

## Questions & Answers on the Agency's Opinion No 09/2015

23 September 2015

<b>What is the issue at stake?</b>	<p>On 2 December 2014, the Agency received from Urząd Regulacji Energetyki (URE), the Polish NRA, a request for an Opinion on the compliance of some NRAs' decisions with the provisions of the Guidelines annexed to Regulation (EC) No 714/2009 and with the provisions of Regulation (EC) No 714/2009 itself.</p> <p>More specifically, the request aimed at answering the question of whether the absence of a capacity allocation procedure on the German-Austrian border is compliant with the provisions referred to above.</p>
<b>Why did the Agency get involved?</b>	Pursuant to Article 7(4) of Regulation 713/2009, "The Agency shall provide an opinion, based on matters of fact, at the request of a regulatory authority or of the Commission, on whether a decision taken by a regulatory authority complies with the Guidelines referred to in Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 or Regulation (EC) No 715/2009 or with other relevant provisions of those Directives or Regulations."
<b>Is there really a structural congestion on the DE-AT border?</b>	<p>The legal, economical and technical assessment of the Agency concludes on the existence of a structural congestion on the DE-AT border.</p> <p>The Agency's conclusion is drawn mainly from two facts:</p> <ol style="list-style-type: none"><li>1) the existence of severe structural congestions on the DE-PL, DE-CZ and CZ-AT borders and on internal German lines; and</li><li>2) the significant impact of DE-AT trade on these structurally congested areas (see paragraphs 71 and 72 of the Opinion).</li></ol>

	<p>Therefore, the DE-AT border can carry the DE-AT cross-border exchanges and the resulting physical flows only at the expense of significant limitations of the available cross-border capacity and international trade on other interconnectors, as well as of remedial actions due to congestions on interconnectors and internal network elements.</p> <p>The DE-AT interconnection should therefore be considered as usually and structurally congested pursuant to Article 2(2)(c) of Regulation (EC) No 714/2009 and points 1.2 and 1.4 of the Guidelines annexed to Regulation (EC) No 714/2009.</p> <p>In the Agency's view, the existence of a structural congestion on the DE-AT border requires the implementation of a coordinated capacity allocation procedure on the DE-AT border pursuant to Article 16(1) of Regulation (EC) No 714/2009 and points 1.2, 1.4 and 3.1 of the Guidelines annexed to this Regulation.</p>
<b>Is it the implementation of a coordinated capacity allocation procedure on the DE-AT border the only possible remedy?</b>	<p>In the Agency's view, a coordinated capacity allocation procedure is the only remedy able to ensure, in the short term, compliance with the principles set out in Regulation (EC) No 714/2009 and its Guidelines (transparency, non-discriminatory and market-based congestion management procedures which give efficient economic signals to market participants and the transmission system operators involved).</p> <p>In the Agency's view, other short-term alternative measures (virtual phase shifter agreement, redispatching, the flow-based method with Security Oriented Option), regardless of possible further improvements, do not satisfy the same principles</p>
<b>Will the implementation of a coordinated capacity allocation procedure on the DE-AT border be effective to address the congestion problems in the CEE region?</b>	<p>The Agency firmly believes that the implementation of a coordinated capacity allocation procedure will contribute to improving the situation in the CEE region and help the Internal Energy Market progress. This improvement should be particularly significant once a coordinated flow-based capacity allocation methodology is introduced, as all the transit flows induced by the DE-AT border will finally be taken into account.</p>

	<p>The Agency acknowledges that this measure will not solve all the problems of the CEE region. In particular the increasing amount of north-to-south exchanges within Germany causes severe structural physical congestions within Germany and in the neighbouring countries and this indicates that additional measures would also be needed. While this issue falls outside the scope of this Opinion, the Agency recommends that it is further investigated and seriously addressed in a coordinated way, i.e. in the framework of the bidding zone review process or in any other appropriate framework.</p>
<b>Is the implementation of a coordinated capacity allocation procedure on the DE-AT border not going against the IEM?</b>	<p>The measure aims at improving the functioning of the Internal Energy Market (less discrimination, better price signals for investments, better use of the existing network, etc.).</p> <p>Other European countries - Norway, Italy and Sweden - have already implemented similar measures in order to improve the functioning of their market.</p>
<b>Is the Agency's Opinion not pre-empting the outcome of the ongoing bidding-zone review process foreseen under the CACM Guideline, which has just entered into force?</b>	<p>No, the Opinion explicitly indicates that it is without prejudice to the final outcome of the bidding zone review process, pursuant to Article 32 of the same Guideline.</p>
<b>Is the Agency's Opinion binding?</b>	<p>No, but according to Article 7(5) of Regulation (EC) No 713/2009, "Where a national regulatory authority does not comply with the opinion of the Agency as referred to in paragraph 4 within four months from the day of receipt, the Agency shall inform the Commission and the Member State concerned accordingly."</p>