

**OPINION No 04/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 8 May 2020

on the elements of the coordinated decision on the request for exemption from the obligation to enable permanent physical bi-directional capacity at the "Deutschneudorf EUGAL" cross-border interconnection point from Germany to the Czech Republic

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators ('ACER')¹, and, in particular, Article 9(4) thereof,

Having regard to Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010² ('SoS Regulation'), and, in particular, Article 5(4) and (5) and point 8 of Annex III thereof,

Having regard to the consultation with the national regulatory authorities concerned, the competent authorities concerned and the competent authorities,

Having regard to the information provided by the competent authorities concerned and the transmission system operators concerned,

Whereas:

1. INTRODUCTION

- (1) On 5 February 2020, ACER received from Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen ('Bundesnetzagentur') Decision Ref 609-18-64-Reverse Flow Germany/Czechia (sic) ('the Decision') of the same day. The Decision is on the request for exemption ('the request') from the obligation to enable permanent

¹ OJ L158, 14.6.2019, p. 22.

² OJ L280, 28.10.2017, p.1.

physical bi-directional capacity ('bi-directional capacity') at the Deutschneudorf-EUGAL cross-border interconnection point ('Deutschneudorf-EUGAL (DE-CZ) IP') in accordance with Article 5(4), first sub-paragraph, and point 2 of Annex III SoS Regulation. The request was submitted on 26 July 2019 by Gascade Gastransport GmbH ('Gascade').

- (2) The Decision, coordinated with the Ministry of Industry and Trade of the Czech Republic, grants an exemption from the obligation to enable bi-directional capacity at the Deutschneudorf-EUGAL (DE-CZ) IP, for a period of four years from 5 February 2020 onwards.
- (3) On 10 February 2020, Bundesnetzagentur informed ACER that it had forwarded the Decision also to the German Ministry of Trade and Energy and to the Polish Ministry of State Assets³.
- (4) On 5 March 2020, ACER published on its website a "Notice on ACER's pending Opinion on the Decision to exempt the Deutschneudorf-EUGAL (DE-CZ) Interconnection Point from the obligation to enable permanent physical bi-directional capacity". ACER invited third parties to provide any comments and observations they may have on this subject matter to ACER by 27 March 2020. By that date, no comments or observations were received.

2. SCOPE OF THE OPINION

- (5) ACER shall deliver an opinion on the elements of the Decision taking into account the requirements of the SoS Regulation, in particular Article 5 and Annex III SoS Regulation, including any possible objection received pursuant to point 7 of Annex III SoS Regulation.

3. OBJECTIONS RECEIVED AND OTHER RELEVANT DOCUMENTS

- (6) By 5 April 2020, i.e. within 2 months of the receipt of the coordinated Decision, the Competent Authorities did not submit objections.

4. ASSESSMENT OF THE PROCEDURE

- (7) On 3 July 2019, Gascade, in line with point 2 of Annex III SoS Regulation, announced on its website⁴ its intention to submit a request for exemption from the obligation to enable bi-directional capacity, and invited responses to the consultation until 10 July

³ The Ministry of State Assets is an office of government administration providing services to the Minister of State Assets. The Ministry was created by the ordinance of the Council of Ministers of November 19, 2019 amending the ordinance establishing the Ministry of Energy (Journal of Laws item 2290). Cf. <https://www.gov.pl/web/aktywa-panstwowe/podstawowe-informacje>.

⁴ <https://www.gascade.de/nc/presse/presseinformationen/pressemitteilung/news/konsultation-bidirektionale-kapazitaeten-am-grenzuebergangspunkt-deutschneudorf-eugal/>

2019, i.e. within a week. On 5 August 2019, Bundesnetzagentur communicated the request to ACER.

- (8) Only the Polish TSO, Gaz-System S.A. ('Gaz-System'), responded to the consultation by a letter dated 20 July 2019. Gaz-System expressed the view that the conditions required by the SoS Regulation for granting an exemption are not met. In particular, Gaz-System referred to Recital 28 of SoS Regulation, which posits that the overall objective of the SoS Regulation is to have a growing bi-directional capacity and keep one-directional capacity in future cross-border projects to a minimum. Gaz-System took the view that enabling bidirectional capacity should be seen from a broader perspective and should include in the cost-benefit analysis ('CBA') the whole transportation corridor. Gaz-System argued that the granting of an exemption would perpetuate liquidity differences between Western and Eastern gas wholesale markets. Moreover, Gaz-System expressed concerns regarding a potential worsening of security of gas supply in the whole region, including Poland, if the flow of gas from Russia to Germany via Poland, through the Yamal pipeline, were to be interrupted and a supply crisis were to occur in the northern part of Germany due to such interruption.
- (9) Contrary to the views of Gaz-System, Gascade argued that the costs caused by a reverse flow project would exceed by far the expected benefit for the security of gas supply and concluded that the prerequisites for granting an exemption as provided by Article 5(4)(b) SoS Regulation are met. Accordingly, Gascade argued in the request that security of supply will not be considerably improved in any Member State or in any region by expanding the capacity from the Czech Republic to Germany through the Deutschneudorf-EUGAL (DE-CZ) IP. This conclusion was, in their view, supported by the fact that market demand for additional transport capacities from the Czech Republic to Germany was lacking at the time of the request and similarly was not expected to materialise in the foreseeable future.
- (10) With respect to the consultation, ACER is of the opinion that Gascade, in addition to posting a notice about the consultation on its website, should have invited to the consultation individually at least the TSOs from the Member States listed in the Eastern Gas Supply risk group⁵. ACER considers the consultation period of one week too short to ensure sufficient opportunity for participation.

