

DÉCISION ILR/E17/76 DU 27 NOVEMBRE 2017

PORTANT DEMANDE DE MODIFICATION DE LA PROPOSITION RELATIVE AUX PROCÉDURES DE REPLI

SECTEUR ÉLECTRICITÉ

La Direction de l'Institut Luxembourgeois de Régulation,

Vu le règlement (UE) 2015/1222 de la Commission du 24 juillet 2015 établissant une ligne directrice relative à l'allocation de la capacité et de la gestion de la congestion, et notamment l'article 9, paragraphes 7 et 12, ainsi que l'article 44 ;

Vu la demande d'approbation de la société Creos Luxembourg S.A. du 19 mai 2017 introduisant une proposition relative aux procédures de repli conformément à l'article 44 du règlement (UE) 2015/1222 précité, qui a été élaborée conjointement par les gestionnaires de réseau de transport de la région de calcul de capacité CORE et qui a fait l'objet d'une consultation publique au niveau régional du 27 mars 2017 au 27 avril 2017 ;

Vu la lettre du 9 décembre 2016 des gestionnaires de réseau de transport de la région de calcul de la capacité CORE relayant la lettre du 30 novembre 2016 l'ENTSO-E et la réponse du 3 janvier 2017 des autorités de régulation de la région de calcul de la capacité CORE ;

Considérant l'opinion émise en date du 3 octobre 2017 par les autorités de régulation lors de la réunion du CORE Energy Regulators' Regional Forum, demandant aux gestionnaires de réseau de transport de la région de calcul de la capacité CORE de soumettre pour approbation une version modifiée de la proposition relative aux procédures de repli en vertu de l'article 9, paragraphe 12 du règlement (UE) 2015/1222 précité ;

Décide :

Art. 1^{er}. La proposition relative aux procédures de repli, telle que décrite dans le document portant l'intitulé « *CORE CCR TSOs' Fallback Procedures Proposal in accordance with Article 44 of the Commission Regulation (EU) 2015/1222* », dans sa version du 17 mai 2017, est à modifier conformément aux indications données par les autorités de régulation de la région de calcul de la capacité CORE dans leur opinion annexée à la présente.

Art. 2. La présente décision sera notifiée à la société Creos Luxembourg S.A. et publiée, ensemble avec le document mentionné à l'article 1^{er}, sur le site internet de l'Institut.

L'Institut informe la société Creos Luxembourg S.A. qu'un recours en annulation est ouvert contre la présente décision, à introduire devant le Tribunal Administratif de Luxembourg par ministère d'avocat à la Cour, au plus tard dans les trois mois qui suivent la notification de la présente décision.

Pour l'Institut Luxembourgeois de Régulation

La Direction

(s.) Michèle Bram
Directrice adjointe

(s.) Camille Hierzig
Directeur adjoint

(s.) Luc Tapella
Directeur

Annexe : Request for Amendment by the Core NRAs agreed at the Core Energy Regulators' Regional Forum of the "Core CCR TSOs' Fallback Procedures Proposal in accordance with Article 44 of the Commission Regulation (EU) 2015/1222" - 3 October 2017



**Request for Amendment by the Core NRAs
agreed at the Core Energy Regulators' Regional Forum**

of

**the “Core CCR TSOs’ Fallback Procedures Proposal in
accordance with Article 44 of the Commission Regulation
(EU) 2015/1222”**

3 October 2017

I. Introduction and legal context

In July 2016, the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (CACM Regulation) set out detailed rules on cross-zonal capacity allocation, on the establishment and operation of fallback procedures as appropriate for capacity allocation for the case where the single day-ahead coupling process does not lead to any results.

From 27 March to 27 April 2017, Core TSOs held a public consultation on the Core TSOs' proposal for the fallback procedures in accordance with Article 44 of the CACM Regulation. Core NRAs provided their shadow opinion to the draft proposal.

The final Core TSOs' proposal for the fallback procedures, submitted on 17 May 2017, covers the design of the fallback procedures for the Core Region.

This agreement of the Core NRAs shall provide evidence that a decision on the fallback procedures does not, at this stage, need to be adopted by ACER pursuant to Article 9(11) of CACM Regulation. It is intended to constitute the basis on which the **Core NRAs will each subsequently request an amendment** to the fallback procedures proposal pursuant to Article 9(12) of CACM Regulation.

The legal provisions that lie at the basis of the fallback procedures, and this Core NRAs agreement on the fallback procedures, can be found in Article 3, 8, 9, and 44 of CACM Regulation:

Article 3 Objectives of capacity allocation and congestion management cooperation

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 8 TSOs' tasks related to single day-ahead and intraday coupling

1. *In Member States electrically connected to another Member State all TSOs shall participate in the single day-ahead and intraday coupling.*
2. *TSOs shall:*

(...)

(i) establish and operate fallback procedures as appropriate for capacity allocation in accordance with Article 44;

Article 9 Adoption of terms and conditions or methodologies

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.*

(...)

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.*

(...)

7. *The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities of the concerned region:*

(a) (...)

(b) (...)

(c) (...)

(d) (...)

(e) the fallback procedures in accordance with Article 44;

(f) (...)

(g) (...)

(h) (...)

(...)

