

Case No: 89021  
Document No: 1365324  
Decision No: 065/23/COL

## EFTA SURVEILLANCE AUTHORITY DECISION

of 24 April 2023

on the determination of capacity calculation regions in accordance with Article 15(1) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to:

the Agreement on the European Economic Area<sup>1</sup> ('the EEA Agreement'), in particular to Article 24 and Annex IV thereof,

the Act referred to at point 47 of Annex IV to the EEA Agreement:

*Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators ('the ACER Regulation'),<sup>2</sup> and in particular Article 8 thereof, as adapted to the EEA Agreement,<sup>3</sup>*

the procedure referred to at point 47(d) of Annex IV to the EEA Agreement,

the Act referred to at point 49 of Annex IV to the EEA Agreement:

*Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management ('the CACM Regulation'),<sup>4</sup> and in particular Articles 9(5), 9(6)(b) and 9(11) as well as Article 15 thereof, as adapted to the EEA Agreement,<sup>5</sup>*

Whereas:

### 1 Introduction

- (1) The CACM Regulation defines capacity calculation regions ('CCRs') as geographic areas in which coordinated capacity calculation is applied.<sup>6</sup> Article 15(1) of the CACM Regulation requires all transmission system operators ('TSOs') to jointly develop a common proposal regarding the determination of CCRs.

<sup>1</sup> OJ L 1, 3.1.1994, p. 3.

<sup>2</sup> OJ L 211, 14.8.2009, p. 1.

<sup>3</sup> EEA Joint Committee Decision No. 93/2017 of 5 May 2017.

<sup>4</sup> OJ L197, 25.7.2015, p. 24.

<sup>5</sup> EEA Joint Committee Decision No. 204/2020 of 11 December 2020.

<sup>6</sup> Article 2(3) of the CACM Regulation.

- (2) Norway is part of the internal energy market through the EEA Agreement. The objective of the EEA Agreement is to create a homogenous European Economic Area ('EEA'). Relevant EU legislation for the internal energy market is incorporated into the EEA Agreement so that it applies throughout the whole EEA, ensuring uniform application of laws relating to this market and thus ensuring a level playing field throughout the EEA. Upon incorporation of the EU legislation into the EEA Agreement, Norway has the obligation to implement the energy *acquis* covered by these acts.
- (3) Following the incorporation of the CACM Regulation into the EEA Agreement by Decision of the EEA Joint Committee No. 204/2020, the CACM Regulation was approved by the Norwegian Parliament in June 2021 and thus was made binding in the internal legal order in Norway with entry into force on 1 August 2021. The Norwegian bidding zone borders therefore need to be allocated to the relevant CCRs, namely the CCR Nordic and CCR Hansa.
- (4) The present Decision determines the CCRs methodology for Norway. It follows from the request of the Norwegian regulatory authority ('NVE-RME') that the EFTA Surveillance Authority ('the Authority') adopts a decision on the proposal for the determination of the CCRs submitted by the European Network of Transmission System Operators for Electricity ('ENTSO-E') on behalf of the Norwegian TSO, Statnett, to NVE-RME ('the Proposal'). The present Decision includes the following annex:

Annex I      Determining the CCRs methodology for Norway, as amended and approved by the EFTA Surveillance Authority (Document No. 1366718).

For information purposes only, the Authority's Decision is accompanied by a text providing a track-changed version of the Proposal, reflecting the Authority's amendments (Document No. 1365453).

## 2 PROCEDURE

- (5) On 13 October 2022, ENTSO-E, on behalf of Statnett, submitted the Proposal to NVE-RME for the determination of the CCRs methodology.
- (6) By letter dated 18 November 2022 (Documents No. 1329747 and 1329748), NVE-RME requested the Authority to decide on the Proposal in accordance with point 47 of Annex IV of the EEA Agreement, in particular the adaptations set out in paragraph (d) thereof for the application of Article 8(1)(b) of the ACER Regulation, as incorporated into the EEA Agreement by Decision of the EEA Joint Committee No. 93/2017, and Article 9(11) of the CACM Regulation, as incorporated into the EEA Agreement by Decision of the EEA Joint Committee No. 204/2020 and having regard in particular to paragraph (9) of the preamble thereof.
- (7) On 22 November 2022, the Authority requested the European Agency for the Cooperation of Energy Regulators ('ACER') to prepare a draft for the Authority's decision on the Proposal in accordance with point 47(d)(iv) of Annex IV to the EEA Agreement (Document No. 1330020).
- (8) On 31 March 2023, ACER decided on the CCRs methodology for the EU.<sup>7</sup> ACER's decision followed the receipt, on 13 October 2022, from ENTSO-E on

