

Commission Regulation (EU) 2017/2195 of 23 November 2017
establishing a guideline on electricity balancing (Text with EEA relevance)

TITLE IX

DEROGATIONS AND MONITORING

Article 62

Derogations

- 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 on 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.

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Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EU) 2017/2195. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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.

Article 63

Monitoring

1 ENTSO-E shall monitor the implementation of this Regulation in accordance with Article 8(8) of Regulation (EC) No 714/2009. Monitoring of the implementation of this Regulation by ENTSO-E shall cover at least the following matters:

- a preparation of the European report on integration of balancing market pursuant to Article 59;

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- b preparation of a report on monitoring of the implementation of this Regulation including the effect on the harmonisation of applicable rules aimed at facilitating market integration.
- 2 ENTSO-E shall submit a monitoring plan on the reports to be prepared and any updates, to the Agency for an opinion by six months after entry into force of this Regulation.
- 3 The Agency, in cooperation with ENTSO-E, shall draw up by 12 months after the entry into force of this Regulation a list of the relevant information to be communicated by ENTSO-E to the Agency in accordance with Article 8(9) and 9(1) of Regulation (EC) No 714/2009. The list of relevant information may be subject to updates. ENTSO-E shall maintain a comprehensive, standardised format, digital data archive of the information required by the Agency.
- 4 All TSOs shall submit to ENTSO-E the information required to perform the tasks in accordance with paragraphs 1 and 3.
- 5 Market participants and other relevant organisations for the integration of electricity balancing markets shall, at the joint request of the Agency and ENTSO-E, submit to ENTSO-E the information required for monitoring in accordance with paragraphs 1 and 3, except for information already obtained by the relevant regulatory authorities in accordance with Article 37 of Directive 2009/72/EC, the Agency or ENTSO-E in the context of their respective implementation monitoring tasks.

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