

1. Legal basis

To address contractual congestion, point 2.2.2 of Annex I to Regulation (EC) No 715/2009 states that TSOs are to propose an incentive-based oversubscription and buy-back scheme to the regulatory authority and implement it after regulatory approval has been obtained.

In this context, E-Control formally invited the Austrian TSOs Baumgarten-Oberkappel Gasleitungsges.m.b.H. (BOG), Gas Connect Austria GmbH (GCA) and Trans Austria Gasleitung GmbH (TAG) on 22 March 2013 to develop and propose such a scheme. In their reaction in mid-May 2013, the TSOs argued that it was not strictly necessary to introduce an oversubscription and buy-back scheme by 1 October 2013 given that a firm day-ahead use-it-or-lose-it mechanism (UIOLI) would apply in Austria from that day. On 25 June 2013, E-Control replied asking the TSOs to assess the interdependence between the two mechanisms. The TSOs' answers reached E-Control towards the end of July 2013.

2. Substance

The TSOs argued that there had not yet been sufficient time to gather the experience required for drawing up a reliable risk profile for the buy-back obligation and the related costs. Introduction of an entry/exit regime in Austria as of 1 January 2013 also meant a new capacity calculation model and new possibilities for system users. The TSOs needed more time to gather reliable data from the entry/exit regime, only then could they compute the risk profile.

E-Control would like to point to item 5 of point 2.2.2 of Annex I to Regulation (EC) No 715/2009, which states that in determining the additional capacity, the TSOs “shall [...] take into account a risk profile [...] which does not lead to excessive buy-back obligation. The oversubscription and buy-back scheme shall also estimate the likelihood and the costs of buying back capacity on the market [...]”

In E-Control's view, it is crucial that additional capacity offered as part of an oversubscription and buy-back scheme does not lead to excessive buy-back obligation for the TSOs. Though there are remedies that would protect the TSOs from the financial risk of excessive buy-back obligation (such as a cost cap and prorated curtailment), the authority does not consider these to be a market-based buy-back procedure in the meaning of point 2.2.2 of Annex 1 of Regulation (EC) No 715/2009.

Prorated capacity curtailment would also mean that interruptible capacity would have to be interrupted to accommodate firm capacity that has not been bought back because of the costs being capped, and maybe even that firm capacity would be curtailed.

Austria introduces UIOLI for firm day-ahead capacity on 1 October 2013; the corresponding stipulations are included in E-Control's *Gasmarktmodell-Verordnung* (Gas Market Model Ordinance, Section 11) 2012, issued in May 2012. According to item 6 of point 2.2.3 of Annex I to Regulation (EC) No 715/2009, “[o]n interconnection points where a firm day-ahead use-it-or-lose-it mechanism [...] is applied, an evaluation of the relationship with the oversubscription and buy-back scheme pursuant to point 2.2.2 shall be carried out by the national regulatory authority, which may result in a decision by the national regulatory authority not to apply the provisions of point 2.2.2 at those interconnection points.”

In terms of computing a risk profile for the TSOs offering additional capacity, there has not been enough time to gather the requisite data since the entry/exit regime was introduced on 1 January 2013. The regulator is of the opinion that the available non-market based remedies which would hedge against excessive buy-back obligation that might arise due to the insufficient market observation period are neither satisfactory nor in line with the Regulation.

3. Regulatory decision

Given the reactions received from the TSOs and the above considerations, and based on item 6 of point 2.2.3. of Annex I to Regulation (EC) No 715/2009, E-Control decides not to introduce an oversubscription and buy-back scheme on 1 October 2013.

The regulator shares the TSOs' concerns about the period for gathering experience with the new entry/exit regime being too short. To address this, the regulator will ask the TSOs to submit, by 1 October 2014, an evaluation report that covers the following points:

- the effects of the firm day-ahead UIOLI;
- the status of contractual congestion at cross-border interconnection points; and
- the additional capacity that could be offered as part of an oversubscription scheme and related risk profile.

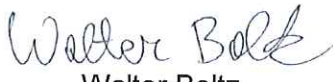
However, E-Control welcomes pilot projects by individual TSOs to implement an oversubscription and buy-back scheme during the period until 1 October 2014. Prior to implementing a pilot project, the TSO shall inform E-Control thereof.

Based on this evaluation report and any insights from pilot projects, E-Control will again consider whether to introduce or not an oversubscription and buy-back scheme.

Energie-Control Austria
für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control)

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Executive Board


Walter Boltz
Executive Director


Martin Graf
Executive Director