

**DECISION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 09/2018**

of 28 August 2018

**ON THE REQUEST OF THE REGULATORY AUTHORITIES OF ESTONIA,
FINLAND, LATVIA, LITHUANIA, POLAND AND SWEDEN TO EXTEND
THE PERIOD FOR REACHING AN AGREEMENT ON THE AMENDED
PROPOSAL FOR THE METHODOLOGY FOR CALCULATING CROSS-
ZONAL CAPACITY IN THE CAPACITY CALCULATION REGION BALTIC**

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 27 August 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’) lays down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements include the development of the capacity calculation methodology (‘CCM’) in each of the capacity calculation regions (‘CCR’), in accordance with Article 20 of the CACM Regulation.
- (2) Pursuant to Article 20(2) of the CACM Regulation, transmission system operators (‘TSOs’) of each CCR are required to develop a common proposal for a common coordinated capacity

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 197, 25.7.2015, p. 24.

calculation methodology within the respective region and submit it to the concerned national regulatory authorities for approval. Then, those regulatory authorities should reach an agreement and take a decision on the proposal for CCM 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 the regulatory authorities of Estonia, Finland, Latvia, Lithuania, Poland and Sweden to extend the period for reaching an agreement on the amended proposal for a CCM of the TSOs of the CCR Baltic³ by three months, pursuant to Article 8(1) of Regulation (EC) No 713/2009.

2. PROCEDURE

- (4) In a letter dated 20 July 2018 and received by the Agency on the same day, the Executive Director of the Public Utilities Commission of Latvia submitted, on behalf of all regulatory authorities of the CCR Baltic, i.e. of Estonia, Finland, Latvia, Lithuania, Poland and Sweden, a joint request, according to Article 8(1) of Regulation (EC) No 713/2009, to grant a three-month extension of the period for reaching an agreement and take a decision on the amended proposal for CCM of the TSOs of the CCR Baltic.
- (5) According to this letter, the regulatory authorities of the CCR Baltic had received from all TSOs of the CCR Baltic an initial proposal for CCM on 19 September 2017, requested amendments to this proposal on 19 March 2018, and received an amended proposal for CCM by 23 May 2018.
- (6) In support of the request for extension, the letter and a position paper attached thereto state in particular that on 12 July 2018, the regulatory authorities of the CCR Baltic concluded that the amended proposal could not be approved without further clarification over the following issues:
- the implementation date of the proposal is currently conditional upon the implementation dates of three methodologies which remain undefined to this day; and
 - the practical outcome of the implementation of the amended proposal is impacted by the CCM with third countries, which has not yet been communicated to the regulatory authorities of the CCR Baltic.

³ See Article 11 of Annex I of the Agency's Decision No 06/2016 of 17 November 2017.

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(7)(a) of the CACM Regulation, the proposal for CCM in accordance with Article 20(2) 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 CCM within two months

after receipt of the submission, i.e. by 23 July 2018, 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 CCM according to Article 20 of the CACM Regulation which was submitted by the TSOs of the CCR Baltic to the regulatory authorities of the countries within the CCR Baltic, i.e. Estonia, Finland, Latvia, Lithuania, Poland, and Sweden. The requesting regulatory authorities of Estonia, Finland, Latvia, Lithuania, Poland and Sweden are therefore competent to decide on the amended proposal for CCM according to Article 9(7)(a) 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 CCM on 19 September 2017 and the submission of the amended proposal for CCM by 23 May 2018, the competent regulatory authorities had to decide on the proposal for CCM, in accordance with Article 9(10) and 9(12) of the CACM Regulation, by 23 July 2018. The request for extension was received by the Agency on 20 July. Thus, it was received before the expiry of the two-month deadline on 23 July 2018.
- (19) In their request, the concerned regulatory authorities ask for an extension of three 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 requesting regulatory authorities of Estonia, Finland, Latvia, Lithuania, Poland and Sweden consider the extension justified as, in their views, they cannot accept the amended proposal without clarifications on: (1) the redispatching and countertrading ('RDCT') cost sharing methodology in the CCR Baltic, according to Article 9(4) of the CACM Regulation, and (2) the Baltic TSOs' proposal on CCM with third countries. The regulatory authorities see strong interrelation between the three methodologies. They claim that the requested three-month extension would allow (1) the Commission, with the support of the Agency, to provide a proposal regarding the RDCT cost sharing methodology according to Article 9(4) of the CACM Regulation; and (2) the TSOs from the Baltic States to subsequently share a CCM proposal with third countries. The RDCT cost sharing methodology proposal and the CCM proposal with third countries would provide the regulatory authorities from the CCR Baltic with the necessary clarification to allow them to provide their final assessment of the amended proposal.

(23) The Agency acknowledges that the implementation of the amended CCM proposal and the RDCT cost sharing methodology must be consistent. However, the Agency observes that the amended CCM proposal can be approved before the RDCT cost sharing methodology. Therefore, the Agency does not share the view that the regulatory authorities from the CCR Baltic need clarifications on the RDCT cost sharing methodology before approving the amended CCM proposal.

(24) The Agency acknowledges the specific importance of the interaction of third countries with the CCR Baltic as compared to other CCRs. The Agency observes that it is important that the provisions of the CCM with third countries remain independent from the CCM within the CCR Baltic. This independence between the two methodologies is a condition for the approval of the amended CCM proposal. The Agency shares the opinion of the regulatory authorities from the CCR Baltic that the amended proposal does not guarantee this independence. The Agency agrees that additional discussions between the TSOs and the regulatory authorities from the CCR Baltic will possibly address the specific problem of the CCM with third countries.

(25) The Agency finds the request from the regulatory authorities from the CCR Baltic for an extension of the period for reaching an agreement reasonable and proportionate to the problem. Furthermore, the Agency cannot detect any inappropriate delays, which the requested extension would cause.

(26) Therefore, the Agency considers an extension of three months justified.

3.4 Conclusion

- (27) For the above reasons, the Agency accepts the request for an extension submitted by the regulatory authorities of Estonia, Finland, Latvia, Lithuania, Poland and Sweden, and extends the period for those regulatory authorities to reach an agreement on the amended proposal for CCM within the CCR Baltic by three months, i.e. until 23 October 2018,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Estonia, Finland, Latvia, Lithuania, Poland and Sweden, competent according to Article 9(7)(a) of Commission Regulation (EU) 2015/1222, shall reach an agreement on the amended proposal for the common capacity calculation methodology within the capacity calculation region Baltic according to Article 20(2) of Commission Regulation (EU) 2015/1222, submitted by the transmission system operators of the capacity calculation region Baltic by 23 May 2018, is extended, in accordance with Article 8(1) of Regulation (EC) No 713/2009, by three months, i.e. until 23 October 2018.

Article 2

This Decision is addressed to:

- Konkurentsiamet (Estonian Competition Authority), Estonia
- Energiavirasto (Energy Authority), Finland
- Sabiedrisko pakalpojumu regulēšanas komisija (Commission for Regulation of Utilities), Latvia
- Valstybinė kainų ir energetikos kontrolės komisija (National Commission for Energy Control and Prices), Lithuania
- Urząd Regulacji Energetyki (Energy Regulatory Office), Poland
- Energimarknadsinspektionen (Swedish Energy Markets Inspectorate), Sweden

Done at Ljubljana on 28 August 2018.

For the Agency:


Alberto Pototschnig
Director

In accordance with Article 19 of Regulation (EC) No 713/2009, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.