oesterreichs energie.

GENERALSEKRETARIAT

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|---|---|---|---|---|
| Alexandra Gruber | 211 | AG – 05/2022 | | 21.04.2022 |

**Consultation on the revision of the Capacity Allocation and Congestion Management Regulation**
**Comments by Oesterreichs Energie (Register ID number: 80966174852-38)**

Dear Madam,
Dear Sir,

Oesterreichs Energie, the Association of Austrian Electricity Companies, welcomes the opportunity to submit its views on the revision of the Capacity Allocation and Congestion Management Regulation. Oesterreichs Energie represents more than 140 energy companies active in generation, trading, transmission, distribution and sales which in total cover more than 90 per cent of the Austrian electricity generation and the entire distribution.

## Title I – General Provisions

**1. While in the original CACM the market coupling was based on exchange of electricity across bidding zones, ACER proposal is based on exchanges of electricity between Nominated Electricity Market Operator (NEMO) trading hubs. ACER concludes that this would make it easier for individual NEMOs in the market to get access to market coupling as they would no longer need to agree on separate multi-NEMO arrangements (MNA) with existing NEMOs/TSOs in a bidding zone. Do you agree with this approach and the stated benefits? If not, why?**

Before changing definitions and structure, we urge to wait until the current regulation is fully implemented. We do not see additional benefits and we do not see crucial problems in the current structure. The NEMO arrangements define the detailed operational processes between the NEMOs. Thereby any participating NEMO has to meet sensitive technical requirements. We believe that it is not possible to get around such agreements or to regulate all that via CACM.



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**2. Publication of information and transparency: do you consider the new article 8 sufficient to address current transparency concerns? Would you see further aspects to tackle or data to be published?**

Concerning transparency, we urge to publish all capacity calculation parameters, inputs and methodology, to enable the market participants to fully reproduce the results of the capacity calculation process. Also, the assessment studies foreseen should be made available for all stakeholders.

We suggest the following amendments:

- Add a point in (3)(a): “capacity calculation inputs and for common grid models at least on a representative set of market time units”
- Add a point in (3)(a): “planned and ordered costly and non-costly remedial actions”
- Modify (3)(b)(iv): “aggregated bid/offer ~~order~~ curves with executed volumes and prices, including all executed orders (including blocks, both simple and complex), for each bidding zone”
- Modify (3)(b)(v): “aggregated information on the volume and the price of the paradoxically accepted and paradoxically rejected orders for each bidding zone~~s~~”
- Add a point (3)(b)(vi): “after the orders are matched, all the blocks with their status of execution and prices and all their characteristics”.

In addition, to be more precise, we ask for the addition of a paragraph in Article 8 saying that: “All this information provided should be made available in an easily accessible format for at least 5 years”.

**3. Do you have any other comments on Title I - General Provisions?**

New requirements from CACM 2.0 should not postpone the implementation of CACM 1.0. There have already been a few delays postponing deadlines from 2020 to 2025. Especially the proposed major changes such as the introduction of uniform pricing and an MCO legal entity bear the risk of further delays.

Generally, we do not agree with the creation of an MCO legal entity.

Article 7 Nemo Tasks: The NEMOs shall publish the results (volume, price) of SDAC and SIDC per MTU.

In Article 9 (1./2.) (Adoption of terms and conditions or methodologies) the voting power is split among TSOs and NEMOs, whereby e.g. EPEX is owned 49% by several TSOs. We argue that the current voting system does not respect possible biases that arise from ownership and stakes of those entities. Other stakeholders are not represented and have no voting power. Only consisting of TSOs and NEMOs, the voting is focused on spot fulfilment of electricity, whereas the important forward market is much neglected.

In Article 12 the framework for consultations is elaborated. However, these provisions are not sufficient. It should also include an obligation to consult relevant regional and



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pan-European terms & conditions and methodologies (TCMs) in the preparation phase as well as before submitting final TCMs to the Agency.

**Title II – Organisation of market coupling and capacity calculation**

**4. Do you consider the review of national legal monopolies proposed in article 11 a necessary/sufficient measure? Which alternatives would you see?**

No opinion.