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<sup>7</sup> ACER Decision No. 08/2023 of 31 March 2023 on the amendment to the determination of capacity calculation regions. The Decision is available under this link:

behalf of all TSOs in the EU of a proposal of amendments to ACER Decision No. 04/2021 of 7 May 2021,<sup>8</sup> which determined the CCRs methodology for the EU ('the EU Proposal'). The content of the EU Proposal and the Proposal received by the Authority from NVE-RME is aligned.

- (9) On 3 April 2023, ACER provided the Authority with a draft for the Authority's decision on the Proposal, in accordance with point 47(d)(iv) of Annex IV to the EEA Agreement (Document No. 1364864). The Authority exchanged with ACER for the preparation of its decision based on the draft received from ACER.
- (10) On 5 April 2023, the Authority invited NVE-RME to express its views on the Authority's draft decision, in accordance with point 47(d)(iv) of Annex IV to the EEA Agreement (Document No. 1365479).
- (11) On 14 April 2023, the Authority shared with NVE-RME an updated draft decision, with minor edits compared to the version sent on 5 April 2023, and invited NVE-RME to express its views on the updated draft decision (Document No. 1366891).
- (12) On 18 April 2023, NVE-RME shared its views on the Authority's draft decision (Document No. 1367352). These views are summarised in Section 5 of this Decision.
- (13) This Decision is issued following the Authority's review and amendment of the Proposal, in cooperation with ACER. Annex I to this Decision determines the CCRs methodology for Norway, pursuant to Article 15(1) of the CACM Regulation, as amended and approved by the Authority.
- (14) The Authority's Decision determines the CCRs methodology solely for Norway.

### **3 THE AUTHORITY'S COMPETENCE TO DECIDE ON THE PROPOSAL**

- (15) In accordance with point 47(d)(i) of Annex IV to the EEA Agreement, adapting Article 8 of the ACER Regulation, in cases involving one or more EFTA States, the Authority shall adopt a decision addressed to the national regulatory authorities of the concerned EFTA State(s), where ACER is competent on the EU side.
- (16) On 18 November 2022, NVE-RME referred the Proposal to the Authority for a decision in accordance with point 47(d)(i) of Annex IV to the EEA Agreement, adapting Article 8(1)(b) of ACER Regulation.
- (17) The Proposal's content falls within the scope of Article 15 of the CACM Regulation. The CACM Regulation was incorporated at point 49 of Annex IV to the EEA Agreement by Decision of the EEA Joint Committee No. 204/2020 and

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[https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions/ACER\\_Decision\\_08-2023\\_Amendment\\_of\\_CCRs.pdf](https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions/ACER_Decision_08-2023_Amendment_of_CCRs.pdf)

Annex III to ACER Decision No. 08/2023, which provides the consolidated version of the CCRs methodology for the EU is available under this link:

[https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions\\_annex/ACER\\_Decision\\_08-2023\\_Amendment\\_of\\_CCRs\\_Annex\\_III.pdf](https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions_annex/ACER_Decision_08-2023_Amendment_of_CCRs_Annex_III.pdf)

<sup>8</sup> ACER Decision No. 04/2021 of 7 May 2021 on the determination of capacity calculation regions. The Decision is available under this link:

[https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions/ACER%20Decision%2004-2021%20on%20the%20CCR\\_0.pdf](https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions/ACER%20Decision%2004-2021%20on%20the%20CCR_0.pdf)

Annex I to ACER Decision No. 04/2021 is available under this link:

[https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions\\_annex/ACER%20Decision%2004-2021%20on%20the%20CCR%20-%20Annex%20I\\_0.pdf](https://acer.europa.eu/sites/default/files/documents/Individual%20Decisions_annex/ACER%20Decision%2004-2021%20on%20the%20CCR%20-%20Annex%20I_0.pdf)

made binding in the internal legal order in Norway with entry into force on 1 August 2021.

