



E-CONTROL

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per RSb

Aktenzahl	Ihre Nachricht vom	Posteingangs-Nr.	Postausgangs-Nr.	Name	DW	Datum
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Aufforderung zur Abänderung des Vorschlags für Nominierungsregeln physikalischer Übertragungsrechte gemäß Art 36 FCA-VO

Sehr geehrte Damen und Herren,

gemäß Art 36 VO (EU) 2016/1719 zur Festlegung einer Leitlinie für die Vergabe langfristiger Kapazität („**FCA-VO**“) erarbeiten alle Übertragungsnetzbetreiber („**ÜNB**“), die physikalische Übertragungsrechte an einer Gebotszonengrenze ausgeben, spätestens zwölf Monate nach dem Inkrafttreten der FCA-VO, einen Vorschlag zu Nominierungsvorschriften für Stromaustausch-Fahrpläne zwischen Gebotszonen und legen diesen gemäß Art 4 Abs 1 FCA-VO den zuständigen Regulierungsbehörden innerhalb der festgelegten Frist zur Genehmigung vor.

Wenn die Genehmigung eines Vorschlags eine Entscheidung von mehr als einer Regulierungsbehörde erfordert, sieht Art 4 Abs 9 FCA-VO vor, dass die zuständigen Regulierungsbehörden einander koordinieren und für eine enge Zusammenarbeit sorgen.

Unter Anwendung des Art 4 Abs 11 FCA-VO können die zuständigen Regulierungsbehörden für die Genehmigung der vorgelegten Geschäftsbedingungen oder Methoden eine Änderung verlangen. Die jeweiligen ÜNB legen innerhalb von zwei Monaten nach Aufforderung durch die Regulierungsbehörden einen Vorschlag für geänderte Modalitäten oder Methoden vor.



Mit Schreiben vom 4.10.2017 hat Austrian Power Grid AG unter anderem folgende Vorschläge gemäß Art 36 FCA-VO zur Genehmigung bei E-Control eingereicht:

- Proposal for nomination rules for Physical Transmission Rights for the bidding zone border(s) between Austria, Croatia, Czech Republic, Germany, Hungary, Poland, Slovakia, and Slovenia in accordance with Article 36 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation ("**Vorschlag**")
- Annex 1 to the Proposal for nomination rules for Physical Transmission Rights for the bidding zone border(s) between Austria, Croatia, Czech Republic, Germany, Hungary, Poland, Slovakia, and Slovenia ("**User's Guide**")

(beide Dokumente gemeinsam "**Antrag Nominierungsrechte PTR**")

Wie in Erwägungsgrund 3 des Vorschlags erläutert, fördert ein solcher gemeinsamer Vorschlag aller betroffenen ÜNB gemäß Art 36 Abs 2 FCA-VO die allgemeinen Ziele der FCA-VO, insbesondere die des Art 36 Abs 3 FCA-VO und Art 3 FCA-VO. Gegenständlicher Antrag erfordert sohin die Entscheidung von mehr als einer Regulierungsbehörde iSd des Art 4 Abs 9 FCA-VO und macht daher die in Art 4 Abs 9 ff FCA-VO gesetzten Verfahrensgrundsätze bzw -abläufe anwendbar.

Der Antrag Nominierungsrechte PTR wurde am 7.11.2017 bei der letzten zuständigen Regulierungsbehörde eingebracht, so dass die Frist zur Genehmigung bzw. Aufforderung zur Änderung gemäß Art 4 Abs 9 FCA-VO bis zum 7.5.2018 läuft.

Am 19.4.2018 haben sich die Regulierungsbehörden von Österreich, Kroatien, der Tschechischen Republik, Deutschland, Ungarn, Polen, der Slowakei und von Slowenien („**betroffene Regulierungsbehörden**") geeinigt, hinsichtlich des Antrags Nominierungsrechte PTR eine Abänderung gemäß Art 4 Abs 11 FCA-VO zu verlangen.

Diese Abänderungen betreffen in erster Linie Anpassungen der Artikel 4, 7 und 9 des Vorschlags. Weitere Änderungen betreffen Beschreibungen des Nominierungsprozesses und der Nominierungsumgebung. Hier sollen für die regulatorische Genehmigung nicht benötigte Detailbeschreibungen soweit wie möglich entfernt werden.



Der zwischen den betroffenen Regulierungsbehörden abgestimmte Abänderungsantrag („Request for Amendment by all concerned Regulatory Authorities on the TSO's Proposal of 11 October 2017 for nomination rules for Physical Transmission Rights for the bidding zone border(s) between Austria, Croatia, Czech Republic, Germany, Hungary, Poland, Slovakia, and Slovenia in accordance with Article 36 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation“) wird als Beilage .1 dem gegenständlichen Schreiben beigefügt. Der identifizierte Änderungsbedarf ist dort ausführlich beschrieben und erklärt.

