

**DECISION No 11/2020  
OF THE EUROPEAN UNION AGENCY  
FOR THE COOPERATION OF ENERGY REGULATORS**

**of 17 June 2020**

**on the Methodology for a list of standard products for balancing capacity  
for frequency restoration reserves and replacement reserves**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup> ('Regulation (EU) 2019/942'), and, in particular, Article 5(2)(b) thereof,

Having regard to Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing<sup>2</sup>, and, in particular, Article 5(2)(c) thereof,

Having regard to the outcome of the consultation with the concerned regulatory authorities and transmission system operators ('TSOs'),

Having regard to the outcome of the consultation with the Agency's Electricity Working Group ('AEWG'),

Having regard to the favourable opinion of the Board of Regulators of 26 May 2020, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

**1. INTRODUCTION**

- (1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the 'EB Regulation') laid down a range of requirements for electricity balancing, platforms for the exchange of balancing

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<sup>1</sup> OJ L158, 14.6.2019, p. 22.

<sup>2</sup> OJ L312, 23.11.2017, p. 6.

energy, standard products for balancing capacity, as well as pricing and settlement of balancing energy. These requirements include the development of a methodology for a list of standard products for balancing capacity for frequency restoration reserves and replacement reserves ('the SPBC methodology').

- (2) Pursuant to Articles 4(1) and 5(2)(a) of the EB Regulation, all TSOs are required to develop a common proposal for SPBC in accordance with Article 25(2) of the EB Regulation. All TSOs shall submit the common proposal for SPBC for revision and approval to ACER, pursuant to Article 5(2)(b) of Regulation (EU) 2019/942.
- (3) Annex I to this Decision sets out the SPBC methodology pursuant to Article 25(2) of the EB Regulation as decided by ACER.

## **2. PROCEDURE**

### **2.1. Proceedings before ACER**

- (4) Article 25(2) of the EB Regulation requires all TSOs to submit a proposal for the SPBC no later than two years after the entry into force of the EB Regulation. As the EB Regulation entered into force on 18 December 2017, all TSOs were required to submit a proposal for the SPBC by 18 December 2019.
- (5) On 15 May 2019, all TSOs published for public consultation the draft 'all TSOs' proposal on list of standard products for balancing capacity for frequency restoration reserves and replacement reserves in accordance with Article 25(2) of Commission Regulation (EU) 2017/2195 of 23 November 2017<sup>3</sup>. The consultation lasted from 15 May 2019 until 31 July 2019.
- (6) On 17 December 2019, all TSOs submitted to ACER an 'all TSOs' proposal on list of standard products for balancing capacity for frequency restoration reserves and replacement reserves in accordance with Article 25(2) of Commission Regulation (EU) 2017/2195 of 23 November 2017<sup>4</sup> ( the 'Proposal').
- (7) On 19 February 2020, ACER launched a public consultation on the Proposal, inviting all market participants to submit their comments by 10 March 2020. The summary and evaluation of the responses received are presented in Annex II to this Decision.
- (8) ACER closely cooperated with all regulatory authorities and TSOs and further consulted on the amendments to the Proposal during teleconferences, meetings and through exchanges of draft amendments to the Proposal suggested by ACER. In

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[https://consultations.entsoe.eu/markets/ebgl\\_art25\\_spbc/supporting\\_documents/190515\\_ALL%20TSOs\\_Standard\\_Product\\_for\\_Balancing\\_Capacity\\_Proposal.pdf](https://consultations.entsoe.eu/markets/ebgl_art25_spbc/supporting_documents/190515_ALL%20TSOs_Standard_Product_for_Balancing_Capacity_Proposal.pdf)

<sup>4</sup>

<https://www.acer.europa.eu/en/Electricity/MARKET-CODES/ELECTRICITY-BALANCING/17%20SPBC/Action%201%20-%20SPBC%20proposal.pdf>

general, before each interaction, ACER shared with regulatory authorities and TSOs a new version of amendments proposed by ACER to the Proposal. In particular, the following procedural steps were taken:

