

Joint Opinion of the Commission de Régulation de l'Electricite et du Gaz (Belgium) and the Gas and Electricity Markets Authority (Great Britain) on the Access Rules for the Nemo Link interconnector in the event that Great Britain no longer participates in the single day-ahead market coupling

This document sets out the Joint Opinion (the “Joint Opinion”) of the National Regulatory Authorities (“NRAs”) in Belgium and Great Britain (“GB”) on the Access Rules for the Nemo Link interconnector (“Nemo Link”) in the event that GB no longer participates in the single day-ahead market coupling as a result of the United Kingdom (UK) leaving the European Union (EU) without a withdrawal agreement (thereafter “GB decoupling”). The concerned NRA in Belgium is the Commission de Régulation de l'Electricite et du Gaz (“CREG”) and the concerned NRA in GB is the Gas and Electricity Markets Authority (“the Authority”), whose administrative functions are carried out by the Office of Gas and Electricity Markets (“Ofgem”).

Nemo Link is a 1,000 MW high voltage direct current link, connecting the transmission systems of Belgium and of GB. Nemo Link Limited (“NLL”) is a joint venture between National Grid Interconnector Holdings Limited, a subsidiary company of National Grid Plc, and Elia System Operator NV/SA (“Elia”). NLL and Elia (thereafter “Nemo Link TSOs”) operate Nemo Link.

On 29 March 2017, the UK notified its intention to leave the EU, pursuant to Article 50 of the Treaty on European Union, thus officially initiating the process of withdrawal from the EU (hereafter “Brexit”). Changes on the legislative and regulatory frameworks governing the operation of Nemo Link should be expected in the event that the UK leaves the EU without a withdrawal agreement. CREG and Ofgem emphasise the need for the continued operation of Nemo Link to allow for trades in all timeframes between Belgium and the UK, regardless of the Brexit outcome.

As a contingency measure, Nemo Link TSOs have prepared, consulted on and submitted proposed modifications to the Nemo Link Access Rules to the NRAs for their approval. The main modifications are as follows:

- Nemo Link TSOs propose to allocate day-ahead capacity *via* explicit auctions on the Joint Allocation Office (JAO) eCAT platform.
- Nemo Link TSOs do not propose a framework for the long-term timeframe. The currently applicable Nemo Link Access Rules contain provisions for the long-term timeframe. Those provisions however are due to start applying only as of April 2019¹.

The present document forms the basis for the NRAs’ national approval processes on the proposed Nemo Link Access Rules in case of GB decoupling. It is divided in three chapters:

- Chapter 1: General context
- Chapter 2: Nemo Link Access Rules in the event of GB decoupling
- Chapter 3: NRAs’ decision on Nemo Link Access Rules in the event of GB decoupling

¹ Nemo Link 2019 Calendar for the long-term auctions is available here: <http://www.nemo-link.com/wp-content/uploads/2018/11/Auctions-schedule-0301.pdf>

1. CHAPTER 1: GENERAL CONTEXT

1.1 Potential impacts of Brexit on Nemo Link allocation mechanisms

On 29 March 2017, the UK notified its intention to leave the EU, pursuant to Article 50 of the Treaty on European Union. Consequently, the UK is scheduled to leave the EU on 29 March 2019 (24:00 CET). As part of the UK government's preparations for the withdrawal from the EU, the European Union (Withdrawal) Act 2018 was granted Royal Assent on 26 June 2018². The Act will serve to convert EU law that the UK is subject to at the moment, into UK law.

The UK government has agreed the full legal text of the withdrawal agreement, concluded on 13 November 2018 with the EU³, and remains confident that this will provide the basis for a smooth and orderly exit. If the withdrawal agreement is implemented, an implementation period will run until 31 December 2020. During this time, CREG and Ofgem's assumption is that EU law would continue to apply to the UK and that the consequential changes to the Nemo Link Access Rules, as described in this Joint Opinion, would not be required nor implemented by the involved TSOs.

As a contingency measure however, Nemo Link TSOs have submitted proposed modifications to the Nemo Link Access Rules to CREG and Ofgem, as the relevant NRAs, for their approval. The aim of the proposed modifications is to:

- a) ensure that the current allocation mechanism evolve to remain operable; and
- b) take into account the scenario where the UK leaves the EU without the entry into force of a withdrawal agreement and consequently the scenario of GB decoupling

This Joint Opinion therefore elaborates the NRAs' position on the set of Access Rules that would apply in the event of GB decoupling (thereafter "Nemo Link Access Rules in case of GB decoupling").

