

# Derogations from 70% target

## Scope of the document

This document aims to provide TSOs with some messages commonly agreed by EU NRAs with respect to the criteria to grant a derogation according to Article 16(9) of the Regulation EU 2019/943 (hereinafter Electricity Regulation), to the content of the derogation requests and to the duration of the derogations.

TSOs are invited to take these principles in duly account while developing any derogation requests from 2021 onward.

## Reasons underlying a request for derogation

The derogation requests shall **deal with issues that clearly relate to operational security**, as prescribed by Article 16(9) of the Electricity Regulation. TSOs should elaborate in their derogation requests the link between the issue they consider and how operational security could be endangered.

It is worth mentioning that operational security can be guaranteed by applying remedial actions and, as a measure of last resort in case of insufficient remedial actions, by reduction of cross-zonal capacities below the 70% target in accordance with Article 16(3) of the Electricity Regulation and with CACM Regulation (i.e. capacity validation). Operational security problems could therefore be handled without derogations, however, in case the foreseeable operational security problems are not under the control of the TSO(s) a derogation may be applied to temporarily reduce the legally required target capacity.

If TSOs choose to request a derogation according to Article 16(9) of the Electricity Regulation, they should consider in particular the following points:

- a derogation may be granted on foreseeable grounds where necessary for maintaining operational security, but it shall not cope with situations originating from structural congestions;
- a derogation can be applied to reduce the capacity only to the extent that is required to maintain operational security;
- a derogation can be issued to cope with loop flows, that exceed the 30% level<sup>1</sup> as allowed by Article 16(8) of the Electricity Regulation, but only if the TSOs are not able to address these loop flows with an increased use of coordinated remedial actions (redispatching and countertrading) as meant in the CACM Regulation;
- a derogation can be issued to cope with the high uncertainty of external market flows (uncertainty of exchanges outside the CCR which cannot be captured with allowed FRM), but only if the TSOs are not able to address these external market flows with measures such as better forecasting, merger of regions or advanced hybrid coupling; once the TSOs get experience in managing the uncertainty in more efficient manner, the derogation shall cease.

The list of reasons given above was agreed by all EU NRAs and ACER and it may not be exhaustive. TSOs may propose different reasons in their request, but they always need to demonstrate the underlying reasons and how much control they have on them. Moreover, the extent of possible reductions of capacity should be limited to the amount reflecting the underlying reasons lying outside the control of a TSO.

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<sup>1</sup> The 30% level can be used for the reliability margins, loop flows and internal flows on each critical network element.

## Minimum content of a request for derogation

The requests for derogation shall comply at least with the following requirements:

- The reasons for derogations demonstrating the request is legitimate as regards the principles above;
- The requests shall **clearly mention for which CNE(Cs)** or at least EU bidding zone border(s) the derogation applies;
- **The approving NRAs and ACER shall be put in the position to perform a proper monitoring of the compliance of its TSO** with the 70% requirement and the derogations themselves. A simple request to be exempted from the 70% requirement is not acceptable, but at least a minimum level of capacities and a proper monitoring of the level of capacity made available during the derogation period shall be offered. For example, indications of what level of capacity will be given to the market, which reductions below 70% relate to which underlying reason for the derogation request and how a derogation on a specific CNE(C) is reflected in the capacity calculation are valid alternatives. Also, a parallel run phase aimed to test the specific tools developed to cope with the 70% requirement should be envisaged.
- Article 16(9) of the Electricity Regulation explicitly requires TSOs to **publish a methodology and projects that shall provide a long-term solution to the issue that the derogation seeks to address**. The requests shall clearly address these issues or at least include a timeline for the adoption of such methodology and projects. NRAs and ACER are aware that this requirement cannot be matched in some cases<sup>2</sup>: if this happen, the TSOs shall clearly explain in the derogation requests why they cannot publish the above mentioned methodology.
- The requests shall describe how to compute the minimum capacity value the TSO can offer while respecting operational security (for example using a predefined value or a varying one based on a predefined formula attached to the request): where a flow-based approach is in force, a minimum value for CNEC shall be proposed, while a minimum value for border may be sufficient if a cNTC approach is in force). In any case, the minimum level of capacity shall not be lower than the minimum level granted in previous derogations related to the same reasons. If TSOs cannot commit to a proper minimum level of capacity, they shall explain the reasons in the derogation request.

To the extent possible, TSOs in the same CCR shall try to further align and harmonise approaches and calculations. For example, they could investigate common approaches to monitor the parallel run phase.

## Duration of a derogation

According to the Electricity Regulation, derogations shall be granted for no more than one-year at a time, or, provided that the extent of the derogation (namely reduction of capacities) decreases significantly after the first year, up to a maximum of two years. The TSOs willing to ask for a derogation for more than one year shall, thus, demonstrate such decrease, providing a proper analysis attached to the derogation request.

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<sup>2</sup> In case of a loop flow derogation it is understandable that the requesting TSO will probably not be able to publish a methodology and projects that shall provide a long-term solution to the issue that the derogation seeks to address.

### Timings to request a derogation

According to the Electricity Regulation, the relevant regulatory authority in charge of adopting a decision on the derogation shall consult the regulatory authorities belonging to the affected capacity calculation regions. NRAs established a specific procedure to check the impact of a derogation on other NRAs: the entire process from the receipt of the proposal from the TSO to the final approval may require at least two months.

Nonetheless, if a consulted regulatory authority disagrees with the proposed derogation, the derogation is referred to ACER that shall adopt a decision within 6 months according to Article 6(12) of Regulation (EU) 2019/942.

TSOs are invited to take into account the above-mentioned deadlines while deciding the timings of the submission of a new derogation request.