5. ASSESSMENT OF THE ELEMENTS OF THE DECISION

- (11) Gascade's request includes a succinct argumentation dealing with the elements set out in Article 5(5) SoS Regulation, which are also described in the Decision.
- (12) The Decision grants an exemption from the obligation to enable or enhance bidirectional capacity at the Deutschneudorf-EUGAL (DE-CZ) IP for a duration of four years

⁵ Listed in Annex I. 1 (b) to the SoS Regulation.

following the analysis of the conditions foreseen in Article 5, paragraph (4) and (5), and Annex III SoS Regulation.

- (13) Bundesnetzagentur includes in the Decision the relevant facts, background and main steps of the procedure, and the legal basis of the request leading to the Decision.
- (14) Bundesnetzagentur further assesses the substantive conditions contained in the request and essential for granting an exemption in line with Article 5(5) SoS Regulation.
- (15) ACER's considerations on the elements of the Decision in view of the requirements of Article 5(5) SoS Regulation are presented below.

5.1. CBA prepared on the basis of the methodology pursuant to Article 11 of Regulation (EU) No 347/2013⁶

- (16) ACER considers that there is no sufficient evidence that the CBA included in the request follows sufficiently the CBA methodology pursuant to Article 11 of Regulation (EU) No 347/2013⁷. The CBA submitted by Gascade is a summary of five pages covering the elements set out in Article 5(5) of the SoS Regulation.

5.2. Assessment of market demand

- (17) Bundesnetzagentur concludes that the applicants have shown in an objective and comprehensible way that shippers do not need any additional bi-directional capacity in the relevant region. In particular, Bundesnetzagentur points out that, according to the data available on the relevant capacity-booking platform's⁸ portal, in the past four years, (i) demand for yearly capacity from the Czech Republic to Germany did not materialise, (ii) the bookings of capacity products that did materialise, concerned shorter durations (quarterly, monthly, daily, within-day) and occurred sporadically.
- (18) ACER assessed the data available⁹ about the patterns of gas transportation capacity bookings and actual physical flows by market participants over the period from 1 January 2018 to 22 March 2020, for all capacities and flows for all interconnection points between

⁶ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115, 25.4.2013, p. 39.

⁷ It does not meet the requirements of the gas CBA methodology pursuant to Article 11 of Regulation (EU) 347/2013 currently in force, which is ENTSOG's CBA methodology 2.0, cf. https://www.entsog.eu/sites/default/files/2019-03/1_ADAPTED_2nd_CBA_Methodology_Main_document_EC_APPROVED.pdf.

⁸ PRISMA.

⁹ Assessment provided to ACER by the Joint Research Centre (JRC) of the European Commission, report JRC120428.

Germany, the Czech Republic, Poland, Slovakia, and Austria, as well as flows to and from neighbouring countries to these ones, such as Ukraine, Hungary, and Slovenia.¹⁰

(19) ACER notes that the virtual interconnection point ('VIP') Brandov-GASPOOL-EUGAL is versatile¹¹, as it allows redirecting flows in multiple ways to destinations in many countries included in Annex 1.1.a and 1.1.b of the SoS Regulation (cf. Figure 1). Over the period between 1 January 2018 and 22 March 2020, the capacity bookings and, particularly, as reported below in Figure 2, the physical flows have taken place, for the major part, in the direction from Germany to the Czech Republic. Flows in the opposite direction have been significantly smaller.¹²

