***Derogation request of Transelectrica SA from the obligation under Article 16(8) pursuant to Article 16(9) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity for the Core and SEE Capacity Calculation Regions***

**Introduction**

(1) In accordance with Article 16(8) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (“Regulation 2019/943”) the transmission system operators shall not limit the volume of interconnection capacity to be made available to market participants as a means of solving congestion inside their own bidding zone or as a means of managing flows resulting from transactions internal to bidding zones. The minimum levels of available capacity for cross-zonal trade are reached:

(a) for borders using a coordinated net transmission capacity approach, the minimum capacity shall be 70% of the transmission capacity respecting operational security limits after deduction of contingencies. This is determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation 2009/714 (EC) of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (“Regulation 2009/714”);

(b) for borders using a flow-based approach, the minimum capacity shall be a margin set in the capacity calculation process available for flows induced by cross-zonal exchange. The margin shall be 70% of the capacity respecting operational security limits of internal and cross-zonal critical network elements, taking into account contingencies, as determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation (EC) no. 2009/714.

(2) However, in case a transmission system operator cannot comply with the minimum capacity of 70% to be made available for cross-zonal trade due to operational security risks on foreseeable grounds, such transmission system operator may request from the relevant regulatory authorities a derogation from Article 16(8) of the Regulation 2019/943. The extent of such derogations shall be strictly limited to what is necessary to maintain operational security and they shall avoid discrimination between internal and cross-zonal exchanges. Before granting a derogation, the relevant regulatory authority shall consult the regulatory authorities of the other Member States forming part of the affected capacity calculation regions. In absence of a unanimous decision by the regulatory authorities such decision is incumbent upon ACER.

(3) ACER issued a Recommendation (No. 01/2019), published on 9 August 2019, describing an unified way on how to monitor the capacities made available to the market in relation to the 70% target for all considered timeframes and all coordination areas.

(4) Article 16(4) of the Regulation (EU) 2019/943 foresees that the maximum level of capacity shall be made available while complying with the safety standards of secure network operation and, in order to reach the minimum binding level of capacity, TSOs shall use counter-trading and redispatch, including cross-border redispatch, by using a coordinated and non-discriminatory process and following the implementation of a redispatching and counter-trading cost-sharing methodology.

(5) In accordance with the Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management („Regulation (EU) 2015/1222”) and the Regulation (EU) 2017/1485 of 02 August 2017 establishing a guideline on electricity transmission system operation („Regulation (EU) 2017/1485”), transmission system operators are required to implement methodologies on coordinated capacity calculation, regional operational security coordination and regional coordination of the non-costly and costly remedial actions.

(6) In 2021 the methodology *SEE CCR TSOs’ proposal for the common capacity calculation methodology for the day-ahead and intraday market time-frame* was implemented in the SEE CCR (in accordance with article 21 of the Regulation (EU) 2015/1222) approved by the national regulatory authorities of SEE RCC. Thus, starting with 01.07.2021 the day-ahead capacity calculation has been coordinated across SEE CCR. In spite of this, the coordinated validation process in the SEE CCR has not been implemented yet.

(7) Starting with the 9th of June 2022 the Core Day-ahead Capacity Calculation Methodology has been implemented. However, the Coordinated Validation process is not yet implemented, TSOs only being able to validate the results through the Individual Validation process.

(8) The following methodologies and processes, relevant for determining the minimum capacity for cross-zonal trade, are being implemented at Core and SEE CCR level, but the implementation has not been finalized yet:

* The regional coordinated redispatching and countertrading methodology, pursuant to Article 35 of Regulation (EU) 2015/1222, is under the implementation phase with go-live window in 2027;
* The redispatching and countertrading cost sharing methodology, pursuant to Article 74 of Regulation (EU) 2015/1222, is under the implementation phase with go-live window in 2027;
* The regional operational security coordination methodology (ROSC), pursuant to Article 76 of Regulation (EU) 2017/1485, is under implementation phase, with go-live window of the first version in 2027. ROSC Methodology introduces a coordination process which defines explicit rules for the preparation of remedial actions in a coordinated way and assigns the responsibilities for the TSOs and RCCs of the region, complementing the methodologies developed in accordance with Articles 35 and 74 of Regulation (EU) 2015/1222.