**5. The article 13 sets that NEMOs together with TSOs shall establish a joint decision-making body, taking decisions related to the management of the integrated single day- ahead and intraday coupling based on the qualified majority voting rules set in article 4. Do you see any risks or inadequacies to this proposal? If so, what alternative/improvement would you suggest?**

We oppose the establishment of a joint decision making body, if its purpose is to govern the MCO legal entity, since we oppose the MCO entity itself. However, we agree to establish a joint decision-making body, taking decisions related to the management of the integrated single day-ahead and intraday coupling based on the qualifies majority voting rules. We miss the direct involvement of market participants, who are also key players within the single day-ahead and intraday coupling.

**6. The article 14 provides for the establishment of a single legal entity performing the MCO tasks. In your view, what would be the challenges and conditions for a successful set-up? Do you have any suggestions to improve the current proposal (for example in terms of accountability/liability of the entity, regulatory oversight, efficient and effective decision making, etc.)?**

We oppose to the creation of a MCO as a single legal entity. Such a creation is highly complex and the added value of such an institution is questioned. Both proposed options include a creation of a new institution with a complex coordination process between NEMOs and TSOs whereas a stakeholder involvement is not foreseen, a fact we strongly criticise. Stakeholders should be involved in the whole market coupling process and not only via consultations, when the first proposals have already been developed. Market participants should be included in the whole development process of new features in market coupling. The organisation of the market coupling should therefore be organised including all relevant and interested parties such as NEMOs, TSOs and market participants.

The MCO tasks as outlined in ACER's proposal describe a complex bundle of processes that would have to be covered by this entity. With regard to the evolution of the market coupling it may take years to acquire specialists and set up the sensitive operational processes. We consider the cost of time and resources for the MCO not adequate compared to the little additional value offered. We do not believe that an MCO entity, based on regulation, would

be in itself dynamic enough to cope with the technological progress, but rather focus and operate tightly according to the given prescription.

TSOs, NEMOs and market participants work together at the European level at several occasions. As the best practice, the exchange within in the CWE consultative group (https://www.jao.eu/cwe-consultative-group), organised by TSOs and NEMOs (the CWE Partners) but also co-chaired by a market participant nominated by the Market Parties Platform (https://marketpartiesplatform.eu/) can be mentioned. We would encourage such an exchange also for the further development of the market coupling process. This would allow market participants not only participate, but also share the responsibility to develop the market and discuss current topics and challenges for the market coupling process with all relevant parties.

**7. If no single legal entity were set up, would you have further proposals to improve the current governance framework (including current voluntary set up), and strengthen effectiveness of the decision making process?**

The focus should lie on the implementation timeline of the market coupling process and not further delaying the already identified and necessary amendments. The algorithm and the flow-based market coupling are already complex enough and the whole process around it should not be made more complicated by creating a new and costly institution, not taking into account the role of market participants. The emphasis should also lie on the involvement of market participants.

The CACM revision should contribute to the development of competition between NEMOs as competition increases trading opportunities, notably in terms of platforms and innovative products.

**8. Article 16 proposes a framework for a NEMO of last resort in case no NEMO is operating in a bidding zone: Would you suggest other alternatives?**

An MCO performing the role of a last resort NEMO is not appropriate as it should not operate NEMO functions which are better managed in a competitive framework. If introduced, the NEMO of last resort should be determined in a competitive tender. If introduced, the Last resort NEMO should always ensure minimisation of costs for market participants, use existing tools for market coupling, etc.

However, we think that a NEMO of last resort is not necessary. Certain scenarios exist in which both, the NEMOs and the NEMO of last resort would not be operable at all. We argue for a fail-safe solution, i.e. the discussion should focus on mitigating the damages that arise from an all-NEMO-failure.

**9. Do you have any suggestions on how regulatory oversight can be further improved, in order to ensure a smooth and efficient development of the market coupling?**

We do not have an explicit suggestion of how to improve the regulatory oversight for the market coupling processes. We support a collaboration of all parties involved in the process (market participants, NEMOs and TSOs) and an early involvement of market participants if proposals are developed by another party. Forming a new entity is not seen as an improvement, but rather as a hurdle.

**10. Do you agree with the proposed definition of tasks and responsibilities, and their assignment to the different entities? If not, what would you change and why?**

We welcome the amendments made in the CACM. However, we do not agree with the creation of an MCO legal entity.

**11. Do you consider the new methodology on eligible costs of MCO and joint decision making body will increase transparency and help to improve the current cost sharing/cost recovery process? Do you have suggestions for improvement?**

We do not agree with the creation of an MCO legal entity and therefore also not with the new methodology on eligible costs of that MCO legal entity.

