

DECISION No 13/2023
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 19 July 2023

**on the Regional Coordination Centre Regional Procurement of Balancing
Capacity Methodology**

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 ('ACER'), and, in particular, Article 6(1) 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 electricity², and, in particular, Article 27(3) and Article 37(5) thereof,

Having regard to the outcome of the consultation with the European Network of Transmission System Operators for Electricity ('ENTSO-E'),

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

Having regard to the favourable opinion of the Board of Regulators of 12 July 2023, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

(1) Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity provided a legal framework to strengthen

¹ OJ L158, 14.6.2019, p. 22.

² OJ L158, 14.6.2019, p. 54.

regional coordination between transmission system operators ('TSOs') via the introduction of regional coordination centres ('RCCs') and assigning them with tasks of regional relevance. These tasks include performing the regional procurement of balancing capacity in accordance with Article 37(1)(k) of Regulation (EU) 2019/943 with further details outlined in Annex I of Regulation (EU) 2019/943.

- (2) Pursuant to Article 37(5) of Regulation (EU) 2019/943, ENTSO-E shall develop, in accordance with the procedure set out in Article 27 of Regulation (EU) 2019/943, for the relevant tasks not covered by the applicable network codes or guidelines a proposal and submit it to ACER for approval.
- (3) The present Decision follows from ENTSO-E's submission of a proposal for regional procurement of balancing capacity in accordance with Article 37(1)(k) of Regulation (EU) 2019/943 seeking approval by ACER; Annex I of this Decision sets out the methodology following from this proposal as approved by ACER.

2. PROCEDURE

- (4) On 8 November 2022, ENTSO-E published for public consultation the draft 'Proposal for the Regional Coordination Centres' task 'regional procurement of balancing capacity' in accordance with Article 37(1)(k) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity'. The consultation lasted from 8 November 2022 to 9 December 2022.
- (5) On 17 March 2023, ENTSO-E submitted the 'Proposal for the Regional Coordination Centres' task 'regional procurement of balancing capacity' in accordance with Article 37(1)(k) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity' (hereinafter 'the Proposal') to ACER for approval.
- (6) On 13 April 2023, ACER launched a public consultation on the Proposal, inviting all market participants to submit their comments by 15 May 2022. The summary and evaluation of the responses received are presented in Annex II to this Decision.
- (7) Between 17 March 2023 and 26 June 2023, ACER held regular discussions with the ENTSO-E, RCCs and all TSOs and all regulatory authorities. In particular, the following procedural steps were taken:
 - 28 April 2023: discussion with ENTSO-E, RCCs, all TSOs and all regulatory authorities;
 - 3 May 2023 discussion with the regulatory authorities at the AEWG meeting;
 - 4 May 2023: discussion with ENTSO-E, RCCs, all TSOs and all regulatory authorities;
 - 10 May 2023: discussion with all regulatory authorities at the EB TF meeting;
 - 11 May 2023: discussion with ENTSO-E, RCCs, all TSOs and all regulatory authorities;

- 16 May 2023: discussion with the regulatory authorities at the EB TF meeting;
 - 17 May 2023: discussion with ENTSO-E, RCCs, all TSOs and all regulatory authorities;
 - 6 June 2023: oral hearing with ENTSO-E, RCCs and all TSOs;
 - 22 June 2023: discussion with the regulatory authorities at AEWG meeting.
- (8) On 24 May 2023, ACER shared its preliminary position on the Proposal with ENTSO-E, TSOs and regulatory authorities, inviting them to submit their written inputs by 5 June 2023, and offering a possibility to request an oral hearing.
- (9) By 5 June 2023, ACER has received from ENTSO-E written observations of ENTSO-E and the TSOs on ACER's preliminary position as well as the information that TSOs request an oral hearing. The requested oral hearing was held on 6 June 2023. ACER also received written observations on ACER's preliminary position from BNetzA (i.e. regulatory authority of Germany).
- (10) The AEWG was consulted between 19 and 26 June 2023 and provided its advice on 26 June 2023 (see Section 5.3).
- (11) On 12 July 2023, ACER's Board of Regulators issued a favourable opinion.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (12) Pursuant to Article 6(1) of Regulation (EU) 2019/942, ACER should adopt individual decisions on technical issues where those decisions are provided for in Regulation (EU) 2019/943.
- (13) Pursuant to Article 37(5) of Regulation (EU) 2019/943, for the tasks set out in this Article and not already covered by the relevant network codes or guidelines, ENTSO-E should develop a proposal, in accordance with the procedure under Article 27 of the same Regulation, and this proposal is subject to approval by ACER.
- (14) Pursuant to Article 27(3) of Regulation (EU) 2019/943, ACER should either approve or amend the proposal for the regional procurement of balancing capacity, within three months after receiving it from ENTSO-E. If it amends the proposal, ACER should consult ENTSO-E before approving the amended proposal.
- (15) ENTSO-E submitted the Proposal in accordance with Article 37(5) of Regulation (EU) 2019/943 to ACER for approval. The Proposal concerns the RCCs' task of the regional procurement of balancing capacity under Article 37(1)(k) of Regulation (EU) 2019/943. This task concerns technical issues and is not yet covered by any network code or guideline.
- (16) Therefore, ACER is competent to decide on this Proposal under Article 6(1) of Regulation (EU) 2019/942 and Articles 27(3) and Article 37(5) of Regulation (EU) 2019/943.

