

**DECISION No 05/2020
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 30 January 2020

**on all NEMOs' proposal for products that can be taken into account by
nominated electricity market operators in intraday coupling process**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

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 Regulators¹, and, in particular, Article 5(2)(b) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Article 53(1) thereof,

Having regard to the outcome of the consultation with regulatory authorities, nominated electricity market operators, transmission system operators and market participants,

Having regard to the favourable opinion of the Board of Regulators of 22 January 2020, delivered pursuant to Article 22(5) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the 'CACM Regulation') laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. Chapter 6 of the

¹ OJ L 158, 14.6.2019, p. 22.

² OJ L 197, 25.7.2015, p. 24.

CACM Regulation specifies requirements for the single intraday coupling ('SIDC'), including products that can be taken into account in the SIDC.

- (2) Pursuant to Articles 9(1), 9(6)(h) and 53(1) of the CACM Regulation, all nominated electricity market operators ('NEMOs') are required to propose products that can be taken into account in the SIDC ('ID product proposal'), which shall be subject to approval by all regulatory authorities.
- (3) Pursuant to Article 5(2) of the Regulation (EU) 2019/942, where proposals for common terms and conditions or methodologies or their amendments, as the case might be, require the approval of all regulatory authorities, those proposals shall be submitted to ACER for revision and approval.
- (4) Accordingly, on 31 July 2019, all NEMOs submitted to ACER a proposal for amendment to the products that can be taken into account in the SIDC ('SIDC products'). This ACER Decision is hereby made to revise and approve the proposal for amendment. Annex I to this Decision sets out the amended SIDC products.

2. PROCEDURE

2.1. Proceedings before the ACER

- (5) On 3 June 2019, the NEMO Committee, on behalf of all NEMOs, published for a public consultation the proposed amendments to the SIDC products, in accordance with Article 9(13) and Article 12 of the CACM Regulation. The consultation finished on 2 July 2019.
- (6) By email of 31 July 2019, the NEMO Committee, on behalf of all NEMOs, submitted a proposal for amendment to the SIDC products ('proposal for amendment') to ACER for decision.
- (7) On 21 October 2019, ACER launched a public consultation on the proposal for amendment, inviting all market participants to submit their comments by 17 November 2019. In particular, ACER asked stakeholders to provide comments on the choice of products proposed by all NEMOs for the continuous trading and for intraday auctions ('IDAs').
- (8) During the decision-making process, ACER closely cooperated with all NEMOs, all regulatory authorities and all transmission system operators (TSOs) and extensively consulted them on the proposed amendment during numerous teleconferences and meetings and through exchanges of textual amendments via emails. In particular, the following procedural steps were taken in 2019:
 - a) 30 September: teleconference with NEMOs, TSOs and regulatory authorities;
 - b) 3 October: teleconference with NEMOs, TSOs and regulatory authorities;

- c) 7 November: discussion with the regulatory authorities during the CACM Task Force meeting³;
- d) 14 November: teleconference with NEMOs, TSOs and regulatory authorities;
- e) 19 November: discussion during the ACER Electricity Working Group⁴ meeting with regulatory authorities;
- f) 25 November: teleconference with NEMOs, TSOs and regulatory authorities;
- g) 5 December: teleconference with NEMOs, TSOs and regulatory authorities;
- h) 9 December: teleconference with the regulatory authorities;
- i) 10 December: discussion during the Trilateral Coordination Group meeting with the NEMOs, TSOs, regulatory authorities and the representatives of the European Commission;
- j) 11 December: discussion with the regulatory authorities during the Board of Regulators⁵;
- k) 17 December: discussion with the regulatory authorities during the CACM Task Force meeting; and
- l) 9 January 2020: discussion during the ACER Electricity Working Group meeting with regulatory authorities.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL FOR AMENDMENT

- (9) According to Article 9(13) of the CACM Regulation, NEMOs responsible for developing a proposal for terms and conditions or methodologies may request amendments of these terms and conditions or methodologies, which shall be approved in accordance with the procedure set out in that Article.
- (10) According to Article 9(6)(h) of the CACM Regulation, proposals related to the SIDC products shall be subject to approval by all regulatory authorities.
- (11) According to Article 5(2)(a) of Regulation (EU) 2019/942, proposals for terms and conditions or methodologies, based on network codes and guidelines adopted before 4 July 2019 (i.e. the CACM Regulation), which require the approval of all regulatory authorities, shall be submitted to ACER for revision and approval.

³ ACER's platform for discussing all issues connected to the CACM Regulation with the regulatory authorities.

⁴ ACER's high level platform for discussing European regulatory issues with the regulatory authorities.

⁵ Board of Regulators is a decision making body defined in Articles 21 and 22 of the Regulation No 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.