**12. Do you detect any risks in the current cost sharing/recovery provisions, or have any suggestions for improvement?**

No opinion.

**13. Do you have any other comments on Title II- Organisation of market coupling and of capacity calculation?**

No opinion.

**Title III – Capacity calculation**

**14. Do you agree with ACER's reasoning and necessity for allowing some specific bidding zone borders to be in two Capacity Calculation Regions (CCRs)? If not, why and which alternative do you propose to solve the underlying problems?**

It should be further clarified what the principles for the determination of Capacity Calculation Regions (CCRs) are. Especially as CCR methodologies are not harmonised, it should be defined which rules apply when CCRs are adapted.

Furthermore, it should be explained how the general capacity calculation is conducted. The roles of the RCC as defined in the Clean Energy Package should be referenced in the CACM, and it should be made clear that they are responsible for the coordinated capacity calculation and the operational security assessment as well as for the external allocation constraints.

The stakeholder involvement at least with a consultation process should be explicitly mentioned in the corresponding article for the capacity calculation approach.

**15. The Electricity Regulation 2019/943 (article 16(8)) requires that a minimum target apply to capacity calculation timeframes covered by CACM Regulation, which means day-ahead and intraday market coupling: Which solution do you propose to solve any issue related to the implementation of this target across these timeframes?**

The 70% threshold should be assessed with the most favourable setting of the HVDCs and PSTs in the coordinated capacity calculation and allocation. We request that CACM 2.0 enhances clarity as to the 70% rule by specifying its applicability to the day-ahead timeframe only. Not only High Voltage Direct Current (HVDC) but also phase shifter transformers (PSTs) should be included in the capacity calculation. Only if these are included, an efficient capacity allocation and congestion management can be performed.

With the introduction of Intraday auctions, it should be clarified how the capacity calculation in the Intraday time frame will be conducted and how the redispatching and countertrading process is influenced by the introduction of intraday auctions. This should be analysed within the monitoring process that we propose in the following. Furthermore, we request a limitation on the number of ID auctions to three at the maximum.

The methodology on critical network elements contingencies and security limits in the corresponding Article should specify the rule to select critical network elements regarding the impact within the borders and on a cross border level. Also, it should be explicitly stated that the methodology should include rules for the calculation of operational security limits.

We strongly disagree to introducing the 70% MACZT during the Intraday time frame in addition to its application in the Day Ahead time frame. One should first concentrate on the implementation of the target in the Day Ahead market ensuring the maximum cross zonal capacity in that time frame to support an efficient price formation.

**16. In article 27 and 32, option 1 seeks to better align flow-based and coordinated NTC methodologies. ACER concludes that this would improve transparency, reporting and monitoring of 70% requirements. Do you see any risk in this approach?**

We agree with Option 1, if that means, that cNTC regions (e.g. also third-countries) will be included systematically into the CC like a FB-region.

**17. Under which conditions the flows resulting from capacity calculation and allocation with third countries could be counted within the 70% of minimum capacity of critical network elements that needs to be offered to the market? Please motivate your response: why and under which conditions?**

Flows with some neighbouring countries, e.g. Switzerland, are very important in terms of market efficiency in the EU.
Generally, flows between third countries and EU countries should be taken into account in a non-discriminatory way in the cross-zonal capacity calculation process and flows should be-recognized resulting from exchanges with third countries as counting towards the 70% target for capacity available for cross-border trade in the Electricity Regulation Art. 16(8);
Limiting elements from third countries have to be taken into account in the capacity calculation with adjacent capacity calculation regions.

**18. How to ensure proper coordination of capacity calculation and allocation on borders with third countries and that there is no discrimination towards internal EU trade?**

- Data about the exchanges with individual third countries should be systematically collected in order to analyse the economic potential and possible discriminatory effects towards internal EU trade in case of a coordinated capacity allocation.
- Third country CNECs should be included in the CACM processes in the EU.
- RA costs should be shared in a fair and transparent manner (level playing field, transparency).
- Possibilities to create individual capacity calculation regions for third countries through treaties should be checked.

**19. Do you have any other comments on Title III- capacity calculation?**

No further comments.