Austrian Power Grid AG wird hiermit aufgefordert,

den zur Genehmigung eingereichten Vorschlag für Nominierungsregeln physikalischer Übertragungsrechte gemäß Art 36 FCA-VO binnen zwei Monaten im Sinne der Beilage .1 gemeinsam mit allen anderen Übertragungsnetzbetreibern abzuändern und erneut zur Genehmigung einzureichen.

Mit freundlichen Grüßen
Energie-Control Austria

Dr. Wolfgang Urbantschitsch, LL.M.
Vorstandsmitglied

Dr. Markus Helmreich, LL.M.
Leiter Recht

Beilage .1:

Request for Amendment by all concerned Regulatory Authorities on the TSO's proposal of 11 October 2017 for nomination rules for physical transmission rights for the bidding zone border(s) between Austria, Croatia, Czech Republic, Germany, Hungary, Poland, Slovakia, and Slovenia in accordance with Article 36 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation

**REQUEST FOR AMENDMENT BY THE CONCERNED
REGULATORY AUTHORITIES**

ON

**THE TSOs' PROPOSAL OF 11 OCTOBER 2017 FOR
NOMINATION RULES FOR PHYSICAL
TRANSMISSION RIGHTS FOR THE BIDDING ZONE
BORDER(S) BETWEEN**

**AUSTRIA, CROATIA, CZECH REPUBLIC, GERMANY,
HUNGARY, POLAND, SLOVAKIA AND SLOVENIA**

**IN ACCORDANCE WITH ARTICLE 36 OF
COMMISSION REGULATION (EU) 2016/1719 OF 26
SEPTEMBER 2016**

ESTABLISHING A GUIDELINE ON

**FORWARD
CAPACITY ALLOCATION**

19 April 2018

I. Introduction and legal context

This document elaborates an agreement of the respective National Regulatory Authorities (NRAs) on the TSOs' proposal for nomination rules for Physical Transmission Rights (PTRs) for the bidding zone border(s) between Austria (AT), Croatia (HR), Czech Republic (CZ), Germany (DE), Hungary (HU), Poland (PL), Slovakia (SK) and Slovenia (SI) in accordance with Article 36 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation (Regulation 2016/1719).

This agreement shall provide evidence that a decision on the nomination rules for the concerned bidding zone border(s) between AT, HR, CZ, DE, HU, PL, SK and SI does not, at this stage, need to be adopted by ACER pursuant to Article 4(10) of the Regulation 2016/1719. This agreement is intended to constitute the basis upon which the relevant NRAs will subsequently – and each individually – request their respective TSO(s) to amend the proposal as described in this document and in accordance with Article 4(11) of the Regulation 2016/1719.

The legal provisions relevant to the submission and approval of the proposal and this NRA agreement on requesting an amendment to the proposal can be found in Articles 3, 4 and 36 of Regulation 2016/1719. They are quoted here for reference.

Article 3 of Regulation 2016/1719:

“This Regulation aims at:

- (a) promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants;*
- (b) optimising the calculation and allocation of long-term cross-zonal capacity;*
- (c) providing non-discriminatory access to long-term cross-zonal capacity;*
- (d) ensuring fair and non-discriminatory treatment of TSOs, the Agency, regulatory authorities and market participants;*
- (e) respecting the need for a fair and orderly forward capacity allocation and orderly price formation;*
- (f) ensuring and enhancing the transparency and reliability of information on forward capacity allocation;*
- (g) contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.”*

Article 4 of Regulation 2016/1719:

- 1. „TSOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO, the participating TSOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, shall regularly inform the competent regulatory authorities and the Agency about the progress of developing these terms and conditions or methodologies.*
- 2. to 7. (...)*
- 8. The proposal for terms and conditions or methodologies shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of this*

Regulation. Proposals on terms and conditions or methodologies subject to the approval by several or all regulatory authorities shall be submitted to the Agency at the same time that they are submitted to regulatory authorities. Upon request by the competent regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.

