

**REQUEST FOR AMENDMENT BY**  
THE  
REGIONAL REGULATORY AUTHORITIES AGREED AT THE (NORDIC) ENERGY REGIONAL  
REGULATORS' FORUM

ON THE  
**PROPOSAL FOR THE ESTABLISHMENT OF A REGIONAL COORDINATION CENTRE**  
FOR THE NORDIC SYSTEM OPERATION REGION AND NORWAY AND SUBMITTED JOINTLY BY  
ENERGINET, FINGRID, KRAFTNÄT ÅLAND, STATNETT, SVENSKA KRAFTNÄT

8 December 2020

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## I. Introduction and legal context

Article 35(1) of the Regulation (EU) 2019/943 European Parliament and of the Council on the internal Market for electricity (EIREG) requires transmission system operators of a system operation region (SOR) to submit a proposal for establishment of the regional coordinator centres (RCC).

The transmission system operators of SOR Nordic, i.e. Energinet, Fingrid, Svenska Kraftnät, together with the transmission system operators from Norway and Åland, i.e. Statnett and Kratnätt Åland (these five transmission system operators referred to hereinafter as the TSOs), have submitted a proposal for establishment of the Nordic SOR RCC to the regulatory authorities of Denmark, Finland, Sweden, and Norway and Åland (the RAs).

This document elaborates an understanding of the regulatory authorities of Denmark, Finland, and Sweden (the RAs of the Nordic SOR) and the Regulatory Authorities of Norway and Åland.

The Proposal was received by the last relevant RA on 16 July 2020.

The RAs of the Nordic SOR shall review and approve the proposal, cf. EIREG Article 35(1) and Article 62(1)(a) in Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (EIDir).

Following from Article 6(10) 2<sup>nd</sup> subparagraph of 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 Regulators (ACERReg.) the relevant RAs have six months from the receipt of the proposal to make a decision.

The RAs reached an agreement in the (Nordic) ERRF on 8 December 2020 to request an amendment to the Proposal.

## II. The TSOs' Proposal

The TSOs have submitted the Proposal to fulfil the obligation following from EIREG Article 35(1).

The RAs have discussed the proposal and asked clarifying questions on the proposal to the TSOs at meetings on 8 September and 23 October 2020.

The Danish Utility Regulator has consulted the Danish Business Authority on certain aspects of the Proposal related to the Danish Companies Act. The RAs have taken the consultation response received from the Danish Business authority on 4 November 2020 into consideration in their assessment of the Proposal.

## III. Agreed Regulatory Authorities' Position

The RAs have reached an agreement that the proposal cannot be approved and therefore request the TSOs to amend the Proposal taking into consideration the comments below.

## IV. Requests for changes to the Proposal

*The role of Statnett, cf. sections 1.10, 1.11, 3.2.5 in the Proposal*

If the national circumstances change in Norway after the approval and raise legal obstacles for Statnett's participation, this cannot be seen as something that Statnett can remedy with certainty or in a short time span. Thus, to avoid unclear circumstances and legal outcomes that could, in effect, result in a standstill for

RCC operations, there has to be a clear clause allowing for an exclusion of Statnett with automatic and immediate effect if any change of law or legal act should restrict in any way Statnett's participation as approved.

*Legal form and purpose of the Nordic RCC, cf. section 4.1.1.2 of the Proposal*

Section 4.1.1.2 in the Proposal can be read in a way that seems to imply that TSO tasks given in the applicable law take precedence over the tasks of the RCC tasks under EIREG.

To remove the uncertainty that could result from such a reading, the RAs request the TSOs to amend the proposal by deleting the first part of the first sentence in Section 4.1.1.2 (roughly the first 1½ lines). As a result of such a deletion, Section 4.1.1.2 would start *"The purpose of the Nordic RCC will be to carry out..."*

RAs cannot see the relevance of subsection "a" in Section 4.1.1.2. This subsection seems to build on Recitals 53 and 55 in EIREG. There are other Recitals in EIREG relevant to the RCC (Recitals 52, 54 and 56-59). Moreover Article 35(5) in EIREG reads

*Regional coordination centres shall complement the role of transmission system operators by performing the tasks of regional relevance assigned to them in accordance with Article 37.*

The RAs therefore request the TSOs to delete subsection "a" in Section 4.1.1.2.

