

**DECISION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 04/2017**

of 14 November 2017

**ON THE NOMINATED ELECTRICITY MARKET OPERATORS' PROPOSAL
FOR HARMONISED MAXIMUM AND MINIMUM CLEARING PRICES FOR
SINGLE DAY-AHEAD COUPLING**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to the Treaty on the Functioning of the European Union,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 8(1) 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 9(11) thereof,

HAVING REGARD to the outcome of the consultation with the concerned regulatory authorities, transmission system operators and nominated electricity market operators,

HAVING REGARD to the favourable opinion of the Board of Regulators of 18 October 2017, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

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. These requirements also include specific provisions for the single day-ahead coupling ('SDAC') in accordance with Chapter 5 of the CACM Regulation and, particularly, for setting the harmonised maximum and minimum clearing prices in accordance with Article 41 of the CACM Regulation.

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 197, 25.7.2015, p. 24.

- (2) Pursuant to Articles 9(1), 9(6)(i) and 41(1) of the CACM Regulation, the nominated electricity market operators ('NEMOs') are required jointly to develop, in cooperation with the relevant transmission system operators ('TSOs'), a proposal for harmonised maximum and minimum clearing prices ('HMMCP') to be applied in all bidding zones which participate in SDAC and submit it to all regulatory authorities for approval. Then, according to Article 9(10) of the CACM Regulation, the regulatory authorities receiving the proposal for the HMMCP for SDAC should reach an agreement and take a decision on that proposal, in principle, within six months after the receipt of the proposal by the last regulatory authority. According to Article 9(11) of the CACM Regulation, if the regulatory authorities fail to reach an agreement within the six-month period, or upon their joint request, the Agency is called upon to adopt a decision concerning the NEMOs' proposal.
- (3) The present Decision of the Agency follows from the regulatory authorities' request that the Agency adopts a decision on the proposal for the HMMCP for SDAC (which the NEMOs submitted to the regulatory authorities for approval), because the regulatory authorities were not able to reach an agreement on certain elements of the proposal. Annex I to this Decision sets out the HMMCP for SDAC, as decided by the Agency pursuant to Article 41(1) of the CACM Regulation.

2. PROCEDURE

2.1 Proceedings before regulatory authorities

- (4) On 3 November 2016, the NEMO committee, representing all NEMOs being responsible under Article 41(1) of the CACM Regulation, published the '*All NEMOs draft proposal on harmonised maximum and minimum clearing prices (HMMCP)*' for public consultation. The consultation lasted from 3 November until 2 December 2016. Moreover, during the public consultation period, all NEMOs organised, on 14 November 2016, a stakeholder workshop to discuss various all-NEMOs' proposals, including the HMMCP for SDAC, giving the opportunity to interested stakeholders and various organisations impacted by the HMMCP for SDAC to raise questions and ask clarifications from the NEMOs.
- (5) By 17 February 2017, all NEMOs submitted to the regulatory authorities the '*All NEMO's proposal for harmonised maximum and minimum clearing prices for Single Day Ahead Coupling in accordance with Articles 41(1) of Commission Regulation (EU) 2015/1222 of July 2015 establishing a guideline on capacity allocation and congestion management*' dated 14 February 2017³ (the 'Proposal').

