereof,²

Having regard to the outcome of the consultation with ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 4 February 2021, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Article 35(1) of Regulation (EU) 2019/943 ('the Electricity Regulation') provides that all transmission system operators ('TSOs') of a system operation region shall submit, by 5 July 2020, a proposal for the establishment of regional coordination centres to the regulatory authorities concerned which shall review and approve the proposal.

¹ OJ L158, 14.6.2019, p. 22.

² OJ L158, 14.6.2019, p. 54.

- (2) According to Article 6(10) of Regulation (EU) 2019/942, where in the case of joint decisions for regulatory issues having effects on cross-border trade or cross-border system security the regulatory authorities concerned fail to reach an agreement within six months, ACER is called upon to adopt the required decision.
- (3) The present Decision follows from the request of the regulatory authorities of the Nordic System Operation Region ('Nordic SOR'), namely of Denmark, Finland and Sweden, to extend the period for reaching an agreement with regard to the Nordic SOR TSOs' proposal for the establishment of a regional coordination centre in the Nordic SOR in accordance with Article 35(1) of the Electricity Regulation, by six months pursuant to Article 6(10) of Regulation (EU) 2019/942.

2. PROCEDURE

- (4) In a letter sent dated 9 December 2020 and received by ACER via email on the same day, the Finish regulatory authority, Energiavirasto, submitted, on behalf of the regulatory authorities of the Nordic SOR, i.e. Denmark, Finland, Sweden, a joint request to grant a six-month extension according to Article 6(10) of Regulation (EU) 2019/942, regarding a proposal for the establishment of a Regional Coordination Centre in the Nordic System Operation Region.
- (5) According to this letter, the last regulatory authority of the Nordic SOR received the TSOs' proposal for the establishment of the Nordic SOR Regional Coordination Centre ('Proposal') on 16 July 2020.
- (6) In support of the request for extension, the letter explains that:

'The NRAs have assessed, consulted, closely cooperated and coordinated to reach the agreement that they cannot approve the RCC proposal as it stands.

Consequently, the Nordic SOR NRAs will request the TSOs to amend the RCC proposal and to submit a revised proposal for regulatory review and approval.

The NRAs find that requesting the TSOs to amend the proposal rather than doing it by themselves will be more conducive towards a revised proposal that can be approved by the Nordic SOR NRAs. This assessment builds on the substance of the TSOs proposal to establish the Regional Coordination Centre to complement their tasks, cf. Article 35(5) in ElReg.

The Nordic SOR NRAs will request the TSOs to submit a revised proposal no later than two months after receiving the last Nordic SOR NRAs' request for amendment. The revised proposal will be subject to the NRAs' final review and approval.

It is the NRAs' assessment that this amendment process cannot be completed before the NRAs' final deadline to adopt their decisions, i.e. by 16 January 2021.'

- (7) The letter also states that *‘within 6 months, following the extension, if granted by ACER, the Nordic SOR NRAs will strive to reach a unanimous agreement based on an amended RCC proposal by the TSOs with final regulatory review and approval’*.
- (8) On 14 January 2021, ACER held a telephone conference call with representatives from the Danish Utility Regulator (DUR), the Swedish Energy Markets Inspectorate (Ei), Energiavirasto and NVE-RME to clarify certain aspects of the letter, namely confirming which are the requesting regulatory authorities (i.e. the regulatory authorities of the Nordic SOR: Denmark, Finland and Sweden) and when would the six-month extension expire (i.e., the final deadline would be deferred to 16 July 2021).
- (9) On 15 January 2021, a proposed draft of the present decision was submitted to ACER’s Electricity Working Group for consultation in accordance with Article 24(2) of Regulation (EU) 2019/942.
- (10) On 22 January 2021, ACER’s Electricity Working Group provided its comments endorsing the draft ACER decision extending the regulatory authorities’ period for reaching an agreement on the amended Proposal by six months, i.e. until 16 July 2021.

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

- (11) According to point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942, ACER shall decide on regulatory issues having effects on cross-border trade or cross-border system security, which require a joint decision by at least two regulatory authorities, where such competences have been conferred on the regulatory authorities under legislative acts of the Union adopted under the ordinary legislative procedure and where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from the referral of the case to the last of those regulatory authorities. According to the third subparagraph of Article 6(10) of Regulation (EU) 2019/942, the competent national regulatory authorities may jointly request that the six-month period is extended by a period of up to six months.
- (12) According to the first and second subparagraph of Article 35(1) of the Electricity Regulation, the regulatory authorities of the system operation region shall review and approve the TSOs’ proposal for the establishment of regional coordination centres.

3.2. Admissibility

- (13) Article 35(1) of the Electricity Regulation does not explicitly set a time-limit within which the regulatory authorities have to reach an agreement and decide on the TSOs’ proposal. Nor does Article 6(10) of Regulation (EU) 2019/942 lay down such time-limit expressly for the approval under Article 35(1) of the Electricity Regulation. Neither of those provisions provide for the extension of a time-limit specifically concerning the proposal for the establishment of regional coordination centres.

- (14) However, the approval of the proposal for the establishment of regional coordination centres by more than one regulatory authority according to Article 35(1) of the Electricity Regulation is a regulatory issue in the meaning of the first subparagraph of Article 6(10) of Regulation (EU) 2019/942, as it has effects on cross-border system security, requires a joint decision by at least two regulatory authorities and has been assigned to the regulatory authorities by a legislative act of the Union adopted under the ordinary legislative procedure. In such case, Article 6(10) of Regulation (EU) 2019/942 conditions ACER's competence to decide on a TSOs' proposal under Article 35(1) of the Electricity Regulation on the expiry of the six-month period referred to in point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (15) Therefore, the transfer of the competence to decide under Article 35(1) of the Electricity Regulation from the regulatory authorities to ACER may also be subject to an extension of the regulatory authorities' deadline to reach an agreement, in accordance with the third subparagraph of Article 6(10) of Regulation (EU) 2019/942.
- (16) For an extension under the third subparagraph of Article 6(10) of Regulation (EU) 2019/942, the competent regulatory authorities should submit the respective request before the end of the period for reaching an agreement, and the maximum period should be not more than six months.
- (17) The present request for extension relates to a proposal for the establishment of a Regional Coordination Centre in the Nordic System Operation Region, which was submitted in accordance with Article 35 of the Electricity Regulation by all TSOs in the Nordic SOR to all regulatory authorities of the Nordic SOR, i.e. of Denmark, Finland and Sweden. The requesting regulatory authorities of those countries are therefore competent to decide, on the basis of an agreement, on the approval of the Proposal according to Article 35(1) of the Electricity Regulation in conjunction with point (a) of the second subparagraph of Article 6(10) of Regulation (EU) 2019/942. Accordingly, they are also the competent regulatory authorities that may request an extension of the six-month period for reaching an agreement under Article 6(10) of Regulation (EU) 2019/942.
- (18) Since the last competent regulatory authority received the Proposal on 16 July 2020, the competent regulatory authorities were required to agree on it, in accordance with Article 35(1) of the Electricity Regulation and Article 6(10) of Regulation (EU) 2019/942, by 16 January 2021. The request for extension was received by ACER on 9 December 2020. Thus, it was received before the expiry of the six-month deadline on 16 January 2021 for reaching an agreement.
- (19) In their request, the competent regulatory authorities ask for an extension of six months, which, given the initial deadline of 16 January 2021, would defer the final deadline to 16 July 2021. As such, the requested extension does not exceed the maximum limit of six months as provided for in Article 6(10) of Regulation (EU) 2019/942.
- (20) Therefore, ACER considers the request for extension as admissible.

3.3. Substance

- (21) Article 6(10) of Regulation (EU) 2019/942 does not lay down requirements for the justification of an extension.
- (22) The requesting regulatory authorities consider the extension justified on the ground that they agreed that they could not approve the Proposal as it stood, that requesting the TSOs to amend the Proposal and to submit a revised version for regulatory review and approval would be more conducive towards a proposal that could obtain approval than if those regulatory authorities were to amend the Proposal themselves, and that this amendment process would not be completed before the regulatory authorities' deadline to adopt their decisions by 16 January 2021.
- (23) ACER understands from this justification that the additional six months would allow sufficient time for the regulatory authorities of the Nordic SOR to request the TSOs to amend the Proposal, those TSOs to submit the amended Proposal within two months after receiving the request from last regulatory authority, and the regulatory authorities to review and, if possible, finally approve the amended Proposal.
- (24) Furthermore, ACER cannot detect any inappropriate delays that the requested extension would cause, in particular with regard to the requirement under Article 35(2) of the Electricity Regulation to have operative regional coordination centres by 1 July 2022. Therefore, ACER considers an extension until 16 July 2021 justified.

4. CONCLUSION

- (25) For the above reasons, ACER accepts the request for an extension submitted by the regulatory authorities of the Nordic SOR and extends the period for those regulatory authorities to reach an agreement on the Proposal, including amendments thereof submitted by the TSOs of the Nordic SOR, until 16 July 2021,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Nordic System Operation Region, i.e. of Denmark, Finland and Sweden, shall reach an agreement on the proposal for the establishment of a Regional Coordination Centre in the Nordic System Operation Region, is extended, in accordance with Article 6(10) of Regulation (EU) 2019/942, by six months, until 16 July 2021.

Article 2

This Decision is addressed to:

Danish Utility Regulator (DUR)
Swedish Energy Markets Inspectorate (Ei)
Energiavirasto

Done at Ljubljana, on 17 February 2021.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

In accordance with Article 28 of Regulation (EU) 2019/942, 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 the Agency within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressees 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.