

**DECISION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 01/2018**

of 10 January 2018

**ON THE REQUEST OF THE REGULATORY AUTHORITIES OF AUSTRIA,
FRANCE, ITALY AND SLOVENIA TO EXTEND THE PERIOD FOR
REACHING AN AGREEMENT ON THE AMENDED PROPOSAL FOR
COMPLEMENTARY REGIONAL INTRADAY AUCTIONS IN THE
CAPACITY CALCULATION REGION ITALY NORTH**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to the Treaty on the Functioning of the European Union,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 8(1) thereof,

HAVING REGARD to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Article 9(12) thereof,

HAVING REGARD to the favourable opinion of the Board of Regulators of 9 January 2018, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the 'CACM Regulation') laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements also include the development of complementary regional intraday auctions ('CRIDAs') in accordance with Article 63 of the CACM Regulation.

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 197, 25.7.2015, p. 24.

- (2) Pursuant to Articles 9(1), 9(7)(f) and 63(1) of the CACM Regulation, the relevant nominated electricity market operators ('NEMOs') and transmission system operators ('TSOs') are required jointly to develop a common proposal for the design and implementation of CRIDAs and submit it to the regulatory authorities of the concerned region for approval. Then the regulatory authorities receiving the proposal for CRIDAs should reach an agreement and take a decision on that proposal within six months after the receipt of the proposal by the last regulatory authority, according to Article 9(10) of the CACM Regulation, or, if they request the NEMOs and TSOs to amend the proposal, within two months after the receipt of the amended proposal by the last regulatory authority, according to Article 9(12) of the CACM Regulation. When the competent regulatory authorities fail to reach an agreement within the six-month period or within the two-month period after the resubmission, the Agency, pursuant to Article 9(11) and (12) of the CACM Regulation, is called upon to adopt a decision concerning the NEMOs' and TSOs' proposal in accordance with Article 8(1) of Regulation (EC) No 713/2009.
- (3) The present Decision of the Agency follows from the request of the regulatory authorities of Austria, *E-control*, France, *Commission de Regulation de l'Energie*, Italy, *Autorità per l'energia elettrica il gas e il sistema idrico*, and Slovenia, *Agencija za energijo* (hereafter: 'the concerned regulatory authorities') to extend the period for reaching an agreement on the amended proposal for CRIDAs of the NEMOs and TSOs of the capacity calculation region Italy North by six months pursuant to Article 8(1) of Regulation (EC) No 713/2009.

2. PROCEDURE

- (4) In a letter dated 15 December 2017 and received by the Agency on 19 December 2017, the Italian regulatory authority submitted, on behalf of the concerned regulatory authorities, a joint request for a six-month extension of the deadline to reach an agreement on the amended proposal for CRIDAs submitted by the NEMOs and TSOs of the capacity calculation region Italy North.
- (5) According to this letter, the concerned regulatory authorities received from the relevant NEMOs and TSOs a proposal for CRIDAs on 22 March 2017, agreed in August 2017 to request the NEMOs and TSOs to amend that proposal and received an amended proposal for CRIDAs on 19 October 2017.
- (6) In support of the request for extension, the letter states in particular the following:

The CRIDA proposal is tightly interlinked with and/or dependent upon other methodologies, whose approval is still pending at European or regional level. Notably, this is the case for the proposal for Intraday Cross Zonal Gate Opening and Closure Times, according to Article 59 of Regulation 2015/1222, the proposal for Intraday Cross Zonal Capacity Pricing, according to Article 55 of Regulation 2015/1222, as well as, the proposal for Common Capacity Calculation Methodologies, according to Article 20 of Regulation 2015/1222. The Intraday

Cross Zonal Gate Opening and Closure Times set the time frame during which continuous trading is allowed, and, at its current stage, the methodology on Intraday Cross-Zonal Capacity Pricing foresees one pan-European auction. Both these methodologies, the potential fragmentation of the continuous Intraday trading, the liquidity of the continuous Intraday trading, the capacity recalculation and the necessity and effectiveness of the CRIDAs need to be taken into account by the concerned Regulatory Authorities when assessing the CRIDA proposal. Since the CRIDA proposal is a regional one that complements the pan-European Intraday market, the concerned Regulatory Authorities deem it important to obtain more information about the development of the above mentioned pending methodologies before issuing a decision about the CRIDA proposal.'

3. ASSESSMENT OF THE REQUEST

3.1 Legal framework

- (7) According to Article 8(1) of Regulation (EC) No 713/2009, the Agency shall decide upon regulatory issues that fall within the competence of national regulatory authorities, where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from when the case was referred to the last of those regulatory authorities. According to the second subparagraph of Article 8(1) of Regulation (EC) No 713/2009, the competent national regulatory authorities may jointly request that the six-month period is extended by a period of up to six months.
- (8) According to Article 9(7)(f) of the CACM Regulation, the proposals for CRIDAs in accordance with Article 63(1) of that Regulation shall be subject to approval by all regulatory authorities of the concerned region.
- (9) According to Article 9(10) of the CACM Regulation, where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order to reach an agreement, and they shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6, 7 and 8, within six months following the receipt of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.
- (10) According to Article 9(12) of the CACM Regulation, where the submitted terms and conditions or methodologies have been resubmitted with amendments, the competent regulatory authorities shall decide on those amended terms and conditions or methodologies within two months following their resubmission.
- (11) According to Article 9(12) of the CACM Regulation, where the regulatory authorities have not been able to reach an agreement on the amended terms and conditions or methodologies

within the two-month deadline, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.