Figure 1: Illustrative map of the considered region and main IPs¹³

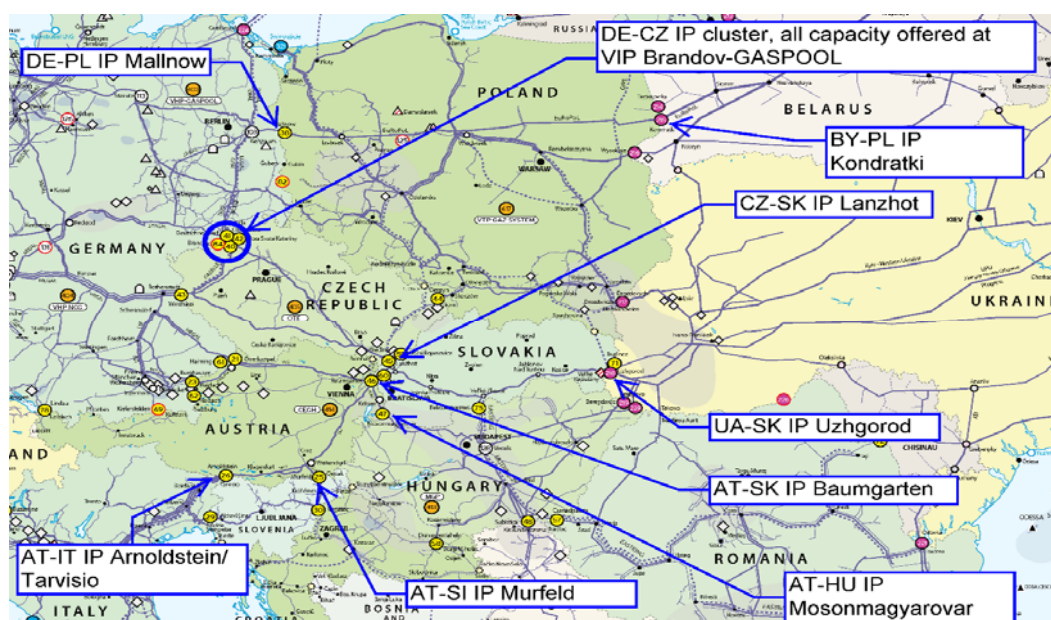


Figure 1 uses part of ENTSOG's map of the European gas transmission network 2019, cf. https://www.entsog.eu/sites/default/files/2020-01/ENTSOG_CAP_2019_A0_1189x841_FULL_401.pdf

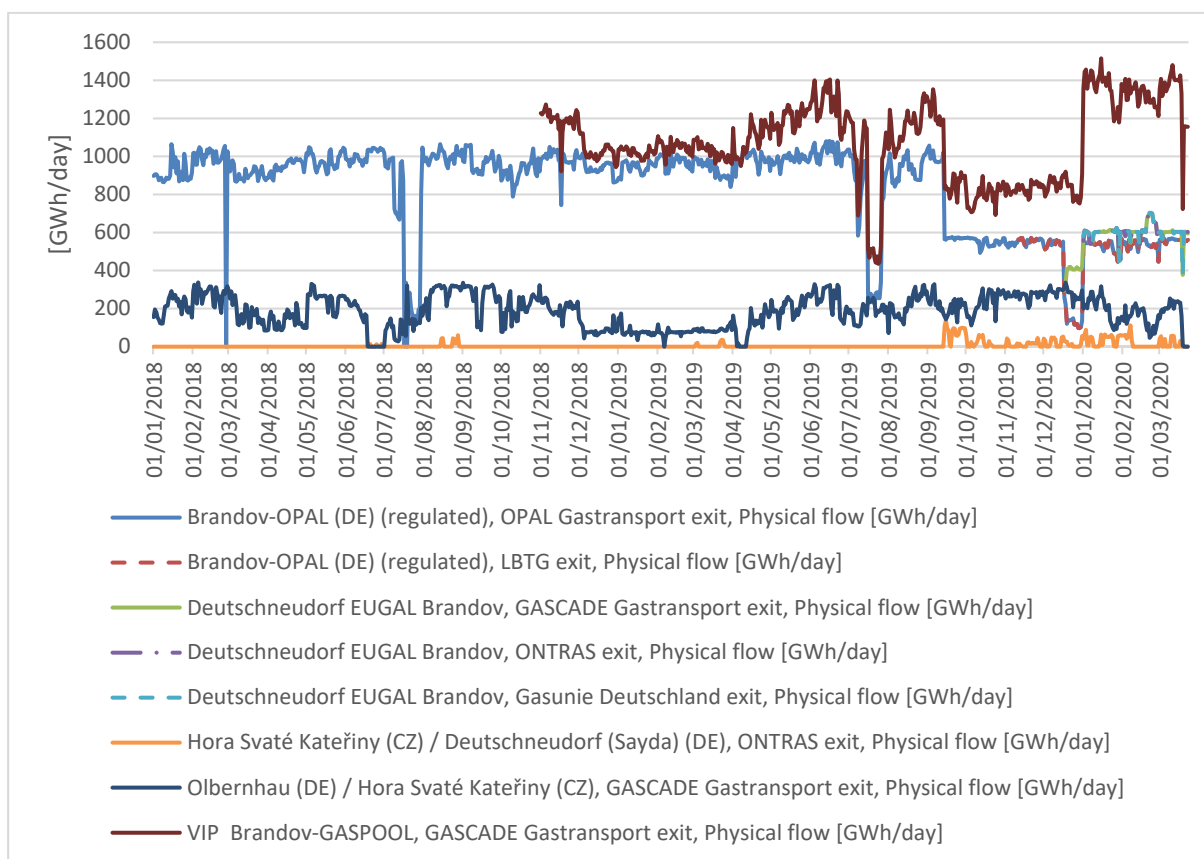
¹⁰ In particular, by using information provided by JRC in report JRC120428. Scope is in line with the scope indicated in Annex I.1.a to the SoS Regulation, wherein Germany and the Czech Republic are also included along with the countries assessed here. Technical firm capacities considered are the ones reported by ENTSOG for the entire 2019. Technical firm capacities for Deutschneudorf EUGAL - Brandov are as reported for the four associates of EUGAL until 2025. Recent changes in some capacities are also considered.

¹¹ According to information provided by the Ministry of Industry and Trade of the Czech Republic, the EUGAL pipeline is already connected to the Hora Svaté Kateřiny IP between the Czech Republic and Germany, which provides bi-directional capacity. Physically, the distance between the Brandov IP and the Hora Svaté Kateřiny IP is only 9 km, and the two IPs are interconnected with two large diameter, high pressure pipelines (DN 900 and DN 1000). All available capacity at the Deutschneudorf-EUGAL IP, the Brandov IP, and the Hora Svaté Kateřiny IP are offered as the sum of their capacity at the VIP Brandov-GASPOOL-EUGAL.

¹² Here and below (including Figures 2, 3, and 4), cf. JRC report JRC120428.