- (18) Following the incorporation of the CACM Regulation into the EEA Agreement, the CCRs methodology involves one EFTA State, namely Norway. In the EU, the CCRs methodology has been determined by ACER through binding decisions.
- (19) Consequently, it is the Authority's competence to adopt a decision addressed to NVE-RME to determine the CCRs methodology for Norway.

#### **4 SUMMARY OF THE PROPOSAL**

- (20) The Proposal includes a 'Whereas' section and the following titles:

Title 1	General provisions.
Title 2	Capacity Calculation Regions.
Title 3	Final provisions.

- (21) The Proposal includes an Appendix with the maps of the proposed CCRs.

#### **5 OBSERVATIONS RECEIVED BY THE AUTHORITY**

- (22) NVE-RME indicated having no remarks to the Authority's draft decision, found that the content of ESA's draft decision falls within the scope of Article 15(1) of the CACM Regulation and that the CACM Regulation provides the relevant framework for the determination of the CCRs for Norway.
- (23) It noted that, by coordinating capacity calculation across bidding zone borders with high interdependencies, cross-zonal capacity can be optimised across the region, making better use of the transmission infrastructure while ensuring operational security.
- (24) It also noted that the inclusion of the Norwegian bidding zone borders in the CCRs Nordic and Hansa would, subject to NVE-RME's further approval of further developed and coordinated relevant regional methodologies pursuant to the CACM Regulation, allow regional coordination and optimal use of transmission infrastructure.
- (25) NVE-RME further mentioned that, following the Authority's Decision, NVE-RME shall take the necessary measures to ensure implementation of the decision in Norway, in accordance with Norwegian law.

#### **6 ASSESSMENT OF THE PROPOSAL**

##### **6.1 Legal requirements**

- (26) Article 15(1) of the CACM Regulation requires all TSOs to jointly develop a common proposal regarding the determination of CCRs and the proposal shall be subject to consultation in accordance with Article 12 of the CACM Regulation.
- (27) According to Article 15(2) of the CACM Regulation, each bidding zone border shall be assigned to one CCR and TSOs shall be assigned to all CCRs in which they have bidding zone borders.
- (28) According to Article 15(3) of the CACM Regulation, CCRs applying flow-based capacity calculation shall be merged into one CCR if their transmission systems are directly linked to each other, they participate in the same single day-ahead or

intraday coupling area and merging them is more efficient than keeping them separate. The competent regulatory authorities may request a joint cost-benefit analysis from the TSOs concerned to assess the efficiency of the merger.

- (29) Pursuant to Article 9(9) of the CACM Regulation, all proposals for terms and conditions or methodologies, i.e. including the proposal referred to in Article 15(1) of that Regulation, shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of the CACM Regulation. These objectives are listed in Article 3 of the CACM Regulation.
- (30) Article 1 of the EEA Agreement defines the aim of the EEA Agreement as achieving a homogeneous EEA based on common rules and equal conditions of competition.
- (31) The Decisions of the EEA Joint Committee No. 93/2017 and No. 204/2020 set up a mechanism catering for homogenous interpretation and application of the ACER Regulation and the CACM Regulation throughout the EEA. Under these acts, the Authority is the competent entity to issue binding decisions *vis-à-vis* the concerned national regulatory authorities of the EFTA States in cases involving one or more EFTA State(s), where ACER is competent on the EU side. The decisions of the Authority shall be based on drafts prepared by ACER. The Authority shall invite the national regulatory authorities of the EFTA States to express their views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.

## 6.2 The Proposal

- (32) As explained above in Section 2, the Proposal is aligned with the EU Proposal.
- (33) ACER, when determining the CCRs methodology in the EU, assessed in detail the conformity with the applicable legal requirements. ACER held numerous dialogues and exchanges with the EU TSOs and national regulatory authorities of the EU Member States. Statnett and NVE-RME also took part in the dialogues and exchanges with ACER. The dialogues and exchanges are documented in detail in ACER Decisions No. 04/2021 and No. 08/2023.
- (34) NVE-RME, when invited by the Authority to express its view on the Authority's draft decision, indicated of having no remarks to the Authority's draft decision.
- (35) As NVE-RME outlined, the Authority considers that the CACM Regulation provides the relevant framework for the determination of the CCRs methodology for Norway.
- (36) The Proposal fulfils the requirements of Article 9(6)(b) and Article 15(1) of the CACM Regulation, as all TSOs jointly developed the Proposal and submitted it for approval to ACER, for EU TSOs, and to NVE-RME for the Norwegian TSO, which referred the Proposal to the Authority for its decision.
- (37) The Proposal assigns the Norwegian bidding zone border to specific CCRs and extends the list of TSOs in the concerned CCRs where relevant. The Proposal therefore fulfils the requirements of Article 15(2) of the CACM Regulation.
- (38) The EU Proposal was publicly consulted via ENTSO-E's web-based consultation between 19 August 2020 and 19 September 2020 (with regard to the methodology determined for the EU by ACER Decision No. 04/2021) and 10 November 2021 and 10 December 2021 (with regard to the methodology determined for the EU by ACER Decision No. 08/2023). Statnett is a member of