*The possibility of the RCC to delegate tasks, cf. section 4.2.2 in the proposal*

Section 4.2.2 in the Proposal deals with a delegation of tasks that "[t]he Nordic is considering". Taking into account that the RCC is not established yet, the RCC as such cannot consider anything at the moment.

The RAs therefore request a deletion of Section 4.2.2.

The RAs note that article 45 in EIREG reads

*Regional coordination centres shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Regulation and carrying out their tasks independently and impartially.*

If the RCC were to consider delegating some of its tasks following its establishment, the RAs note the following: First, a delegation of task cannot entail a delegation of the obligations of the RCC, the fulfillment of which will be under regulatory oversight by the RAs, cf. Article 62 (1)(f) in EIDiR. Second, a delegation of tasks cannot result in a situation whereby the RCC will not be equipped with all human, technical, physical and financial resources necessary for fulfilling its obligations under EIREG. Third, a delegation cannot result in a situation where the RCC cannot carry out its tasks independently and impartially.

*The Cooperation Committee, cf. section 4.2.5 of the Proposal*

The RAs agree that cooperation between TSOs and RCC is needed and foreseen by the EIReg.

The RAs note that EIREG Article 35(1)(e) stipulates that the Proposal has to contain a description of cooperative processes in accordance with EIREG Article 38.

Moreover, the RAs note that the cooperation processes have to comply with the requirements on the independence of the RCC following from Articles 35(4) and 45 in EIREG.

Further, the RAs note that a detailed description of the cooperative processes as is now the case in the Proposal will limit the possibility to amend these processes without prior regulatory approval; and amendments might be needed due to challenges unforeseen at the time of the submission of the Proposal.

The RAs consider that Section 4.2.5 of the Proposal establishing a Cooperation Committee as a structure with pre-defined members seems to go beyond the scope of the co-operative processes to be described in the Proposal in accordance with EIREG Article 35(1)(e) and can easily go beyond what is necessary in terms of independence of the RCC.

The RAs request the TSOs to take the considerations above into consideration when revising the Proposal.

*Procedure for adoption and review of coordinated actions and recommendations, cf. Section 7.3.*

Notwithstanding Article 35(5) in EIREG which gives the TSOs the obligation to ensure a secure, reliable and efficient electricity system in accordance with Article 40(1)(d) in EIDir, RAs are of the opinion that Section 7.3 of the proposal needs some amendments to be compliant with the procedure in EIREG article 42 for the adoption and revision of coordinated actions and recommendations.

In this respect, RAs note that the main rule in EIREG Article 42(2) is that TSOs implement those coordinated actions. Section 7.3 of the Proposal could be read as having the opposite starting point.

In order, thus, to comply with Article 42(2) in EIREG, the RAs request the TSOs to amend the Proposal to make sure that the following follows directly from the Proposal or that the Proposal does not contain wording going against these requirements:

1. TSOs shall implement the coordinated actions except where the implementation of the coordinated actions would result in a violation of the operational security limits, cf. Article 42(2), 1<sup>st</sup> subparagraph in EIREG
2. If a TSO does not implement a coordinated action, it shall transparently report the detailed reasons to the RCC and the TSOs of the system operation region immediately. Such a reporting, and the assessment of the TSO leading to its decision not to implement the coordinated Action will *de facto* presuppose the review and confirmation of the Coordinated Action that is referred to in the Proposal. However, such a review and conformation will happen after the Coordinated Action is issued and not before.
3. In case of a TSO refusal to implement an action, the RCC shall assess the impact of that refusal on the other TSOs of the system operation region and may issue a different set of coordinated actions but RCC is not required change the coordinated actions.
4. A TSO request for a review shall not suspend the action except where the implementation of the coordinated action would result in a violation of the operational security limits

Furthermore, the RAs find it unclear what is meant in the Proposal when it reads that there exists a possibility of coordinated actions becoming unavailable. RAs suggest a deletion of this part of the proposal.

