

## **Consultation on the Capacity Calculation Regions**

E-Control Austria appreciates the opportunity to respond ACER's consultation on common proposal for capacity calculation regions which all TSOs have jointly developed pursuant to Article 15(1) of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management. E-Control wants to share its point of view on question 1, 3 and 4. On the other two questions E-Control has no comments at this stage:

**1. Do you consider both the commitment from the CWE and the CEE TSOs to cooperate towards a merger of the CWE and CEE CCRs and the MoU signed on 3 March 2016 as sufficient to ensure that the CWE and CEE regions will develop and implement a common congestion management procedure compliant with the requirements of the CACM Regulation, as well as of Regulation (EC) No 714/2009? Or should the definition of the CCRs provide for a CCR already merging the proposed CWE and CEE regions to ensure compliance with the required common congestion management procedure?**

The CWE and CEE Regions are technically and via market relations strongly linked. Thus TSOs from both regions need to cooperate as close as possible in order to foster the market integration within this core part of Europe.

It should be noted that the existing MoU between TSOs is a reasonable step in the right direction and demonstrates the positive intentions. But since a MoU is by nature not legally binding it does however not provide for all elements which are needed to guarantee an agreement amongst the relevant TSOs on methods and their implementation and application for coordinated capacity calculation and other related issues such as underlying input data and redispatching coordination.

E-Control therefore supports the merger of the CWE and CEE region in the CCR that is going to be approved by ACER in order to ensure effective implementation of the merger at the earliest stage possible.

**3. Should the CEE region (or a merged region) include the bidding zone borders between Croatia and Slovenia, between Croatia and Hungary, and between Romania and Hungary?**

We are in favour of including the borders to Romania and Croatia into a merged CWE / CEE Region. Preparatory contacts and projects have been established via the CEE work so far. In case the inclusion of the borders affects implementation timelines on other borders this should be tackled via a stepwise approach for implementation.

**4. Should the CEE region (or a merged region) include a bidding zone border between Germany/Luxembourg and Austria?**

The DE/LU – AT bidding zone border must not be included nor in the CEE region neither a merged region due to the following reasons:

a. Legal reasons against the inclusion of the DE/LU – AT bidding zone border

The CCR Proposal introduces a new bidding zone border, which does not exist under the current legal framework. The CACM Regulation does not provide a procedure for establishing (new) bidding zones in the first place, rather a formal procedure for reviewing the **existing** bidding zone configuration. Such a review of existing bidding zone configurations is explicitly governed by Articles 32–34 of the CACM Regulation. Pursuant thereto, the procedure of the bidding zone review is a completely separate and distinguished procedure from the procedure of determining the CCRs. The fact that a specific process for reviewing bidding zone configurations has been included in the CACM Regulation implies that beyond this process, bidding zones cannot be changed.

Bidding zone borders serve as a reference for the determination of capacity calculation regions pursuant to Article 15 of the CACM Regulation. However, it is based on existing bidding zone borders which can under the CACM Regulation only be re-configured after undergoing a formal bidding zone review.

The introduction of the DE/LU – AT bidding zone border in the CCR proposal leads to an artificial split of the integrated electricity market between Austria and Germany by establishing barriers to cross-border trade, although there physical congestion at German-Austrian border does not exist. Approving the CCR Proposal with the DE/LU-AT bidding zone border would infringe European competition law, precisely of Article 101 and 102 TFEU.

Furthermore, the limitation of capacity at the German-Austrian border constitutes a quantitative restriction on cross-border trade which is prohibited under Art 34 and 35 TFEU.

Therefore ACER is obliged by law to not approve the CCR Proposal with the DE/LU – AT bidding zone border.

b. Technical reasons against the inclusion of the DE/LU – AT bidding zone border

By the end of June 2016 a new grid investment, having market and operational impacts came into operation. The phase-shifting transformers between Germany and Poland on the interconnection Hagenwerder – Mikulowa became effective and at the same time the interconnection between Vierraden – Krajnik became disconnected. First analysis shows that this new grid topology situation has significant mitigating effects on the magnitude of loop-flows from Germany towards Poland and further on. The ACER Opinion 09/2015 was widely justified with arguments related to these loop-flows, therefore the new situation must be taken into account. Considering the impact of the new grid investment it is – again – shown that a forward looking assessment is needed for decisions on bidding zone configurations.

Due to the mentioned legal and technical reasons E-Control therefore objects the inclusion of the border between Germany/Luxembourg and Austria into the Capacity Calculation definition.