- 22 and 23 January 2020: discussion with all regulatory authorities in the framework of ACER's Electricity Balancing Taskforce ('EB TF');
- 31 January 2020: telephone conference call with all regulatory authorities and TSOs;
- 14 February 2020: telephone conference call with all regulatory authorities and TSOs;
- 26 February 2020: public workshop with market participants, all TSOs and all regulatory authorities;
- 26 and 27 February 2020: discussion with all regulatory authorities in the framework of the EB TF;
- 28 February 2020: telephone conference call with all regulatory authorities and TSOs;
- 13 March 2020: telephone conference call with all regulatory authorities and TSOs;
- 17 March 2020: discussion with all regulatory authorities in the framework of the EB TF;
- 20 March 2020: telephone conference call with all regulatory authorities and TSOs;
- 27 March 2020: telephone conference call with all regulatory authorities and TSOs;
- 23 April 2020: discussion with all regulatory authorities in the framework of ACER's Electricity Working Group ('AEWG');
- 13 May 2020: discussion with all regulatory authorities at the Board of Regulators' meeting.

### **3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL**

- (9) Pursuant to point (b) of the second subparagraph of Article 5(2) of Regulation (EU) 2019/942 ACER shall revise and approve the Proposal within six months after submission by all TSOs. Therefore, ACER shall take a decision on the Proposal by 17 June 2020.
- (10) Article 5(2)(c) of the EB Regulation requires that all TSOs submit this Proposal to all regulatory authorities for approval. Following the entering into force of Regulation (EU) 2019/942, on 4 July 2019, all TSOs were now required to submit this Proposal to ACER in accordance with Article 5(2)(b) of Regulation (EU) 2019/942.

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

- (11) The Proposal consists of the following elements:
- (a) the ‘Whereas’ section and Articles 1 and 2, which include general provisions, the scope of application and the definitions;
  - (b) Article 3, which includes the general principles for standard balancing capacity products;
  - (c) Article 4, which describes the characteristics of the standard balancing capacity products, including the validity period;
  - (d) Article 5, which provides general provision for standard balancing capacity product bids for both balancing service providers and TSOs;
  - (e) Articles 6 and 7, which specify the implementation timeline and the publication; and
  - (f) Article 8, which includes provisions on language.

#### **5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER**

##### **5.1. Consultation of all regulatory authorities and TSOs**

- (12) ACER, in close cooperation and consultation with all regulatory authorities and TSOs as detailed in paragraph (8) above:
- (a) discussed with TSOs and all regulatory authorities the comments received during the public consultation (see Section 5.2);
  - (b) with respect to the implementation scope and timeline, further discussed the applicability of the SPBC and a later implementation with TSOs and regulatory authorities;
  - (c) with respect to the level of harmonisation and barriers for merging different cooperation of TSOs exchanging frequency restoration reserves and replacement reserves, further discussed this with TSOs and regulatory authorities;
  - (d) with respect to additional characteristics, further discussed with TSOs the process and clarified the wording in the Proposal; and
  - (e) with respect to defining the validity period of bids from standard balancing capacity products, further specified this with TSOs.

##### **5.2. Public consultation**

- (13) On 19 February 2020, ACER launched a public consultation on the Proposal, inviting all stakeholders to provide their comments by 10 March 2020. The consultation document asked stakeholders to provide views on the level of harmonisation for standard balancing capacity products, which was deemed as the most relevant, and asked stakeholders to also provide views on any other topics from the Proposal.