*Liability, cf. Section 8 of the Proposal*

When assessing the Proposal, the RAs have taken into consideration the information provided by TSOs following the submission of the Proposal.

To add clarity to the Proposal, the RAs therefore request the TSOs to specify Section 8 in the proposal in accordance with Danish tort law (*erstatningsret*) drawing on the information provided by the TSOs following the submission of the Proposal.

The RAs request the TSOs to take into account the following when making these specifications: The RAs find that the so-called knock-for-knock principle (KFK) in the Proposal seems a reasonable arrangement for liability between the Nordic TSOs and the RCC. Besides performing mandatory tasks for the Nordic CCR,

there are also mandatory tasks that the RCC will have to perform vis-à-vis other RCCs. If possible, the liability arrangements related to these tasks could preferably also be designed following the KFK.

When it comes to non-mandatory tasks (i.e. when the Nordic RCC would voluntarily “sell” its services) for the benefit of other TSOs or RCCs, this should only be allowed if the KFK principle is accepted by all parties or if a sufficient insurance has been taken out to cover potential losses from these activities (the costs for this insurance should be fully covered by the fees charged to these “customers”). The RAs thus advise strongly against a setup where Nordic tariff customers would have to pay for liability claims or insurance costs that derive from RCC “business” in delivering services outside of the Nordic region.

The RAs request the TSOs to build into the Proposal a reporting scheme where the KFK applied between Nordic TSOs and the Nordic RCC could be accounted for and presented regularly to RAs in order to make visible if there would emerge a situation where the RCC will have to accept many and repeated “knocks” from one and the same TSO, while the others perform according to the anticipated standard

#### *Rules of Procedure, cf. Annex 6.2*

It follows from the Rules of Procedure that the Shareholders Agreement will prevail in case of inconsistency between the Shareholders Agreement and the Rules of Procedure.

The Rules of Procedure are submitted for regulatory approval whereas the Shareholders Agreement are submitted for the RAs for information purposes only. Still, since the Rules of Procedure have been submitted for regulatory approval, the Rules of Procedure will be binding for the RCC unless an amendment to the Rules of Procedure has been approved by the RAs of the Nordic SOR.

Consequently, the RAs ask the TSOs to amend the Proposal in order to ensure that the Shareholders Agreement contains no provisions that do not comply with the elements in the Proposal, including its annexes, that have been submitted for regulatory approval, i.a. voting rules.

RAs note that the implementation of elements in the Proposal that have not been submitted for regulatory approval, e.g. the Shareholders Agreement, might be subject to regulatory oversight in accordance with Article 62(1)(f) in EDir.

## **V. Conclusion**

The RAs have assessed, consulted, closely cooperated and coordinated to reach the agreement that they cannot approve the Proposal.

According to ACERReg Article 5(6), the RAs of the Nordic SOR hereby request the TSOs to amend the Proposal and to submit a revised proposal for regulatory review and approval. The RAs 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 RAs of the Nordic SOR. This assessment builds on technical substance matter of the Proposal as well as the fact that the TSOs are to establish the Regional Coordination Centre to complement their tasks, cf. Article 35(5) in EIREG.

The amendments shall take into account the RAs’ assessment and requests above. The amended Proposal shall be submitted by all TSOs no later than two months after receiving the last RA of the Nordic SOR’s request for amendment. If the TSOs do not provide the revised proposal by the expiration of the two-month deadline, the RAs will take the necessary steps towards coordinated regulatory decisions based on the information at hand.