

POSITION PAPER
by the Channel Regulatory Authorities

on

**The Channel TSOs' proposal for fallback
procedures in accordance with Article 44 of the
Commission Regulation (EU) 2015/1222 of 24
July 2015 establishing a Guideline on Capacity
Allocation and Congestion Management**

27 November 2018

1. Introduction and legal context

This document elaborates an agreement of the Channel Regulatory Authorities on the proposal of the Channel TSOs for common fallback procedures in accordance with Article 44 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management (Regulation 2015/1222).

This agreement of the Channel Regulatory Authorities shall provide evidence that a decision does not, at this stage, need to be adopted by the Agency for Cooperation of Energy Regulators (ACER) pursuant to Article 9(11) of the Regulation 2015/1222. This agreement is intended to constitute the basis on which Channel Regulatory Authorities will approve the fallback procedures, and will each subsequently make national decisions pursuant to Article 9(10).

The legal provisions relevant to the submission and approval of the proposal and this Channel Regulatory Authority agreement on this proposal, can be found in Articles 3, 8, 9 and 44 of the Regulation 2015/1222. They are set out here for reference.

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 8 of Regulation 2015/1222:

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 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. (...)
7. *The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities of the concerned region:*
(...)
(e) the fallback procedures in accordance with Article 44;
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. *Where the regulatory authorities have not been able to reach agreement within the period referred to in paragraph 10, or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.*

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.*
13. *TSOs or NEMOs responsible for developing a proposal for terms and conditions or methodologies or regulatory authorities responsible for their adoption in accordance with paragraphs 5, 7 and 8, may request amendments of these terms and conditions or methodologies.*

The proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedures set out in Article 12 and approved in accordance with the procedure set out in this Article.

Article 44 of Regulation 2015/1222:

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.

2. The Channel TSOs' Proposals

Prior to the inclusion¹ of the bidding zone border between Belgium and Great-Britain (BE-GB) in the Channel CCR, the Channel TSOs (TenneT BV, BritNed, RTE, NGET and NGIC) submitted a proposal for fallback procedures by 21 December 2016. ACM, CRE and Ofgem approved these original fallback procedures on 12 June 2017.

In February 2018, all National Regulatory Authorities approved the proposal for an amendment

¹ Formalized through the approval of each European Regulatory Authority, following the positive decision by the *Energy Regulators' Forum* on 18 September 2017: "Approval by all Regulatory Authorities agreed at the Energy Regulators' Forum on the all TSOs' Proposal for Amendment in accordance with Article 9(13) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management on the Determination of Capacity Calculation Regions"

to the determination of capacity calculation region, thereby formalizing the inclusion of the interconnector BE-GB in the Channel CCR. Therefore, from February 2018 onwards, Elia and Nemo Link Ltd. are formal members of the Channel TSOs and CREG is a formal member of the Channel Regulatory Authorities.

Channel Regulatory Authorities recognise the need for a revised version of the fallback procedures. The inclusion of the bidding zone border BE-GB in the Channel capacity calculation region requires, at least, an update of the legal framework for the existing fallback procedures to the enlarged geographical scope. In addition, the fallback procedures require an update towards progressive harmonization of a) the procedures, and b) the shadow allocation rules.

On 19 January 2018, all Channel TSOs organised a public consultation on a revised version of the fallback procedures for the Channel CCR. This draft methodology was consulted upon until 19 February 2018, in line with the provisions in Article 44 and Article 12 of Regulation 2015/1222. Channel TSOs indicate that they have not received any responses from stakeholders to the public consultation.

The final version of the Channel TSOs' proposal for the fallback procedures, dated 29 May 2018, was received by the last Regulatory Authority on 1 June 2018, along with the original explanatory note of the first fallback procedures (dated 14 December 2016).

The proposal includes a proposed timescale for its implementation and a description of its expected impact on the objectives of Regulation 2015/1222, in line with Article 9(9) of Regulation 2015/1222.

Article 9(10) of Regulation 2015/1222 requires relevant Regulatory Authorities to consult and closely cooperate and coordinate with each other in order to reach an agreement, and issue decisions within six months following receipt of submissions of the last relevant Regulatory Authority concerned. A decision is therefore required by each Channel Regulatory Authority by 1 December 2018.

3. Channel Regulatory Authorities' position

On the form of the proposal

Channel Regulatory Authorities acknowledge that the need for the geographical enlargement as well as the harmonization of the fallback procedures justifies a revised proposal in accordance with Article 44 rather than a proposal for amendment in accordance with Article 9(13) of Regulation 2015/1222, for the following reasons:

- Proposals for terms and conditions or methodologies that are to be developed by all TSOs of a capacity calculation region (listed in Article 9(7) of Regulation 2015/1222) generally have a submission deadline relative to the approval of the determination of capacity calculation regions². Even though this is not the case for the fallback procedures in Article 44, the fact that a revised determination of capacity calculation regions³ has been approved and implemented, could trigger a new process for the submission of a proposal for revised fallback procedures, in accordance with the new outlines of the Channel

² For example: Article 20(2) for the methodology for coordinated capacity calculation, or Article 35(1) for the methodology for coordinated redispatching and countertrading.

