

**DECISION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 02/2018**

of 23 February 2018
(text rectified by corrigendum of 14 March 2018)

**ON THE REQUEST OF ALL REGULATORY AUTHORITIES TO EXTEND
THE PERIOD FOR REACHING AN AGREEMENT ON THE PROPOSAL FOR
THE SINGLE METHODOLOGY FOR PRICING INTRADAY CROSS-ZONAL
CAPACITY**

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(11) thereof,

HAVING REGARD to the favourable opinion of the Board of Regulators of 22 February 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 the single methodology for pricing intraday cross-zonal capacity in accordance with Article 55 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(6)(j) and 55(3) of the CACM Regulation, all transmission system operators ('TSOs') are required to develop a proposal for the single methodology for pricing intraday cross-zonal capacity ('proposal for IDCZCP') and to submit it to all regulatory authorities for approval. Then those regulatory authorities should reach an agreement and take a decision on the proposal for IDCZCP 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 require the 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 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 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 all regulatory authorities to extend, by six months, the period for reaching an agreement on the TSOs' proposal for IDCZCP pursuant to Article 8(1) of Regulation (EC) No 713/2009.

2. PROCEDURE

- (4) In a letter dated 5 February 2018 and received by the Agency on the same day, the chair of the Energy Regulators' Forum submitted, on behalf of all regulatory authorities and according to Article 9(6)(j) of the CACM Regulation, a joint request to grant a six-month extension for the regulatory authorities' decision-making on the all TSOs' proposal for IDCZCP.
- (5) According to this letter, all regulatory authorities had received from all TSOs the proposal for IDCZCP by 28 August 2017. As evidenced by earlier communication to the Agency, those regulatory authorities are the regulatory authorities of Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.
- (6) In support of the request for extension, the letter states in particular the following:

'Regulatory Authorities reached the conclusion that the capacity pricing proposal is interlinked with other methodologies which are not yet finalised. In particular, this is the case for the proposal for Intraday Cross Zonal Gate Opening and Closure Times (IDCZGT), submitted by TSOs in accordance with Article 59 of CACM Regulation, on which the Agency is expected to adopt a decision in April 2018. In addition, the capacity pricing proposal is linked to the Capacity Calculation Methodology, submitted by TSOs in accordance with Article 20 of the CACM Regulation. The approval of the capacity calculation methodology is still pending. All Regulatory Authorities deem it important to obtain more information

about the development of the above-mentioned pending methodologies before issuing a decision about the capacity pricing proposal. Having clarity on how these methodologies will develop will support Regulatory Authorities to reach an informed decision on the capacity pricing proposal and ensure consistency across the methodologies under CACM Regulation.'

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 be extended by a period of up to six months.
- (8) According to Article 9(6)(j) of the CACM Regulation, the proposal for IDCZCP in accordance with Article 55(1) of that Regulation shall be subject to approval by all regulatory authorities.
- (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, of the same Article within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (10) According to Article 9(11) of the CACM Regulation, where the regulatory authorities have not been able to reach an agreement on the terms and conditions or methodologies within the six-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.

3.2 Admissibility

- (11) Article 9(11) of the CACM Regulation requires the concerned regulatory authorities to take the decision and to reach an agreement on the proposal for IDCZCP within six months after six months from the receipt of the submission, but does not explicitly provide for the possibility to extend the six-month period.

- (12) However, Article 9(11) of the CACM Regulation 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 six-month deadline.
- (13) Therefore, the transfer of the decision-making competence from the regulatory authorities to the Agency under Article 9(11) 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.
- (14) 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.
- (15) The present request for extension relates to the proposal for IDCZCP according to Article 55 of the CACM Regulation which has been submitted by all TSOs in accordance with Article 9(6)(j) of the CACM Regulation to the regulatory authorities of Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. The requesting regulatory authorities, i.e. the regulatory authorities of those countries, are therefore competent to decide on the proposal for IDCZCP according to Article 9(6)(j) of the CACM Regulation. Accordingly, they are also the competent regulatory authorities which may request an extension of the six-month period for reaching an agreement under Article 9(10) and (11) of the CACM Regulation.
- (16) Given the initial submission of the proposal for IDCZCP to the last competent regulatory authority on 28 August 2017, the competent regulatory authorities have to decide on the proposal for IDCZCP, in accordance with Article 9(10) and (11) of the CACM Regulation, by 28 February 2018. The request for extension was received by the Agency on 5 February. Thus, it was received before the expiry of the six-month deadline on 28 February 2018.
- (17) In their request, the competent 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.
- (18) Therefore, the Agency considers the request for extension as admissible.

3.3 Substance

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

3.4 Conclusion

- (24) For the above reasons, the Agency accepts the request for an extension submitted by all regulatory authorities competent according to Article 9(6)(j) of the CACM Regulation, i.e. the regulatory authorities of Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom, and extends the period for those regulatory authorities to reach an agreement on the proposal for IDCZCP by six months,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom, competent according to Article 9(6)(j) of Commission Regulation (EU) 2015/1222, shall reach an agreement on the proposal for the single methodology for pricing intraday cross-zonal capacity according to Article 55 of Commission Regulation (EU) 2015/1222, submitted by the transmission system operators by 28 August 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 the regulatory authorities:

Energie-Control Austria (Austria)
Commission de Régulation de l'Électricité et du Gaz (Belgium)
комисия за енергийно и водно регулиране (Bulgaria)
Hrvatska energetska regulatorna agencija (Croatia)
Energetický regulační úřad (Czech Republic)
Energitilsynet (Denmark)
Konkurentsiamet (Estonia)
Energiavirasto (Finland)
Commission de régulation de l'énergie (France)
Bundesnetzagentur (Germany)
Ρυθμιστική Αρχή Ενέργειας (Greece)
Magyar Energetikai És Közmű-Szabályozási Hivatal (Hungary)
Commission for Regulation of Utilities (Ireland)
Autorità di Regolazione per Energia Reti e Ambiente (Italy)
Sabiedrisko pakalpojumu regulēšanas komisija (Latvia)
Valstybinė kainų ir energetikos kontrolės komisija (Lithuania)
Institut Luxembourgeois de Régulation (Luxembourg)
Autoriteit Consument & Markt (the Netherlands)
Urząd Regulacji Energetyki (Poland)
Entidade Reguladora dos Serviços Energéticos (Portugal)
Autoritatea Națională de Reglementare în Domeniul Energiei (Romania)
Úrad pre reguláciu sieťových odvetví (Slovakia)
Agencija za Energijo (Slovenia)
Comisión Nacional de los Mercados y la Competencia (Spain)
Energimarknadsinspektionen (Sweden)
Office of Gas and Electricity Markets (United Kingdom)

Done at Ljubljana on 23 February 2018.

For the Agency:

- **SIGNED** -

Alberto Pototschnig
Director