



Brussels, **XXX**
[...](2014) **XXX** draft

COMMISSION OPINION

of **XXX**

**pursuant to Article 3(1) of Regulation (EC) No 714/2009 and Article 10 of Directive
2009/72/EC - Germany – Baltic Cable AB**

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I. PROCEDURE

On 25 November 2013, the Commission received a notification from the German Federal Network Agency (hereafter, "Bundesnetzagentur"), in accordance with Article 10(6) of Directive 2009/72/EC¹ (hereafter, "Electricity Directive"), of a negative draft decision on the certification of "Baltic Cable AB" (hereafter, "Baltic Cable") as a transmission system operator (hereafter, "TSO") for electricity.

Pursuant to Article 3(1) Regulation (EC) No 714/2009² (hereafter, "Electricity Regulation") the Commission is required to examine the notified draft decision and deliver an opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) and Article 9 of the Electricity Directive.

II. DESCRIPTION OF THE NOTIFIED DECISION

The Baltic Cable connects the Swedish and the German onshore transmission systems. It became operational in 1994 and has a nominal capacity of 600MW. The Baltic Cable is owned and operated by Statkraft Energie AS, a vertically integrated energy undertaking with activities in the field of generation, transmission and supply of electricity. In the context of (EMCC) market coupling the capacity of the Baltic Cable is put at the disposal of the EPEX and Nordpoolspot power exchanges.

The draft decision by Bundesnetzagentur is an *ex officio* decision in the absence of a request for certification by Baltic Cable. Since March 2012, the unbundling deadline, Bundesnetzagentur has commenced to point Baltic Cable to its default in not submitting an application for unbundling. In its preliminary decision, Bundesnetzagentur explains that Baltic Cable has consistently retained it is not a TSO and that certification is hence not required. Baltic Cable appears to take the view that it merely operates the Baltic Cable as a cross-border connection and is therefore not a transmission system.

Bundesnetzagentur has come to the preliminary conclusion that Baltic Cable has not demonstrated that it complies with the requirements of any of the unbundling models as laid down in the German legislation transposing the Electricity Directive and that it therefore cannot be certified. Bundesnetzagentur has submitted its draft decision to the Commission requesting an opinion.

¹ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55 of 14.8.2009.

² Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211/15 of 14.8.2009.

III. COMMENTS

On the basis of the present notification the Commission agrees with Bundesnetzagentur that the Baltic Cable being a high voltage transmission line connecting the Swedish and the German transmission networks with each other needs to be operated by an independent TSO in accordance with one of the unbundling models laid down in the Electricity Directive. The Commission furthermore agrees with Bundesnetzagentur that Baltic Cable at present cannot be certified as the operator of the Baltic Cable as it has not demonstrated that it complies with one of the unbundling models.

The Commission calls upon Bundesnetzagentur, following its final decision, to engage with Baltic Cable and its owner, and cooperate closely with the Swedish regulatory authority for energy Energimarknadsinspektionen, with a view to finding agreement on a solution that as soon as possible will ensure the independent operation of the Baltic Cable and allow its certification in Germany and Sweden.

IV. CONCLUSION

Pursuant to Article 3(2) Electricity Regulation, Bundesnetzagentur shall take utmost account of the above comments of the Commission when taking its final decision regarding the certification of Baltic Cable, and when it does so, shall communicate this decision to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take vis-à-vis national regulatory authorities on any other notified draft measures concerning certification, or vis-à-vis national authorities responsible for the transposition of EU legislation as regards the compatibility of any national implementing measure with EU law.

The Commission will publish this document on its website. The Commission does not consider the information contained herein to be confidential. Bundesnetzagentur is invited to inform the Commission within five working days following receipt whether it considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information which it wishes to have deleted prior to such publication. Reasons should be given for any such request.

Done at Brussels,

For the Commission

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Member of the Commission