

OPINION No 02/2022
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 2 February 2022

on the elements of the coordinated decisions on a request of prolongation of the exemption from the obligation to enable bi-directional capacity at the Murfeld/Ceršak cross-border interconnection point between Austria and Slovenia

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

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 Regulators¹, and, in particular, Article 9(4) thereof,

Having regard to Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010², and, in particular, Article 5(4) and (5) and point 8 of Annex III thereof,

Having regard to Commission's decision C(2020) 6600 final of 1 October 2020 on the revision of certain exemptions from the obligation to enable bi-directional capacity pursuant to Regulation (EU) 2017/1938,

Having regard to the consultation with the national regulatory authorities concerned, the competent authorities concerned and the competent authorities,

Having regard to the information provided by the competent authorities concerned and the transmission system operators ('TSOs') concerned,

Whereas:

1. INTRODUCTION

(1) On 2 November 2021, the European Union Agency for the Cooperation of Energy Regulators ('ACER') received from Energie-Control Austria für die Regulierung der

¹ OJ L158, 14.6.2019, p. 22.

² OJ L280, 28.10.2017, p.1.

Elektrizitats- und Erdgaswirtschaft (‘E-Control’) Decision V REV G 01/20/3 (‘the Austrian Decision’) of 29 October 2021. On 5 November 2021, ACER received from the Slovenian Energy Agency (‘AGEN’) Decision 132-15/2020/58 of 5 November 2021. The Austrian Decision and the Slovenian Decision (‘the Decisions’) have been coordinated and reach the same conclusion.

- (2) The Decisions are the result of the proceedings to review the exemption from the obligation to enable bi-directional capacity at the Murfeld/Ceršak cross-border interconnection point between Austria and Slovenia in accordance with Article 5(4) and point 2 of Annex III to Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (‘the SoS Regulation’).
- (3) Plinovodi, DruŹba za upravljanje s prenosnim sistemom, d.o.o (‘Plinovodi’) and Gas Connect Austria GmbH (‘GCA’) jointly developed a request to prolong the current exemption, which was submitted to E-Control on 15 April 2021 and to AGEN on 16 April 2021.
- (4) The Joint Decisions by E-Control and AGEN grant an exemption from the obligation to enable bi-directional capacity at the Murfeld/Ceršak cross-border interconnection point from Slovenia to Austria, for a period of four years.
- (5) On 18 November 2021, ACER published on its website a “Notice on ACER’s pending Opinions on Decisions on proceedings related to the review of the exemption from the obligation to enable bi-directional gas transmission capacity at the two Interconnection Points: Mosonmagyaróvár (Hungary to Austria) and Murfeld/Ceršak (Slovenia to Austria)”. ACER invited third parties to provide any comments and observations they may have on this subject matter to ACER by 7 December 2021. By that date, no comments or observations were received.

2. SCOPE OF THE OPINION

- (6) ACER shall deliver an opinion on the elements of the Decisions taking into account the requirements of the SoS Regulation, in particular Article 5 and Annex III, including any possible objection received pursuant to point 7 of Annex III.

3. OBJECTIONS RECEIVED AND OTHER RELEVANT DOCUMENTS

- (7) On 21 December 2021, ACER circulated to the relevant Competent Authorities (E-Control and AGEN) and the European Commission the draft ACER Opinion on the elements of the coordinated decisions as result of the proceedings to review the exemption from the obligation to enable bi-directional capacity at the Murfeld/Ceršak cross-border interconnection point between Slovenia and Austria. ACER invited the addressed parties to provide comments or confidentiality claims they may have on this subject matter to ACER by 12 January 2022. By that date, no comments or confidentiality claims were received.