1.2 In case of Brexit without the entry into force of withdrawal agreement, EU legislation shall no longer be applicable to the UK and the basis for decisions on Nemo Link Access Rules shall lie within national legislation

In the event that the UK leaves the EU without the entry into force of a withdrawal agreement, EU legislation such as Commission Regulation (EU) 2015/1222 of 24 July 2015 on capacity allocation and congestion management ("the CACM guideline") and Commission Regulation (EU) 2016/1719 of 26 September 2016 on establishing a guideline on forward capacity allocation ("the FCA guideline") will cease to apply in the UK. Even though these regulations are retained by application of the European Union (Withdrawal) Act 2018, in the event that no withdrawal agreement has entered into force on 29 March 2019 these regulations will be revoked by application of subsequent regulations⁴.

The CACM guideline sets out the legal framework that underpins GB's participation in the single day-ahead market coupling ("SDAC") and in the single intraday market coupling. The FCA guideline sets out the legal framework for the harmonised allocation of cross-zonal capacity in the forward electricity markets and the participation in a single allocation platform.

² See the EU Withdrawal Act available here : <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

³ See the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 14 November 2018 and see the Political Declaration setting out the framework for the future relationship between the European and the United Kingdom, respectively available at: https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf and <https://www.consilium.europa.eu/media/37059/20181121-cover-political-declaration.pdf>

⁴ Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019

The current Access Rules must therefore evolve to take into account that the CACM guideline and the FCA guideline will cease to apply to the infrastructure connecting Belgium to GB. In case of GB decoupling, the Nemo Link Access Rules will hence constitute the new regulatory framework applicable to the allocation of capacity between Belgium and GB. The Nemo Link Access Rules have been developed according to well-known processes already identified in the CACM and FCA guidelines, mostly as fallback for the normal SDAC.

The Nemo Link Access Rules in case of GB decoupling will be adopted on the basis of national legislation, namely Article 23 of the Electricity Act⁵ for Belgium and the Standard Licence Condition 11A of the GB electricity interconnector licence for GB.

1.3 Nemo Link Access Rules in case of GB decoupling have been consulted and similar processes have been conducted on other interconnected borders

In accordance with the applicable legal and regulatory framework, Nemo Link TSOs organised a public consultation on the proposed amendments to Nemo Link Access Rules, which took place between 14 November 2018 and 14 December 2018⁶.

The interconnectors between the UK and France (IFA) and between the UK and the Netherlands (BritNed) similarly organised a public consultation on a set of amendments to their own set of Access Rules to take into account the scenario of GB decoupling.

2. CHAPTER 2: NEMO LINK ACCESS RULES IN CASE OF GB DECOUPLING

2.1 Current allocation mechanisms on Nemo Link

The commercial access for market participants to the Nemo Link interconnector started on 30 January 2019. Currently, interconnection capacity on Nemo Link is allocated by Nemo Link TSOs along two timeframes: long term (explicit allocation), and day-ahead (implicit allocation)⁷. The underlying allocation mechanisms, which are based on European or national legislation, are described in the following paragraphs.

Long-term allocation process

Under Article 31(3) of the FCA guideline, TSOs that are part of a capacity calculation region (“CCR”) were required to develop a proposal for the regional design of long term transmission rights (“LTTR”) to be issued on each bidding zone border within six months after entry into force of the FCA guideline.

In line with the Channel LTTR regional design⁸, long-term capacity on Nemo Link is allocated in the form of Physical Transmission Rights (“PTR”) with a Use-It-Or-Sell-It (“UIOSI”) regime *via* explicit auctions. Nemo Link long-term PTRs are base load products offered to auctions in the annual, quarterly, and monthly timeframes. In the event that PTR holders do not nominate their PTR ahead of the day-ahead firmness

⁵ Electricity Act of 29 April 1999 on the organisation of the electricity market

⁶ Nemo Link’s consultation page can be accessed here: http://www.nemo-link.com/?page_id=6

⁷ Implicit allocation involves the sale of the transmission capacity (i.e. the right to flow electricity) and of electrical energy as a single product. In contrast, transmission capacity and electrical energy are sold separately and independently from each other in explicit allocation. For example, a GB market participant wishing to import 10MW of electricity from France for instance needs to buy i) the right to transmit 10MW over the IFA interconnector in the appropriate direction and ii) 10MW of electricity from a generator in France.