¹³ Based on ENTSOG Capacity Map, edition of October 2019: <https://www.entsog.eu/maps#>

Figure 2: Patterns of physical flows associated with the VIP Brandov-GASPOOL- EUGAL in the direction from Germany to the Czech Republic (1 January 2018 – 22 March 2020)



* The brown shorter line on top represents an aggregation of flows crossing the border from Germany to the Czech Republic. Based on data from ENTSOG's Transparency Platform.

(20) Changes in patterns of physical flows can clearly be observed after the re-establishment of the cap on OPAL (flow drop in September 2019).¹⁴ ACER also notes that flows have clearly increased after the line fill¹⁵ of EUGAL was completed by mid-December 2019, and then again from 1 January 2020 (cf. green line in Figure 2), thus bringing the overall flows in early 2020 to a level exceeding the average flow levels observed in 2019. Due to this pattern of flow via EUGAL, as reported in Figure 3 below, physical flows from the Czech Republic to Slovakia have re-started on 1 January 2020. ACER notes that, in general, the start of EUGAL has had the effect of increasing flows downstream to Austria, Hungary, Italy, and Slovenia. These changes in flow patterns may compensate

¹⁴ Cf. Press Release of General Court of the European Union, 10 September 2019 - Judgment in Case T-883/16, Poland v Commission, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190107en.pdf>

¹⁵ 'Line fill' is the volume of gas required to fill an empty pipeline (e.g. a newly constructed one) before the pipeline can be put in operation and deliveries can be made at take-off points.

the drop in physical flows from Ukraine to Slovakia that has taken place as of 1 January 2020 (cf. Figure 4).

Figure 3: Physical flow patterns from the Czech Republic to Slovakia

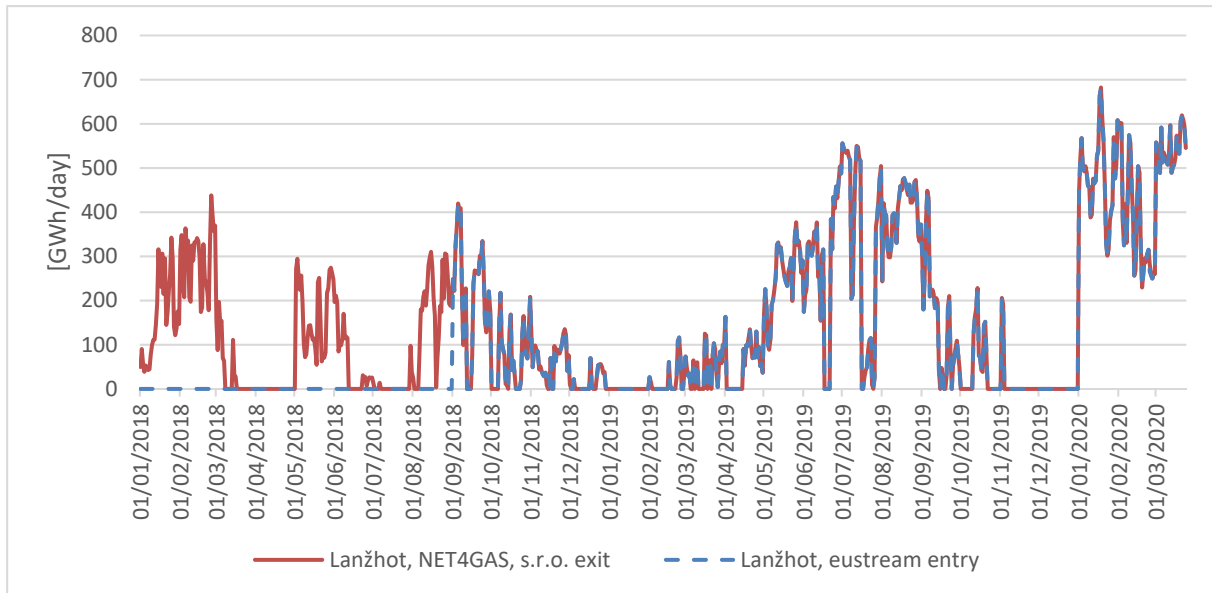
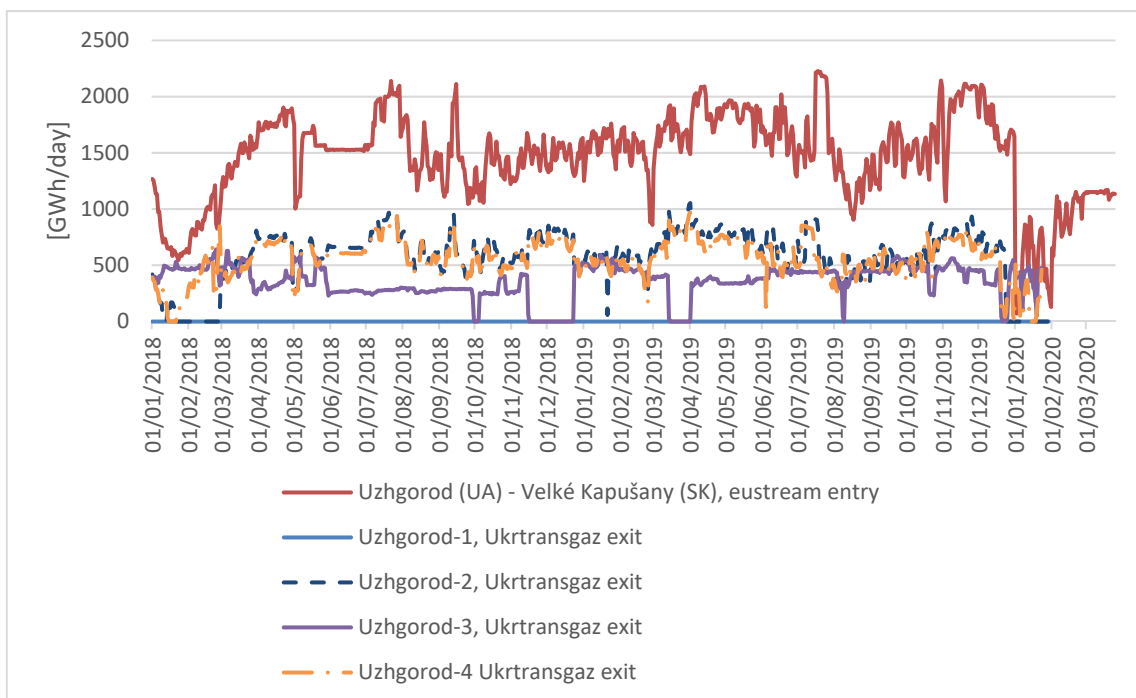