4. ASSESSMENT OF THE PROCEDURE

- (8) The European Commission in its decision C(2020) 6600 of 1 October 2020, addressed, among other Member States, to Slovenia and Austria, requested the review of the exemption from the obligation to enable bi-directional capacity at the Murfeld/Ceršak cross-border interconnection point between Austria and Slovenia in line with the procedure foreseen in Annex III to the SoS Regulation. The coordinated decision referred to in point 5 of Annex III shall be adopted by the competent authorities of the Member States on both sides of each interconnection point referred by 31 January 2022.
- (9) On 15 and 16 April 2021 respectively, GCA and Plinovodi submitted a joint coordinated application to E-Control and AGEN ('the Joint Proposal'), requesting a prolongation of the exemption from the obligation to enable bi-directional capacity at the Murfeld/Ceršak cross-border interconnection point pursuant to SoS Regulation. The Joint Proposal was submitted pursuant to point 2 of Annex III to SoS Regulation, following a consultation with the transmission system operators of the directly connected Member States which lasted from 30 March 2021 until 13 April 2021. There were no responses on the contents of the Joint Proposal.
- (10) Upon receipt of the Joint Proposal, in line with point 3 of Annex III to SoS Regulation, E-Control and AGEN jointly consulted on the Joint Proposal the competent authorities of neighbouring Member States which have a natural gas transmission connection with Slovenia and Austria, ACER, and the European Commission. This consultation was open from 6 May 2021 until 6 September 2021. The duration of the consultation period provided sufficient time for participation. One response, submitted on 6 September 2021 by the Croatian regulatory authority ('HERA') was received to this consultation. HERA did not find any significant arguments against the proposed prolongation of the exemption from the reverse-flow obligation at the cross-border interconnection point Murfeld/Ceršak in the frame of security of supply. Therefore, HERA did not raise any objection against this joint decision.
- (11) ACER welcomes that the Joint Proposal was prepared and consulted by the TSOs, GCA and Plinovodi, and the regulatory authorities, E-Control and AGEN, in compliance with the procedure under Annex III to the SoS Regulation.

5. ASSESSMENT OF THE ELEMENTS OF THE DECISION

- (12) The request contains the elements set out in Article 5(5) of the SoS Regulation, which are also described in the Decisions.
- (13) The Decisions approve the Joint Proposal of GCA and Plinovodi to prolong the exemption from the obligation of enabling bi-directional capacity at the interconnection point Murfeld/Ceršak and include the relevant facts, background the legal basis and elements of the analysis leading to the Decisions.
- (14) The Decisions further assess the substantive conditions contained in the request in line with Article 5(5) of the SoS Regulation.
- (15) ACER's considerations on the elements of the Decisions, which are made in particular in view of the requirements of Article 5(5) of the SoS Regulation are presented below.

5.1. On the overall Joint Proposal and Decisions for exemption

- (16) The Joint Proposal and the Decisions argue that enabling bi-directional capacity at the interconnection point Murfeld/Ceršak pursuant to gas SoS Regulation would not enhance the security of gas supply in Slovenia and would only slightly enhance the N-1 criterion³ in Austria, therefore not bringing benefits to the Slovenian nor significant benefits to the Austrian transmission systems. Currently, there is an exemption from the obligation to enable bi-directional capacity for this interconnection point granted in 2012⁴ by the corresponding exemption request based on Article 7 of the previous gas SoS Regulation⁵.
- (17) In addition, both the TSOs (GCA and Plinovodi) and Competent Authorities (E-Control and AGEN) believe that “creating permanent bi-directional capacity would require large investments, in Austria and Slovenia, and that these would greatly outweigh the benefits to the security of supply in both Member States.”

5.2. CBA prepared on the basis of the methodology pursuant to Article 11 of Regulation (EU) No 347/2013⁶

- (18) ACER considers that there is insufficient evidence that the Cost-benefit Analysis (CBA) included in the request sufficiently follows the CBA methodology pursuant to Article 11 of Regulation (EU) No 347/2013⁷. However, the Joint Proposal submitted by GCA and Plinovodi covers all elements set out in Article 5(5) of the SoS Regulation. For this particular case, the justifications provided in the Joint Proposal for prolongation of the exemption, provide sufficient evidence and necessary elements for ACER to be able to evaluate and confirm the presented facts and conclusions. In other cases where the prolongation of the exemption from the obligation to enable reverse flow may be less straightforward, ACER would expect a significantly more elaborated CBA approach based on the latest ENTSOG’s methodology, especially with inclusion of all SoS indicators and monetised benefits, backed up with analyses performed with the latest TYNDP scenarios and infrastructure levels.

5.3. Assessment of market demand

³ Annex II to the gas SoS Regulation defines the N-1 indicator: “*The N – 1 formula describes the ability of the technical capacity of the gas infrastructure to satisfy total gas demand in the calculated area in the event of disruption of the single largest gas infrastructure during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years*”

⁴ Granted by E-Control’s official decision V REV G 03/12 of 9 November 2012.

⁵ Regulation (EC) No 994/2010.

⁶ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115, 25.4.2013, p. 39.