³ <http://www.europex.org/all-nemos/all-nemos/>

2.2 Proceedings before the Agency

- (6) In a letter dated 25 July 2017 and received by the Agency on the same day, the Chair of the Energy Regulators' Forum⁴, on behalf of all regulatory authorities, informed the Agency that all regulatory authorities agreed to request the Agency to adopt a decision on the Proposal, pursuant to Article 9(12) of the CACM Regulation, and indicated the regulatory authorities were not able to agree on all provisions of the Proposal. The letter was accompanied by a document titled '*Request for amendment by all regulatory authorities agreed at the energy regulators' forum on the All NEMOs' proposal for harmonised maximum and minimum clearing prices for single day ahead coupling*' ('Position paper'), which presented in more detail the regulatory authorities' positions.
- (7) According to the letter, the main reason for the regulatory authorities not being able to reach a unanimous position was the value of the maximum clearing price proposed by all NEMOs. On the one hand, at least one regulatory authority opposed the value of 3000 EUR/MWh arguing that it will give insufficient incentive for a well-functioning energy-only market and proposed a value of 5000 EUR/MWh instead. On the other hand, the alternative value was opposed by several regulatory authorities, which argued that it is not the regulatory authorities' task to set the maximum clearing price, but the NEMOs'. Moreover, the regulatory authorities considered the Proposal as not fully compliant with the CACM Regulation as it does not take into account the value of lost load ('VoLL'). While they agreed that the requirement on VoLL could have been adequately substituted by an automatic adjustment mechanism for the HMMCP, they considered that this mechanism was not described clearly enough in the Proposal. With regard to the increase of the maximum clearing price, at least one regulatory authority raised concerns on the future effects in terms of increased collaterals, which might be a possible source of discrimination between market participants.
- (8) In the Position paper, the regulatory authorities described, on top of the issues mentioned above, the necessity to justify the choice of the proposed clearing prices and to provide more detail on the automatic adjustment mechanism, e.g. identification of the entity which will monitor clearing prices for the purposes of the Proposal, description of the process of maximum clearing price increase after the triggering level has been reached and publishing the new price limits. Moreover, the regulatory authorities requested deletion or justification of the provisions in the timescale implementation chapter, which make the Proposal's implementation dependent on the implementation of the provisions in Articles 20, 27 and 57 of the CACM Regulation.
- (9) The letter of 25 July 2017 did not indicate that the regulatory authorities requested the NEMOs to amend the Proposal. In fact, there was no such request.

⁴ The regulatory authorities' platform to consult and cooperate for reaching a unanimous agreement on NEMOs' and TSOs' proposals

- (10) On 24 August 2017, the Agency launched a public consultation on the Proposal, inviting all regulatory authorities, TSOs and NEMOs, as well as any other market participants, to submit their comments by 15 September 2017. The Agency asked three questions: (i) on the value of the maximum clearing price, (ii) on the implementation timeline and (iii) on the functioning of the automatic adjustment mechanism for the harmonised maximum clearing price for SDAC. The summary and the evaluation of the responses received are presented in Annex II to this Decision.

3. THE AGENCY'S COMPETENCE TO DECIDE ON THE PROPOSAL

3.1 Joint request and no agreement by the concerned regulatory authorities

- (11) Pursuant to Article 9(11) of the CACM Regulation, where the regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies within six months following the receipt of the proposal for such terms and conditions or methodologies by the last regulatory authority concerned, or upon the regulatory authorities' joint request, the Agency shall adopt a decision concerning the submitted Proposal within six months and in line with Article 8(1) of Regulation (EC) No 713/2009. Pursuant to Article 9(12) of the CACM Regulation, where the regulatory authorities have requested the relevant applicants (i.e. NEMOs or TSOs) to amend the proposal and have not been able to reach an agreement on the amended terms and conditions or methodologies within two months after their resubmission, or upon the regulatory authorities' 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 713/2009.
- (12) According to the letter of the Chair of the Energy Regulators' Forum of 25 July 2017, all regulatory authorities agreed to request the Agency to adopt a decision on the Proposal pursuant to Article 9(12) of the CACM Regulation and they were not able to reach an agreement on the Proposal, in particular on the proposed maximum clearing price.
- (13) As regards the regulatory authorities' reference to an Agency's decision pursuant to Article 9(12) of the CACM Regulation, it is to note that this provision refers to an Agency's decision in a situation where the regulatory authorities requested the NEMOs to amend their proposal and the NEMOs submitted an amended proposal. In the present case, there is, however, no such situation as the regulatory authorities did not request any amendments from the NEMOs, nor did the NEMOs submit the Proposal in amended form. By contrast, the Agency's decision-making competence in the event of the regulatory authorities' disagreement or joint request under Article 9(11) of the CACM Regulation does not refer to a proposal which, following a request by the regulatory authorities, has been amended by the NEMOs. Accordingly, the Agency considers that, given the substance of the regulatory authorities' request and the fact that no amendment of the Proposal has been requested by the regulatory authorities and has not been proposed by the NEMOs, its decision on the Proposal should be based on Article 9(11) of the CACM Regulation.

- (14) Therefore, under the provisions of Article 9(11) of the CACM Regulation, the Agency has become responsible to adopt a decision concerning the submitted Proposal by the referral of 25 July 2017.

