

**APPROVAL BY ALL REGULATORY AUTHORITIES
AGREED AT THE ENERGY REGULATORS' FORUM**

OF

**ALL NEMOs' PROPOSAL FOR
THE PLAN ON JOINT PERFORMANCE OF MCO
FUNCTIONS (MCO Plan)**

16 JUNE 2017

I. Introduction and legal context

This document elaborates an opinion of all regulatory authorities, agreed at the Energy Regulators' Forum on 16 June 2017, on the **All NEMOs' Proposal for the Plan on Joint Performance of MCO Functions (MCO Plan) submitted in accordance with Article 7(3) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management.**

This agreed opinion of all regulatory authorities shall provide evidence that a decision does not, at this stage, need to be adopted by ACER pursuant to Article 9(11) of the Regulation 2015/1222¹. This agreement is intended to constitute the basis on which regulatory authorities will each subsequently make national level decisions concerning the MCO Plan Proposal submitted by NEMOs under Article 9(6) of the Regulation 2015/1222.

The legal provisions that lie at the basis of the MCO Plan Proposal and this all Regulatory Authority agreed opinion of the MCO PLAN Proposal, can be found in Article 3, Article 7 and Article 9 of the Regulation 2015/1222.

Article 7 of Regulation 2015/1222:

1. *NEMOs shall act as market operators in national or regional markets to perform in cooperation with TSOs single day-ahead and intraday coupling. Their tasks shall include receiving orders from market participants, having overall responsibility for matching and allocating orders in accordance with the single day-ahead coupling and single intraday coupling results, publishing prices and settling and clearing the contracts resulting from the trades according to relevant participant agreements and regulations.*

With regard to single day-ahead coupling and single intraday coupling, NEMOs shall in particular be responsible for the following tasks:

- (a) *implementing the MCO functions set out in paragraph 2 in coordination with other NEMOs;*
- (b) *establishing collectively the requirements for the single day-ahead and intraday coupling, requirements for MCO functions and the price coupling algorithm with respect to all matters related to electricity market functioning in accordance with paragraph 2 of this Article, and Articles 36 and 37;*
- (c) *determining maximum and minimum prices in accordance with Articles 41 and 54;*
- (d) *making anonymous and sharing the received order information necessary to perform the MCO functions provided for in paragraph 2 of this Article and Articles 40 and 53;*
- (e) *assessing the results calculated by the MCO functions set out in paragraph 2 of this Article allocating the orders based on these results, validating the results as final if they are considered correct and taking responsibility for them in accordance with Articles 48 and 60;*
- (f) *informing the market participants on the results of their orders in accordance with Articles 48 and 60;*

¹ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, hereafter referred to as the " Regulation 2015/1222"

- (g) acting as central counter parties for clearing and settlement of the exchange of energy resulting from single day-ahead and intraday coupling in accordance with Article 68(3);*
 - (h) establishing jointly with relevant NEMOs and TSOs back-up procedures for national or regional market operation in accordance with Article 36(3) if no results are available from the MCO functions in accordance with Article 39(2), taking account of fallback procedures provided for in Article 44;*
 - (i) jointly providing single day-ahead and intraday coupling cost forecasts and cost information to competent regulatory authorities and TSOs where NEMO costs for establishing, amending and operating single day-ahead and intraday coupling are to be covered by the concerned TSOs' contribution in accordance with Articles 75 to 77 and Article 80;*
 - (j) Where applicable, in accordance with Article 45 and 57, coordinate with TSOs to establish arrangements concerning more than one NEMO within a bidding zone and perform single day ahead and / or intraday coupling in line with the approved arrangements.*
- 2. NEMOs shall carry out MCO functions jointly with other NEMOs. Those functions shall include the following:*
- (a) developing and maintaining the algorithms, systems and procedures for single day-ahead and for intraday coupling in accordance with Articles 36 and 51;*
 - (b) processing input data on cross-zonal capacity and allocation constraints provided by coordinated capacity calculators in accordance with Articles 46 and 58;*
 - (c) operating the price coupling and the continuous trading matching algorithms in accordance with Articles 48 and 60;*
 - (d) validating and sending single day-ahead and single intraday coupling results to the NEMOs in accordance with Articles 48 and 60.*
- 3. By eight months after the entry into force of this Regulation all NEMOs shall submit to all regulatory authorities and the Agency a plan that sets out how to jointly set up and perform the MCO functions set out in paragraph 2, including necessary draft agreements between NEMOs and with third parties. The plan shall include a detailed description and the proposed timescale for implementation, which shall not be longer than 12 months, and a description of the expected impact of the terms and conditions or methodologies on the establishment and performance of the MCO functions in paragraph 2.*
- 4. Cooperation between NEMOs shall be strictly limited to what is necessary for the efficient and secure design, implementation and operation of single day-ahead and intraday coupling. The joint performance of MCO functions shall be based on the principle of non-discrimination and ensure that no NEMO can benefit from unjustified economic advantages through participation in MCO functions.*
- 5. The Agency shall monitor NEMOs' progress in establishing and performing the MCO functions, in particular regarding the contractual and regulatory framework and regarding technical preparedness to fulfil the MCO functions. By 12 months after entry into force of this Regulation, the Agency shall report to the Commission whether progress in establishing and performing single day-ahead coupling or intraday coupling is satisfactory.*