⁸ Ofgem’s decision to approve the Channel regional design of the LTTRs proposal under the FCA Guideline is available here: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-decision-approve-channel-regional-design-long-term-transmission-rights-proposal-under-fca>. CREG’s decision is available here: <https://www.creg.be/nl/publicaties/beslissing-b1730>

deadline, they are entitled to a compensation based on the day-ahead reference price differential between the two bidding zones' prices (thereafter "price spread").

Under Chapter 5 of the FCA guideline, all TSOs were required to develop within six months after entry into force of the FCA guideline:

- Harmonised Allocation Rules ("HAR") describing the allocation procedure for LTTR, as well as outlining the contractual obligations of market participants⁹; and if relevant
- Regional or bidding zone border specific requirements (Border Specific Annex, "BSA") developed by TSOs of each CCR.

Nemo Link BSA (GB-BE Border) was approved by CREG and Ofgem, both on 24 January 2019¹⁰.

Under Chapter 4 of the FCA guidelines, all TSOs were required to develop a proposal for a common set of requirements and for the establishment of a single allocation platform ("SAP"). The All TSOs' proposal establishing the Joint Allocation Office ("JAO") as SAP was approved by CREG and Ofgem¹¹ based on an all EU NRAs' common position paper. Allocation of long-term rights on direct current interconnectors should take place on JAO at latest 24 months after the approval.

Under the current framework, auctions for the Nemo Link long-term capacity will be conducted on the Single Allocation Platform (JAO S.A.). Although Nemo Link Access Rules have provisions for the allocation of capacity in the long-term timeframe, no long-term auctions have been conducted yet. Under the current framework, the first long term auction is scheduled to happen in April 2019¹²

Day-ahead allocation process

The "Nemo Link Access Rules V1"¹³ presently governs capacity allocation at the day-ahead and intraday stages.

At the day-ahead stage, capacity is allocated implicitly via the SDAC. The terms, conditions and methodologies that govern the SDAC are set out in or made under the CACM guideline.

Under Chapters 4 and 5 of the CACM guideline, the SDAC uses an algorithm called the 'EU Pan-European Hybrid Electricity Market Integration Algorithm' ("EUPHEMIA") to match energy demand and supply for all the periods of a single day at once while taking into account of the available network capacity. EUPHEMIA returns the market clearing prices, the matched volumes and the net position of each bidding zone.

Intraday allocation process

There is currently no allocation mechanism for the intraday timeframe. Nemo Link intends to join the third wave of XBID implementation, which is foreseen to be in 2020. Capacity in the intraday timeframe would be allocated on a continuous basis under the XBID mechanism. An explicit capacity allocation mechanism in

⁹ Decision of the Agency for the Cooperation of Energy Regulators No 03/2017 of the electricity Transmission System Operators' proposal for Harmonised Allocation Rules for Long-Term Transmission Rights, available at: https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2003-2017%20on%20HAR.pdf

¹⁰ Ofgem's decision is available here: <https://www.ofgem.gov.uk/publications-and-updates/ofgem-decision-approve-channel-regional-design-long-term-transmission-rights-proposal-under-fca>. CREG's decision is available here: <https://www.creg.be/nl/publicaties/beslissing-b1864>

¹¹ Ofgem approved the Single Allocation Platform on 13 October 2017. The decision letter can be found here: https://www.ofgem.gov.uk/system/files/docs/2017/10/batch_9_decision_letter_har_sap_lttrs_final.pdf. CREG's decision approved the Single Allocation Platform on 16 November 2017. The decision can be found here: <https://www.creg.be/nl/publicaties/beslissing-b1675>

¹² <http://www.nemo-link.com/wp-content/uploads/2018/11/Auctions-schedule-0301.pdf>

¹³ http://www.nemo-link.com/wp-content/uploads/2013/01/Nemo-Link-Access-Rules-v1.0_Approved_250119.pdf

the intraday timeframe might be foreseen as an intermediate solution in advance of the go-live of the third XBID implementation wave.