4. SUMMARY OF THE PROPOSAL

- (15) The Proposal includes the following elements:
- a) general provisions, including on the scope of application and on harmonised definitions, in chapters 1 and 2 (i.e. Title 1 of Annex 1 to this Decision);
 - b) provisions on maximum and minimum prices, including criteria for their amendment, in chapters 3 and 5 (i.e. Title 2 of Annex 1 to this Decision); and
 - c) final provisions, including the timeline for implementation and the applicable language, in chapters 4 and 6 (i.e. Title 3 of Annex 1 to this Decision).
- (16) The Proposal provides that all NEMOs should implement the HMMCP for SDAC immediately after the MCO function has been implemented in accordance with Article 7(3) of the CACM Regulation and also conditions the implementation on the finalisation of several other methodologies described in Section 5.5 below.
- (17) Point 1.7 of the Proposal (i.e. Recitals (4) to (12) of Annex I to this Decision) describes the expected impact of the HMMCP for SDAC on the objectives set out in Article 3 of the CACM Regulation.

5. ASSESSMENT OF THE PROPOSAL

5.1 Legal framework

- (18) Recital (29) of the CACM Regulation requires the introduction of the HMMCP for strengthening investment conditions for secure capacity and long-term security of supply both within and between Member States.
- (19) Article 41 of the CACM Regulation sets out specific requirements for the proposal for the HMMCP for SDAC.
- (20) According to Article 41(1), the proposal for the HMMCP for SDAC shall be developed by all NEMOs, in cooperation with all TSOs, and shall set the HMMCP to be applied in all bidding zones which participate in SDAC. Moreover, the proposal shall take into account an estimation of the VoLL and be subject to consultation in accordance with Article 12 of the CACM Regulation.

- (21) As a general requirement, Article 9(9) of the CACM Regulation demands 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 above-mentioned objectives of Article 3 of the CACM Regulation.
- (22) Moreover, the proposal for the HMMCP for SDAC must be in line with the objectives of Article 3 of the CACM Regulation.

5.2 The harmonised maximum and minimum clearing prices for SDAC

- (23) Point 3.1 of the Proposal provides that the harmonised maximum clearing price for SDAC shall be set at 3000 EUR/MWh, point 3.2 thereof that the harmonised minimum clearing price for SDAC shall be set at -500 EUR/MWh.
- (24) With regard to the proposed maximum clearing price, at least one regulatory authority opposed the proposed value of 3000 EUR/MWh and suggested, as an alternative, to increase the value to 5000 EUR/MWh. Such alternative proposal was opposed by several other regulatory authorities.
- (25) The views and opinions, which the regulatory authorities and stakeholders expressed in that context during the consultation, reflect two main positions. On the one hand, there were concerns that most of the consumers today are not used to estimate their individual VoLL and, for this reason, are willing to accept any price whereas the harmonised maximum clearing price for SDAC should serve the purpose of protecting the consumers from extremely high prices. Many stakeholders also expressed the concern that a higher harmonised maximum clearing price for SDAC may have an impact on the collaterals required for participation in SDAC. On the other hand, there was support for an elimination of any price cap in order to facilitate the free price formation and contribute to a more efficient market, better signals for investment and innovation for flexible resources (in particular demand response) and a better use of existing infrastructure⁵.
- (26) While these positions may be considered as opposing each other, the Agency believes that the automatic adjustment mechanism for the harmonised maximum clearing price proposed by NEMOs, with the amendments introduced by the Agency, provides a well-balanced and proportional approach between the objectives an efficient market, and the need to protect consumers and the impact on collaterals. On the one hand, the Agency expects that the automatic adjustment mechanism provided in Annex I should prevent any situation where the harmonised maximum clearing price for SDAC would restrict the clearing prices, because the former should automatically increase whenever the clearing prices exceeds 60 percent of the harmonised maximum clearing price. On the other hand, setting the harmonised maximum clearing price for SDAC to the current value of 3000 EUR/MWh and

⁵ This position was also supported by the Agency in the “European Energy Regulators’ White Paper # 4: Efficient Wholesale Price Formation Relevant to European Commission’s Clean Energy Proposals” of 30 May 2017, see http://www.acer.europa.eu/official_documents/position_papers/position%20papers/wp%20acer%2004%2017.pdf

allowing it to gradually increase in case of scarcity should allow consumers gradually to adapt to the environment in which they will need to become more active and bid into SDAC (e.g. using their own estimate of VoLL). This would gradually also decrease the concern over the collaterals required to participate in SDAC.