- (14) The summary and evaluation of the responses received are presented in Annex II to this Decision. It presents the summary of stakeholders' concerns regarding some of the above mentioned issues and in particular on the question raised by ACER:
- (a) On the one hand, regarding the suggested approach for the level of harmonisation for standard balancing capacity products, six stakeholders provided their support for ACER's proposal and agree with the proposed level of harmonisation. On the other hand, four stakeholders expressed concerns with ensuring a level-playing field, especially when different cooperation for the exchange of standard balancing capacity products should be merged.
  - (b) Regarding additional characteristics and the inclusion of further details, three stakeholders expressed concerns for the TSOs' possibility to define additional characteristics within national terms and conditions. Four stakeholders expressed concerns with the minimum duration between the end of deactivation period and the following activation to be set by default equal to zero. Three stakeholders were concerned with providing additional locational information beyond the LFC area or bidding zone for their bids. In addition, one stakeholder asked that the activation time shall be included in the general characteristics, that additional national products shall be kept next to the standard products, that linking of bids be possible and mentioned that indivisible bids could lead to complex problems.
  - (c) Regarding the implementation of the Proposal, three stakeholders asked for clarifying the implementation timeline.
  - (d) Regarding other issues, stakeholders expressed concerns on several topics, namely providing locational information of bids in portfolio-based systems, clarifying the direct activation for frequency restoration reserves with manual activation, the possibility of linking of bids during bidding process, the possibilities for TSOs from self- and central dispatch systems to cooperate, the scope for price resolution for bids, the (im-)possibility for a TSO to participate in more than one balancing capacity cooperation and the (im-)possibility to allocate cross-zonal capacity for the exchange of balancing capacity.

### **5.3. Hearing phase**

- (15) ACER initiated a hearing phase on 27 March 2020 by providing all TSOs and all regulatory authorities with a near final draft of Annex I to this Decision, as well as the reasoning for the introduced changes to the Proposal. The hearing phase lasted until 9 April 2020. During this time, ACER received written responses from ENTSO-E<sup>5</sup>, on behalf of all TSOs, from ČEPS (Czech TSO) and MAVIR (Hungarian TSO).
- (16) ENTSO-E, on behalf of all TSOs, agreed with the proposed implementation timeline of 18 months after approval. ENTSO-E noted that TSOs should be able, within this

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<sup>5</sup> European Network of Transmission System Operators for Electricity

timeline, to define which product they will use (standard or specific) but that they were not responsible of the approval process by regulatory authorities at national level and could not therefore guarantee that the approval and subsequent use of standard balancing capacity products could be done within the proposed 18 months.

- (17) The feedback from ČEPS requested an implementation of at least 36 months to complete also the national approval process by the regulatory authority, which is a requirement for them to start the actual procurement of either standard or specific balancing capacity products in accordance with the EB Regulation.
- (18) The third feedback from MAVIR contained a request to link the implementation of standard balancing capacity products with the start of using standard balancing energy products through the European platforms<sup>6</sup> in accordance with Articles 20 and 21 of the EB Regulation. This would result in an implementation close to 25 months after approval or later.

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

### **6.1. Legal framework**

- (19) Articles 4(1), 4(2) and 5(2)(a) of the EB Regulation require all TSOs to provide the proposal for the SPBC methodology in accordance with Article 25(2) of the EB Regulation. This proposal must be submitted to ACER for revision and approval in accordance with Article 5(2)(b) of the Regulation (EU) 2019/942.
- (20) Article 25 of the EB Regulation sets out the requirements for the development of a proposal for the SPBC and its implementation. In this context, all TSOs are required to develop a list of standard products for balancing capacity for frequency restoration reserves and replacement reserves no later than two years after the entry into force of the EB Regulation. TSOs must consult the Proposal in accordance with Article 10 of the EB Regulation.
- (21) Article 18 of the EB Regulation contains all the requirements for terms and conditions related to balancing at a Member State level. These national terms and conditions on balancing include rules for balancing service providers.
- (22) Article 25 of the EB Regulation provides requirements for standard products and divides them into standard products for balancing energy and balancing capacity. Paragraphs (4) and (5) of this Article include non-exhaustive lists of optional and respectively mandatory characteristics of the standard products to be set out by the methodology.

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<sup>6</sup> ACER Decisions 02 and 03-2020 include an implementation of 30 months after approval in Articles 5, which would be 24.07.2022.