⁷ It does not meet the requirements of the gas CBA methodology pursuant to Article 11 of Regulation (EU) 347/2013 currently in force, which is ENTSOG’s CBA methodology 2.0, cf. https://www.entsog.eu/sites/default/files/2019-03/1_ADAPTED_2nd_CBA_Methodology_Main_document_EC_APPROVED.pdf.

- (19) The GCA and Plinovodi found no non-binding demand for transmission capacity in the direction from Slovenia to Austria when conducting the incremental capacity process based on the provisions of CAM NC⁸ in years 2021 and 2019. The Decisions concur with the TSOs' Joint Proposal, which evidence that in 2021 and 2019 shippers have not made binding capacity bookings at the cross-border interconnection point Murfeld/Ceršak in direction from Slovenia to Austria. ACER additionally notes that Plinovodi recorded positive non-binding demand expressions for the direction from Slovenia to Austria in its demand assessment in 2017, but that the incremental process for a project at the Murfeld/Ceršak was stopped in agreement among the concerned TSOs and NRAs before a joint incremental project proposal was submitted for coordinated NRA approvals.
- (20) ACER notes the existence of periodic assessments of market demand for the cross-border interconnection point Murfeld/Ceršak conducted based on the provisions of CAM NC, Regulation (EC) 715/2009 and Directive 2009/73/EC. ACER concurs with E-Control's and AGEN's Joint Decision that the incremental capacity process has not attracted sufficient binding capacity interest in recent years to justify a market-based expansion at the cross-border interconnection point Murfeld/Ceršak for the flow direction from Slovenia to Austria.

5.4. Projections for demand and supply

- (21) E-Control and AGEN concur with the assessment of the projections of demand and supply presented in the TSOs' Joint Proposal. In Slovenia, gas demand is expected to grow by 2030, implying that also the transmitted gas volumes from Austria to Slovenia are projected to increase. In Austria, no increase in gas demand is expected, due to decarbonisation plans and related measures. In addition, no scenario that ENTSOG prepares within the TYNDP process foresees possible gas supply in the direction from Slovenia to Austria.
- (22) ACER concurs with E-Control's and AGEN's Decisions where they state that neither the current market situation nor mid- and long-term forecasts show a need to increase the capacity from Slovenia to Austria at the cross-border interconnection point Murfeld/Ceršak.

5.5. Possible economic impact on existing infrastructure

- (23) E-Control and AGEN confirm TSOs' estimates that necessary investment costs to enable permanent bi-directional capacity at the cross-border interconnection point Murfeld/Ceršak are 42.8m EUR on the Slovenian side and 31.4m EUR on the Austrian side. ACER notes the inclusion of cost estimates in the Joint Proposal and considers that if a reverse flow project would eventually be implemented the efficiency incurred costs

⁸ Commission Regulation (EU) No 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013 ('CAM NC').

would potentially need to be included into the transmission tariffs, depending on how the costs are allocated to network users.

5.6. A feasibility study

- (24) In their Joint Proposal, GCA and Plinovodi listed essential investments needed in both transmission systems and data necessary for deciding on the requested exemption, including the necessary minimum gas flow from Slovenia to Austria. The duration of implementing the potential reverse flow project is estimated at 3.5 years on the Slovenian side and 4.5 years on the Austrian side, from the date of the final investment decision.
- (25) ACER notes that the Joint Proposal only includes a non-exhaustive list of the necessary investments to enable a minimum flow of 126 000 Sm³/h (15 °C) for the purpose of security of supply in the direction from Slovenia to Austria. ACER deems that such feasibility study⁹ should cover, as a rule, techno-economic elements which provide essential information about the basic design parameters of the main facilities, the associated cost estimates, and the possible implementation schedule of a reverse flow project proposal, even when the study concludes that the project is not feasible.

5.7. Costs of implementing bi-directional capacity

- (26) E-Control and AGEN estimate that in addition to investment costs of 74.2m EUR in total, the annual operation and maintenance costs are estimated at 1.1m EUR in Austria and 0.75m EUR in Slovenia. According to the TSOs, the investment costs for establishing bi-directional capacity at the cross-border interconnection point Murfeld/Ceršak would significantly outweigh the prospective benefits for the security of gas supply in Austrian system, where the improvement of the infrastructure standard N-1 would be negligible.
- (27) ACER deems that the Joint Proposal could have included more detailed cost estimates of the investment items needed to implement bi-directional capacity, specifically about the estimated compressor power and technology solutions needed to enable physical reverse flow at the interconnection point. Only such elaborated list of investment items with detailed cost estimates, would allow ACER to make comparison with unit investment costs and provide views whether such cost are reasonable or not.