- (27) The Agency therefore considers the proposal to set the harmonised maximum clearing price for SDAC equal to 3000 EUR/MWh, combined with the automatic adjustment mechanism as proposed by NEMOs and amended by the Agency in Annex I to this Decision, as an adequate response to the various concerns expressed by regulatory authorities and stakeholders.

5.3 Taking into account an estimation of the value of lost load

- (28) The Proposal does not explicitly take into account the VoLL. However, the Proposal, in its chapter 5 (i.e. Article 4 of Annex I to this Decision), sets out the criteria for amending the harmonised maximum clearing price for SDAC, which allow its increase whenever the market clearing price exceeds a certain threshold.

The main purpose of the requirement to take into account an estimation of the VoLL is that the harmonised maximum clearing price for SDAC shall never restrict the free price formation. Therefore, the automatic adjustment mechanism should ensure that the harmonised maximum clearing price for SDAC be always above the clearing price that would occur in the absence of price limits or in the case of price limits equal to VoLL.

- (29) In the Agency's view, this automatic adjustment mechanism for harmonised maximum clearing price for SDAC may substitute the requirement in Article 41(1) of the CACM Regulation to take into account an estimation of the VoLL.
- (30) The automatic adjustment mechanism as set in the Proposal would increase the harmonised maximum clearing price for SDAC by 1000 EUR/MWh only when the clearing price exceeds 60 percent of the harmonised maximum clearing price for SDAC in at least three separate delivery dates in the period of 30 days. Such mechanism could likely fail to increase the harmonised maximum clearing price for SDAC in cases of occasional scarcity situations occurring over a longer period than 30 days and, therefore, represent an obstacle to the free price formation.
- (31) In order to minimise the likelihood that the harmonised maximum clearing price for SDAC restricts the free price formation, the proposed automatic adjustment mechanism has been amended such that any event where the clearing price exceeds 60 percent of the harmonised maximum clearing price for SDAC triggers the increase of the harmonised maximum clearing price for SDAC by an increment of 1000 EUR/MWh. Accordingly, the Agency has introduced this amendment in Annex I to this Decision to ensure compliance of the Proposal with the requirement in Article 41(1) to take into account an estimation of the VoLL.

- (32) Recital (3) and Article 4(1) of Annex I specify that, in the event that the clearing price exceeds 60 percent of the harmonised maximum clearing price for SDAC, the latter shall be increased by 1000 EUR/MWh the next day, however it shall be applied in bidding zones five weeks later. However, the Agency clarified in Article 4(1)(c) of Annex I that if, during this five-week period, the clearing price exceeds 60 percent of the newly increased harmonised maximum clearing price for SDAC, the harmonised maximum clearing price for SDAC would increase again with effect from the next calendar day onward, and applied in bidding zones five weeks later. This transition period aims to give time to market participants to adjust to the amended value of the harmonised maximum clearing price for SDAC, while minimising the impact on free price formation.
- (33) In that context, the Agency notes, however, that the impact of the HMMCP on the free price formation will be affected where in Member States, besides the HMMCP, additional limits are imposed on market participants' bidding prices. These limits, if set lower than the HMMCP, could restrict the free price formation, which is, in the Agency's view, one of the central objectives of Article 41(1) of the CACM Regulation. Therefore, in the Agency's view, such additional price limits should be removed or at least aligned with the HMMCP.

5.4 Public consultation

- (34) The draft Proposal was consulted Union-wide with stakeholders from 3 November to 2 December 2016.
- (35) The comments received from stakeholders, their assessment and the explanation of why comments have or have not been taken into account were published by the NEMO Committee representing all NEMOs, under the title '*Justification document on the consideration of stakeholder views on the All NEMOs Consultation Proposals on CACM Article 9 methodologies*', together with the Proposal, on 14 February 2017.
- (36) Therefore, the Proposal has been subject to a public consultation in accordance with Article 12 of the CACM Regulation and complies with Article 41(1) of the CACM Regulation.

5.5 Proposed timescale for implementation

- (37) Chapter 4 of the Proposal provides that all NEMOs shall implement the HMMCP in all bidding zones participating in SDAC after the MCO function has been implemented in accordance with Article 7(3) of the CACM Regulation, after the common grid model methodology has been developed in accordance with Article 17 of the CACM Regulation, after the capacity calculation methodology has been developed in accordance with Article 20 of the CACM Regulation and after the relevant coordinated capacity calculator has been set up in accordance with Article 27 of the CACM Regulation on the borders of the relevant capacity calculation region.