(9) As the operational security would have been endangered, pursuant to article 16 (9) of the Regulation (EU) 2019/943, CNTEE Transelectrica SA submitted a request for derogation from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 for Core and SEE CCRs for 2020. The Decision of ANRE no. 2206 from 20.12.2019 granted the derogation for Transelectrica SA from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 for a period of one year starting with 01.01.2020.

(10) In 2021, the Romanian Government decided to adopt an Action Plan pursuant to Article 15 of the Regulation (EU) 2019/943, including a linear trajectory for the yearly increase of the minimum capacity made available for cross-zonal trade until 31st of December 2025. For 2021, the minimum capacity made available for cross-zonal trade on the Romania – Hungary border was 800 MW (representing 33% of the transmission capacity) whereas on the Romania – Bulgaria border it was 900 MW (representing 25% of the transmission capacity). Through the Decision no. 1562 from 07.09.2022, ANRE approved the “Annual monitoring report on the maximum available capacity for cross-border trade for the year 2021, in accordance with Article 15(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council of June 5, 2019 on the internal market for electricity".

(11) For 2022 the minimum capacity that was foreseen to be made available for cross-zonal trade on the Romania – Hungary border was 980 MW (representing 41% of the transmission capacity), respectively 1230 MW on Romania – Bulgaria border (representing 34% of the transmission capacity). On the premises of maintaining the operational security, pursuant to article 16(9) of the Regulation (EU) 2019/943, Transelectrica SA submitted a request for derogation from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 for the Romania – Hungary border for the year 2022. The Decision of ANRE no. 59 from 02.02.2022 granted the derogation for Transelectrica SA from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 with the obligation of maintaining the available minimum capacity for cross-zonal trade at the level of 33% of the transmission capacity for the Romania – Hungary border. For the Romania – Bulgaria border there had not been a request for derogation for the year 2022. Through the Decision no. 799 from 24.04.2024, ANRE approved the “Annual monitoring report on the maximum available capacity for cross-border trade for the year 2022, in accordance with Article 15(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council of June 5, 2019 on the internal market for electricity".

(12) For 2023 the minimum capacity that had to be made available for cross-zonal trade on Romania – Hungary border was 1160 MW (representing 48% of the transmission capacity), respectively 1560 MW on Romania – Bulgaria border (representing 43% of the transmission capacity). For this year, CNTEE Transelectrica SA applied for a derogation from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 for the Romania – Hungary border, in accordance with Article 16(9) of the Regulation (EU) 2019/943. The Decision of ANRE no. 2359 from 28.12.2022 granted the derogation for CNTEE Transelectrica SA from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 with the obligation of maintaining the available minimum capacity for cross-zonal trade at 800 MW (meaning the level of 33% of the transmission capacity) for the Romania – Hungary border in 2023. For Romania – Bulgaria border CNTEE Transelectrica SA did not request a derogation, meaning that the cross-zonal trade level target was set at 1560 MW (43% of the transmission capacity). The annual monitoring report on the maximum available capacity for cross-border trade for 2023 has been submitted to ANRE for approval.

(13) For 2024 there is a minimum available capacity foreseen for cross-zonal trade of 1340 MW on Romania – Hungary border (representing 55% of the transmission capacity) and 1890 MW on Romania – Bulgaria border (representing 52% of the transmission capacity). For this year, CNTEE Transelectrica SA applied for a derogation from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 for the Romania – Hungary border, in accordance with Article 16(9) of the Regulation (EU) 2019/943. The Decision of ANRE no. 2947 from 20.12.2023 granted the derogation for CNTEE Transelectrica SA from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 with the obligation of maintaining the available minimum capacity for cross-zonal trade at 800 MW (representing 33% of the transmission capacity) for the Romania – Hungary border and 1560 MW (representing 43% of the transmission capacity) for Romania – Bulgaria border in 2024.