- (23) Article 26 of the EB Regulation covers the rules for specific products.
- (24) Article 31 of the EB Regulation lays down the requirements for the activation optimisation function that facilitates the optimisation for the activation of balancing energy bids from different common merit order lists.
- (25) Article 33 of the EB Regulation covers requirements for the exchange of balancing capacity among TSOs and specifies that standard balancing capacity products shall be the basis for an exchange.
- (26) Article 59 of the EB Regulation contains provisions for reporting and performance indicators, which shall assess the benefits from the use of standard balancing capacity products.
- (27) As a general requirement, Article 5(5) of the EB Regulation requires that the Proposal includes a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.

## **6.2. Assessment of the legal requirements**

### **6.2.1. Assessment of the requirements for the development and for the content of the Proposal**

#### *6.2.1.1. Development of the Proposal*

- (28) The Proposal fulfils the requirements of Articles 4(1) and 4(2) of the EB Regulation, as all TSOs jointly developed a proposal for the SPBC methodology. Article 5(2)(c) of the EB Regulation required that all TSOs submit the Proposal to all regulatory authorities for approval; following the entering into force of Regulation (EU) 2019/942, on 4 July 2019, all TSOs were now required to submit this Proposal to ACER in accordance with Article 5(2)(b) of Regulation (EU) 2019/942.
- (29) The procedure for the development of the Proposal respected the requirements of Article 25(2) of the EB Regulation, as the Proposal was submitted by all TSOs by 17 December 2019, which is within two years after the entry into force of the EB Regulation. The Proposal was subject to consultation as described in Section 2.1 above.

#### *6.2.1.2. Proposed timescale for implementation*

- (30) The Proposal fulfils the requirements of Article 5(5) of the EB Regulation with regard to the proposed timescale for implementation of the SPBC methodology and includes a timeline for implementation in Article 6 of the Proposal.

#### *6.2.1.3. Description of the expected impact on the objectives of the EB Regulation*

- (31) The Proposal does not fully fulfil the requirement of Article 5(5) of the EB Regulation on describing the expected impact on the objectives of the EB Regulation. The recitals in the Proposal provide a description of the expected impact of the SPBC methodology

on the objectives of the EB Regulation. The relevant objectives set in Article 3 of the EB Regulation are addressed in the recitals but in a general manner only. ACER added specific sub-paragraphs (c) to (h) in recital (11) to address the expected impact on each of the objectives in more details.

6.2.2. Assessment of the requirements for standard balancing capacity products

- (32) The Proposal fulfils the requirements of Articles 25(4) to (6) of the EB Regulation, for setting the characteristics for standard balancing capacity products. The mandatory characteristics, in accordance with Article 25(5) of the EB Regulation, to be determined by the balancing service providers, when submitting the standard product bids, are included in Article 5(2) of the Proposal. These are: (a) price of the bid, (b) divisibility, (c) location and (d) minimum duration between the end of deactivation period and the following activation.
- (33) During the public consultation, seven stakeholders expressed concerns for providing the locational information for bids beyond the bidding zone or LFC (load frequency control) area.
- (34) ACER understands from the discussion with TSOs, that balancing service providers who submit their bids on a portfolio level will not be asked to submit locational information further than the bidding zone or LFC area. Therefore, ACER did not make any changes.
- (35) Four stakeholders commented on ‘minimum duration between the end of deactivation period and the following activation’. They expressed concerns for setting the value to zero as detailed in Annex 1 (List of standard products for balancing capacity) to the Proposal.
- (36) During the consultation, TSOs clarified that there may be two different types of standard balancing capacity products for each balancing process and each validity period. The first product aims to accommodate generation units which do not have a minimum duration between the end of an activation and the following activation. The second product aims to foster the participation of other assets which may have a technical restriction that do not allow them to be activated immediately after the deactivation period ended. The restriction, to be determined by the balancing service providers in the form of full hours, is formulated as a range instead of specific values. This range facilitates the pooling of liquidity from balancing service providers. These standard balancing capacity products are different in a way that the first one has by default zero minimum duration between the end of deactivation period and the following activation, being a “static” product. The second product provides flexibility, by allowing the ‘minimum duration between the end of deactivation period and the following activation’ to be any number of hours between zero and up to eight hours, resulting in a more “dynamic” product.
- (37) For transparency reasons, the products are separated to make it clear that one product allows a minimum duration between the end of deactivation period and the following activation, whereas the other product does not. The choice of product shall be decided



and defined when TSOs exchange standard balancing capacity products, respecting the requirements from Article 25(6) of the EB Regulation, within a proposal in accordance with Article 33 of the EB Regulation.