- (12) According to Recital (31) of the CACM Regulation, the Agency should take a decision if the competent national regulatory authorities are not able to reach an agreement on common terms and conditions or methodologies, in line with Article 8 of Regulation (EC) No 713/2009.

3.2 Admissibility

- (13) Article 9(12) of the CACM Regulation requires the concerned regulatory authorities to take the decision and to reach an agreement on the amended proposal for CRIDAs within two months after receipt of the submission, i.e. by 19 December 2017, but does not explicitly provide for the possibility to extend the two-month period.
- (14) However, Article 9(12) of the CACM Regulation is based on Article 8(1) of Regulation (EC) No 713/2009, as evidenced by Recital (31) of the CACM Regulation, and also stipulates that the Agency shall take its decision in accordance with Article 8(1) of Regulation (EC) No 713/2009 when the regulatory authorities did not reach an agreement within the two-month deadline.
- (15) Therefore, the transfer of the decision-making competence from the regulatory authorities to the Agency under Article 9(12) of the CACM Regulation may also be subject to an extension of the regulatory authorities' deadline to reach an agreement, in accordance with Article 8(1) of Regulation (EC) No 713/2009.
- (16) The second subparagraph of Article 8(1) of Regulation (EC) No 713/2009 allows for an extension of the prescribed period within which the competent regulatory authorities have to reach an agreement on a regulatory issue before the decision-making competence is transferred from the regulatory authorities to the Agency. The maximum period of such an extension is six months. The extension may be requested by the competent regulatory authorities. The fact that the requesting authorities need to be competent implies also that the competent regulatory authorities should submit the request before the end of the period for reaching an agreement.
- (17) The present request for extension relates to the amended proposal for CRIDAs according to Article 63(1) of the CACM Regulation which has been proposed by the NEMOs and TSOs of the capacity calculation region Italy North. The concerned regulatory authorities are therefore competent to decide on this amended proposal for CRIDAs for the capacity calculation region Italy North according to Article 9(7)(f) of the CACM Regulation. Accordingly, they are also the competent regulatory authorities which may request an extension of the two-month period for reaching an agreement under Article 9(12) of the CACM Regulation.

- (18) Given the initial submission of the proposal for CRIDAs on 22 March 2017 and the submission of the amended proposal for CRIDAs on 19 October 2017, the concerned regulatory authorities had to decide on the amended proposal for CRIDAs, in accordance with Article 9(10) and (12) of the CACM Regulation, by 19 December 2017. The request for extension was received by the Agency on 19 December 2017. Thus, it was received before the expiry of the two-month deadline on 19 December 2017.
- (19) In their request, the concerned regulatory authorities ask for an extension of six months. As such, the requested extension does not exceed the maximum limit of six months as provided for in Article 8(1) of Regulation (EC) No 713/2009.
- (20) Therefore, the Agency considers the request for extension as admissible.

3.3 Substance

- (21) Article 8(1) of Regulation (EC) No 713/2009 does not lay down requirements for the justification of an extension.
- (22) The concerned regulatory authorities consider the extension justified as, in their views, their decision on the amended proposal for CRIDAs is tightly interlinked with and/or dependent upon other methodologies under the CACM Regulation, in particular the proposals for intraday cross zonal gate opening and closure times, for intraday cross zonal capacity pricing and for common capacity calculation methodologies, whose approval is still pending.
- (23) The Agency agrees with this assessment.
- (24) Furthermore, the Agency cannot detect any inappropriate delays which the requested extension would cause.
- (25) Therefore, the Agency considers an extension of six months justified.

3.4 Conclusion

- (26) For the above reasons, the Agency accepts the request for an extension submitted by the concerned regulatory authorities and extends the period for those regulatory authorities to reach an agreement on the amended proposal for CRIDAs for the capacity calculation region Italy North by six months.

HAS ADOPTED THIS DECISION:

Article 1

The period within which *E-control*, *Commission de Regulation de l'Energie*, *Autorità per l'energia elettrica il gas e il sistema idrico* and *Agencija za energijo* shall reach an agreement on the amended proposal for complementary regional intraday auctions in the capacity calculation region Italy North according to Article 63(1) of Regulation (EU) 2015/1222, submitted by the concerned nominated electricity market operators and transmission system operators on 19 October 2017, is extended, in accordance with Article 8(1) of Regulation (EC) No 713/2009, by six months.

Article 2

This Decision is addressed to *E-control*, *Commission de Regulation de l'Energie*, *Autorità per l'energia elettrica il gas e il sistema idrico* and *Agencija za energijo*.

Done at Ljubljana on 10 January 2018.

For the Agency:


Alberto Pototschnig
Director