The Agency may assess the effectiveness and efficiency of establishment and performance of the MCO function at any time. If that assessment demonstrates that the requirements are not fulfilled, the Agency may recommend to the Commission any further measures needed for timely effective and efficient delivery of single day-ahead and intraday coupling.

6. *If NEMOs fail to submit a plan in accordance with Article 7(3) to establish the MCO functions referred to in paragraph 2 of this Article for either the intraday or the day-ahead market timeframes, the Commission may, in accordance with Article 9(4), propose an amendment to this Regulation, considering in particular appointing the ENTSO for Electricity or another entity to carry the MCO functions for single day-ahead coupling or for intraday coupling instead of the NEMOs.*

Article 3 of Regulation 2015/1222:

This Regulation aims at:

- (a) *Promoting effective competition in the generation, trading and supply of electricity;*
- (b) *Ensuring optimal use of the transmission infrastructure;*
- (c) *Ensuring operational security;*
- (d) *Optimising the calculation and allocation of cross-zonal capacity;*
- (e) *Ensuring fair and non-discriminatory treatment of TSOs, NEMOs, the Agency, regulatory authorities and market participants;*
- (f) *Ensuring and enhancing the transparency and reliability of information;*
- (g) *Contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union;*
- (h) *Respecting the need for a fair and orderly market and fair and orderly price formation;*
- (i) *Creating a level playing field for NEMOs;*
- (j) *Providing non-discriminatory access to cross-zonal capacity*

Article 9 of Regulation 2015/1222

1. *TSOs and NEMOs 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 or NEMO, the participating TSOs and NEMOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, and all NEMOs shall regularly inform the competent regulatory authorities and the Agency about the progress of developing these terms and conditions or methodologies.*
2. (...)
3. (...)
4. (...)
5. *Each regulatory authority shall approve the terms and conditions or methodologies used to calculate or set out the single day-ahead and intraday coupling developed by TSOs and NEMOs. They shall be responsible for approving the terms and conditions or methodologies referred to in paragraphs 6, 7 and 8.*
6. *The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities:*
 - (a) *the plan on joint performance of MCO functions in accordance with Article 7(3);*
 - (b) (...)
 - (c) (...)

7. (...)
8. (...)
9. *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.*
10. *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, 7 and 8, 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.*
11. (...)
12. *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, 7 and 8, the relevant TSOs or NEMOs 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 719/2009. If the relevant TSOs or NEMOs fail to submit a proposal for amended terms and conditions or methodologies, the procedure provided for in paragraph 4 of this Article shall apply.*

Article 7(3) of Regulation 2015/1222² requires that eight months after the entry into force of this Regulation all NEMOs shall submit to all regulatory authorities and the Agency a plan that sets out how to jointly set up and perform the MCO functions, including necessary draft agreements between NEMOs and with third parties. The plan shall include a detailed description and the proposed timescale for implementation, which shall not be longer than 12 months, and a description of the expected impact of the terms and conditions or methodologies on the establishment and performance of the MCO functions. As the Regulation 2015/1222 has been published in the European Journal on 25 July 2015, entry into force of this Regulation was on 14 August 2015 (20 days after publication). According to Article 9(6)(a) of the Regulation 2015/1222 this proposal shall be subject to the approval of all NRAs.