(14) For 2025 there is a minimum available capacity foreseen for cross-zonal trade of 1520 MW (representing 63% of the transmission capacity) for Romania – Hungary border, respectively 2220 MW (representing 61% of the transmission capacity) for Romania – Bulgaria border.

(15) In this context and pursuant to Article 16(9) of the Regulation (EU) 2019/943, CNTEE Transelectrica SA submits the present request for derogation from the obligations laid down under Article 16(8) of the Regulation (EU) 2019/943 in relation to the bidding zone borders Romania – Hungary and Romania – Bulgaria for the year 2025. In 2025, CNTEE Transelectrica SA will maintain the minimum capacity available for cross-border exchanges as follows:

* 980 MW, representing 41% of the transmission capacity, for Romania – Hungary border;
* 1890 MW, representing 52% of the transmission capacity, for Romania – Bulgaria border.

(16) The national regulatory authorities (hereinafter referred to as “NRAs”) adopted on 29th of June 2020 a common note, which gives guidance for the TSOs on the necessary content of derogation requests in line with Article 16(9) of the Regulation 2019/943 as well as the assessment criteria. This request for derogation prepared by CNTEE Transelectrica SA takes into account the requirements of the common NRAs’ note.

**Article 1. Subject Matter and Scope**

(1) This document constitutes a request for derogation for the year 2025 from the implementation of the minimum margin available for cross-zonal trade as established in Article 16(8) of the Regulation (EU) 2019/943 in relation to the bidding zone borders Romania – Hungary and Romania – Bulgaria. The request is presented by CNTEE Transelectrica SA in accordance with Article 16(9) of the Regulation (EU) 2019/943.

(2) This request for derogation is based on foreseeable grounds for deviating from the 70% capacity criterion as established in Article 16(8) of Regulation 2019/943 respectively from the target capacity value according to the action plan as further described in Article 2, justifying the approval of the derogation. The foreseeable grounds would impact the operational security in case of non-consideration, while a minimum target capacity is to be achieved.

(3) In 2025, Transelectrica SA shall maintain the minimum target capacity available for cross-zonal trade of:

* 980 MW, representing 41% from the transmission capacity on Romania – Hungary border;
* 1890 MW, representing 52% from the transmission capacity on Romania – Bulgaria border.

**Article 2. Definitions**

All the terms used in this request for derogation shall have the meaning provided by Article 2 of Regulation (EU) 2019/943 and Article 2 of Regulation (EU) 2015/1222.

**Article 3. Foreseeable grounds justifying the request for a derogation**

1. Acknowledging that key methodologies from the Regulation (EU) 2015/1222 and Regulation (EU) 2017/1485 mentioned in the Introduction are still not implemented in the Core and SEE regions, CNTEE Transelectrica SA cannot count on them in relation to the assessment and fulfilment of the target capacity on the Romania – Hungary and Romania – Bulgaria borders, according to the national action plan as of 1 January 2025.

(2) The application of the Article 16(8) of the Regulation (EU) 2019/943, respectively the minimum target capacity for the borders Romania – Hungary and Romania – Bulgaria according with the Action Plan, starting from the 1st of January 2025 on, endangers the operational security due to the following foreseeable grounds:

* ***Lack of the regional coordinated processes for capacity calculation and security analysis***

The Articles 16(4) and 16(8) of the Regulation (EU) 2019/943 refers to the implementation of the coordinated capacity calculation and security analysis at regional level to ensure a minimum capacity available for cross-zonal trade. The implementation of the capacity calculation using flow-based method in Core CCR in June 2022 is not enough to comply with the minimum available capacity requirements. The lack of a coordinated validation of the day-ahead capacity calculation results at regional level comes with a certain level of risk of maintaining the operational security limits in real-time. Not always the internal measures and remedial actions estimated as available for day-ahead capacity calculation are available and enough to maintain the system security in real-time;