5.8. Benefits to the security of gas supply taking into account the possible contribution to meet the infrastructure standard

- (28) E-control's and Energy Agency's Decisions note that enabling minimum flow and establishing bi-directional capacity at the interconnection point Murfeld/Ceršak does not affect the level of the N-1 infrastructure standard in the Slovenian transmission system. The current value of the N-1 for Austria is 140%, well above the required 100% level as

⁹ See p. 10, para 32 of ACER Opinion No 4/2020 on a request of exemption for a cross-border interconnection point from Germany to the Czech Republic
https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2004-2020%20on%20Reverse%20flow%20DE-CZ.pdf.

requested by the gas SoS Regulation, and its value N-1 would be improved by 6% with this project. GCA has calculated the N-1 infrastructure standard referred to in Article 5 and defined in Annex II to the gas SoS Regulation with the value of the parameters used in the Austrian Gas Grid Management AG (AGGM) long-term plan for 2020: beyond this slight improvement of N-1 indicator, no other benefits of enabling bi-directional capacity at the concerned interconnection point were identified in relation to the security of supply in Austria.

- (29) Considering the facts above, ACER supports the conclusions in the Decisions that there is no need to establish bi-directional capacity at the interconnection point Murfeld/Ceršak for reasons of security of gas supply.

5.9. Common risk assessment

- (30) The Decisions and Joint Proposal also refer to the results of the common risk assessment at the regional level performed in accordance with Article 7(2) of the SoS Regulation of the Eastern and North African gas supply risk groups, Ukraine, Algeria and Libya (cf. Annex 1.1.a) of the SoS Regulation. The outcome is that there is no potential positive effect of or need for enabling bi-directional capacity at the interconnection point Murfeld/Ceršak. ACER notes that all scenarios compiled to assess the security of supply in the region in that common risk assessment found that it would not be necessary to enable bi-directional capacity from Slovenia to Austria to ensure adequate level of security of gas supply.

HAS ADOPTED THIS OPINION:

1. ACER welcomes that the Joint Proposal was prepared and consulted by the TSOs (GCA and Plinovodi) and Competent Authorities (E-Control and AGEN) in compliance with the procedure under Annex III of the SoS Regulation and that the Competent Authorities decided on the Joint Proposal in a coordinated and timely way.
2. The Decisions fulfil the requirements of the SoS Regulation applicable to the elements of decisions on requests and prolongations for exemption from the obligation to enable permanent physical bi-directional capacity. However, the Joint Proposal for an exemption does not include:
 - a. a complete feasibility study for a reverse flow project enabling permanent marketable capacities;
 - b. a CBA based on the methodology foreseen in Article 11 of the Regulation (EU) No 347/2013, as required by Article 5(5) of SoS Regulation;
3. The inclusion of a feasibility study is a regulatory requirement. In ACER's view, the study should provide essential information about the design, the cost estimates, and the implementation schedule of the project. Such feasibility study would also provide more detailed information needed to carry out the proper CBA required by Article 5(5) SoS Regulation.
4. The reasoning contained in the Decisions about the N-1 infrastructure standard indicator of the SoS Regulation is compelling. This N-1 indicator is at a more than adequate level

in Austria already and would only be slightly improved [6%] by the implementation of a reverse flow project.

5. ACER concurs with the Decisions that, at the time of the submission of the Joint Proposal, i.e. in April 2021 neither the current market situation nor mid- and long-term forecasts show a need to establish bi-directional capacity from Slovenia to Austria at the Murfeld/Ceršak interconnection point. The establishment of the capacity from Slovenia to Austria in the short- to medium-term, when not supported by the market, may result in inefficient investments, as the assessment shows that the investment costs of having permanent bi-directional reverse flow capacity at this interconnection point would significantly outweigh the very limited prospective benefits for the security of gas supply it would provide.
6. The duration of the exemption of four years appears to be justified insofar as no substantial changes occur in the market or in the infrastructure's conditions under which the exemption was granted (i.e. only if the risk factors remain similar to the ones observed at that time). While these conditions are unlikely to change in the near- and mid-term future, the risk patterns may be different in the long term.

This Opinion is submitted to the Commission for consequential actions deemed necessary, all competent authorities concerned, and the national regulatory authorities referred to in points 3 and 6 of Annex III SoS Regulation.

Done at Ljubljana, on 2 February 2022.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN