

**OPINION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 16/2017**

of 7 November 2017

**ON THE ENTSO-E MONITORING PLAN IN ACCORDANCE WITH
ARTICLE 63(2) OF COMMISSION REGULATION (EU) 2016/1719 OF
26 SEPTEMBER 2016 ESTABLISHING A GUIDELINE ON FORWARD
CAPACITY ALLOCATION**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation¹ (“FCA Guideline”) and, in particular, Article 63(2) thereof,

WHEREAS:

- (1) On 14 April 2017, the European Network of Transmission System Operators for Electricity (‘ENTSO-E’) submitted its plan for the monitoring of the implementation of forward capacity allocation and the establishment of a single allocation platform in accordance with Article 63(2) of the FCA Guideline (‘ENTSO-E Monitoring Plan’) to the Agency for its opinion.
- (2) For its assessment of the ENTSO-E Monitoring Plan, the Agency took into account the scope and purpose of ENTSO-E’s monitoring duties regarding network codes and guidelines under Regulation (EC) No 714/2009, as well as the matters that the monitoring plan must cover pursuant to Article 63(1) of the FCA Guideline,

HAS ADOPTED THIS OPINION:

The Agency commends ENTSO-E’s assessment of its monitoring obligations, pursuant to Regulation (EC) No 714/2009 and the FCA Guideline, and the submission of the ENTSO-E Monitoring Plan to the Agency within the required deadline. The Agency acknowledges ENTSO-E’s efforts to coordinate with the Agency on an informal basis before the official submission of the ENTSO-E Monitoring Plan and to address the Agency’s concerns raised during this informal process.

Given that the deadline for the submission of the ENTSO-E Monitoring Plan is well in advance of the actual start of the monitoring activities, the Agency understands that the ENTSO-E Monitoring Plan aims to provide a high-level overview of the monitoring obligations and deliverables, whereas a detailed substantial monitoring plan may be developed in the near future when the monitoring activities start. For this reason, this Opinion is focused on general aspects related to the ENTSO-E Monitoring Plan and does not evaluate the appropriateness of the scope and action plans for the

¹ OJ L 259, 27.9.2016, p. 42.

reports listed therein. In the Agency's view, such an evaluation will be appropriate when more clarity and detail on these reports is available.

At this stage the Agency expresses two general concerns with regard to the ENTSO-E Monitoring Plan.

The first concern is related to the assumption, in the ENTSO-E Monitoring Plan, that the deliverables listed in Article 63(1) of the FCA Guideline constitute the only monitoring reports to be submitted by ENTSO-E to the Agency pursuant to Article 8(8) of Regulation (EC) No 714/2009. The Agency disagrees with such a narrow interpretation and considers instead that the list of deliverables in Article 63(1) of the FCA Guideline is non-exhaustive and does not limit ENTSO-E's reporting obligations under its general monitoring duties pursuant to Article 8(8) of Regulation (EC) No 714/2009. The ENTSO-E Monitoring Plan should therefore encompass the monitoring of the implementation of all significant provisions of the FCA Guideline, as well as of the effects of such implementation on the harmonisation of applicable rules aimed at facilitating market integration. Examples of monitoring obligations which ENTSO-E has not considered within the ENTSO-E Monitoring Plan include the monitoring of:

- (a) whether the specific provisions of the FCA Guideline have been implemented or not;
- (b) the application of firmness regime of the allocated capacity, with respect to the definition and implementation of yearly or monthly caps per bidding zone border;
- (c) the congestion income of the TSOs compared with the costs they bear for ensuring firmness and remuneration of long-term transmission rights.

The second concern of the Agency is related to the fact that ENTSO-E and the Agency have similar monitoring obligations according to Regulation (EC) No 714/2009. For this reason, the Agency sees the need for closer coordination between the Agency and ENTSO-E during the definition of, *inter alia*, the process, timing, scope and data collection procedures for the monitoring of the implementation of the network codes and guidelines. The Agency is of the opinion that the ENTSO-E Monitoring Plan should include a description of the general monitoring process under which the relevant requirements in Regulation (EC) No 714/2009 are fulfilled, taking into account that some obligations may overlap with those of the Agency. In particular, the Agency suggests that any future updates of the ENTSO-E Monitoring Plan include a general description of the monitoring process, which should contain the following:

- (a) the timelines for scoping, data collection and drafting of the reports;
- (b) the timelines for interactions and coordination with the Agency;
- (c) the timelines for interactions with stakeholders during the scoping and evaluation of reports;
- (d) data collection procedures with participation of TSOs and third parties; and
- (e) a definition of the responsibilities and arrangements for data collection and archiving.

Apart from the above-mentioned general concerns, the Agency broadly supports the proposed high-level overview of the reports in the ENTSO-E Monitoring Plan. This includes:

- (a) the proposed scoping of these reports, which the Agency considers as preliminary and which will need to be updated in coordination with the Agency in future version(s) of the ENTSO-E Monitoring Plan;
- (b) the proposed timelines for the first report and the periodicity of the subsequent reports; and

- (c) the proposed interactions with the Agency, stakeholders and third parties, which may also be subject to updates when the overall monitoring processes are further developed.

However, regarding the report on the effectiveness of the operation of the forward capacity allocation and the single allocation platform according to Article 63(1)(d), the Agency suggests that the first submission be linked not to the establishment of the single allocation platform, but rather to the implementation of Harmonised Allocation Rules, since the effectiveness of the operation of forward capacity allocation can only be assessed after their implementation.

Finally, the Agency emphasises that the ENTSO-E Monitoring Plan does not exempt ENTSO-E from the obligation to provide the results of ENTSO-E's analysis in the annual report, in accordance with Article 8(8) of Regulation (EC) No 714/2009.

Given the above considerations, the Agency invites ENTSO-E to address the above concerns and revise the ENTSO-E Monitoring Plan within the timeline established in cooperation with the Agency, but no later than 1 October 2018. During this period, ENTSO-E is invited to coordinate closely with the Agency on several important aspects of the ENTSO-E Monitoring Plan in order to establish efficient monitoring procedures to fulfil all the monitoring requirements of the FCA Guideline. The Agency considers well established monitoring procedures as essential to fulfilling the objectives of the FCA Guideline and of Regulation (EC) No 714/2009.

Done at Ljubljana on 7 November 2017.

For the Agency:



Alberto Pototschnig
Director