4. SUMMARY OF THE PROPOSAL

(17) The Proposal consists of the following elements:

- a. The recitals and Articles 1 and 2, which contain the subject matter and scope and provisions on definitions and interpretation;
- b. Article 3, which includes the general principles;
- c. Article 4, which contains the provisions for the assessment by the RCCs of the available non-contracted platform bids;
- d. Articles 5 and 6, which contain the provisions for the RCCs' involvement in the regional procurement of balancing capacity and provisions about the cross-zonal capacity data which are relevant for the harmonised cross-zonal capacity allocation;
- e. Article 7, which lays down the provisions for the RCCs' monitoring and reporting requirements in the context of this task;
- f. Articles 8 and 9, which contain the requirements for the implementation timeline of the methodology and the reference language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED

5.1. Public consultation on the Proposal

(18) Responses to ACER's public consultation are summarised in Annex II to this Decision.

5.2. Consultation on ACER's preliminary position

(19) The following paragraphs provide a summary³ of views on ACER's preliminary position received during the hearing phase between 24 May and 6 June 2023. ACER received written comments from the following parties:

- a. BNetzA (i.e. regulatory authority of Germany);
- b. CREG (i.e. regulatory authority of Belgium); and
- c. ENTSO-E and all TSOs.

³ This is ACER's summary of key concerns and not to be considered a complete representation of the comments received.

- (20) In addition, ENTSO-E and TSOs provided oral comments to ACER during an oral hearing.
- (21) BNetzA provided comments on the definition of “non-contracted platform bids”.
- (22) CREG provided comments on the definition of “non-contracted platform bids” and the TSOs’ right to deviate from the RCC’s recommendation.
- (23) In their written response, ENTSO-E and the TSOs presented some general remarks on third country provisions, implementation deadlines, reporting and monitoring. With respect to the assessment of the volume of non-contracted platform bids, ENTSO-E and the TSOs included in the written submission their views on the definition of the non-contracted platform bids, comments on the interpretation of provisions addressing the RCC’s facilitation of regional procurement of balancing capacity, the definition of the parameters, the process on consideration of the volumes of non-contracted platform bids, and the consideration of specific products. Regarding the RCC involvement in the cross-zonal capacity market-based allocation, ENTSO-E and the TSOs presented their views with respect to the RCC involvement in forecast validation, and the legal basis for this RCC task.
- (24) A detailed summary and assessment of the feedback received can be found in Section 6 below.
- (25) In their hearing input, ENTSO-E and the TSOs also mentioned that they would have needed more time than the 8 working days after receiving ACER’s preliminary position. ACER generally agrees that the availability of time for this decision process was challenging for all involved parties, considering also that ACER should take its decision within three months according to Article 27(3) of Regulation (EU) 2019/943. This is why ACER extended the consultation period up to the last moment (taking into account the internal approval process that had to be launched afterwards), which did not allow the possibility for further extending the deadline for submitting views on the preliminary position. However, ACER exchanged extensively, including on preliminary drafts, with ENTSO-E and the TSOs, as well as regulatory authorities, during the entire consultation phase. This allowed ENTSO-E and the TSOs to be informed about ACER’s position and prepare their views well ahead of ACER’s actual submission of its preliminary position. Therefore, ACER considers that the period of two weeks given to ENTSO-E and the TSOs to provide their views on ACER’s preliminary position was still sufficient and also justified.

5.3. Consultation of the AEWG

- (26) The AEWG provided its advice on 26 June 2023 and broadly endorsed the draft Decision.
- (27) In its advice the AEWG invited ACER to take note of the comments raised by BNetzA and CREG (see Recitals (47) and (48)).

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (28) Article 37(1)(k) of Regulation (EU) 2019/943 provides that each RCC shall carry out the task of regional procurement of balancing capacity in the entire system operation region where it is established.
- (29) Point 8 of Annex I of Regulation (EU) 2019/943 sets out in more detail the task of regional procurement of balancing capacity.
- (30) Article 37(5) of Regulation (EU) 2019/943 provides that, for the tasks set out in Article 37 which are not already covered by the relevant network codes or guidelines, ENTSO-E must develop a proposal in accordance with the procedure set out in Article 27 of Regulation (EU) 2019/943.
- (31) Article 27(2) of Regulation (EU) 2019/943 requires ENTSO-E to consult on the proposal before submitting it.

6.2. Consultation and submission of the Proposal

- (32) Article 27(2) in conjunction with Article 37(5) of Regulation (EU) 2019/943 requires ENTSO-E to carry out a consultation involving all relevant stakeholders, including regulatory authorities and other national authorities, and take the results of that consultation into consideration in its proposal, before submitting it.
- (33) As indicated in Recitals (4) and (5) above, ENTSO-E consulted stakeholders from 8 November 2022 until 9 December 2022, as well as regional security coordinators, and submitted the Proposal on 17 March 2023.
- (34) Therefore, ENTSO-E fulfilled the requirements of Article 27(2) in conjunction with Article 37(5) of Regulation (EU) 2019/943 regarding the involvement of stakeholders and the submission.

6.3. Required content of the Proposal

- (35) Article 37(1)(k) of Regulation (EU) 2019/943 on the RCCs' task of regional procurement of balancing capacity is set out in more detail in point 8 of Annex I of Regulation (EU) 2019/943, and in particular in points 8.1 and 8.2 of it, which provide that RCCs must support the transmission system operators in the system operation region in determining the amount of balancing capacity that needs to be procured and in procuring this amount of balancing capacity.

According to point 8.1, the determination of the amount of balancing capacity must:

- a. be performed at the day-ahead or intraday timeframe, or both;
- b. take into account possible substitutions between different types of reserve capacity with the aim to minimise the costs of procurement;

- c. take into account the volumes of required reserve capacity that are expected to be provided by balancing energy bids, which are not submitted based on a contract for balancing capacity.

According to point 8.2, the procurement of balancing capacity must:

- a. be performed at the day-ahead or intraday timeframe, or both;
- b. take into account the volumes of required reserve capacity that are expected to be provided by balancing energy bids, which are not submitted based on a contract for balancing capacity.

- (36) ACER considers that all of these elements have been included in the Proposal as explained below.
- (37) Article 3 of the Proposal provides that the task of facilitating the regional procurement of balancing capacity consists of two subtasks (i) supporting TSOs in the determination of the volume of balancing capacity that needs to be procured, and (ii) supporting TSOs in the regional procurement of the required volume of balancing capacity. Articles 4, 5 and 6 of the Proposal further specify those subtasks. of the combination of these two subtasks, which forms the task regional procurement of balancing capacity, is meant to fulfil the respective requirements of points 8.1 and 8.2 of Annex I of Regulation (EU) 2019/943.
- (38) The assessment of available non-contracted platform bids, as described in Article 4 of the Proposal is performed in day-ahead to deliver results which are considered in the day-ahead procurement of balancing capacity. Therefore, the Proposal fulfils the requirement of point 8.1 (a) of Annex I of Regulation (EU) 2019/943.
- (39) The assessment of available non-contracted platform bids, as described in Article 4 of the Proposal, provides the TSOs with the information on the availability of balancing resources on a European level, for different types of reserve capacity. Following the RCC's recommendation, the TSOs with expensive local balancing resources are able to substitute these with cheaper reserve capacity available cross-border, taking into account non-contracted platform bids, with the aim to minimise the costs of balancing capacity procurement, in the context of Article 32(1) of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation'). Therefore, the Proposal fulfils the requirement of point 8.1 (b) of Annex I of Regulation (EU) 2019/943.
- (40) Article 4 of the Proposal describes the process for the assessment of the volume of available non-contracted platform bids by the RCC. The process takes into account the volumes of required reserve capacity that are expected to be provided by balancing energy bids, which are not submitted based on a contract for balancing capacity, based on the local information provided by each TSO, and within specific reliability levels. However, the Proposal restricts this task only to the scope of the TSOs who are allowed to use non-contracted balancing energy bids, in the context of their assessment pursuant to Article 32(1) of the EB Regulation. ACER considers that the