2.2 Nemo Link TSOs' proposed Nemo Link Access Rules in the event of GB decoupling

Nemo Link TSOs have developed a set of rules that would apply in case of GB decoupling. Due to different licensee's requirements under the GB and Belgian legislations, the content submitted to both regulators slightly differ. Indeed, the Access Rules received by Ofgem contain the following provisions:

- the main body of Nemo Link Access Rules which includes, but is not limited to, rules on the requirements and process for participations in Auctions and Nominations, the information system, and the outages.
- the Appendix 1 which provides the rules for the Day-Ahead Explicit Auctions
- the Appendix 2 which provides the rules for the Day-Ahead Nominations; and
- the Appendix 3 which provides the definitions and interpretations.

CREG has only received the Appendix 1 and Appendix 2, in line with the legal requirements in the Belgian Electricity Act. Ofgem and CREG have ensured that both regulators received the same appendix.

The main changes introduced in the Nemo Link Access Rules in case of GB decoupling compared to the current allocation mechanisms in each timeframe are described in the following paragraphs.

Long Term Allocation Process

In the Nemo Link Access Rules in case of GB decoupling, Nemo Link TSOs did not include any provisions for the forward timeframe. Nemo Link TSOs explained that they intend to propose further amendment to the Nemo Link Access Rules to include provisions related to the long term timeframe after the GB decoupling takes place

Day-ahead allocation process

Upon entry into force, the Nemo Link Access Rules in case of GB decoupling will require the explicit allocation of day-ahead capacity on the JAO eCat platform.

More specifically, Appendix 1 and Appendix 2 detail the procedural elements of the explicit allocation process. This process requires one day-ahead auction (the explicit daily auction) taking place between 09:40-10:10 on day D-1 (or at any other time specified by the allocation platform in the relevant auction specification or after publication of the auction specification). The final results of the explicit daily auction will be published as soon as reasonably practicable after the end of the bidding period. The allocation platform will notify each unit holder of its daily interconnector capacity rights in each direction for contract day D at 12:00 on the day D-1 (or at any other time specified in advance). Unit holders can submit daily mid-Channel nominations ("MCN") of daily units for the contract day D, from opening of the gate for daily MCNs at 12:05 on the day D-1 until daily MCNs gate-closure at 14:00 on day D-1 (or at any other time specified in advance by the allocation platform).

Intraday Allocation Process

Nemo Link does not intend to allocate capacity in the intraday timeframe immediately following GB decoupling. Nemo Link TSOs explained that they intend to propose further amendment to the Nemo Link

Access Rules to include provisions for an explicit allocation mechanism for the intraday timeframe after the GB decoupling takes place either as an enduring or temporary measure.

2.3 Feedback of public consultation

Nemo Link TSOs have submitted the draft Nemo Link Access Rules in case of GB decoupling to public consultation via their dedicated websites between 14 November 2018 and 14 December 2018. A consultation report was included to the formal submission of the Nemo Link Access Rules that summarises stakeholders' responses and details Nemo Link TSOs position on the points raised.

Nemo Link TSOs have received seven responses: three from trade organizations, three from market participants and one from JAO S.A. The responses from the stakeholders can be summarized as follows:

- Concerns about the lack of an intraday capacity allocation mechanism. Nemo Link TSOs consider that, in the framework of the implementation of the CACM Regulation and the SIDC target model, the intraday capacity should by default be allocated through the XBID mechanism. However, in the framework of the Nemo Link Access Rules in case of GB decoupling, Nemo Link TSOs will initiate the development of an explicit intraday access mechanism on a bilateral basis.
- Inconsistent timing of the long-term nominations and the submissions of bids for day-ahead nominations. Nemo Link TSOs have amended the proposal to open the gates for day-ahead bid submissions, following this remark, on 9:40 D-1.
- Lack of a long-term capacity allocation mechanism. Following the approval of Nemo Link Access Rules in case of GB decoupling, Nemo Link TSOs commit to develop and submit new provisions for the long term time frame
- Lack of clarity on the entry into force of the Nemo Link Access Rules in case of GB decoupling. Ofgem and CREG clarify the point of entry into force through this Joint Opinion and the subsequent national decisions.
- Clarification on the firmness regime. Nemo Link TSOs clarified that day-ahead capacity is always considered firm and non-curtable, and long-term-curtablements will be clarified in the relevant allocation rules.
- Requested removal of GB Banks from the list of financial institutions which can provide collateral in Article 19(g) of the Nemo Link Access Rules in case of GB decoupling. The Access Rules have been amended in this regard.

