

Joint Opinion of the Commission de Régulation de l'Électricité 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 Regulatory Authorities (“RAs”) 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 deal (thereafter “GB decoupling”). The concerned RA in Belgium is the Commission de Régulation de l'Électricité et du Gaz (“CREG”) and the concerned RA 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 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 (“the Nemo Link TSOs”) operate the Nemo Link interconnector.

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 interconnectors should be expected in the event that the UK leaves the EU without a deal. CREG and Ofgem emphasise the need for the continued operation of interconnectors to allow for trades in all timeframes between Belgium and Great Britain, regardless of the Brexit outcome.

On 14 March 2019¹ and 15 March 2019² respectively, CREG and Ofgem approved Access Rules which would apply to Nemo Link in the case of GB decoupling (“Access Rules in case of GB decoupling”). These Access Rules covered the day-ahead timeframe. For the avoidance of doubt, these are the rules which will come into force for Nemo Link in the event the UK leaves the EU on the 31 October without a deal. The NEMO Link TSOs

¹ CREG’s decision to approve the Access Rules in case of GB decoupling is available here: <https://www.creg.be/sites/default/files/assets/Publications/Decisions/B1911FR.pdf>

² Ofgem’s decision to approve the Access Rules in case of GB decoupling is available here: <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-nemo-link-interconnector-apply-event-uk-leaves-eu-without-deal>

have proposed modifications to the Access Rules in case of GB decoupling to include provisions for the long-term and intraday timeframes (“modified Access Rules in case of GB decoupling”).

The present document forms the basis for the RAs’ national approval processes on the modified Access Rules in case of GB decoupling. It is divided into three chapters:

1. General context
2. The modified Access Rules in case of GB decoupling
3. RAs’ decision on the modified Access Rules in case of GB decoupling.

1. GENERAL CONTEXT

1.1 Potential impacts of Brexit on Nemo Link's Access Rules

On 29 March 2017, the UK notified its intention to leave the EU, pursuant to Article 50 of the Treaty on European Union. The UK is currently scheduled to leave the EU on 31 October 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 2018³. The Act will serve to convert EU law that the UK is subject to at the point of Exit, into UK law.

As a contingency measure, Nemo Link TSOs submitted Access Rules in case of GB decoupling in February 2019. These Access Rules were approved by CREG and Ofgem respectively. NEMO Link TSOs have proposed modifications to these Access Rules. This Joint Opinion therefore elaborates the RAs' position on the modified Access Rules in case of GB decoupling

1.2 Legislation in the event of GB decoupling

In the event that the UK leaves the EU without a deal, 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 2018⁴, in the event the UK leaves the EU without a deal, these regulations will be revoked by the application of subsequent regulations⁵.

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.

To take into account that the CACM guideline and the FCA guideline would cease to apply to the infrastructure connecting Belgium to GB, CREG and Ofgem have previously adopted the Access Rules in case of GB decoupling, thus constituting the new regulatory framework applicable to the allocation of capacity between Belgium and GB. These Access Rules were developed according to well-known processes already

³ See the EU Withdrawal Act available here: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>.

⁴ The European Union (Withdrawal) Act 2018 was granted Royal Assent on 26 June 2018 and will serve to convert EU law that the UK is subject to at the point of Exit, into UK law. See: <http://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>.

⁵ See the Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 here: <http://www.legislation.gov.uk/uksi/2019/532/contents/made>.

identified in the CACM and FCA guidelines, mostly as fallback for the existing arrangements under SDAC and were adopted on the basis of national legislation.

The modified Access Rules in case of GB decoupling will also be adopted on the basis of national legislation, namely Article 23 of the Electricity Act⁶ for Belgium and the Standard Licence Condition 11A of the GB electricity interconnector licence for GB⁷.

1.3 Access Rules consultation

In accordance with the applicable legal and regulatory framework, the Nemo Link TSOs organised two public consultations on the modified Access Rules in case of GB decoupling. The first one⁸ focused on the provisions for the long-term timeframes and took place between 9 May 2019 and 14 June 2019. The second consultation covered the provisions for the intraday timeframe⁹ and was held between 2 July 2019 and 5 August 2019. After these consultations, the Nemo Link TSOs submitted the modified Access Rules in case of GB decoupling to the RAs on 14 August 2019.

⁶ Electricity Act of 29 April 1999 on the organisation of the electricity market.

⁷ Standard Licence Condition 11A of the GB Electricity Interconnector Licence is available at:

https://epr.ofgem.gov.uk/Content/Documents/Electricity_Interconnector_Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf.