- (38) Therefore, the Proposal complies with the requirement of the implementation timescale proposal in Article 9(9) of the CACM Regulation.
- (39) As regards the substance of the proposed implementation timescale, the Agency agrees with the requirement, in point 4.1.2 of the Proposal, that the HMMCP should be implemented immediately after the market coupling operator ('MCO') function has been implemented in accordance with Article 7(3) of the CACM Regulation, as the timely implementation of the MCO functions is essential for the proper functioning of SDAC, which will accommodate the HMMCP set by this Decision. However, the Agency does not see any justification for making the implementation of the HMMCP subject to the conditions in point 4.1.1 of the Proposal, i.e. the development of the common grid model in accordance with Article 17 of the CACM Regulation, the development of the capacity calculation methodology in accordance with Article 20 of the CACM Regulation and the setting up of the relevant coordinated capacity calculator in accordance with Article 27 of the CACM Regulation, because, in the Agency's view, they are independent from and not relevant for the application of the HMMCP. Therefore, the Agency deems it appropriate to remove the conditions of point 4.1.1 of the Proposal, amended by the Agency in Annex I to this Decision.

5.6 Expected impact on the objectives of the CACM Regulation.

- (40) Point 1.7 of the Proposal (Recitals (4) to (11) of Annex 1 to this Decision) describes the expected impact of the HMMCP for SDAC on the objectives listed in Article 3 of the CACM Regulation.
- (41) Therefore, the Proposal complies with the requirement of impact description in Article 9(9) of the CACM Regulation.
- (42) As regards the substance of the described impact, the Agency generally agrees with the description in point 1.7 of the Proposal, but deems it appropriate to clarify certain aspects in more detail and to amend the text in order to improve readability.

5.7 Assessment of other points of the Proposal

- (43) In points 1.1 to 1.5 of the Proposal, most of the '*Background*' has been deleted, as it refers to all NEMOs' responsibilities under the CACM Regulation. It has been replaced, in the 'Whereas'-considerations of Annex I, with a text, which reflects the fact that the Proposal has been amended by the present Decision and which lays out the objectives, which the Proposal as amended by the present Decision shall pursue.
- (44) The content of point 1.8, which explains the commitment of the NEMOs to review the Proposal every two years or when the NEMOs deem it appropriate after an increase of the harmonised maximum clearing price for SDAC, has been incorporated in Article 4(3) of Annex I and only, where necessary to enhance readability, clarified.

- (45) In chapters 2 and 3, the wording of the definitions has been slightly amended better to mimic the CACM Regulation; the word '*Limit*' has been omitted.
- (46) Finally, the Agency introduced several additional editorial amendments. The most significant one relates to the transformation of the document into a legal format, which enables its enforceability. Further, the ordering of some chapters has been changed in order to improve readability and clarity.

5.8 Conclusion

- (47) For all the above reasons, the Agency considers the Proposal in line with the requirements of the CACM Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I to this Decision.
- (48) Therefore, the Agency approves the Proposal subject to the necessary amendments of its chapters 1 to 5 and to the necessary editorial amendments. To provide clarity, Annex I to this Decision sets out the amended Proposal as approved, including the above-mentioned amendments.

HAS ADOPTED THIS DECISION:

Article 1


The harmonised maximum and minimum clearing prices for all bidding zones which participate in single day-ahead coupling, pursuant to Article 41 of Regulation (EU) 2015/1222, shall be applied as set out in Annex I to this Decision.

Article 2

This Decision is addressed to all NEMOs.

Done at Ljubljana on 14 November 2017.

For the Agency:


Alberto Pototschnig
Director

Annexes:

Annex I – Harmonised maximum and minimum clearing prices to be applied in all bidding zones which participate in single day-ahead coupling pursuant to Article 41 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management

Annex Ia – Harmonised maximum and minimum clearing prices to be applied in all bidding zones which participate in single day-ahead coupling pursuant to Article 41 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management in track change compared to the Proposal (for information only)

Annex II - Evaluation of responses to the consultation of regulatory authorities, NEMOs, TSOs and other market participants on the Proposal