**Title IV – Market coupling**

**20. Regarding the SDAC and SIDC algorithm, do you agree that the algorithms' source codes should be published? Which benefits in particular would you see in the algorithm code publication? Which risks? Do you have any alternative proposals?**

We welcome the amendment of the article dedicated to the Algorithm methodology (Article 41) and approves new provision in Article 41(2) concerning the publication of "the source code of each of these algorithms […] by no later than 3 years after the approval publication of the methodology". It will contribute to more transparency on the algorithm that will then be auditable.

However, the publication of the continuous trading algorithm should not be conditioned to a positive cost-benefit analysis as reasons of transparency should be sufficient. We ask to delete this specific condition for the publication of the source code of the continuous trading algorithm.

**21. Regarding algorithm objectives, what are your views on the possibility to introduce non-uniform pricing? Which benefits and drawbacks?**

In fact, it is not clear what the term non-uniform exactly means. In our view, the possibility to use non-uniform pricing in the algorithm was discussed in the context of performance improvements. However, the priorities should be focused on a reliable market price, not on technical issues of the algorithm. If the algorithm is underperforming in time, it should be made simpler or have its computing power scaled up. We believe that non-uniform pricing leads to strategic bidding among some market participants, making the resulting price of the DA auction less reliable.

The information that is provided by ACER on uniform pricing is very poor. The concept of uniform pricing should be skipped in this CACM amendment process. A workshop should be organised with all relevant stakeholders to develop a common position on the matter.

**22. Regarding the suspension of intraday continuous trading during intraday auctions, would you favour suspending all continuous trading (national and cross-zonal) or only cross-zonal continuous trading? Why? Do you have further views on the introduction of intraday auctions?**

We generally disagree with the implementation of intraday auctions in parallel to continuous intraday trading in Article 36. Auctions interrupting the continuous trading process, as they are planned from 2023 onwards are distorting the system and are expected to have a detrimental effect on the market development. It is likely to hamper availability of offers and increase costs overall; market participants will not be able to react e.g. to fundamental market changes (e.g. weather) and adjust their portfolio in these periods, accordingly.

We still strongly oppose their introduction, which will be implemented three times a day from 2023 onwards. Instead of introducing auctions for the intraday, it should be focused on the further development of the continuous intraday market coupling (SIDC). The implementation of additional intraday auctions running parallel to the continuous market will syphon away its liquidity, distort its price signals and therefore weaken the SIDC as a whole. The proposed interruption of the SIDC three times a day for the intraday auctions is not bearable. Especially the interruption at 10:00 in the morning for one hour will have a detrimental effect on trading liquidity of the hour 13, which is extraordinary critical as portfolios are adjusted according to the weather forecast for generation from renewable energy resources. We would strongly recommend to ACER to provide a detailed explanation on which basis the agency is taking this decision which is most likely to adversely disrupt the smooth functioning of markets.

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The electricity regulation refers to intraday auctions Article 16(5) as a complementary option to continuous trading. The proposed amendment does not meet this requirement but puts intraday auction and continuous trading at the same level. We would like to recall that ID auctions have been initially introduced due to an article in CACM requiring the pricing of intraday capacity. In CACM , an alternative solution should have been to delete the possibility to price capacity in ID, instead of confirming the possibility of ID auctions. We highly recommend to analyse the most liquid intraday markets as a benchmark for the EU-wide intraday market development.

If intraday auctions are included in the CACM, it should be clarified that intraday auctions should be kept at a maximum of three per day and that the continuous trading should only be interrupted for no more than 10 minutes and only for cross-border products. The local, i.e. zone-internal, products should remain tradable at the zonal level during cross-border auctions.

Furthermore, an assessment on what kind of impact auctions have on the continuous trading should be mandatory and conducted once a year. In this regard, we propose the addition of a new Article 26 para 2 as follows: “The Agency should provide a regular monitoring report on the assessment of the implementation of ID auctions. Such a review should analyse the effects of IDAs in terms of efficiency, cross-zonal capacity allocated, and impact on the liquidity of the continuous SIDC. The assessment should result in the publication of an annual report based on relevant indicators to demonstrate improvements in congestion management and capacity allocation; as well as to challenge the number of auctions. Based on this monitoring report, the Agency may decide to reduce the number of ID auctions or revise the timings of ID auctions.”

**23. Would you find it useful to centralize clearing and settlement between NEMO trading hubs (even if there is no single legal entity) and why/why not ?(Please note that this refers to clearing and settlement between NEMOs or NEMOs and MCO and not to clearing and settlement between NEMOs and its clients).**

We believe that it would not be more efficient to centralize clearing and settlement, but rather more beaurocratic and more costly.