*6.2.2.1. Assessment of the requirements for the scope of application for standard balancing capacity products*

- (38) The Proposal partly fulfils the requirements of Article 25(2) of the EB Regulation when setting the scope for application and implementation of the SPBC methodology.
- (39) All TSOs proposed that the SPBC methodology shall be considered implemented after ACER's decision on the Proposal, resulting in an implementation of the list of standard products for balancing capacity by mid-2020. In addition, all TSOs considered that the SPBC methodology shall only apply for TSOs exchanging balancing capacity in accordance with Article 33(3) of the EB Regulation. They argued that only these TSOs would need to implement and use standard balancing capacity products.
- (40) In the public consultation, ACER received comments from three stakeholders that the implementation and application of the SPBC methodology, as initially proposed by all TSOs, needed to be further clarified. In particular, ENTSO-E, on behalf of all TSOs, requested that TSOs already exchanging balancing capacity be given sufficient time to implement standard balancing capacity products. During the hearing phase, ENTSO-E, ČEPS and MAVIR gave again feedback on the scope of application of the SPBC methodology.
- (41) Regarding the scope of application of the SPBC methodology, ACER notes that the EB Regulation defines only two products: standard products in Article 25 and specific products in Article 26. In addition, it follows from Article 33(3) of the EB Regulation that TSOs exchanging balancing capacity shall only use standard balancing capacity products for the exchange. Therefore, all TSOs who intend to use standard balancing capacity products for frequency restoration reserves and replacement reserves or to exchange balancing capacity shall implement standard balancing capacity products from the list of Annex 1 of the SPBC methodology. On the contrary, those TSOs who do not intend to use standard products shall define specific balancing capacity products in the framework of a national process, which is however outside the scope of this Decision.
- (42) With regard to the implementation timeline to implement the SPBC methodology, ACER notes that TSOs' feedback was that one existing cooperation<sup>7</sup> of TSOs exchanging balancing capacity would require at least 18 months to become compliant
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with the SPBC methodology. During the discussion, regulatory authorities also explained that, should the existing balancing capacity products require an adaption to be compliant with the standard balancing capacity products defined by this Decision, they could imagine approving an amendment to national terms and conditions for balancing in accordance with Article 18 of the EB Regulation or approve a proposal in accordance with Article 26 of the EB Regulation within the 18 months deadline.

- (43) For the above reasons, ACER changed the implementation timeline, giving more time to TSOs to implement the SPBC methodology. Within 18 months after approval, all TSOs who intend to use standard balancing capacity products for frequency restoration reserves and replacement reserves or to exchange balancing capacity shall implement standard balancing capacity products from the list of Annex 1 of the SPBC methodology. In addition to this change in Article 6 of the SPBC methodology, ACER added a recital (10) to the SPBC methodology to clarify the scope of application and implementation of the SPBC methodology. That way, the concerns of stakeholders, TSOs exchanging balancing capacity and all other TSOs can be addressed by giving sufficient time to become compliant with this SPBC methodology.

6.2.3. Amendments necessary to ensure legal clarity and consistency with existing legal provisions

- (44) ACER included a new recital (9) in the ‘whereas’ section to clarify why only frequency restoration reserves with manual direct activation are considered a standard balancing capacity product and not also those with scheduled activation. This change was also made to address concerns from stakeholders, who asked for a clarification on this point of direct activation.