Ofgem and CREG have carefully reviewed the consultation report. The clarifications and modifications implemented by Nemo Link TSOs are considered to be appropriate for the purpose of the Nemo Link Access Rules in case of GB decoupling.

2.4 NRAs' analysis of the proposed Nemo Link Access Rules in case of GB decoupling

CREG and Ofgem have thoroughly analysed and evaluated the proposed Nemo Link Access Rules in case of GB decoupling, including responses to public consultation. CREG and Ofgem consider that the Nemo Link Day-Ahead Allocation Rules would implement the minimum necessary changes that ensure that day-ahead trading can continue across the Nemo Link interconnector in the event of GB decoupling. If the Nemo Link Access Rules in case of GB decoupling are implemented, explicit allocation shall apply at the day-ahead stage, replacing implicit allocation. CREG and Ofgem thus deem that the proposed Nemo Link Access Rules in case of GB decoupling minimise disruption to markets and market participants as far as possible.

Highlighting their joint concern for the lack of intraday and long-term products, CREG and Ofgem received confirmation from Elia and Nemo Link that they would amend further the Nemo Link Access Rules to include provisions for the long-term and intraday timeframes promptly after entry into force of the Nemo Link Access Rules in case of GB decoupling. Furthermore, CREG and Ofgem consider that the firmness provisions in case of capacity curtailment should not be more favourable than the sell-it regime. However, CREG and Ofgem are of the opinion that in case a reference price would be available for GB, NEMO Link TSOs should, at the earliest possible opportunity, evaluate the possibility of amending the Access Rules with the view of ensuring price spread-based compensation for the PTR sell-it regime and firmness provisions in case of capacity curtailment.

3. CHAPTER 3: NRAS' DECISION ON NEMO LINK ACCESS RULES IN THE EVENT OF GB DECOUPLING

3.1 NRAs approve the Nemo Link Access Rules

Based on their common analysis and evaluation of the Nemo Link Access Rules in case of GB decoupling, including responses to public consultation, CREG and Ofgem agree that they can be approved. This agreement is intended to constitute the basis on which CREG and Ofgem will each subsequently make national decisions.

Following national decisions by CREG and Ofgem, Nemo Link TSOs will be required to publish the Nemo Link Access Rules in case of GB decoupling on their respective websites and to ensure their entry into force according to the planning decided by the NRAs in Chapter 3.2 of this Joint Opinion.

3.2 Effectiveness date

The Nemo Link Access Rules submitted by Nemo Link TSOs to CREG and Ofgem, to both on 19 February 2019, shall apply in the event that GB no longer participates in the SDAC as a result of the UK leaving the EU without a withdrawal agreement. In that case, these Nemo Link Access Rules shall apply from the day following the UK's withdrawing from the EU.

Since the UK notified its intention to leave the EU on 29 March 2017, pursuant to Article 50 of the Treaty on European Union, the UK is scheduled to leave the EU on 29 March 2019 (24:00 CET), unless that period is extended by the European Council in agreement with the UK. As such, unless the period is extended or a withdrawal agreement enters into force, the first day-ahead explicit auction would take place on 30 March 2019 for delivery on 31 March 2019.

3.3 Further considerations

CREG and Ofgem express their common support that, in the event of GB decoupling, Nemo Link TSOs should launch a public consultation as soon as possible to add provisions to allocate capacity in the intraday and long-term timeframes.

CREG and Ofgem request the Nemo Link TSOs to coordinate and agree with all involved parties (NEMOs, MRC, etc.) to ensure a smooth and efficient switch from implicit to explicit day-ahead market coupling. The Nemo Link TSOs are encouraged to implement the switch in the least disruptive way possible on 29 March 2019 (24:00 CET) and consider longer-term solutions afterwards.

CREG and Ofgem ask Nemo Link TSOs to continue to review their Access Rules. Any modifications required to improve the Access Rules should be submitted to the relevant NRAs.