**24. Do you have any other comments on Title IV- market coupling?**

Technical bidding limits should be harmonised at a European level in Article 36C in line with the Clean Energy Package (CEP) and the reference to both clearing and bidding prices as well the reference to Regulation (EU) 2019/943 is welcomed.

**Title V – Bidding Zone Review process**

In the Commission's view, some further adaptations are needed to this chapter to fully align the CACM text with the bidding zone review process defined in the Electricity regulation.

**25. In addition, further clarification could be provided on the process when one Member State intends to review its internal bidding zones or establish a new bidding zone to improve locational price signals. Do you agree and what are the most important considerations in these cases?**

The CACM should not include any new provisions or additional measures, or measures that are more coercive than those in the Electricity Regulation. Furthermore, it is essential that the CACM GL does not repeat the requirements of the Electricity Regulation but cross-refers to the regulation.

For the bidding zone process more stakeholder involvement is needed early and at all stages of the process. In the current situation, stakeholders are considered for the methodologies and are not part of the development of the outcomes.

We agree with the proposal that the final decision on a bidding zone configuration is left to the member states or their designated competent authorities.

The criteria for reviewing bidding zone configuration should entail that not only three year ahead network infrastructure decision but 10 year infrastructure development should be considered. Furthermore, stranded costs for merchant assets should be taken into account as an additional criterion.

The Electricity Regulation should not only be the reference point but should be the main guiding regulatory framework. CACM should not repeat principles already stated in the Electricity Regulation. Where CACM allows individual Member States to conduct bidding zone reviews outside the scope of the Electricity Regulation, this can be covered by provisions within CACM.

Reviewing CACM should involve the challenging of the currently included criteria applied to bidding zone reviews. We are of the view that the criteria "transition costs" should be clarified further. It will be a major dimension in the bidding zone review if it is understood as the amount of potential stranded costs associated with the change of a bidding zone configuration.

The mentioning of the need for bidding zones to be consistent for all capacity calculation time frames should be retained with a link to the respective provision in the Electricity Regulation. No ambiguity should be created over the criteria (where some are copied and some are not).

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**26. In order to reach the decarbonisation targets, a significant rollout of offshore renewable energy is expected, and the TEN-E Regulation sets out the process for developing integrated offshore network development plans for each sea-basin. Do you agree that these plans should be used as a basis for establishing or reviewing offshore bidding zones, instead of doing so on an ad-hoc basis as projects are developed? If not, why not and what alternatives do you propose?**

No opinion.

**27. Do you have any other comments on Title V- Bidding zone review process?**

No further comments.

**Title VI – Reporting and implementation monitoring**

**28. In article 62 detailing the regular reporting on current bidding zone configuration by ENTSO-E, it is envisaged to introduce an objective criterion for reporting purposes. Do you agree with the proposal to define a threshold for frequency of occurrence when reporting on structural congestion, to ensure consistency in reporting among Member States? If not, why and which alternative do you propose?**

No opinion.

**29. Do you have any other comments on Title VI- Reporting and implementation monitoring?**

No further comments.

**Provisions moved to Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation**

**30. The new article 76 "Proposal for regional operational security coordination" envisages two options for sharing of costs of remedial actions, one simply referring to article 16(13) of the Electricity Regulation, the other providing more detail in its interpretation. Which option do you favour and why?**

No opinion.

**Other comments**

**31. Do you find any gaps in the current ACER proposal (for example, due to existing provisions in the original CACM that are not reflected in the current text following its restructuration)? If so, which ones?**

We do not agree with the amendments of Articles 1 and 2. In Article 1 it is laid down what guidelines the regulation should give. Cross-zonal capacity allocation and congestion management is hereby replaced with market coupling. We reject this amendment as capacity computation and congestion management i.e. remedial actions and counter trading should still be part of the CACM and not be shifted to the SOGL. The CACM 2.0 still includes a lot of topics which are inherently linked to remedial actions and countertrading such as the capacity calculation in the day ahead and intraday as well as the bidding zone review processes. To provide an overall picture and fully reflect the interdependencies between capacity calculation and remedial actions, remedial actions should be kept in the CACM.

Thank you for considering our comments. If you have any further questions, please do not hesitate to contact us.

Yours sincerely,

Mag. Dr. Michael Strugl
President

Dr. Barbara Schmidt
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