scope of the task is the entire SOR, as explained in Section 6.4.1 below. Therefore, ACER amended Article 4 of the Proposal accordingly. Furthermore, Article 4 of the Proposal includes a range for the reliability levels mentioned above. Following the consultation with TSOs, ACER understands that the values of these reliability levels are not yet known – and this is why a range is included in the Proposal –, but ACER considers that the values should still be determined and included in the methodology, as explained in Section 6.4.1 below. Consequently, ACER amended Articles 3 and 4 of the Proposal accordingly. Therefore, the Proposal as amended by ACER fulfils the requirements of point 8.1 (c) of Annex I of Regulation (EU) 2019/943.

- (41) Articles 5 and 6 include the provisions for the RCC involvement in the regional procurement of balancing capacity and the provision of relevant data to the harmonised cross-zonal capacity allocation. Both cross-zonal capacity allocation processes, for which the RCC role is described, i.e. the co-optimised and the market-based one, are performed at day-ahead to deliver results which are considered in the day-ahead procurement of balancing capacity. Therefore, the Proposal fulfils the requirement of point 8.2 (a) of Annex I of Regulation (EU) 2019/943.
- (42) Article 5 includes the provisions for the RCC involvement in the regional procurement of balancing capacity, which involves also the processes assigned to the RCC in the context of the harmonised cross-zonal capacity allocation methodology, developed pursuant to Article 38(3) of the EB Regulation. The cross-zonal capacity allocation process is required for the exchange of balancing capacity and sharing of reserves. TSOs with expensive local balancing resources are able to substitute these with cheaper reserve capacity, available in other scheduling areas via the exchange of balancing capacity or sharing of reserves on regional level. With this substitution, the TSOs aim to minimise the costs of balancing capacity procurement, in the context of Article 32(1) of the EB Regulation. Hence the RCC's involvement in the regional procurement of balancing takes into account the substitution between different types of reserve capacity implicitly, with the aim to minimise the costs of balancing capacity procurement. Therefore, the Proposal fulfils the requirement of point 8.2 (b) of Annex I of Regulation (EU) 2019/943.

6.4. Amendments to the Proposal

- (43) Further to the amendments that ACER had to make, in order for the Proposal to fulfil the requirement of points 8.1 and 8.2 of Annex I of Regulation (EU) 2019/943, as already mentioned in the previous Section, additional amendments were required, either to align the Proposal with the legal framework or to clarify its provisions. All the amendments to the Proposal, in the order of the Articles of the Proposal, are described in this Section. Finally, ACER introduced some necessary editorial changes to improve the readability and the structure of the Proposal.

6.4.1. On the process for assessing the availability of non-contracted platform bids (Article 2(1)(a) and 4 of the Proposal)

- (44) Article 2 of the Proposal includes a definition for the 'non-contracted platform bids', which does not apply to bids; the definition describes the excess amount/volume from

non-contracted platform bids which are not locally used, but not the bids as such. In its preliminary position, ACER amended this definition, in order to align it with the wording of the EB Regulation and Regulation (EU) 2019/943 and to accurately reflect which bids are to be considered ‘non-contracted platform bids’ (i.e. balancing energy bids, which are not submitted based on a contract for balancing capacity).

- (45) Article 4 of the Proposal describes the assessment of the available non-contracted platform bids as a task to be performed using solely the data of the TSOs who are allowed to use non-contracted bids. ACER understands that the use of non-contracted platform bids, when determining the amount of balancing capacity, is a national issue and depends on the different approaches used by each TSO. However, ACER also considers that the assessment of the availability of non-contracted platform bids should be broader – and be performed at the SOR level – independently of the TSOs who would then choose to take these available non-contracted platform bids into account during their calculation. Therefore, in its preliminary position, ACER significantly amended Article 4 of the Proposal, to reflect this new approach and the corrected definition of non-contracted platform bids. The revised approach allows the RCCs to consider the TSOs’ assessment of non-contracted platform bids which the relevant TSO expects to be locally available in its LFC block, provides that non-contracted platform bids are preferably used by the local TSO, respects the TSOs’ choice of using locally available non-contracted platform bids (as the local use is a decision made by the TSOs at national level and is provided as information to the RCC), and enables the RCCs to fully assess the availability of all non-contracted platform bids of the entire SOR. This approach enhances the transparency and openness of the whole process, provides all the SOR TSOs with important information for making their decisions on the use of available non-contracted bids, and respects the national specificities in the determination of balancing capacity. The revised approach also disconnects the RCC assessment of the available non-contracted platform bids from the RCC recommendation (following the assessment), which indeed should only be limited to the TSOs who are allowed to use the available non-contracted platform bids in their balancing capacity calculation. Accordingly, ACER introduced a new paragraph 2 in Article 4 of the Proposal to make this distinction explicit and define the scope of the recommendation with respect to the relevant TSOs, and added new paragraphs 4 to 6 to describe the recommendation process.
- (46) In their hearing input, ENTSO-E and the TSOs shared their concerns regarding the revised process for assessing the non-contracted platform bids and the change of the definition of non-contracted platform bids. ENTSO-E and the TSOs explained that their initially proposed process already assesses the volume of non-contracted platform bids which is available within the entire SOR and allows TSOs to decide on the consideration of the available volume of non-contracted bids. While ENTSO-E and the TSOs also shared their concerns on maintaining the local TSO’s right to decide on the use of locally available non-contracted bids, it was clarified in the oral hearing that these concerns actually relate to draft revisions which were exchanged before ACER’s preliminary position but are not valid for ACER’s preliminary position. ENTSO-E and the TSOs further asked for clarifications on how the volume of non-contracted platform bids which are expected to be locally available within the relevant

TSO's LFC block should be calculated at national level. ENTSO-E and the TSOs also shared concerns that the process proposed by ACER would only be beneficial with a daily assessment process, which is time-wise very challenging, while in case of a less frequent assessment the suggested process is considered an unnecessary burden. Therefore, ENTSO-E and the TSOs suggested to use the definition of non-contracted platform bids and the related process to assess these as initially set out in the Proposal.

- (47) In its hearing input, BNetzA expressed a similar view regarding the preference to use the initial definition of non-contracted platform bids in the Proposal. In BNetzA's comments for the AEWG advice, BNetzA proposed to delete the definition of non-contracted platform bids and use the term 'non-contracted balancing energy bids' from Article 32(1) of the EB Regulation throughout the Proposal instead.
- (48) In its hearing input, CREG proposed a broader definition of non-contracted platform bids that also includes balancing energy platform bids which are not expected to be used by TSOs from other LFC areas. Such approach would allow TSOs to use the potential of unused bids from the balancing energy platforms without depending on a sharing agreement. In addition, CREG shared concerns about Article 4(11) of Proposal as approved and pointed out that in accordance with Article 42(3) of Regulation (EU) 2019/943 TSOs have the right to deviate from the RCC's recommendation. The concern about the limitation of a TSO's possibility to deviate from a RCC's recommendation was also reiterated in the AEWG advice which asked ACER to take note of the relevant comments by CREG and BNetzA.
- (49) Regarding the definition of non-contracted platform bids, ACER deems it necessary to have a definition of 'non-contracted platform bids' for sufficient clarity in the Proposal. Further, ACER is of the opinion that the position of ENTSO-E, the TSOs, BNetzA and CREG would not reflect the wording in accordance with point 8.1.c of Annex I of Regulation (EU) 2019/943. ACER generally shares CREG's concern that, in the absence of sharing agreements, the potential of non-used bids on the balancing capacity platforms would be unnecessarily inaccessible. Yet, in ACER's view this concern can be addressed also with a definition that is in line with point 8.1.c of Annex I of Regulation (EU) 2019/943: TSOs participating in the balancing energy platforms will not be exposed to drawbacks if they sign sharing agreements as control capability providing TSOs and thereby allow other TSOs on the balancing energy platform to access the potential of their non-used balancing energy platform bids. To unleash this potential of non-used bids on the balancing energy platforms, ACER recommends all TSOs on balancing energy platforms to enter into sharing agreements at least as control capability providing TSOs. Therefore, ACER amended the Proposal as indicated in its preliminary position.
- (50) ACER agrees to the TSOs' right to deviate from the RCC's recommendation in accordance with Article 42(3) of Regulation (EU) 2019/943 and understands that the provisions of the Proposal as approved sufficiently allow for such deviation. In accordance with Article 4(5) of the Proposal as approved, TSOs have the right to decide on the use of non-contracted platform bids which the TSOs consider available in their LFC block. In accordance with Article 4(9) of the Proposal as approved, TSOs decide on how to consider the RCCs' recommendation for the cross-zonal use of non-

contracted platform bids. While TSOs may decide to follow the recommendation to use non-contracted platform bids or provide reasons for not considering the available potential of non-contracted platform bids, ACER deems it important for maintaining operational security in a SOR that a double reliance on available non-contracted platform bids is avoided. ACER is of the opinion that the RCC's process for facilitating the cross-zonal use of non-contracted platform bids can be efficiently run if TSOs of an SOR use their right to deviate from the RCC's recommendation under Article 4(9) of the Proposal as approved but it cannot be efficiently run if TSOs of an SOR use their right to deviate from the foreseen consideration of non-contracted platform bids pursuant to Article 4(11) of the Proposal as approved. However, to ensure that TSOs are not limited in their right to decide on the use of non-contracted platform bids, following the AEWG advice, ACER revised Article 4(11) of the Proposal as approved and introduced Article 4(12) of the Proposal as approved to address a case where a TSOs does not consider the availability of non-contracted platform bids, as assessed under Article 4(11) of the Proposal as approved. In case of potentially exaggerated reliance of a TSO on unlikely available non-contracted platform bids TSOs are warned by the RCC and may re-consider their intended use of non-contracted platform bids to avoid operational security risks. Since ACER expects that such occurrences would likely lead to a limited use non-contracted platform bids by most TSOs as a security measure and a general decline of TSO's trust in the efficiency of the RCC's facilitation process, ACER deemed it important to also explicitly mention the required monitoring for these cases under Article 7(3) of the Proposal as approved.

- (51) Following the questions and discussion in the AEWG regarding the recommendation processes in the RCC's facilitation for the cross-zonal use of non-contracted platform bids, ACER would like to clarify its understanding of the process steps under Article 4(8) to (11) of the Proposal as approved. In ACER's view, a recommendation pursuant to Article 4(8) of the Proposal as approved would ideally also inform each relevant TSO about the available volume of non-contracted platform bids, which the relevant TSO of an LFC block may consider without a risk of reduction pursuant to Article 4(10) of the Proposal as approved and about an additional volume of non-contracted platform bids, which would only be available if other relevant TSOs of the SOR decide not to consider the recommended use of non-contracted platform bids. If more than one TSO would like to consider the same additional volume of non-contracted platform bids, the RCC should proportionally consider the TSOs' request and inform the TSOs accordingly pursuant to Article 4(11) of the Proposal as approved. ACER therefore considers that the proportional distribution factors for available non-contracted platform bids should already be considered in the RCC's recommendation pursuant to Article 4(8) of the Proposal as approved, when informing the relevant TSOs of the SOR which volume of non-contracted platform bids is foreseen to be used in which LFC block in the SOR (i.e. the volume of non-contracted platform bids, which would not be reduced pursuant to Article 4(10) of the Proposal as approved).
- (52) How the volume of available non-contracted platform bids is calculated follows in principle Article 4(3)(a) of the Proposal. ACER agrees that this description includes limited details. However, ACER understands that RCCs may assess the availability of

non-contracted platform bids in each LFC block in a similar way as TSOs individually assess the expected availability of non-contracted platform bids in their LFC block. While ACER understands that the timing for the proposed process is limited, ACER understands that the process for the assessment of the availability of non-contracted platform bids is required to be performed on a daily frequency in accordance with point 8.1.a of Annex I of Regulation (EU) 2019/943 and does not share the opinion of TSOs that the defined process could be an unnecessary burden. Therefore, ACER amended the Proposal regarding the process for the assessment of the availability of non-contracted platform bids as indicated in its preliminary position.

(53) ACER made also additional amendments throughout Article 4 of the Proposal, following the consultation with ENTSO-E, the TSOs and the RCCs, in order to clarify the process and the interactions between the TSOs and the RCCs.

6.4.2. On the definition of reliability levels for the assessment of the availability of non-contracted platform bids (Article 3 and 4 of the Proposal)

(54) Article 4 of the Proposal requires the assessment of the availability of non-contracted platform bids to be performed for certain reliability levels, i.e. 99% to 100% in 0.1% steps. ACER understands that ENTSO-E does not have sufficient data at this point to justify the proposed values of these reliability levels, and ACER is also in no position to make this determination without the relevant data. Therefore, in its preliminary position, ACER amended the Proposal to replace these values (99% and 0.1% step) with parameters to be defined later, through an amendment of this methodology. Accordingly, under Article 3(7) of the Proposal as approved, ACER introduced a process in accordance with Article 27 of Regulation (EU) 2019/943, requiring ENTSO-E to submit a proposal for amending this methodology in the future, and in any case before the implementation of this methodology, proposing the concrete values of the specific parameters. ACER suggests these values to be included in an Annex of this methodology in order to limit the scope of necessary changes to the methodology, which may also facilitate their approval process.

