

**POSITION PAPER OF THE BALTIC NATIONAL
REGULATORY AUTHORITIES
ON
THE AMENDED BALTIC TRANSMISSION SYSTEM
OPERATORS' REQUEST FOR DEROGATION FROM
ARTICLE 53(1) OF COMMISSION REGULATION (EU)
2017/2195 OF 23 NOVEMBER 2017 ESTABLISHING A
GUIDELINE ON ELECTRICITY BALANCING**

1 December 2020

1. INTRODUCTION

This document elaborates an agreement between Baltic National Regulatory Authorities¹ (NRAs) of 1 December 2020 on the Baltic Transmission System Operators' (TSOs) request for derogation from Article 53(1) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (EB GL) (Derogation request).

Given that according to Article 5(4) h) of the EB GL the Derogation request should be approvable by each NRA, this agreement is intended to constitute the basis on which NRAs will subsequently issue a reasoned decision concerning the Derogation request.

2. LEGAL CONTEXT

The legal provisions relevant to the submission of the Derogation requests and granting the derogation from Article 53(1) of EB GL, and NRAs agreement can be found in Articles 3, 5(3) n), 5(4) h), 6(1), Article 53(1) and 62 of the EB GL.

Article 3

1. This Regulation aims at:

- (a) fostering effective competition, non-discrimination and transparency in balancing markets;
- (b) enhancing efficiency of balancing as well as efficiency of European and national balancing markets;
- (c) integrating balancing markets and promoting the possibilities for exchanges of balancing services while contributing to operational security;
- (d) contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union while facilitating the efficient and consistent functioning of day-ahead, intraday and balancing markets;
- (e) ensuring that the procurement of balancing services is fair, objective, transparent and market-based, avoids undue barriers to entry for new entrants, fosters the liquidity of balancing markets while preventing undue distortions within the internal market in electricity;
- (f) facilitating the participation of demand response including aggregation facilities and energy storage while ensuring they compete with other balancing services at a level playing field and, where necessary, act independently when serving a single demand facility;
- (g) facilitating the participation of renewable energy sources and support the achievement of the European Union target for the penetration of renewable generation.

2. When applying this Regulation, Member States, relevant regulatory authorities, and system operators shall:

- (a) apply the principles of proportionality and non-discrimination;
- (b) ensure transparency;
- (c) apply the principle of optimisation between the highest overall efficiency and lowest total costs for all parties involved;
- (d) ensure that TSOs make use of market-based mechanisms, as far as possible, in order to ensure network security and stability;

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- (e) ensure that the development of the forward, day-ahead and intraday markets is not compromised;
- (f) respect the responsibility assigned to the relevant TSO in order to ensure system security, including as required by national legislation;
- (g) consult with relevant DSOs and take account of potential impacts on their system; (h) take into consideration agreed European standards and technical specifications.

Article 5(3) n)

3. The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities of the concerned region:

[..]

(n) the exemption, at synchronous area level, to the harmonisation of the imbalance settlement periods pursuant to Article 53(2).

Article 5(4) h)

4. The proposals for the following terms and conditions or methodologies shall be subject to approval by each regulatory authority of each concerned Member State on a case-by-case basis:

[..]

(h) the derogations to one or more provisions of this Regulation pursuant to Article 62(2).

Article 6(1)

1. Where one or several regulatory authorities in accordance with Article 37 of Directive 2009/72/EC require an amendment in order to approve the terms and conditions or methodologies submitted in accordance with paragraphs 2, 3 and 4 of Article 5, the relevant TSOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the relevant regulatory authorities. The relevant regulatory authorities shall decide on the amended terms and conditions or methodologies within two months following their submission.

Article 53(1)

1. By three years after the entry into force of this Regulation, all TSOs shall apply the imbalance settlement period of 15 minutes in all scheduling areas while ensuring that all boundaries of market time unit shall coincide with boundaries of the imbalance settlement period.

Article 62

1. A regulatory authority in accordance with Article 37 of Directive 2009/72/EC may, at the request of a TSO or at its own initiative, grant the relevant TSOs a derogation from one or more provisions of this Regulation in accordance with paragraphs 2 to 12.
2. A TSO may request a derogation from the following requirements:
 - (a) the deadlines by which a TSO shall use the European platforms pursuant to Articles 19(5), 20(6), 21(6) and 22(5);
 - (b) the definition of the integrated scheduling process gate closure time in a central dispatching model pursuant to Article 24(5) and the possibility to change the integrated scheduling process bids pursuant to Article 24(6);
 - (c) the maximum volume of cross-zonal capacity allocated on a market-based process pursuant to Article 41(2) or a process based an economic efficiency analysis pursuant to Article 42(2);
 - (d) the harmonisation of the imbalance settlement period in Article 53(1);
 - (e) the implementation of the requirements pursuant to Articles 45, 46, 47, 48, 49, 50, 51, 54, 55, 56 and 57.