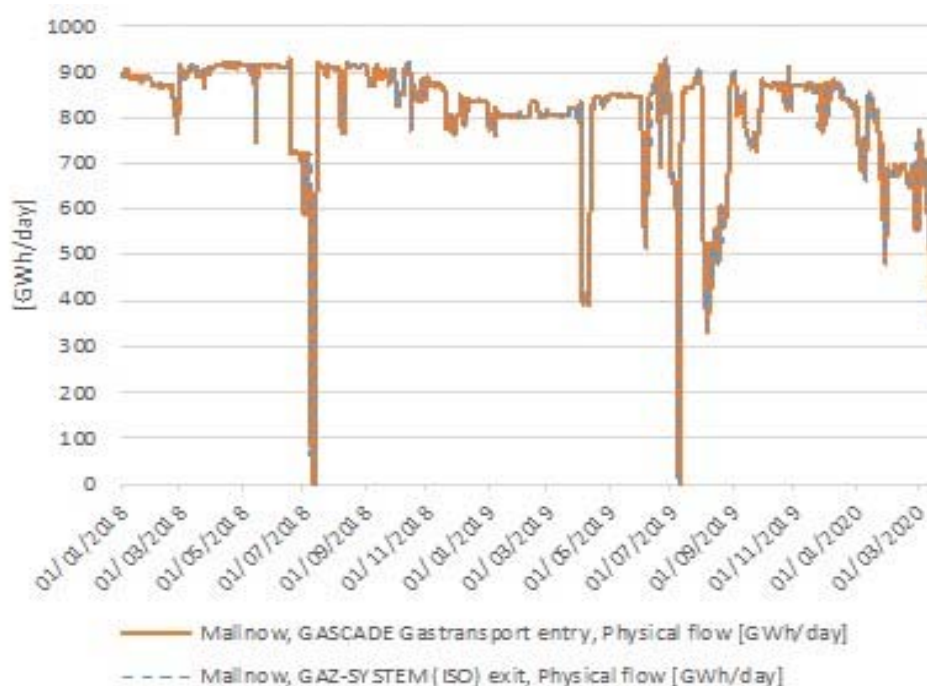
Figure 4: Physical flow patterns from Ukraine to Slovakia



- (21) Regarding reverse flows across the border between Germany and Poland, ACER notes that reverse flow from Germany to Poland has been employed only twice over the period from 1 January 2018 to 22 March 2020.

- (22) ACER furthermore concurs with the view that there has been no demand for yearly capacity from the Czech Republic to Germany on the European gas transport capacity market. This conclusion is supported not only by the data available on the relevant booking platform¹⁶, but also by the ‘more capacity process’ (*sic*, i.e. incremental capacity process) for the year 2015 and by the most recent incremental capacity processes covering the years 2017-2019 and 2019-2021.
- (23) Based on the foregoing, and in particular having regard to the insufficient evidence of the need of reverse flow from the Czech Republic to Germany resulting from the assessment of the data available as indicated above, ACER considers that the Decision correctly concluded that sufficient unused entry capacity exists from the Czech Republic to Germany, both physically (flows) and commercially (capacity).
- (24) In addition, contrary to Gaz-System’s view according to which the exemption would entail a potential worsening of the security of gas supply in the whole region, including Poland, as indicated above at (8), ACER concurs with Bundenetzagentur’s view that it is possible to supply Poland from Germany on a firm basis using the Mallnow cross-border IP. The latter IP in fact has available capacity (cf. Figures 5 and 6 below)¹⁷.