9. *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 reach an agreement. Where applicable, the competent regulatory authorities shall take into account the opinion of the Agency. Regulatory authorities shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6 and 7, within six months following the receipt of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.*
10. *Where the regulatory authorities have not been able to reach an agreement within the period referred to in paragraph 9, or upon their joint request, 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.*
11. *In the event that one or several regulatory authorities request an amendment to approve the terms and conditions or methodologies submitted in accordance with paragraphs 6 and 7, the relevant TSOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the regulatory authorities. The competent regulatory authorities shall decide on the amended terms and conditions or methodologies within two months following their submission. Where the competent regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies pursuant to paragraphs 6 and 7 within the two-month deadline, or upon their joint request, the Agency shall adopt a decision concerning the amended terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009. If the relevant TSOs fail to submit a proposal for amended terms and conditions or methodologies, the procedure provided for in paragraph 4 shall apply. (...)*
12. *TSOs responsible for developing a proposal for terms and conditions or methodologies or regulatory authorities responsible for their adoption in accordance with paragraphs 6 and 7, may request amendments of these terms and conditions or methodologies. The proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedure set out in Article 6 and approved in accordance with the procedure set out in this Article.*
13. *TSOs responsible for establishing the terms and conditions or methodologies in accordance with this Regulation shall publish them on the internet after approval by the competent regulatory authorities or, if no such approval is required, after their establishment, except where such information is considered as confidential in accordance with Article 7.”*

Article 36 of Regulation 2016/1719 on the general provisions for physical transmission rights nomination:

1. *“Where TSOs issue and apply physical transmission rights on bidding zone borders, they shall enable physical transmission rights holders and/or their counterparties to nominate their electricity exchange schedules. Physical transmission rights holders may authorise eligible third parties to nominate their electricity exchange schedules on their behalf in line with the nomination rules in accordance with paragraph 3.*
2. *No later than 12 months after the entry into force of this Regulation, all TSOs issuing physical transmission rights on a bidding zone border shall submit to the relevant regulatory authorities' approval a proposal for nomination rules for electricity exchange schedules between bidding*

zones. The proposal shall be subject to consultation in accordance with Article 6. Nomination rules shall contain at least the following information:

- (a) the entitlement of a physical transmission rights holder to nominate electricity exchange schedules;
 - (b) minimum technical requirements to nominate;
 - (c) description of the nomination process;
 - (d) nomination timings;
 - (e) format of nomination and communication.
3. All TSOs shall progressively harmonise the nomination rules on all bidding zone borders on which physical transmission rights are applied.
 4. Physical transmission rights holders, their counterparties where applicable or an authorised third party acting on their behalf shall nominate all or part of their physical transmission rights between bidding zones in compliance with the nomination rules.
 5. In case allocation constraints on interconnections between bidding zones have been included in the day-ahead capacity allocation process in accordance with Article 23(3) of Regulation (EU) 2015/1222, they shall be taken into account in the proposal for nomination rules referred to in paragraph 2.”

II. Process

The draft proposals on PTR nominations were publicly consulted upon by the TSOs from 27 June 2017 until 18 August 2017 in accordance with Article 36(2) and Article 6 of Regulation 2016/1719¹. The TSOs’ proposal on PTR nomination rules for the bidding zone border(s) between AT, HR, CZ, DE, HU, PL, SK and SI, dated 11 October 2017, was received by the last competent regulatory authority on 7 November 2017, together with an annex labelled “The User’s Guide to Scheduling - Trader’s Manual”, which forms an integral part of the proposal.

Article 4(9) of Regulation 2016/1719 requires the competent regulatory authorities to consult and closely cooperate and coordinate with each other in order to reach an agreement, and subsequently take national decisions within six months following the receipt of the proposal by the last concerned regulatory authority. In this case, a national request for amendment based on the agreement reached between the concerned regulatory authorities is therefore required by each Regulatory Authority at latest by 7 May 2018.

According to Article 4(11) of Regulation 2016/1719 the TSOs addressed in the request for amendment then have two months to submit an amended proposal, which shall be decided upon by the concerned regulatory authorities within a period of another two months.

¹ The public consultation which was held from 27 June until 18 August 2017 is available on the ENTSO-e website: <https://consultations.entsoe.eu/markets/nom-ptrs/>

III. Agreed position of the NRAs of AT, HR, CZ, DE, HU, PL, SK, SI

For the reasons outlined further below, the concerned regulatory authorities cannot approve the current proposal on nomination rules for PTRs between the bidding zone border(s) of AT, HR, CZ, DE, HU, PL, SK and SI and therefore request the following amendments to the proposal to be incorporated pursuant to Article 4(11) of Regulation 2016/1719:

Article 4 (main body of the proposal):

To reflect the requirement of Article 36.2(a) of Regulation 2016/1719, a general phrase on the actual entitlement to nominate PTRs should be incorporated in the body of the article (i.e. just above the table). It is legally not sufficient to deduct the entitlement to nominate just from the headline of the article².

The revised sentence above the table could read for example as follows: *"Physical transmission rights can be nominated by their holders, eligible or authorized persons – as applicable – fulfilling both the minimum technical requirements pursuant to Article 5 and the following prerequisites of the respective TSO:"*

A similar sentence can also be found in the PTR nomination rules proposals for other borders.