⁸ The consultation for the long-term timeframes is available here: <https://www.nemolink.co.uk/consultation-notice/consultation-on-non-iem-long-term-allocation-and-nomination-rules/>

⁹ The consultation for the intraday timeframe is available here: <https://www.nemolink.co.uk/consultation-notice/nemo-link-launches-intraday-product-consultation/>

2. THE MODIFIED ACCESS RULES IN CASE OF GB DECOUPLING

2.1 Aim of the modified Access Rules in case of GB decoupling

The aim of the modified Access Rules in case of GB decoupling are to:

- a) Implement the long-term business rules consisting of explicit auctions for annual, quarterly and monthly timeframes
- b) Implement the intraday business rules consisting of four intraday explicit auctions and twenty four nomination gates provisions for capacity allocation for the intraday timeframes.

Inclusion of provisions for long-term timeframes

The Nemo Link TSOs propose to allocate long-term capacity via explicit auctions held on the Joint Allocation Office (“JAO”) platform in the form of Physical Transmission Rights (“PTRs”). Appendix 1 and 2 of the modified Access Rules in case of GB decoupling detail the procedural elements of these auctions.

The Nemo Link TSOs propose to offer baseload long-term PTRs across annual, quarterly and monthly timeframes. PTR holders that do not nominate their PTRs ahead of the corresponding day ahead auction are entitled to compensation. Article 48 of Appendix I specifies that this compensation will be equal to the clearing price of the day-ahead explicit auction multiplied by the non-nominated amount.

Appendix 1 specifies the compensation mechanisms that would apply in case of capacity curtailment. In particular, Articles 59, 60 and 61 provide that PTR holders are entitled to a compensation equal to:

- The clearing price of the day ahead explicit auction multiplied by the amount curtailed in case of i) curtailment to ensure operation remains within operational security limits before the firmness deadline and ii) curtailment for both force majeure or emergency situations after the firmness deadline.
- The clearing price of the auction at which the rights were allocated (“initial auction”) multiplied by the amount curtailed in case of curtailment for force majeure before the firmness deadline.

The Nemo Link TSOs have published the timings of the long-term auction calendar¹⁰ for 2019 on their website. They will also publish additional information for each long-term auction within deadlines specified in Article 29 of Appendix 1.

Inclusion of provisions for intraday timeframe

The Nemo Link TSOs propose to allocate intraday capacity in the form of PTRs via explicit auctions using the JAO platform. More specifically, Appendix 4 and 5 describe the procedural elements of these auctions.

There are four intraday auctions, whose timings are described in Article 26 of the Appendix 4. Each auction covers specific delivery timings, as outlined in the following table.

Time of auction (CET/CEST)	For delivery period on Day D
Intraday Auction 1: 21:45-22:10 (D-1)	00:00-06:00
Intraday Auction 2: 03:30-03:55 (D)	06:00-12:00
Intraday Auction 3: 09:30-09:55 (D)	12:00-18:00
Intraday Auction 4: 15:30-15:55 (D)	18:00-24:00

The NEMO Link TSOs propose to have twenty-four nomination gates, one for each hour of the delivery day. PTR holders will be able to nominate their intraday capacity during the nomination gate period, which takes place between one hundred minutes and seventy-five minutes before the delivery. The intraday explicit auctions use the Use-It-Or-Lose-It (“UIOLI”) principle for nomination. The UIOLI means an automatic application by which the underlying daily explicit capacity of the non-nominated PTRs irrevocably fall back to the Nemo Link TSOs and whereby PTR holders that do not nominate have no right to receive a pay-out.

Article 41 of Appendix 4 provides that, in case of curtailment due to force majeure or emergency situation, PTR holders are entitled to compensation equal to the marginal price of the initial auction multiplied by the curtailed volume.

¹⁰ The Nemo Link 2019 Auction Calendar is available here: <https://www.nemolink.co.uk/wp-content/uploads/2019/10/Auctions-Calendar-Update-091019-2.pdf>.

2.2 Feedback of public consultation

The Nemo Link TSOs consulted on the provisions of the modified Access Rules in case of GB decoupling. Consultation reports were included in the formal submission that summarise stakeholders' responses and detail Nemo Link TSOs' positions on the points raised.

Long term consultation

The Nemo Link TSOs received feedback from two trade organisations and one market participant. The responses from the stakeholders are summarised below:

- *As regard the products offered*, the respondents welcomed the opportunity to have a quarterly product in addition to the mandatory annual and monthly products.
- *As regard financial firmness*, one respondent noted major concerns with suggestion that Nemo Link would offer the "Initial Price Paid" as compensation for curtailed rights in an emergency situation, as the respondent considered it would damage the quality of forward hedging. The Nemo Link TSOs clarified that, in the first instance, the compensation would be the clearing price of the explicit Day Ahead auction, as foreseen by the modified Access Rules in case of GB decoupling. It would be only if the day ahead auction were not held that the compensation would be the initial price paid.

The Nemo Link TSOs did not make any changes to the provisions for the long-term timeframes as a result of the consultation responses received.