- (45) ACER deleted the definition of ‘balancing capacity validity period’ because the proposed definition by all TSOs was not clear enough and the term ‘validity period’ is already defined in the EB Regulation under Article 2(33). Instead, ACER included in Article 3 of the Proposal on general principles a new paragraph (4) explaining the validity period for bids from standard balancing capacity products. Due to the deletion of this definition, ACER made changes to Article 4(1)(a) and the Annex 1 of the Proposal.

- (46) ACER made changes to Article 5(3) of the Proposal to clarify the basis and process of the possibility for TSOs to define additional characteristics for standard balancing capacity products in the national terms and conditions for balancing, in line with the requirements from the EB Regulation.

6.2.4. Assessment of the requirements for consultation, transparency and stakeholder involvement

6.2.4.1. *Consultation and involvement of stakeholders*

- (47) When drafting the Proposal, all TSOs aimed at addressing the requirements from Article 10 of the EB Regulation regarding the involvement of stakeholders.

- (48) As indicated in Recital (5) above, all TSOs fulfilled the requirements of Article 10 of the EB Regulation, since stakeholders were consulted on the draft Proposal pursuant to Article 10(1) of the EB Regulation. This involvement took place during a public consultation, which ran from 15 May 2019 until 31 July 2019. In addition, all regulatory authorities were regularly informed and consulted pursuant to Article 10(1) of the EB Regulation.

*6.2.4.2. Publication and transparency*

- (49) The Proposal fulfils the requirements on publication and transparency in accordance with Article 7 of the EB Regulation.

**7. CONCLUSION**

- (50) For all the above reasons, ACER considers the Proposal in line with the requirements of the EB Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I.
- (51) Therefore ACER approves the Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

*Article 1*

The methodology for a list of standard products for balancing capacity for frequency restoration reserves and replacement reserves in accordance with Article 25(2) of Regulation (EU) 2017/2195 is adopted as set out in Annex I to this Decision.

*Article 2*

This Decision is addressed to all TSOs:

50Hertz Transmission GmbH,  
Amprion GmbH,  
AS Augstsprieguma tīkls,  
APG Austrian Power Grid AG,  
ČEPS a.s.,  
Creos Luxembourg S.A.,  
EirGrid plc,  
ESO Elektroenergien Systemen Operator EAD,  
Elering AS,  
ELES, d.o.o.,  
Elia Transmission Belgium SA/NV,  
Energinet,

Fingrid Oyj,  
HOPS Croatian Transmission System Operator Ltd,  
IPTO Independent Power Transmission Operator S.A.,  
Kraftnät Åland Ab,  
Litgrid AB,  
MAVIR - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen  
Működő Részvénytársaság ZRt.,  
NG ESO National Grid ESO,  
PSE Polskie Sieci Elektroenergetyczne S.A.,  
REE Red Eléctrica de España S.A.,  
REN Rede Eléctrica Nacional, S.A.,  
RTE Réseau de Transport d'Electricité S.A.,  
SEPS Slovenská elektrizačná prenosová sústava, a.s.,  
SONI System Operator for Northern Ireland Ltd,  
Svenska Kraftnät,  
TenneT TSO B.V.,  
TenneT TSO GmbH,  
Terna - Terna Rete Elettrica Nazionale S.p.A.,  
Transelectrica - National Power Grid Company Transelectrica S.A.,  
TransnetBW GmbH and  
VÜEN-Vorarlberger Übertragungsnetz GmbH.

Done at Ljubljana, on 17 June 2020.

**- SIGNED -**

*For the Agency  
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Methodology for a list of standard products for balancing capacity for frequency restoration reserves and replacement reserves in accordance with Article 25(2) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

Annex Ia (for information only) – Methodology for a list of standard products for balancing capacity for frequency restoration reserves and replacement reserves in accordance with Article 25(2) of the Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing – with track changes

Annex II (for information only) – Evaluation of responses to the public consultation on the Methodology for a list of standard products for balancing capacity for frequency restoration reserves and replacement reserves

*In accordance with Article 28 of Regulation (EU) 2019/942, the addressee may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.*

*In accordance with Article 29 of Regulation (EU) 2019/942, the addressee may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.*