

DECISION No 06/2019
OF THE AGENCY FOR THE COOPERATION OF
ENERGY REGULATORS

of 29 May 2019

on the request of all regulatory authorities to extend the period for reaching an agreement on the amended proposal for the implementation framework for a European platform for the imbalance netting process

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) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing², and, in particular, Article 6(1) thereof,

Having regard to the favourable opinion of the Board of Regulators of 28 May 2019, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (the ‘EB Regulation’) laid down a detailed guideline on electricity balancing including the establishment of common principles for the procurement and the settlement of frequency containment reserves, frequency restoration reserves and replacement reserves and a common methodology for the activation of frequency restoration reserves and replacement reserves. These requirements also

¹ OJ L211, 14.8.2009, p. 1.

² OJ 312, 28.11.2017, p. 6.

include the development of the implementation framework for a European platform for the imbalance netting process in accordance with Article 22 of the EB Regulation.

- (2) Pursuant to Articles 4(1), 5(2)(a) and 22(1) of the EB Regulation, all transmission system operators ('TSOs') shall develop a proposal for the implementation framework for a European platform for the imbalance netting process and submit it to all regulatory authorities for approval. Then, all 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 5(6) of the EB 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 6(1) of the EB 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 Articles 5(7) and 6(2) of the EB 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 implementation framework for a European platform for the imbalance netting process ('Amended Proposal') to 19 July 2019, pursuant to Article 8(1) of Regulation (EC) No 713/2009.

2. PROCEDURE

- (4) In a letter dated 17 May 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 two-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 15 July 2019.
- (5) According to this letter, all regulatory authorities received from all TSOs the Amended Proposal by 15 March 2019. However, according to the notifications sent to the Agency by the NRAs, and further confirmed by them, the last NRA actually received the Amended Proposal on 19 March 2019. This was also confirmed in a letter of the chair of

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

the Energy Regulators' Forum of 21 May 2019 and received by the Agency on the same date.

- (6) In support of the request for extension, the letter states that *'[t]he all TSOs' proposal also contains a proposal for an entity to operate the functions of the imbalance netting platform (Article 9 of the proposal). The question, whether or not the formulation of this Article is acceptable for all NRAs is still under discussion. In this context the Legal Expert Network (LEN) was asked to provide legal input. This question also affects other all TSOs' proposals of the EBGL, namely according to Article 20 and Article 21. Given the time the LEN will need to agree on a recommendation and subsequent discussions amongst All Regulatory Authorities in the Electricity Balancing Task Force, All Regulatory Authorities are not able to conclude on this question and decide on the amended all TSOs' proposal before 15 May 2019.'*
- (7) However, in the letter of 21 May 2019 referred to in recital (5) above, the chair of the Energy Regulators' Forum specified that the request for extension should cover a two-month period, and therefore the period to 19 July 2019.

3. ASSESSMENT OF THE REQUEST

3.1. Legal framework

- (8) 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.
- (9) According to Article 5(2)(a) of the EB Regulation, the proposal for the implementation framework for a European platform for the imbalance netting process in accordance with Article 22(1) of that Regulation shall be subject to approval by all regulatory authorities.
- (10) According to Article 5(6) of the EB 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 2, 3 and 4, within six months following the receipt of the terms and conditions or methodologies by the last regulatory authority concerned.
- (11) According to Article 6(1) of the EB 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.

- (12) According to Article 6(2) of the EB 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

- (13) Article 6(1) of the EB Regulation requires all 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.
- (14) However, Article 6(2) of the EB 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.
- (15) Therefore, the transfer of the decision-making competence from the regulatory authorities to the Agency under Article 6(2) of the EB 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 according to Article 22 of the EB Regulation, which was submitted by all TSOs in accordance with Article 5(2)(a) of the EB Regulation to all regulatory authorities, i.e. 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 5(2)(a) of the EB Regulation. Accordingly, they are also the competent regulatory authorities that may request an extension of the two-month period for reaching an agreement under Article 6(2) of the EB Regulation.
- (18) Since the last competent regulatory authority received the Amended Proposal on 19 March 2019, the competent regulatory authorities had to decide on it, in accordance with

Article 6(1) of the EB Regulation, by 19 May 2019. The request for extension was received by the Agency on 17 May 2019. Thus, it was received before the expiry of the two-month deadline on 19 May 2019.

- (19) In their request, the competent regulatory authorities ask for an extension of two months, i.e. to 19 July 2019. 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 consider the extension justified on the ground that they need a recommendation from the Legal Expert Network (LEN) of the Agency with respect to the entity that operates the functions of the imbalance netting platform, as provided in Article 9 of the Amended Proposal, in order to conclude their discussions and decide on the Amended Proposal, and that, given the time the LEN would need to formulate the required recommendation, it would not be possible for them to respect the necessary procedural steps before 19 May 2019.
- (23) The Agency understands from this justification that the regulatory authorities cannot decide on the Amended Proposal, and particularly on the entity that operates the functions of the imbalance netting platform, unless they have the recommendation by the LEN. Moreover, given that the NRAs have two months to reach an agreement on the Amended Proposal, the Agency understands that concluding the procedures for the involvement of the LEN and the discussions on the LEN's recommendation within this short period can be challenging. In the Agency's view, the fact that the decision on the entity that operates the functions of the imbalance netting platform affects also the discussions for the all TSOs' proposals pursuant to Articles 20 and 21 of the EB Regulation, it requires that the NRAs reach an agreement taking also into consideration the requested recommendation from the LEN. The Agency agrees with the regulatory authorities that the requested extension to 19 July 2019 is justified to enable them to review and decide on the Amended Proposal after receipt of the recommendation by the LEN.
- (24) Furthermore, the Agency cannot detect any inappropriate delays, which the requested extension would cause.
- (25) Therefore, the Agency considers an extension until 19 July 2019 justified.

4. CONCLUSION

(26) For the above reasons, the Agency accepts the request for an extension submitted by all regulatory authorities and extends the period for those regulatory authorities to reach an agreement on the Amended Proposal until 19 July 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 implementation framework for a European platform for the imbalance netting process according to Article 22(1) of Commission Regulation (EU) 2017/2195, submitted by the transmission system operators by 19 March 2019, is extended, in accordance with Article 8(1) of Regulation (EC) No 713/2009, until 19 July 2019.

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 29 May 2019.

- SIGNED -

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.