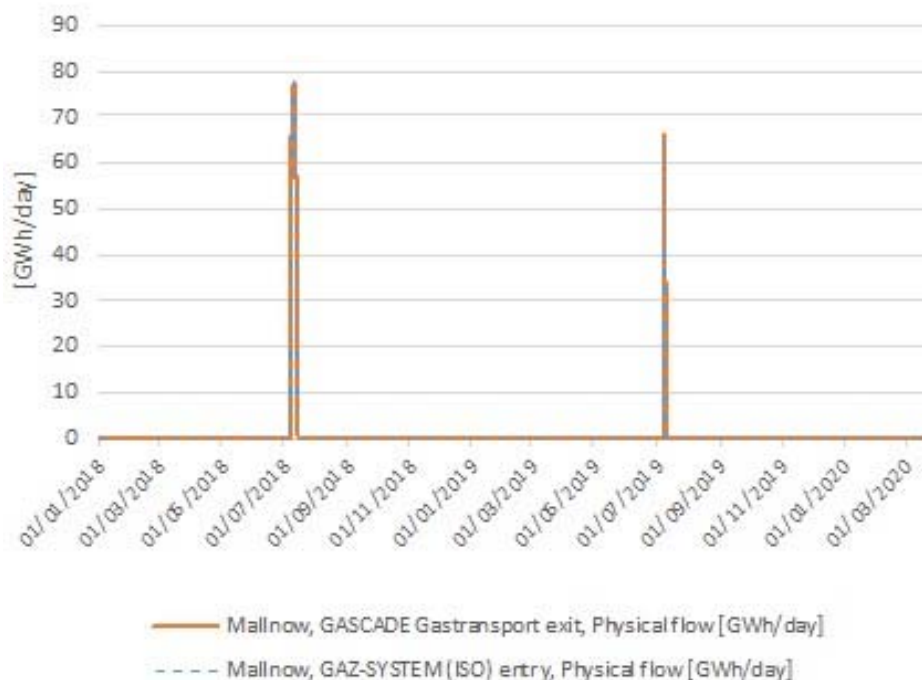
Figure 5: Flows from Poland to Germany, Mallnow IP



¹⁶ PRISMA.

¹⁷ For Figures 5 and 6, cf. JRC report JRC120428, pp. 9-10.

Figure 6: Flows from Germany to Poland, Mallnow IP



(25) In addition, the Brandov-Gaspool VIP between the Czech Republic and Germany (GASPOOL market area) already offers bundled capacity at interconnections points adjacent to the Deutschneudorf-EUGAL (DE-CZ) IP. Consequently, regarding security of gas supply, ACER considers that, contrary to Gaz-System’s view, Poland would not be affected if the flow of gas from Russia to Germany via Poland via the Yamal pipeline were to be interrupted and a supply crisis were to occur in Northern Germany due to the interruption.

5.3. Projections for demand and supply

(26) ACER concurs with Bundesnetzagentur’s statement that neither the current market situation nor long-term forecasts show at the time of the submission of the request a need to increase the capacity from the Czech Republic to the GASPOOL market area in Germany. ACER supports Bundesnetzagentur’s view that this consideration also applies specifically to the Deutschneudorf-EUGAL (DE-CZ) IP.

5.4. Possible economic impact on existing infrastructure

(27) Bundesnetzagentur is of the view that the request correctly indicated that, due to the lack of demand and revenues from capacity bookings, the costs of the project to enable bi-directional capacity would be borne by all network users, leading to a possible increase of transmission tariffs.

- (28) In this regard, ACER considers that the efficiently incurred costs of a project should be taken into account via tariffs.¹⁸

5.5. Results of the feasibility study

- (29) ACER notes that the request did not contain a comprehensive feasibility study, and that the failure to meet this requirement was not rectified in the course of the procedure.
- (30) Bundesnetzagentur is of the view that the expenses and the time involved in conducting such a study would have been disproportionate in light of the clear lack of demand for reverse flow.
- (31) ACER is of the opinion that the lack of demand cannot relieve transmission system operators from the obligation to prepare and present the results of a feasibility study as a part of a submission of a request for exemption,¹⁹ as this obligation constitutes an essential requirement pursuant to Article 5(5) SoS Regulation.
- (32) ACER furthermore notes that a feasibility study covers, as a rule, techno-economic elements which provide essential information about the basic design parameters of the main facilities, the associated cost estimates, and the possible implementation schedule of a potential reverse flow project proposal, even when the study concludes that the project is not feasible. The feasibility study could have therefore provided information relevant for the purpose of deciding upon the request.

5.6. Costs of implementing bi-directional capacity

- (33) ACER notes that Bundesnetzagentur deemed that the request contained plausible estimates of the costs of enabling bi-directional capacity. The cost estimates are associated with (i) the need to build an additional compressor station and (ii) the relevant operating expenses. Bundesnetzagentur states that costs are in line with those used for comparable measures in recent National Development Plans.
- (34) ACER notes that a proper assessment of the costs to enable bi-directional capacity requires knowledge about (i) the estimated compressor power and technology solutions needed to enable physical reverse flows at the interconnection point and (ii) other major infrastructure elements which would be required to enable bi-directional capacity.