(55) In their hearing input, ENTSO-E and the TSOs proposed to keep the reliability levels as defined in the Proposal, since in accordance with Article 18(5)(b) of the EB Regulation TSO may apply individual security levels for the consideration of volumes of non-contracted platform bids for the optimal provision of reserve capacity according to Article 32(1)(c) of the EB Regulation. ACER understands that individual security levels may be applied by TSOs. However, with the submission of the Proposal ENTSO-E did not assess the proposed different reliability levels. For example, a larger amount of assessed reliability levels is expected to increase the complexity of the process, while it is not clarified what different steps of reliability levels would actually be needed and to what extent these could be harmonised or reduced without resulting in major drawbacks for the participating TSOs. Therefore, ACER amended the Proposal as indicated in its preliminary position.

6.4.3. On the RCC involvement in the regional procurement of balancing capacity (Article 5 of the Proposal)

(56) ACER amended the wording of Article 5 of the Proposal to better describe the RCC's tasks related to the information collected from the TSOs and provided to the relevant cross-zonal capacity allocation process, linked to the process described in Article 6 of the Proposal.

6.4.4. On the provision of data regarding limits for exchanging balancing capacity or sharing reserves to the harmonised cross-zonal capacity allocation (Article 6 of the Proposal)

(57) ACER significantly amended Article 6 of the Proposal to align it with the methodology on the harmonised cross-zonal capacity allocation pursuant to Article 38(3) of the EB Regulation. In particular, ACER deleted points (c), (d) and (e) from both paragraphs 1 and 2 of Article 6 of the Proposal, since according to the harmonised cross-zonal capacity allocation methodology, these data are directly provided from the relevant cross-zonal capacity allocation optimisation function to the respective platforms. The harmonised cross-zonal capacity allocation methodology is not approved yet, but its approval is expected to take place together with the one for the present methodology, hence their alignment is important. Moreover, according to Article 37 of Regulation (EU) 2019/943, the present methodology should only include tasks not already covered by the relevant network codes or guidelines. Therefore, ACER considers that first the harmonised cross-zonal capacity allocation methodology should be amended based on the relevant requirements of the EB Regulation, and afterwards the RCC task of the regional procurement of balancing capacity needs to be defined in alignment with the harmonised cross-zonal capacity allocation methodology.

6.4.5. On the monitoring and reporting (Article 7 of the Proposal)

(58) Following the amendments to Article 4 of the Proposal on the assessment of the available non-contracted platform bids, as explained in Section 6.4.1 above, ACER considers that it is important to monitor the identified potential of the available non-contracted platform bids and the use of these bids. Therefore, ACER introduced a new paragraph 4 in Article 7 of the Proposal with the requirement for the RCCs to publish, on a quarterly basis, a report on the potential of the available non-contracted platform bids and the use of these bids as described in Article 4 of the Proposal.

6.4.6. On the implementation timeline (Article 8 of the Proposal)

(59) Paragraph 4 of Article 8 of the Proposal includes a general provision for obliging TSOs to endeavour concluding agreements with third country TSOs for the implementation of this methodology. In its preliminary position, ACER considered that if a third country TSO is to be included in the implementation of this methodology, there should be amendments to it to be developed by TSOs and RCCs, proposed by ENTSO-E and approved by ACER, hence ACER deleted the respective paragraph. In their hearing input, ENTSO-E and the TSOs stated that the deleted provision aims specifically at allowing EU TSOs to conclude bilateral agreements