ENTSO-E. Therefore, the Authority considers that the Proposal meets the requirements of Article 12 of the CACM Regulation.

- (39) The Proposal meets the requirements of Article 9(9) on the description of the expected impact on the objectives of the CACM Regulation and the inclusion of a proposed timescale for implementation. Recitals (12) to (23) of the Proposal describe the expected impact of the Proposal on the objectives listed in Article 3 of the CACM Regulation. Article 11 of the Proposal specifies the timeline for its implementation. The Authority has introduced editorial amendments to Article 11 of the Proposal to reflect specificities under the EEA Agreement, as described below.
- (40) In line with the objective of the EEA Agreement, the Proposal, as amended by the Authority, achieves a homogenous approach with the CCRs methodology determined by ACER for the EU in its Decisions No. 04/2021 and No. 08/2023.

### **6.3 The Authority's amendments**

- (41) This section outlines the Authority's amendments to the Proposal, taking into account the legal requirements (see section 6.1) and NVE-RME's views (see section 5).
- (42) The Authority has introduced several editorial amendments to improve the wording, clarity and readability of the Proposal, while preserving the intended meaning of the content. The Authority has introduced editorial amendments under the 'Whereas' section, Article 1 and Article 2, in order to improve the clarity of the methodology.
- (43) The Authority has removed several recitals in the 'Whereas' section. The removed recitals relate mainly to the process for the determination of the CCRs methodology in the EU, which the Authority does not consider to be relevant for this Decision. The Authority has amended recital (10) to better reflect the legislative process on how the CACM Regulation entered into force in Norway.
- (44) The Authority has also amended the 'Whereas' section and Article 2 of the Proposal to reflect the legal framework applicable in Norway.
- (45) The Authority has introduced amendments to Article 11 of the Proposal to reflect the procedure set out in point 47 of Annex IV of the EEA Agreement required for the determination of the CCRs methodology for Norway.
- (46) The Authority also amended recital (1) and Article 12 of the Proposal to reflect the application of this Decision to Norway. Specifically, the Authority amended Article 12 of the Proposal to align the procedure for future assessments involving Norway with the procedure provided by points 47 and 49 of Annex IV to the EEA Agreement.
- (47) The Authority, addressing its decision to NVE-RME, has deleted the reference to the submitting TSOs in recital (24) of the Proposal.

## **7 CONCLUSION**

- (48) For the above reasons, the Authority considers that the amendments detailed in section 6 are necessary to ensure that the Proposal is in line with the requirements and the objectives of the CACM Regulation, as well as to improve the editorial quality.

- (49) Therefore, the Authority approves the Proposal subject to the necessary substantive and editorial amendments. Annex I to this Decision sets out the determination of the CCRs methodology, as amended and approved by the Authority.

HAS ADOPTED THIS DECISION:

1. This Decision applies to Norway.
2. The determination of the capacity calculation regions methodology pursuant to Article 15(1) of the CACM Regulation is approved as set out in Annex I to this Decision. Annex I forms an integral part of this Decision.
3. This Decision is addressed to NVE-RME.
4. This Decision enters into force upon notification to NVE-RME.
5. This Decision is authentic in the English language.

Done at Brussels,

For the EFTA Surveillance Authority,

Arne Røksund  
President

Stefan Barriga  
College Member

Árni Páll Árnason  
Responsible College Member

Melpo-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

*This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.*

Annex: Annex I to Decision No. 065/2023/COL determining the CCRs methodology for Norway, as amended and approved by the EFTA Surveillance Authority (Document No. 1366718)