¹⁸ Cf. Art. 5(6) of the SoS Regulation. Also cf., for example, Recommendation No 05/2015 of ACER of 18 December 2015, pt. 2.10: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2005-2015.pdf

¹⁹ There is no definition of feasibility study under the SoS Regulation. However, the European Commission Guide to Cost-Benefit Analysis from 2014 of Investment Projects provides guidelines on the elements to be included in a feasibility study (cf. Section 2.6, p. 36-37 in https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/cba_guide.pdf)

- (35) The request, the Decision, and the additional information provided within the context of the procedure before ACER do not include sufficient information about the main technical features of a potential reverse flow project²⁰ for enabling permanent bi-directional capacities at the Deutschneudorf-EUGAL (DE-CZ) IP. The absence of this information does not allow ACER to properly evaluate the costs associated with potentially implementing bi-directional capacity at the Deutschneudorf-EUGAL (DE-CZ) IP, should a new compression station and other associated infrastructure be required.
- (36) ACER also notes that the Decision does not indicate whether the possibility to flow gas via EUGAL from the Czech Republic to Germany without new compressor station ('CS') has been studied. The Deutschneudorf receiving station, according to EUGAL's webpage, is already adapted to get flows from the Czech network. Pressure in the Czech network could be used to flow gas to Germany, should a sufficient pressure differential be feasible. Should the pipelines arriving at Hora Sv. Kateřiny be running at pressures around 70 bar, moderate gas flows to Germany via EUGAL are likely to be feasible, possibly up to 50% of the pipeline's design flow, and the pressure drop until CS Radeland 2 would be fairly small. In case CS Radeland 2 is equipped with reverse flow capabilities, flowing gas into the JAGAL-YAMAL system or FGL 306 would probably be feasible as well.²¹ ACER notes that the verification of these options could have been part of a feasibility study for enabling permanent bi-directional capacities at the Deutschneudorf-EUGAL (DE-CZ) IP. However, as such study has not been performed, the various options for flowing gas from the Czech Republic to Germany and the cost associated with these options has not been properly assessed for the purpose of the Decision.

5.7. Benefits for the security of gas supply

- (37) The Decision confirms that the calculations contained in the request with regard to the infrastructure standard (N-1) have been performed in accordance with the SoS Regulation.
- (38) In particular, the Decision notes that the exact calculation of the N-1 formula for the national risk assessment was carried out by using the criteria set out in Annex II SoS Regulation. In addition, the Decision reports that the latest edition of the German national risk assessment (2018) confirms that if the largest single entry point to Germany (the Mallnow cross-border interconnection between Germany and Poland) were to be disrupted, there would still be sufficient transport capacity to satisfy a day of exceptionally high gas demand, as specified in the SoS Regulation. In particular, the Decision highlights that the indicator of the N-1 standard in Germany scores at least 198%, well over the minimum requirement of 100% for the N-1 indicator set out in the SoS Regulation.

²⁰ In particular, installed compression power, technology choice, and scope of other adaptations of the transmission lines, with quantifications in physical and cost terms.

²¹ Cf. JRC report JRC120428, p. 13.

- (39) ACER assessed the level of the N-1 indicator as available in recent (as of 2019) published national Preventive Action Plans ('PAPs') of Austria, the Czech Republic, Germany, Poland, and Slovakia (cf. Table 1). ACER notes that in all of these Member States the N-1 indicator stands at a level well over the minimum required by the SoS Regulation.

Table 1: Infrastructure standard indicator levels (N-1) as published in recent PAPs

	AT*	CZ	DE	PL	SK
Date of PAP	2019/08/02	2019/02	2019/06/21	2019	2019/12
Largest infrastructure	Baumgarten (GCA, WAG, TAG)	Lanžhot	Mallnow	SSRP Włocławek	Veľké Kapušany
Unit	MNm ³ /d	MSm ³ /d	Mm ³ /d	Mm ³ /d	Mm ³ /d
EP _m	163.16	296.8	565.74	59.2	282.1
P _m	3.22	0.5	25.16	5.7	0.2
S _m 100%			672.16	53.5	49.9
S _m 30%	42.04	57.6	526.56	46.7	39.5
LNG _m	0	0	0	13.7	0
I _m	140.34	146.6	86.01	24.0	181.7
D _{max}	52.40	65.0	517.44	91.5	44.4
N-1 100%			227%	118%	339%
N-1 30%	130%	321%	199%	111%	316%

Note: *Table compiled by JRC based on recent PAPs. For AT, a distinction per facility is available. Cf. JRC report JRC120428, p. 11.

- (40) In light of the above, ACER considers that the Decision concludes, on the basis of sufficient evidence, that further entry capacity from the Czech Republic to Germany is unnecessary for the purpose of ensuring a sufficient level of security of gas supply.

5.8. Common risk assessment

- (41) The Decision indicates that Gascade used the results of the common risk assessment in accordance with Article 7(2) of the SoS Regulation of the Eastern gas supply risk group, Belarus (cf. Annex 1.1.b of the SoS Regulation). The assessment was led by Poland and included Germany and the Czech Republic, as well as other Member States in accordance with Annex I.1.b of the SoS Regulation. ACER notes that all ten scenarios compiled to assess the security of supply in the region in that common risk assessment found that it would not be necessary to use significant capacity from the Czech Republic to Germany and from Germany to Poland to ensure the required level of security of gas supply. The Decision also reports that an assessment of a disruption at the Kondratki entry point from Belarus to Poland provides levels for the N-1 indicator over the minimum requirement pursuant to the SoS Regulation.

- (42) Furthermore, ACER notes that even in the case of most severe disruption of gas supply from Russia to Poland, and even without EUGAL, the German network should be capable to provide considerable support to Poland in case of need, for example via the

STEGAL-JAGAL route and underground gas facilities nearby, or via the NEL-OPAL route.²²

- (43) In light of the above, ACER considers that the Decision relies on reasonably certain results of the common risk assessment conducted in 2018 in accordance with Article 7(2) SoS Regulation by the Eastern gas supply risk group.