* ***Lack of the redispatching and countertrading processes implemented at regional level pursuant to Article 35 and 74 of Regulation (EU) 2015/1222.***

The Article 16(4) of the Regulation (EU) 2019/943 stated that the redispatching and countertrading shall be used to maximize the available capacity to reach the minimum capacity provided for in Article 16(8) of the Regulation (EU) 2019/943. This process shall be coordinated and follow the implementation of cost-sharing methodology. Both at Core and SEE CCR level the processes for the redispatching and countertrading are scheduled for implementation in 2027. Application by CNTEE Transelectrica SA in 2024 of an individual redispatching process aimed at achieving the minimum level of cross-zonal capacity as per national Action Plan is not feasible due to the lack of enough remedial actions. This is caused mainly due to the fact that around 80% of the generation capacity of Romania is located in the southern part of the country, without enough redispatching potential in the west and north-west parts of the country to lead to an increase of the capacity available for cross-border trade on Romania – Hungary border. Also, for increasing the available capacity for cross-zonal trade on Romania – Bulgaria border, coordinated actions among involved TSOs are needed, as the elements limiting the cross-zonal trade are often tie-lines. Moreover, a countertrading process is not implemented on Romania bidding zone borders.

* ***Common grid model available for Core CCR***

At present, every CCR has its own common grid model for the day-ahead capacity calculation process, using different rules regarding the usage of the individual grid models available and the alignment of net positions. The flows on the critical network elements in Romania are influenced by the fact that in both Core and SEE CCRs the individual grid models used for the day-ahead capacity calculation process for all Continental Europe are not the two days-ahead congestion forecast models (D2CF), even though these are available for most TSOs (e.g., ESO EAD Bulgarian D2CF models are available for SEE CCR, but they are not used in the Core CCR capacity calculation process). This aspect introduces high uncertainties and could potentially introduce overloads on network elements which cannot be solved with the available remedial actions.

* ***Capacity calculation regions configurations and lack of the consideration of the non-EU countries power flows in capacity calculation.***

ACER recommendation no. 1/2019 provides that consideration of non-EU country flows in capacity calculation and counting these flows towards the target capacity should be possible on the condition that an agreement has been concluded by all TSOs of a CCR with the TSO of the third country and provided that this agreement is deemed acceptable by the competent regulatory authorities. Moreover, this agreement should be fully in accordance with EU capacity calculation principles and rules, and should cover at least consideration of internal third country constraints for intra-EU capacity calculation, consideration of EU internal constraints for capacity calculation on the border with third countries, and cost-sharing of remedial actions.

Cross-border exchanges on Romanian’s non-EU borders have a significant impact on cross-border capacity available on the EU Romanian borders, and cannot be artificially neglected in the calculation process. Romania – Hungary border from Core CCR is impacted by cross-border flows on Romania – Serbia and Romania – Ukraine, due to the fact that both transmission system operators are sharing borders with both Serbia and Ukraine. It has also been observed that the cross-border flows on the Romania – Hungary border are influenced by the flows on the Romania – Republic of Moldova border, the UA – MD interface being a transit zone for these exchanges. Similarly, the cross-border exchanges between Romania and Bulgaria are influenced by exchanges on Romania – Serbia and Bulgaria – Serbia borders. Non-consideration of third country flows leads to a significant disadvantage for those TSOs with higher exposure to flows of 3rd countries.

* ***Lack of the coordination between capacity calculation regions with impact on the power flows through critical network elements.***

CNTEE Transelectrica SA is also part of two CCRs, with Romania – Bulgaria border in SEE CCR and Romania – Hungary border in Core CCR. Furthermore, for the three non-EU borders there is no coordinated capacity calculation at the present moment. The exchanges, which are not included in the coordinated calculation process of one CCR, are considered fixed in coordinated capacity calculation (e.g., in Core CCR the exchanges on the borders with Bulgaria, Serbia, Ukraine and Republic of Moldova are considered fixed in the common grid model). Any deviation from these values forecasted two days ahead will create a different loading on the critical network element with risks regarding the operational security of the system.