- (12) Accordingly, on 31 July 2019, all NEMOs submitted the proposed SIDC products amendment to ACER for revision and approval, thereby making ACER competent to adopt a decision in that respect.

4. SUMMARY OF THE PROPOSAL FOR AMENDMENT

- (13) The proposal for amendment includes the following elements:
- a) recitals;
 - b) general provisions, including the scope of application, definitions, publication and currency in Articles 1, 2 and 3;
 - c) products for continuous SIDC in Article 4;
 - d) products for IDAs in Article 5; and
 - e) provisions on the timescale for implementation and language in Articles 6 and 7.
- (14) The proposal for amendment therefore consists of the following amendments of SIDC products previously approved by all regulatory authorities:
- a) addition of a paragraph to the Recitals referring to the IDAs;
 - b) addition of a paragraph in Article 1 referring to the IDAs;
 - c) addition of an Article setting out products that can be taken into account in IDAs; and
 - d) addition of a paragraph in Article 6 setting the timescale for implementation for the IDAs.

5. ASSESSMENT OF THE PROPOSAL FOR AMENDMENT

5.1. Legal framework

- (15) Article 53 of the CACM Regulation sets out specific requirements for all NEMOs' joint proposal concerning products that can be taken into account in the SIDC.
- (16) According to Article 53(1), NEMOs shall submit a joint proposal concerning products that can be taken into account in the single intraday coupling. Furthermore, NEMOs shall ensure that all orders resulting from these products submitted to enable the market coupling operator (MCO) functions to be performed in accordance with Article 7 of the CACM Regulation are expressed in euros and make reference to the market time and the market time unit.
- (17) According to Article 53(2), all NEMOs shall ensure that orders resulting from these products are compatible with the characteristics of cross-zonal capacity, allowing them to be matched simultaneously.

- (18) According to Article 53(3), all NEMOs shall ensure that the continuous trading matching algorithm is able to accommodate orders covering one market time unit and multiple market time units.
- (19) According to Article 53(4), by two years after the entry into force of this Regulation and in every second subsequent year, all NEMOs shall consult in accordance with Article 12 of the CACM Regulation:
- (a) market participants, to ensure that available products reflect their needs;
 - (b) all TSOs, to ensure products take due account of operational security;
 - (c) all regulatory authorities, to ensure that the available products comply with the objectives of the CACM Regulation.
- (20) According to Article 53(5), all NEMOs shall amend the products if needed pursuant to the results of the consultation referred to in Article 53(4) above.
- (21) As a general requirement, Article 9(9) of the CACM Regulation sets out that every proposal for terms and conditions or methodologies includes a proposed timescale for their implementation and a description of their expected impact on the objectives set out in Article 3 of the CACM Regulation.
- (22) In addition, ACER Decision No. 01/2019 of 24 January 2019, Annex I, provides for a Methodology for pricing intraday cross-zonal capacity, in accordance with Article 55 of the CACM Regulation. Articles 5 and 6 of Annex I to the ACER Decision set out the frequency of IDAs and require all TSOs to update and complement the common set of requirements for efficient capacity allocation to enable the development of the products and the algorithm for IDAs.

5.2. Assessment of the legal requirements of the CACM Regulation

- (23) The first sentence of Article 53(1) is not relevant for the current amendment process, because it refers to a procedure, which started 18 months after the entry into force of the CACM Regulation, when all NEMOs jointly proposed products that can be taken into account in SIDC to all regulatory authorities for approval. The procedure for amendment has been initiated in accordance with Article 9(13).
- (24) The proposal for amendment partially fulfils the requirements of the second sentence of Article 53(1). While Article 3(2) of the proposal provides that all orders submitted to the continuous trading matching algorithm shall be expressed in euros and makes reference to the market time, it omits the reference to the market time unit. Therefore, ACER amended the text to include the reference to market time unit.
- (25) The proposal for amendment fulfils the requirements of Article 53(2) because the orders from the proposed products allow for simultaneous matching.
- (26) The proposal for amendment fulfils the requirements of Article 53(3) because it proposes orders covering one market time unit and multiple market time units.

- (27) Articles 53(4) and 53(5) set out consultation requirements with respect to already approved products and, as such, they are not within the scope of this proposal for amendment.
- (28) The proposal for amendment does not fully meet the criteria of Article 9(9) of the CACM Regulation. While, in ACER's view, Article 6 of the proposal for amendment sufficiently describes the proposed implementation timescale, the description of the impact on the objectives set out in Article 3 of the CACM Regulation lacks a more detailed analysis.
- (29) In particular, the proposal provides little description of potential impact on the objectives of the CACM Regulation regarding operational security (Article 3(c) of the CACM Regulation) and efficient long-term operation and development of the electricity transmission system and electricity sector in the Union (Article 3(g) of the CACM Regulation). In that respect, NEMOs consider that the requirement to regularly consult the relevant parties and amend the SIDC products based on the consultation results in accordance with paragraphs (4) and (5) of Article 53, is a sufficient guarantee that the above objectives of the CACM Regulation would be met. They do not, however, explain how the proposal itself impacts the above objectives.
- (30) In that regard, the proposal for amendment fails to address all the requirements of Article 9(9) of the CACM Regulation. Therefore, ACER has assessed the expected impacts of the proposal on the Article 3 objectives, and introduced changes to the proposal to describe the impact of the amended SIDC products on these additional objectives.