with third country TSOs to cooperate with third country TSOs as appropriate. In that regard, ENTSO-E and the TSOs explained the relevance of this provision in the first place for TSOs of the Energy Community Contracting Parties only: The transposition of Regulation (EU) 2019/943, of the EB Regulation and the SO Regulation in the Energy Community would mean that all the TSOs of the Energy Community Contracting Parties would have to apply the methodology and, if necessary, to have agreements with the TSOs of the neighbouring EU Member States regarding cross-zonal capacity. Later, ENTSO-E claimed that the deleted provision ensures clarity about the fact that TSOs from third countries can generally enter into bilateral, respectively multilateral, agreements with EU SOR TSOs, and consistency with the third country provisions already approved by ACER in other RCC task methodologies following Article 37(1) of Regulation (EU) 2019/943, on the model of the clause used in ACER Decision No 05/2022 on the definition of SORs⁴. According to ENTSO-E, deleting the provision would therefore create on the one hand unclarity about the possibility of third country TSOs to access certain RCCs services and of EU TSOs to conclude the related arrangements with third country TSOs, on the other hand it would cause inconsistencies with already approved methodologies. According to ENTSO-E, such deletion would have also other consequences, such as potentially hampering the cooperation with third countries within the synchronous area of Continental Europe. First, ACER notes that independently of the inclusion of such a provision in this methodology TSOs already have in principle the freedom to conclude bilateral agreements with third country TSOs in accordance with the current legal framework. Additionally, the inclusion of such a provision in this methodology cannot grant to TSOs rights that are not already provided to them by the current legal framework. Second, as regards TSOs of the Energy Community Contracting Parties, ACER does not consider the provision necessary to allow the transposition of Regulation (EU) 2019/943, of the EB Regulation and the SO Regulation in the Energy Community. Indeed, the implementation of term and conditions or methodologies adopted under EU Regulations by the Contracting Parties of the Energy Community and their TSOs is addressed in a more general and overarching legal framework, including the Decision of the Ministerial Council of the Energy Community No D/2022/03/MC-EnG of 15 December 2022. Moreover, ACER considers that the provision is too general and too vague to provide legal clarity on how the implications of the bilateral agreements with the TSOs of the Contracting Parties of the Energy Community may affect the implementation of the methodology. Third, ACER considers that the geographical scope of the RCC task described in this methodology is the respective SOR, and ACER understands that there is no legal basis for extending the geographical scope of this task outside the respective SOR, i.e. to include also a third country TSO. ACER acknowledges and supports the intention of the TSOs to conclude with the third country TSOs not bound by Regulation (EU) 2019/943 agreements setting the basis for their cooperation concerning secure system operation and setting out arrangements for the compliance of the third country TSOs with the

⁴ Article 5 of Annex I.

obligations set in Regulation (EU) 2019/943. However, ACER understands that the particular RCC task described in this methodology is not about system operation (although it pursues the general objective to maintain operational security in the most cost effective manner), but it relates to the support of TSOs in a SOR, in accordance with the requirements of point 8 of Annex I of Regulation (EU) 2019/943, for decreasing costs from the required procurement of balancing capacity. Hence extending the scope of this methodology to the support of TSOs which are not within a SOR lacks legal basis. Therefore, ACER amended the Proposal as indicated in its preliminary position.

6.4.7. On other considerations

- (60) In their hearing input, ENTSO-E and the TSOs asked ACER to also consider specific balancing capacity products in the Proposal. ACER understands that specific products cannot be considered for the facilitation of the regional procurement of balancing capacity. Therefore, ACER did not amend the Proposal with respect to this comment.
- (61) In their hearing input, ENTSO-E and the TSOs stated that point (5)(a)(ii) of ACER's preliminary position seems to limit the facilitation by an RCC to the form of a recommendation to the TSOs and clarified that ENTSO-E and the TSOs consider the RCC's facilitation being broader. While ACER agrees with ENTSO-E and the TSOs that the RCC's facilitation of the regional procurement of balancing capacity includes more than just the submission of recommendation, ACER does not share the view that ACER's preliminary position limits the RCC's task as claimed by ENTSO-E and the TSOs. Therefore, ACER amended the Proposal as indicated in its preliminary position.

7. CONCLUSION

- (62) For all the above reasons, ACER considers the Proposal in line with the requirements of Regulation (EU) 2019/943, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.
- (63) Therefore, ACER approves the Proposal subject to the necessary amendments and editorial changes. 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 Regional Coordination Centre Regional Procurement of Balancing Capacity Methodology according to Article 37(1)(k) of Regulation (EU) 2019/943 is adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to ENTSO-E.

Done at Ljubljana, on 19 July 2023.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – RCC Regional Procurement of Balancing Capacity Methodology

Annex Ia – RCC Regional Procurement of Balancing Capacity Methodology – with track changes - (For information only)

Annex II – Evaluation of responses to the public consultation on the harmonised cross-zonal capacity allocation methodology, the methodology for the regional sizing of reserve and the methodology for the regional procurement of balancing capacity - (For information only)

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.