5.9. Duration of the exemption

- (44) The Decision grants an exemption for a period of four years from the date of its adoption. The duration of the exemption is based on (i) the lack of demand for more capacity from the Czech Republic to Germany at the time of the Decision, and (ii) a forecast of absence of any such demand in the short and medium term. The Decision further refers to the future incremental capacity process which will test the possible need of capacity in the future, as well as to the continuous monitoring of security of supply situation, and aims to revise the exemption once it expires in 2024.
- (45) ACER notes that, given the duration of the exemption and the lengthy lead time for implementing actual physical capacity projects involving additional major infrastructure (in this instance, compression power and associated network adaptations in Germany), the availability of bi-directional capacity at the Deutschneudorf-EUGAL (DE-CZ) IP may materialize at the earliest in 2025.
- (46) ACER is of the view that the demand and risk patterns could be different in the short to medium term (within the validity of the exemption) and in the longer term, beyond 2025. As a result, bi-directional capacity at the Deutschneudorf-EUGAL (DE-CZ) IP will not be available at least until 2025, even if market demand or security of supply considerations would materially change in the meantime.
- (47) In light of the above, ACER considers advisable that the level of adequacy of gas security of supply standards and potential market demand for reverse flow capacity is closely monitored by the competent authorities in the future, with a focus on the period of time from two years as of the adoption of the Decision and until the end of the duration of the exemption,

HAS ADOPTED THIS OPINION:

1. The Decision fulfils the requirements of the SoS Regulation applicable to the elements of decisions on requests for exemption from the obligation to enable permanent physical bi-directional capacity. However, it is based on a request for an exemption that does not include:
 - a. a feasibility study;

²² Cf. JRC report JRC120428, p. 13.

- b. a CBA based on the methodology foreseen in Article 11 of the Regulation (EU) No 347/2013, as required by Article 5(5) SoS Regulation;
 - c. a consultation process fully enabling the participation of the TSOs from the Member States listed in the Eastern Gas Supply risk group.
2. The inclusion of a feasibility study is a regulatory requirement. The study should provide essential information about the design, the cost estimates, and the implementation schedule of the project. The study is of critical importance for providing information needed to carry out the CBA required by Article 5(5) SoS Regulation.
3. In addition to posting a notice about the consultation on its website, Gascade should have individually invited to the consultation at least the TSOs from the Member States listed in the Eastern Gas Supply risk group. The duration of the consultation period of one week is too short to ensure sufficient opportunity for participation.
4. The reasoning contained in the Decision about the infrastructure standard indicators of the SoS Regulation is compelling. These indicators seem to be at adequate levels in Germany, and also in the Czech Republic and in Poland. None of the ten supply disruption scenarios compiled to assess security of supply in the region found that it would be necessary to use significant capacity from the Czech Republic to Germany or from Germany to Poland. Moreover, there is already available permanent bi-directional capacity from the Czech Republic to Germany at the VIP Brandov, which offers the sum of capacities at existing and adjacent IPs. Furthermore, there is no indication of market demand for additional capacities from the Czech Republic to Germany, and the national preventive action plans of Germany²³, the Czech Republic²⁴ and Poland²⁵ have not signalled any need for additional permanent physical capacities from the Czech Republic to Germany.
5. The increase of the capacity from the Czech Republic to Germany in the short- to medium-term may result in inefficient investments. The assessment contained in the Decision correctly points out to the fact that the investment costs would significantly outweigh the prospective benefits for the security of gas supply – which is a substantive condition to grant the exemption in Germany, and thus appears to be justified.
6. The duration of the exemption of four years appears to be justified insofar as no substantial changes occur in the market or in the infrastructure's conditions under which the exemption was granted (i.e. only if the risk factors remain similar to the ones observed at that time). While these conditions are unlikely to change in the near- and mid-term future, the risk patterns may be different in the long term. To hedge against this possible change of risk patterns, the Decision could have included options for the monitoring of the level of adequacy of gas security of supply standards or future market demand for

²³ https://ec.europa.eu/energy/sites/ener/files/documents/2019.06.21-de-pap-praventionsplan_englisch_final_1.pdf.

²⁴ https://ec.europa.eu/energy/sites/ener/files/documents/2019.03.18-pap_czech_rep_en.pdf.

²⁵ https://ec.europa.eu/energy/sites/ener/files/documents/preventive_action_plan_2019_en.pdf.

capacity, with a focus on the period of time after two years as of the adoption of the Decision and until the end of the duration of the exemption.

7. Once exemption requests within the meaning of Article 5(4), first sub-paragraph, and point 2 of Annex III SoS Regulation are submitted to the competent authorities concerned, those shall ensure that the procedure foreseen under Annex III of the SoS Regulation is duly respected and that the detailed requirements foreseen in Annex III SoS Regulation and Article 5(4) and (5) are fulfilled by the Transmission System Operators to ensure that the purpose, spirit and objective of the SoS Regulation, and, in particular, coordination, cooperation, and solidarity are preserved.

This Opinion is submitted to the Commission for consequential actions deemed necessary, all competent authorities concerned, and the national regulatory authorities referred to in points 3 and 6 of Annex III SoS Regulation.

Done at Ljubljana, on 8 May 2020.

- SIGNED -

For the Agency
The Director
C. ZINGLERSEN