

DECISION No 03/2019
OF THE AGENCY FOR THE COOPERATION OF
ENERGY REGULATORS

of 4 March 2019

**on the request of all regulatory authorities to extend the period for
reaching an agreement on the amended proposal for a common
methodology for calculating scheduled exchanges resulting from single
intraday coupling**

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, Articles 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 1 March 2019, 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

¹ OJ L211, 14.8.2009, p. 1.

² OJ 197, 25.7.2015, p. 24.

development of a common methodology for calculating scheduled exchanges resulting from single intraday coupling in accordance with Article 56 of the CACM Regulation.

- (2) Pursuant to Articles 9(1), 9(7)(d) and 56(1) of the CACM Regulation, the transmission system operators ('TSOs') which intend to calculate scheduled exchanges resulting from the single intraday coupling shall develop a proposal for a common methodology for calculating scheduled exchanges resulting from single intraday coupling and submit it to the regulatory authorities of the concerned region(s) for approval. Then, those regulatory authorities should reach an agreement and take a decision on the 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 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 Austria, Belgium, Bulgaria, Croatia, the 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 to extend the period for reaching an agreement on the TSOs' amended proposal for the common methodology for calculating scheduled exchanges resulting from single intraday coupling ('Amended Proposal') by one month pursuant to Article 8(1) of Regulation (EC) No 713/2009.

2. PROCEDURE

- (4) In a letter dated 8 February 2019 and received by the Agency on the same day, the chair of the Energy Regulators' Forum³ submitted, on behalf of all regulatory authorities, a joint request to grant a one-month extension, according to Article 8(1) of Regulation (EC) No 713/2009, thereby postponing the deadline for the regulatory authorities' decision-making on the Amended Proposal to 14 March 2019.
- (5) According to this letter, all regulatory authorities received from all TSOs the Amended Proposal by 14 December 2018. As the Amended Proposal explains that it is a proposal from all TSOs, the Agency understands that those TSOs are the TSOs of Austria,

³ The regulatory authorities' platform to consult and cooperate for reaching a unanimous agreement on NEMO's and TSOs' proposals

Belgium, Bulgaria, Croatia, the 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 the relevant regulatory authorities are those of the same countries.

- (6) In support of the request for extension, the letter states that *'[a]ll TSOs acknowledge that there are still some editing mistakes, which all TSOs want to correct by providing a new version of the proposal within the deadline of 14 February 2019. Following the necessary all TSOs' procedures, such correction is only possibly by and expected for 8 February 2019'*. Further, the letter explains that *'[a]ll regulatory authorities agree on the exact scope and the importance of these corrections and on a subsequent approval of the corrected proposal. From a procedural point of view, all regulatory authorities need time to conclude their respective national decisions after the receipt of the correct version. This is unfortunately not possible within the remaining days before the deadline of 14 February 2019 expires.'*

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)(d) of the CACM Regulation, the proposal for a common methodology for calculating scheduled exchanges resulting from single intraday coupling in accordance with Article 56(1) of that Regulation shall be subject to approval by all regulatory authorities of the concerned region(s).
- (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 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 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.

3.2. Admissibility

- (12) 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 within two months from the receipt of the submission, but does not explicitly provide for the possibility to extend the two-month period.
- (13) However, Article 9(12) 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 two-month deadline.
- (14) 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.
- (15) 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.
- (16) The present request for extension relates to the Amended Proposal according to Article 56 of the CACM Regulation, which was submitted by the TSOs of Austria, Belgium, Bulgaria, Croatia, the 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 in accordance with Article 9(7)(d) of the CACM Regulation to the regulatory authorities of those countries. The requesting regulatory authorities, i.e. the regulatory authorities of those countries, are therefore competent to decide on the

Amended Proposal according to Article 9(7)(d) of the CACM Regulation⁴. Accordingly, they are also the competent regulatory authorities that may request an extension of the two-month period for reaching an agreement under Article 9(12) of the CACM Regulation.

- (17) Since the last competent regulatory authority received the Amended Proposal on 14 December 2018, the competent regulatory authorities had to decide on it, in accordance with Article 9(10) and (12) of the CACM Regulation, by 14 February 2019. The request for extension was received by the Agency on 8 February 2019. Thus, it was received before the expiry of the two-month deadline on 14 February 2019.
- (18) In their request, the competent regulatory authorities ask for an extension of one month. 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.
- (19) Therefore, the Agency considers the request for extension as admissible.

3.3. Substance

- (20) Article 8(1) of Regulation (EC) No 713/2009 does not lay down requirements for the justification of an extension.
- (21) The requesting regulatory authorities consider the extension justified on the ground that they were expecting the TSOs to provide a new version of the Amended Proposal, which should correct mistakes as agreed with the regulatory authorities, and that it would not be possible for them, after receipt of the corrected version of the Amended Proposal, to respect the necessary procedural steps and to correctly conclude the approval and their national decisions before 14 February 2019.
- (22) The Agency understands from this justification that the regulatory authorities agreed on a corrected version of the Amended Proposal, but that this agreement would only result in the approval of the corrected Amended Proposal if the corrections were actually implemented. In the Agency's view, this means that the regulatory authorities came only to a conditional agreement that does not constitute the agreement to be reached within the two-month deadline of Article 9(12) of the CACM Regulation. Accordingly, the Agency considers present request for extension in accordance with Article 8(1) of Regulation (EC) No 713/2009 submitted by the regulatory authorities as a request to extend the period for reaching an agreement on the corrected Amended Proposal. The Agency agrees with the regulatory authorities that the requested extension by one month

⁴ For the present decision, there is no need to determine whether the Amended Proposal is to be considered as an identical proposal for different regions or as one for a single EU wide region, as in both cases the requesting regulatory authorities would be competent.

is justified to enable them to review and conclude a final agreement on the Amended Proposal after receipt of the corrected version.

- (23) Furthermore, the Agency cannot detect any inappropriate delays, which the requested extension would cause.
- (24) Therefore, the Agency considers an extension of one month justified.

4. CONCLUSION

- (25) For the above reasons, the Agency accepts the request for an extension submitted by the regulatory authorities of Austria, Belgium, Bulgaria, Croatia, the 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 Amended Proposal by one month, i.e. until 14 March 2019,

HAS ADOPTED THIS DECISION:

Article 1

The period within which the regulatory authorities of Austria, Belgium, Bulgaria, Croatia, the 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, shall reach an agreement on the amended proposal for the common methodology for calculating scheduled exchanges resulting from single intraday coupling according to Article 56(1) of Commission Regulation (EU) 2015/1222, submitted by the transmission system operators by 14 December 2018, is extended, in accordance with Article 8(1) of Regulation (EC) No 713/2009, by one month.

Article 2

This Decision is addressed to:

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 (the Czech Republic)
Forsyningstilsynet (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 Energie (Romania)
 Úrad pre reguláciu sieťových odvetví (Slovakia)
 Agencija za Energijo (Slovenia)
 La Comisión Nacional de los Mercados y la Competencia (Spain)
 Energimarknadsinspektionen (Sweden)
 Office of Gas and Electricity Markets (United Kingdom)
 Northern Ireland Authority for Utility Regulation (United Kingdom)

Done at Ljubljana, on 4 March 2019.


*For the Agency
 Director ad interim*

Alberto POTOTSCHNIG

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.