Furthermore, the lack of cross – CCR coordination becomes critical for Romania in cases with high export from the southeast part of continental Europe towards the central area. More specifically, the periods when Romania imports from Bulgaria and Serbia (southern borders) and exports to Hungary, Ukraine and Republic of Moldova (west and north-west borders) involves a major stress for the system with higher than normal power flows on the transmission grid. These uncoordinated transits through Romania correlated with a high generation in the wind and hydro power plants from the southern part of Romania lead to:

- increasing the power flows on the internal elements 400 kV OHL Smârdan – Gutinaș, 400 kV OHL Gura Ialomiței – București Sud, 400 kV OHL Pelicanu – București Sud and 400 kV OHL Isaccea – Vulcănești due to the fact that the 400 kV OHL Medgidia Sud– Dobrudja and Medgidia Sud– Varna tie-lines have a low power flow;

- increasing the power flows on the 220 kV network in the southwest part of the country due to the fact that the tie-lines 400 kV Țânțăreni – Kozlodui d.c. take over most of the import from Bulgaria and it is then transferred to the western area mostly through 220 kV network elements.

These transits create (N-1) violations in the transmission grid which cannot be addressed without coordinated remedial actions for redispatching and countertrading.

* ***Margin for uncoordinated* transits (unreliable forecast).**

For the determination of the capacities to be offered for the cross-zonal trade according to ACER’s Recommendation (No. 1/2019), netting of flows outside of the coordination area (MNCCs) is envisaged. These MNCCs are to be calculated based on uncoordinated and unharmonized forecasts. As the nowadays coordination areas are relatively small (especially for NTC based borders), and as there is no common, harmonized and reliable net-position or exchange forecast yet implemented in Europe, the application of such a methodology will inevitably lead to large uncertainties, which cannot be covered by a low reliability margin contained along with loop flows and internal flows within 30% of the capacity on each CNEC. Neglecting these obvious and foreseeable uncertainties can lead to high overloads to operational situations potentially dangerous, where the available remedial action portfolio (including redispatching) is insufficient. This would severely endanger the operational security.

* ***Available cross-zonal capacity in 2024***

The analysis of the capacity calculation results of the first three quarters of 2024 at Core and SEE CCR level show the following:

* + for Romania – Hungary border the average value of the available cross-zonal capacity was 33,3 %, value that has been calculated according to ACER’s Recommendation (No. 1/2019), taking into account the element with the lowest available margin. The minimum value by month was in July, of 31,1 %, and the maximum value was for February and March, of 34,8 %. Moreover, in 10 % of the analysed period, the values of the available margin for cross-zonal trade were under the target of 33% for 2024;
	+ for Romania – Bulgaria border the available capacity for cross-zonal trade was smaller than the target of 1560 MW for 16,5 % of the time in import direction and for 16,9 % of the time in export direction, mainly because of the planned outage of the 400 kV OHL Țânțăreni – Kozlodui d.c. for major maintenance works. For these periods, the average value of the results of the coordinated capacity calculation process in import direction was of 1609 MW and in export direction of 1599 MW.
* ***Investment projects for the network development.***

According to the Action Plan approved by the Romanian Government, the investment projects foreseen for the increase of the available cross-border capacity are the following:

- OHL 400 kV d.c. Reșița – Timișoara – Săcălaz, including a new 400 kV Timișoara substation, having a signed execution contract, to be commissioned in 2026;

- OHL 400 kV d.c. Timișoara – Săcălaz – Arad, including a new 400 kV Săcălaz substation and the extension of the 400 kV Arad substation, project in preparation for the public procurement, to be commissioned in 2027;

- upgrade at 400 kV of the 220 kV OHLs Brazi Vest – Teleajen – Stâlpu, to be commissioned in 2027;

- OHL 400 kV d.c. (one equipped circuit) Smârdan – Gutinaş, to be commissioned in 2027.