3. The derogation process shall be transparent, non-discriminatory, non-biased, well documented and based on a reasoned request.
4. TSOs shall file a written request for derogation to the relevant regulatory authority at the latest six months prior to the day of application of the provisions from which the derogation is requested.
5. The request for derogation shall include the following information:
 - (a) the provisions from which a derogation is requested;
 - (b) the requested derogation period;
 - (c) a detailed plan and timeline specifying how to address and ensure the implementation of the concerned provisions of this Regulation after expiration of the derogation period;
 - (d) an assessment of the consequences of requested derogation on adjacent markets;
 - (e) an assessment of the possible risks for the integration of balancing markets across Europe caused by the requested derogation.
6. The relevant regulatory authority shall adopt a decision concerning any request for derogation within six months from the day after it receives the request. That time limit may be extended by three months before its expiry where the relevant regulatory authority requires further information from the TSO requesting the derogation. The additional period shall begin when the complete information has been received.
7. The TSO requesting the derogation shall submit any additional information requested by the relevant regulatory authority within two months of such request. If the TSO does not supply the requested information within that time limit, the request for a derogation shall be deemed withdrawn unless, before its expiry, alternatively:
 - (a) the relevant regulatory authority decides to provide an extension;
 - (b) the TSO informs the relevant regulatory authority by means of a reasoned submission that the request for a derogation is complete.
8. When assessing the request for derogation or before granting a derogation at its own initiative, the relevant regulatory authority shall consider the following aspects:
 - (a) the difficulties related to the implementation of the concerned provision or provisions;
 - (b) the risks and the implications of the concerned provision or provisions, in terms of operational security;
 - (c) the actions taken to facilitate the implementation of the concerned provision or provisions;
 - (d) the impacts of non-implementation of the concerned provision or provisions, in terms of non-discrimination and competition with other European market participants, in particular as regards demand response and renewable energy sources;
 - (e) the impacts on overall economic efficiency and smart grid infrastructure;
 - (f) the impacts on other scheduling areas and overall consequences on the European market integration process.
9. The relevant regulatory authority shall issue a reasoned decision concerning a request for a derogation or a derogation granted at its own initiative. Where the relevant regulatory authority grants a derogation, it shall specify its duration. The derogation may be granted only once and for a maximum period of two years, except for the derogations in paragraphs 2(c) and 2(d) which may be granted until 1 January 2025.
10. The relevant regulatory authority shall notify its decision to the TSO, the Agency and the European Commission. The decision shall also be published on its website.

11. The relevant regulatory authorities shall maintain a register of all derogations they have granted or refused and shall provide the Agency with an updated and consolidated register at least once every six months, a copy of which shall be given to ENTSO-E.
12. The register shall contain, in particular: (a) the provisions from which the derogation is granted or refused; (b) the content of the derogation; (c) the reasons for granting or refusing the derogation; (d) the consequences resulting from granting the derogation.

3. THE AMENDED DEROGATION REQUEST

The Derogation request together with a Concept Document After Public Consultation (Concept Document) was submitted to the ECA on 2 April 2020, the PUC on 3 April 2020 and to the NERC on 3 April 2020. NRAs assessed the Derogation request and concluded that information provided in the Derogation request is not sufficient for NRAs to adopt a decision. Therefore, on 3 September 2020 based on Article 5(4), 6(1) and 62(2) of the EB GL the NRAs sent to the TSOs a request for amendments. The NRAs requested the TSOs:

- to supplement and expand the range of the reasons (arguments) for requesting a derogation,
- to provide a justification for the derogation period specified in the Derogation request (31 December 2024);
- to indicate and justify the actions that cannot be taken to implement provision of Article 53(1) of EB GL to apply the imbalance settlement period of 15 minutes (15 minutes ISP) in scheduling area within the deadline set by EB GL;
- to indicate and justify difficulties in fulfilling actions for the implementation of automatic frequency restoration reserves in balancing energy market;
- to provide additional information about Baltic-Nordic balancing market cooperation as well as an explanation of how the different implementation times of 15 minutes ISP will affect the liquidity for Baltic and Nordic balancing market;
- to specify information on the actions to be taken in relation to metering data in 15 minutes resolution for balancing responsible parties scheduling;
- to provide additional information with detailed justification or additional explanation of what is set out in the Concept Document regarding the impact of 15 minutes ISP implementation on moving to 15 minutes time resolution, Baltic-Nordic balancing market cooperation, balancing responsible parties scheduling, single day ahead market coupling as well as on metering data allocation.

The amended Derogation request was submitted to the ECA on 17 November 2020, the PUC on 16 November 2020 and to the NERC on 16 November 2020.

On 1 December 2020 NRAs received letter with information, that TSOs have re-evaluated arguments for Derogation request, therefore development of amendments in the Concept Document After Public Consultation is not relevant anymore. To provide information and necessary explanation requested by NRAs, TSOs with this letter submitted Summary of responses.

The NRAs have assessed the amended Derogation request and submitted comments on Concept Document and note that the TSOs have amended the Derogation request to describe reasons (arguments) for requesting a derogation from Article 53(1) of EB GL and the requested duration of the derogation, difficulties related to the implementation of the provision of Article 53(1) of EB GL regarding applying 15 minutes ISP, the consequences of derogation on adjacent

markets, actions taken to facilitate the implementation of the Article 53(1) of EB GL provision, overall consequences on the European market integration process in sufficient clarity.

4. THE NRAS POSITION

The NRAs, in close co-operation and co-ordination, have carefully assessed the amended Derogation request to reach an agreement that it meets the requirements of Article 62 of EB GL and agree to grant a derogation from the provision of Article 53(1) of EB GL to apply 15 minutes ISP until 31 December 2024.

5. CONCLUSION

In accordance with Article 53(1) of EB GL by 18 December 2020 the TSOs shall apply 15 minutes ISP. Thereby, NRAs must take their decisions to grant derogation from the provision of Article 53(1) of EB GL to apply 15 minutes ISP, based on this agreement, by 17 December 2020 at the latest.