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. *TSOs and NEMOs responsible for establishing the terms and conditions or methodologies in accordance with this Regulation shall publish them on the internet after approval by the competent regulatory authorities or, if no such approval is required, after their establishment, except where such information is considered as confidential in accordance with Article 13.*
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 713/2009. 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 44 Establishment of fallback procedures

By 16 months after the entry into force of this Regulation, each TSO, in coordination with all the other TSOs in the capacity calculation region, shall develop a proposal for robust and timely fallback procedures to ensure efficient, transparent and non-discriminatory capacity allocation in the event that the single day-ahead coupling process is unable to produce results.

The proposal for the establishment of fallback procedures shall be subject to consultation in accordance with Article 12.

II. Core TSOs proposal

The Core CCR TSOs' (50HERTZ, AMPRION, APG, CREOS, ČEPS, ELES, ELIA, HOPS, MAVIR, PSE, RTE, SEPS, TENNET GMBH, TENNET BV, TRANSELECTRICA, TRANSNETBW) Fallback Procedures Proposal in accordance with Article 44 of the CACM Regulation, published by Core TSOs on 27 March 2017, consists of 6 Articles and reflects the general principles and goals set. The document is released on behalf of Core TSOs "to ensure efficient, transparent and non-discriminatory capacity allocation in the event that the single day-ahead market coupling process is unable to produce results" in accordance with Article 44 of the CACM Regulation.

In the public consultation, Core TSOs were seeking input from stakeholders and market participants on the feature. Markets participants were asked to provide TSOs with their feedback via the online survey platform.

The final Core CCR TSOs' Fallback Procedures Proposal, dated 17 May 2017, was received by the last Core NRA on 31 May 2017. The proposal includes proposed timescales for its implementation and a description of its expected impact on the objectives of CACM Regulation, in line with Article 9(9) of CACM Regulation.

Article 9(10) of CACM Regulation requires Core NRAs to consult and closely cooperate and coordinate with each other in order to reach agreement, and make decisions within six months following receipt of submissions of the last Core NRA concerned. A decision is therefore required by each Core NRA by 30 November 2017.

The Core CCR TSOs' Fallback Procedures Proposal, as understood by the Core NRAs, foresees primarily shadow explicit auctions to be applied on decoupled bidding zone borders to allocate the cross zonal capacities on the allocation platform.

III. All Core NRAs' position

Core NRAs appreciate the efforts made by Core TSOs to propose viable fallback procedures in accordance with CACM. However, Core NRAs remark that the Core TSOs need to significantly increase the level of detail in the document, to clearly set out and describe procedures and to write the document in a legal format. All procedures in the document shall be directly applicable and enforceable.

Besides, several Articles contain reference to the "Core Fallback Procedures Proposal". Core NRAs recall that the "methodology" should be published, not the "proposal". Relevant Articles should be amended by skipping the word 'Proposal' in accordance to article 9(14) of the CACM Regulation.

Core NRAs are also of the opinion that instead of Annex 1 that lists "Minimum content of shadow allocation rules" the complete, common – ideally cross regional and Core as minimum requirement - document laying out the "Shadow allocation rules" must be provided and submitted in an Annex to and together with the Fallback Procedures.

Core NRAs request Core TSOs to describe which cross zonal capacities will be used when performing shadow auctions and to express what the main principles of shadow auctions are and what happens – i.e. which procedure is foreseen - in case the fallback procedures are unable to be initiated.

Furthermore, it shall be described - in the document and in more detail - how the shadow auction fits into the timing of the complete process beginning at the deadline provided in Article 50(2) of CACM Regulation until the time of delivery.

Article 3 of the Core Fallback Procedures shall contain a precise description about the procedure at least taking into account at which time and by which communication channel that is used by the MCO function to inform Core TSOs of any potential problem for delivering the results. The subsequent steps of the procedure itself shall be described as well.

Article 5(2) of the Core Fallback Procedures shall be amended as follows: “The Core TSOs shall implement the Core fallback procedures on a bidding zone border immediately when on that bidding zone border the day-ahead market coupling operator function, implemented in accordance with Article 7(3) of the CACM Regulation, is operational.” For the same reason, Whereas (17) shall be removed.

Today, in case of decoupling of the MRC coupling, a regional back-up coupling is maintained in the Central-West Europe region (CWE region). Core NRAs consider that this additional step between pan-European coupling and total decoupling leading to explicit shadow auctions could be beneficial for the Core region as well. Core NRAs then request Core TSOs, in cooperation with NEMOs, to study the possibility and opportunity to establish in the future regional back-up coupling within the Core CCR. If it concludes that a Core regional back-up coupling would be feasible, the analysis shall be included in the explanatory note and the fallback solution in the document shall be modified accordingly.

IV. Conclusion

All Core NRAs have assessed, consulted and closely cooperated and coordinated to reach the agreement that the Core CCR TSOs’ Fallback Procedures Proposal does not meet all requirements of CACM Regulation and as such cannot be approved by all Core NRAs.

According to Art 9(12) of CACM Regulation Core NRAs request an amendment to the fallback methodology submitted by the Core TSOs pursuant to Article 44 of CACM Regulation.

The amended Fallback Procedures shall take into account the Core NRAs position stated above, and shall be submitted by all Core TSOs no later than 2 months following the requirement from the regulatory authorities, in accordance with Article 9(12) of CACM Regulation.

All Core NRAs must make their decisions to request an amendment to the fallback methodology, on the basis of this agreement, by 30 November 2017.