Article 7 (main body of the proposal):

The 2nd sentence about the relevant Allocation Platform liability: *"(...) and the relevant Allocation Platform shall not be held liable for any damaged due to such discrepancy."* should be deleted. It does not lie within NRAs' competences to decide that Allocation Platform should or should not be held liable for damage caused by publishing information not compliant with the approved proposal. That is to be judged by court in each case separately.

Article 9 (main body of the proposal):

The sentence *"Any change of the rules related to nomination of PTRs for a bidding zone border between related TSOs shall lead to an amendment of the present nomination rules Proposal."* should be amended by adding *"in accordance with Article 4(12) of Regulation 2016/1719"* at the end of the sentence for clarification purposes.

Annex 1:

The "User's Guide to Scheduling – Trader's Manual" (Annex 1), which currently forms an integral part of the proposal (cf. Art. 6(2) therein), contains very detailed process descriptions, IT system requirements and communication standards, as well as examples, which go beyond the scope and framework of the proposal for nomination rules to be approved by the competent regulatory authorities. In particular, it should be avoided that any possible minor updates or later changes of details of the ENTSO-E / ETSO standards and definitions or process / IT descriptions require another NRA approval process of the proposal (i.e. its revised annex, as long as it forms an integral part of the proposal). Against the background of other proposals on nomination rules (e.g. for other borders of Germany with its neighbors in central Europe) NOT containing such detailed annexes as integral part of the proposal to be approved, the regulatory authorities therefore consider harmonizing the level

² The right to nominate is formulated explicitly only for a part of the TSOs in some of the rows of the table, but not in all.

of detail of the proposals to be approved. The level of detail and scope should be limited to the aspects which are legally required by Article 36 of Regulation 2016/1719.

In order to avoid a regulatory re-approval of the proposal as soon as technical elements or communication standards are (slightly) adapted, and to arrive at an appropriate level of detail necessary for the regulatory approval, **the following elements of Annex 1 shall be omitted** (i.e. not form an integral part of the proposal anymore):

- Chapter 1.1 Purpose
- Chapter 1.2 Scope
- Chapter 2.3 Cross border nomination
- Chapter 2.4 Example of nomination (except for the three basic rules listed there)
- Chapter 2.5 TSOs reactions (except for a short general description of the TSOs reactions)
- Appendix 3
- In addition, the following two sentences in chapter 2.7 should be deleted:
~~"After successful matching procedure a new CNF or ACK document shall be sent to all ITRs. This CNF or ACK will contain A70 Curtailment [.....] on time series level."
Alternatively, a more general description could replace the sentence.~~
- As chapter 2.2 and 3.2 are redundant, it is advisable to replace the content of chapter 2.2 by the (more detailed) list provided in Appendix 3.2. ("Referenced documents"). If possible, it could be checked, whether the changes that have taken place since the adoption and possible future updates of the referenced documents can be covered as well. If yes, NRAs suggest to include a statement that reflects it (i.e. "The defined communication standards *and related documents* are: /1/ to /5/ in *their most recent version*" [or: "*including their updates.*")

It is left to the discretion of the TSOs how the abovementioned requested changes are realized. For example, Annex 1 could be shortened as described above and still forming an integral part of the proposal. Alternatively, the main body of the proposal could be complemented by the more general descriptions and parts of the Annex 1 which are legally required and necessary (i.e. chapter 1.3, ch. 2.1, the three basic rules of ch. 2.4, ch. 2.6 and chapter 2.7 (but without the detailed two sentences quoted above)).

As NRAs of AT, HR, CZ, DE, HU, PL, SK and SI generally welcome the level of detail (including the examples / appendix 3) provided to market participants in the "User's Manual" (i.e. the original Annex 1 of the proposal), TSOs are encouraged to keep the complete version of the "User's Manual" as a separate document made available to the "users" (not subject to approval by NRAs).

IV. Conclusions

For the reasons described above, the NRAs of AT, HR, CZ, DE, HU, PL, SK and SI request an amendment of the TSOs' proposal on nomination rules for PTRs for the bidding zone borders between AT, HR, CZ, DE, HU, PL, SK and SI based on their agreement reached on this document on 19 April 2018 and according to Article 4(11) of Regulation 2016/1719. On this basis, the concerned NRAs need to send their individual national decisions for requesting the amendment to the nomination rules to their respective TSO(s) by 7 May 2018. The amended TSOs' proposal shall take into account the agreed position stated above in chapter III and shall be resubmitted by the concerned TSOs to the respective NRAs no later than two months following the request from the NRAs.