 In 2024, the following investment projects with a role in increasing the capacity available for cross-border exchanges are finalised:

* comissioning of the 400 kV Reșița substation, OHL 400 kV Porțile de Fier – Reșița, OHL 400 kV Reșița – Pancevo circ. 2, AT3 – 400 MVA, 400/220 kV Reșița and 400 kV shunt reactor Reșița. OHL 400 kV Reșița – Pancevo circ. 1 will be commissioned in 2025;
* connection of OHL 400 kV Stupina – Varna and OHL 400 kV Rahman – Dobrudja in the 400 kV Medgidia Sud substation;
* OHL 400 kV d.c. Cernavodă – Stâlpu, with one circuit connected in Gura Ialomiţei substation, but cannot contribute to the increase of the cross-border capacity until the upgrade at 400 kV of the 220 kV OHLs Brazi Vest – Teleajen – Stâlpu.

(4) Given the completion of these projects, Transelectrica SA has analysed the possibility of increasing the minimum capacity available for cross-border exchanges, both for the Romania – Bulgaria border and for the Romania – Hungary border, with reference to 2024.

(3) As it has been previously detailed, all these arguments related to the request for derogation pursuant to Article 16(9) of the Regulation (EU) 2019/943 are foreseeable and directly impact the operational processes and maintenance of the operational security and justify the necessity of the derogation from the target capacity foreseen in the National Action Plan.

**Article 4. Duration of the Derogation**

(1) In order to be able to fulfil the capacity requirements of Article 16(8) of the Regulation (EU) 2019/943 and the national Action Plan, Transelectrica SA has under implementation investment projects for transmission network development. In parallel, experts of CNTEE Transelectrica SA are actively working with Core and SEE TSOs to implement the relevant methodologies in line with Regulation (EU) 2019/943.

(2) Taking into consideration the foreseeable grounds highlighted in article 3, it is not possible for CNTEE Transelectrica SA to fulfil the relevant target capacity as of the 1st of January 2025, of 1520 MW on Romania – Hungary border, representing 63% of the transmission capacity, and of 2220 MW on Romania – Bulgaria border, representing 61% of the transmission capacity, without endangering operational security. CNTEE Transelectrica SA will make all the efforts to maintain the minimum capacity available for cross-border trade at:

* 980 MW on Romania – Hungary border, representing 41 % of the transmission capacity;
* 1890 MW on Romania – Bulgaria border, representing 52 % of the transmission capacity.

(3) CNTEE Transelectrica SA will report the achieved minimum capacity to ANRE along with any deviation accompanied by the justification, if this is the case.

(4) Therefore, the aim of the derogation does not go beyond the need to maintain operational security.

(5) The proposed derogation is required just to maintain the operational system security and does not contain any measures which can lead to discrimination between internal and cross-zonal exchanges. Also, the derogation does not provide any grounds for curtailing the already allocated capacity on Romania – Hungary and Romania - Bulgaria borders.

(6) Article 16(9) of Regulation 2019/943 provides that, at the request of the TSOs in a CCR, the relevant regulatory authorities may grant a derogation on foreseeable grounds for maintaining operational security to allow the requester to reach the minimum level of capacity.

(7) Taking into consideration all the above reasons, CNTEE Transelectrica SA pursuant to Article 16(9) of Regulation (EU) 2019/943 requests a derogation from the obligations under Article 16(8) of Regulation (EU) 2019/943 regarding the bidding zone borders Romania – Hungary and Romania – Bulgaria for the year 2025.

 (8) If at the expiry date of the derogation period, any of the reasons described in the current derogation are not resolved, CNTEE Transelectrica SA may request for a renewal.