³ In particular, the revised Channel CCR (including the BE-GB border).

capacity calculation region.

- Given the significant changes of the revised fallback procedures compared to the originally approved methodology, a proposal for amendment would hardly have any practical content. The original procedures would have to be entirely replaced by the revised, harmonized fallback procedures.
- At least for one bidding zone border (BE-GB), there is no original fallback procedures to amend and, as such, any amendment proposal would not have any subject.
- On those bidding zone borders where fallback procedures are currently in place (FR-GB and NL-GB), the revised fallback procedures will replace the original as from the moment of the implementation of the proposal for the fallback procedures, once approved.

On the fallback procedures

In Article 3 of the proposed Channel fallback procedures, Channel TSOs explain that they will run Shadow Auctions on the DA Fallback Allocation Platform, i.e. JAO SA. These will be performed as soon as NEMOs performing the MCO function communicate, in accordance with Article 50 of Regulation 2015/1222 and by the deadlines established in accordance with Article 37(1)(a) of Regulation 2015/1222, that they are unable to deliver part or all of the results of the price coupling algorithm.

Channel Regulatory Authorities acknowledge the fact that TSOs do not elaborate on the earlier steps in the procedure of triggering the fallback procedures as these are the responsibility of NEMOs performing the MCO function.

On (the harmonization and approval of) the Shadow Allocation Rules

In order to allocate capacity under the situation where the price coupling algorithm is unable to produce results, i.e. in fallback modus, JAO will organize Shadow Auctions on behalf of the concerned Channel TSOs. These Shadow Auctions will be performed in accordance with the Shadow Allocation Rules. These will be submitted individually by each TSO to its Regulatory Authority, where agreed between the TSO and its Regulatory Authority. The approval of the Shadow Allocation Rules is not within the scope of this decision.

Channel Regulatory Authorities appreciate the effort towards progressive harmonisation of these Shadow Allocation Rules and urge Channel TSOs to, in close cooperation with other TSOs (in for example the Core CCR) not to unilaterally propose changes to the approved Shadow Allocation Rules, in order to preserve the degree of harmonization across European bidding zone borders.

On the timescale for implementation

Channel Regulatory Authorities take note of the implementation timeline, which is described in Article 5 of the proposal, in accordance with Article 9(9) of Regulation 2015/1222. The implementation of the revised fallback procedures on a specific interconnector will take place as soon as, for that bidding zone borders, one of the conditions in Article 5(1)(a) to (c) is met.

Channel Regulatory Authorities understand, from their interpretation of Article 5 in combination with the confirmation from the Channel TSOs, that the currently existing fallback procedures approved on 12 June 2017⁴ continue to apply until one of the criteria in Article 5(1)(a) to (c) are

⁴ Intraday Auctions for NL-GB / BritNed, Shadow Auctions for FR-GB / IFA and none for BE-GB / Nemo Link

fulfilled. Following this the revised fallback procedures will be in place on the relevant interconnector, and the fallback procedures approved on 12 June 2017 will cease to apply.

To ensure transparency and clarity Channel Regulatory Authorities request that Channel TSOs, when publishing the approved revised fallback procedures, communicate clearly to market participants which fallback procedures apply at present. Channel Regulatory Authorities also request that Channel TSO communicate clearly to the market participants that, as from the implementation of the revised fallback procedures, the old procedures will cease to exist.

Channel Regulatory Authorities interpret Article 5(1)(a) to mean the revised fallback procedures will implemented once JAO submits the rights documents for long-term transmission rights for that interconnector. Therefore, in line with the FCA requirement under Article 48 for DC interconnectors to complete forward capacity allocations on the single allocation platform no later than December 2019,⁵ we would expect the revised fallback procedures to be implemented no later than this date.

Channel Regulatory Authorities therefore agree to launch an approval process for the revised fallback procedures, in accordance with Article 9(7) and Article 44 of Regulation 2015/1222.

4. Actions

Based on the above rationale and in accordance with Article 9 of Regulation 2015/1222, all Channel Regulatory Authorities agree to approve the Channel TSOs' proposal for fallback procedures.

This document shall serve as the basis for each individual Channel Regulatory Authority to approve the proposal from its TSO, by 1 December 2018.

⁵ <https://acer.europa.eu/en/Electricity/MARKET-CODES/FORWARD-CAPACITY-ALLOCATION/IMPLEMENTATION/Pages/SINGLE-ALLOCATION-PLATFORM.aspx>