5.3. Assessment of Recitals

- (31) The Recitals are divided into two sections: (i) background and (ii) impact on the objectives of the CACM Regulation, which have separate numbering. For clarity, these sections will be referred to as 'background section' and 'objectives section' in this assessment.
- (32) ACER has reviewed and amended the Recitals in order to clarify the purpose of the methodology, as well as to reflect the changes in the Articles of the proposal for amendment.
- (33) In particular, ACER considers that it is not necessary to repeat the Recitals, which are already provided for in the CACM Regulation and deleted them from the proposal. In addition, ACER has deleted Recital (4) referring to the procedure which has been repealed by Regulation (EU) 2019/942.
- (34) ACER has deleted Recital (6) of the background section and Recitals (6), (7) and (8) of the objectives section, because the governance of the SDAC and SIDC algorithms is out of scope of this Decision.

5.4. Assessment of definitions

- (35) ACER has updated the definitions to reflect the recent legislative changes and added definitions used in other terms and conditions or methodologies approved in accordance with the CACM Regulation.
- (36) ACER has deleted the definitions of ‘Request for Change’, which is already defined in the methodology approved in accordance with Article 37 of the CACM Regulation, and of ‘Scheduling Area’, which is defined in the Regulation (EU) 2017/1485.

5.5. Assessment of the products taken into account in intraday auctions

- (37) All NEMOs proposed in Article 5 the products that can be used in the IDAs by using a reference to the methodology determining products for the day-ahead timeframe, except for the PUN orders. In order to address the concerns related to the performance of the algorithm related to the accommodation of products, ACER explicitly listed all the products that can be accommodated by intraday auctions (i.e products from the SDAC, except for PUN orders), but separated them into two groups. The first group contains products, which are mandatory (i.e. all NEMOs must offer at least those products) and represent the minimum legal requirements set by Article 53 of the CACM Regulation. The second group lists the optional products, which can be used by the NEMOs in addition to the mandatory ones. This separation provides a clear direction to NEMOs that in case the algorithm for intraday auctions would be unable to accommodate all products due to performance issues, the NEMOs should prioritise the legally required products, whereas optional products can be accommodated only in case algorithm for intraday auctions does not experience performance problems.
- (38) Therefore, the products proposed by all NEMOs for intraday auctions remain the same as proposed by NEMOs and ACER only changed the structure and underlined the distinction between the legal and optional requirements regarding the SIDC products for intraday auctions.

6. CONCLUSION

- (39) For all the above reasons, ACER considers that the proposal for amendment is in line with the requirements of the CACM Regulation, provided that the amendments described in this Decision are integrated in the proposal for amendment, as presented in Annex I to this Decision.
- (40) Therefore, ACER approves the proposal for amendment subject to the necessary amendments and editorial changes, as required. To provide clarity, Annex I to this Decision sets out the proposal for amendment as amended and as approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The products that can be taken into account in the single intraday coupling, developed pursuant to Article 53 of Regulation (EU) 2015/1222, are adopted as set out in Annex I to this Decision.

Article 2

This Decision is addressed to:

- BSP Regionalna Energetska Borza d.o.o.
- CROPEX Ltd
- EirGrid plc
- EMCO AS
- EPEX Spot SE
- EXAA AG
- GME Spa
- HEnEx SA
- HUPX Zrt.
- Independent Bulgarian Power Exchange (IBEX)
- Nasdaq Oslo ASA
- Nord Pool AS
- OKTE a.s.
- OMIE S.A.
- OPCOM S.A.
- OTE a.s.
- SONI Ltd
- Towarowa Gielda Energii S.A.

Done at Ljubljana, on 30 January 2020.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Products that can be taken into account by NEMOs in intraday coupling process in accordance with Article 53 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management

Annex Ia – Products that can be taken into account by NEMOs in intraday coupling process in accordance with Article 53 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (track-change version, for information only)

Annex II - Evaluation of responses to the compliance of the all NEMOs' proposal for Products that can be taken into account by NEMOs in intraday coupling process (for information only)

In accordance with Article 28 of Regulation (EU) 2019/942, 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 ACER within two months of the day of notification of this Decision.