I. The MCO Plan Proposal

The all NEMOs' MCO Plan proposal was received by all NRAs on 15 April 2016. According to Article 9(10) of the Regulation 2015/1222, all Regulatory Authorities shall approve or request amendments regarding terms and conditions or methodologies submitted by TSOs or NEMOs within 6 months after the receipt of the proposal. Therefore, the deadline for approving the MCO Plan or requesting amendments was on 15 October 2016. On 26 September 2016 all Regulatory Authorities at the Energy Regulators' Forum unanimously agreed to request an amendment to the MCO Plan submitted by NEMOs. On this basis each Regulatory Authority sent the request for amendment to their respective NEMO. The request for amendment was received by all NEMOs on 25 October 2016.

All Regulatory Authorities received the amended all NEMOs' MCO Plan proposal on 22 December 2016, within the deadline under Article 9(12) of the Regulation 2015/1222. After assessing the amended version of the MCO Plan, the Regulatory Authorities came to the conclusion that NEMOs omitted important parts of the requested amendments when amending the original MCO plan. On 24 January 2017, all Regulatory Authorities at the Energy Regulators' Forum unanimously agreed to reconfirm their initial request for amendment and strongly insisted that NEMOs fully comply with the requirements therein with no derogation being possible.

The new amended proposal for the MCO plan was received by all Regulatory Authorities on 26 April 2017.

II. All Regulatory Authority position

On the MCO Plan proposal (15 April 2016)

All Regulatory Authorities requested an amendment referred to the governance structure, the timescale for implementation, the impact assessment, the access to data, the multi NEMO arrangements, the treatment of cost and the language.

Furthermore, all NRAs considered outside the scope of the MCO Plan, and therefore requested to completely remove, the following topics:

- Provisions restricting NEMOs' liability on MCO Functions;
- Provisions on cost recovery, inasmuch as they have to be based on national approvals and/or agreements between NEMOs, TSOs and the competent regulatory authority (Art. 76(2) and 76(3)) in combination with Art. 9(8)e;
- Provisions on cost sharing referring to costs incurred prior to the entry into force of CACM, inasmuch as they have to be based on existing agreements between NEMOs and TSOs (Art. 80(5));
- Provisions on cost sharing referring to costs not specifically related to the MCO Functions.

Furthermore all Regulatory Authorities explicitly requested that all NEMOs must be granted the same rights and obligations.

On the first amended MCO Plan proposal (22 December 2016)

After assessing the amended version of the MCO Plan, the Regulatory Authorities came to the conclusion that NEMOs omitted important parts of the requested amendments when amending the original MCO plan. Among those, but not exhaustively, the following three topics are of paramount importance:

- Provisions restricting NEMOs' liability on MCO Functions were not completely removed;
- Provisions dealing with costs were still found in the MCO Plan;

- Provisions introducing or implying a differentiated treatment among NEMOs were not duly justified against the objectives set forth in Article 3 of CACM Guidelines.

On the second amended MCO Plan proposal (26 April 2017)

All Regulatory Authorities acknowledge that their requests have been fulfilled, in particular:

- Restrictions on NEMOs' liability on MCO Functions have been removed from the MCO Plan;
- All cost related contingencies have been removed from the MCO Plan;
- No provisions that could allow discrimination between NEMOs were found in the MCO Plan.

Conclusions

All Regulatory Authorities have assessed, consulted and closely cooperated to reach an agreement on the amended proposal for the MCO Plan (26 April 2017). On 16 June, all Regulatory Authorities agreed that the amended MCO Plan meets the requirements of Regulation 2015/1222 and as such can be approved.

For the avoidance of doubt, all Regulatory Authorities' approval of the MCO Plan, including its annexes, does not entail the approval of the contracts between NEMOs and with third parties.

On the basis of this agreement, each Regulatory Authority will subsequently adopt a decision to approve the amended proposal for the MCO Plan by 26 June 2017.

Following national decisions by All Regulatory Authorities, all NEMOs will be required to publish the approved MCO Plan on their relevant company webpages in line with Article 9(14) of Regulation 2015/1222, and must meet the implementation deadlines required by Article 5 of the MCO Plan proposal.