Intraday consultation

The Nemo Link TSOs received feedback from trade organizations, market participants, onshore TSOs, and JAO. The responses from the stakeholders are summarized below:

- *With regard to intraday auctions 1 and 2 that are proposed to be outside of office hours*, respondents noted that as the auctions are automated and that normal operation should not be disrupted. However respondents did note that it would mean that JAO would not be able to provide customer support at the time the auctions take place. The Nemo Link TSOs have identified three cases where overnight auction support could be required: password resets for market participants, intraday auction cancellation and the auction platform not working. For the password resets, Nemo Link TSOs believe market participants could wait until the supported hours to reset passwords. Nemo Link TSOs will also host a training event prior to the intraday auctions to enable market participants to ensure they have the appropriate credentials. In case of intraday auction cancellation, Nemo Link will submit a file to JAO indicating OMW capacity is available, therefore preventing market participants to buy

capacity. If the JAO platform is not working ahead of the intraday auction, this would automatically default to no capacity being available for that particular auction.

- *With regard to the timings and number of auctions*, one respondent welcomed the opportunity to have four intraday auctions. One respondent highlighted the potential overlap with the intraday auctions of other GB - Channel interconnectors. The Nemo Link TSOs clarified that at the time of the consultation, the timings of the other interconnector intraday auctions were unclear. Nonetheless, they remain open to review the timings in the future.
- *With regard to the intraday auctions and nomination gates*, National Grid Electricity System Operator (“NGESO”) highlighted that it could need to increase the reserve volume because of the hourly nomination gates. NGESO also stated that this change would require enhanced operational tools to be dealt with accordingly. The Nemo Link TSOs answered that they note the comments from NGESO, but they do not believe that any change in the proposal is required as a result.

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

2.3 RAs’ analysis of the modified Access Rules in case of GB decoupling

The RAs have thoroughly analysed and evaluated the modified Access Rules in case of GB decoupling, including responses to public consultations.

With regard to intraday auctions that are proposed to be outside of office hours, RAs encourage the Nemo Link TSOs to state on their website that the intraday auctions 1 and 2 will be outside of JAO’s office hours for additional transparency. This will enable market participants to make informed decisions on whether to participate or not in the relevant intraday auctions.

The RAs also take note of NGESO’s response in relation to the number of intraday auctions and nomination gates. We encourage ongoing coordination between the relevant stakeholders, to ensure that the transmission systems in both GB and Belgium are operated effectively and efficiently. NGESO has confirmed that the appropriate system changes will be in place to facilitate the go-live of Nemo Link’s intraday auctions, and we note NGESO’s obligation to co-ordinate and direct the flow of electricity in an efficient and economic manner.

The RAs also welcome that the Nemo Link TSOs have included provisions to allocate long term and intraday capacity, as requested in the CREG-Ofgem position paper for the Nemo Link Access Rules in case of GB decoupling¹¹.

Lastly, CREG and Ofgem encourage Nemo Link TSOs to keep the compensation arrangements under review, to ensure they provide sufficient hedging opportunities and remain fit for purpose.

¹¹ The Ofgem-CREG position paper is available here: <https://www.ofgem.gov.uk/publications-and-updates/approval-modified-access-rules-nemo-link-interconnector-apply-event-uk-leaves-eu-without-deal>

3. RAS' DECISION ON THE MODIFIED ACCESS RULES IN CASE OF GB DECOUPLING

3.1 RAs approve the modified Access Rules in case of GB decoupling

Based on their common analysis and evaluation of the modified Access Rules in case of GB decoupling, including responses to public consultations, 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, the Nemo Link TSOs will be required to publish the modified Access Rules in case of GB decoupling on their websites and to ensure their entry into force according to the implementation timeline set out in Chapter 3.2 of this Joint Opinion.

3.2 Effectiveness date

The modified Access Rules in case of GB decoupling submitted by the Nemo Link TSOs to CREG and Ofgem for approval on 14 August 2019 shall apply in the event that GB no longer participates in the single day-ahead market coupling as a result of the UK leaving the EU without a deal. The modified Access Rules in case of GB decoupling shall come into force on 14 November 2019.

For the avoidance of doubt, the Access Rules in case of GB decoupling approved by CREG on 14 March 2019 and Ofgem on 15 March 2019 shall apply in the event the UK leaves the EU without a deal on 31 October until the modified Access Rules in case of GB decoupling come into effect on 14 November 2019.

3.3 Further considerations

CREG and Ofgem inform stakeholders that in the event that the UK leaves the EU without a deal, they expect to work with Nemo Link TSOs to refine these arrangements.

CREG and Ofgem ask the Nemo Link TSOs to continue to review their Access Rules to ensure they remain fit for purpose. Any modifications required to improve the Access Rules should be submitted to the relevant RAs.