



Energy
Regulatory Office



JOINT STATEMENT

The energy regulators of the Czech Republic, Hungary, Poland, and Slovakia regret that the recently announced *agreement* on congestion management between the German and Austrian regulators falls short of compliance with technical limits of the interconnected transmission network and procedural standards required by recent EU legislation.

On 15 May, the national regulatory authorities of Germany (Bundesnetzagentur) and Austria (E-Control) announced a bilateral *agreement* on the introduction of a congestion management scheme on the bidding zone border “Germany/Luxembourg – Austria”.¹ The Energy Regulatory Office of the Czech Republic (ERO), Hungarian Energy and Public Utility Regulatory Authority (HEA), Energy Regulatory Office of Poland (URE), and the Regulatory Office for Network Industries of Slovakia (RONI) have noted this development which shows willingness to remedy the long-time ongoing breach of the common EU rules, but express their deep concern that the agreement if applied will sustain the non-compliance on the part of Germany and Austria with the relevant EU law and the technical limits of the interconnected transmission network. Our offices have been for a long time advocating a split of the German-Austrian bidding zone since it is a well-established fact that commercial transactions across the German-Austrian border have a strong negative influence on the available transmission capacity on the interconnectors in neighbouring Member States, as well as the overall security of the Continental transmission system.

However, ERO, HEA, URE, and RONI unfortunately have to express serious reservations about important particularities of the *agreement* and the related process:

- **Lack of transparency of the process**

The floor of 4.9 GW for long-term capacity appears unreasonably high. Bundesnetzagentur and E-Control have not provided any technical analysis, which would justify such a high figure. In fact, there are a number of studies which prove the capacity is much lower than that. In addition, the Agency for the Cooperation of Energy Regulators (ACER) in its Annex IV to Decision No 06/2016² (page 10) states that “*the network elements between Germany and the main part of Austria amounting to a maximum transfer capacity between these two areas of 3158 MW*”. Furthermore, the above mentioned limit of 4.9 GW has been set without applying the common capacity calculation methodology required by the Forward Capacity Allocation regulation.³ The *agreement* seems to disregard the disproportionately high impact the exchanges between Germany and Austria have on certain structurally congested interconnectors in the former CEE region found by the ACER in its Opinion No 09/2015 and

¹ See the Bundesnetzagentur press release:

https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/EN/2017/15052017_DE_AU.html?nn=404422.

² http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXES_CCR_DECISION/Annex%20IV.pdf page 10.

³ Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (OJ L 259, 27.9.2016, p. 42).

confirmed in ACER Decision No 06/2016. The *agreement* provides no guaranties that the most affected network elements, namely those east of the bidding zone border “Germany/Luxembourg – Austria”, will be in any way considered in the capacity calculation process.

- **Lack of sufficient regional coordination**

The negotiations leading to the agreement have not met procedural standards laid down in the EU legislation. Regulation (EC) No 714/2009⁴ stipulates that “...where commercial exchanges between two countries are expected to affect physical flow conditions in any third-country significantly, congestion-management methods shall be coordinated between all the TSOs so affected through a common congestion-management procedure...”. ERO, HEA, URE, and RONI regret that neither regulatory authorities nor TSOs from neighbouring countries were included in the work on the capacity allocation procedure. Such an approach contradicts one of the basic principles in the EU internal electricity market, namely that of coordination. The recently adopted Capacity Allocation and Congestion Management⁵ and Forward Capacity Allocation regulations elaborate on the rules laid down in Regulation (EC) No 714/2009 and further harmonize capacity allocation procedures with a view to making the EU internal electricity market possible. Since the entry into force of the two above-mentioned regulations, all capacity allocation procedures on all EU bidding zone borders have to be devised by an unanimous agreement of all NRAs of the respective capacity calculation region, or by an ACER decision in case of a lack thereof.

ERO, HEA, URE, and RONI call upon E-control and Bundesnetzagentur to take the necessary measures in order to comply with the relevant EU legislation and the technical limits of the interconnected transmission network and to refrain from neglecting coordination with affected fellow EU Member States. ERO, HEA, URE, and RONI offer their services for cooperation in this matter.

⁴ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.08.2009, p. 15).

⁵ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015 p. 24).