

**DECC-Ofgem stakeholder prioritisation session:  
Proposal for a Regulation establishing a Guideline on Capacity Allocation and Congestion Management  
(CACM)**

**20 August 2014**

## **Introduction**

Following the meeting of the 28<sup>th</sup> JESG, DECC and Ofgem held a stakeholder prioritisation session on CACM. The aim was to identify the key stakeholder issues to inform the Government's position on the Commission's formal proposal.

DECC provided a brief update of the draft Regulation. The last version was the 14 January 2014 informal service-level draft. This was discussed at a number of Electricity Cross-Border Committee meetings. The Commission has now issued a formal proposal for a Regulation. The main changes are structural, the Regulation is now a Guideline instead of Network Code, and the removal of operational, NEMO and stakeholder committees. The next European Cross-Border Committee meeting is on 10 September. The indicative start of formal comitology is 24 September.

Each attendee was asked to provide their 3 key issues with the formal proposal, building on the written responses requested in advance of the session. Only 4 written responses were received. An anonymous list of these issues is provided in the Annex. A priority list of 5 key issues was then established and discussed in more detail. The first priority issue, Governance, included a number of sub issues.

The session was well attended and generated a lot of constructive ideas. A summary of the detailed discussion, written on the screen during the session indicating in order of priority, is set out below:

## **1. Governance**

Governance is a broad theme that captures a number of points that are all collectively vital to the Regulation's smooth implementation and operation.

### **a. Amendments to methodologies and to the Regulation itself**

- Amending terms and conditions and methodologies. Text provides an advantage to commercial interest of TSOs. Need all stakeholders to be able to raise amendment proposals, not just NEMOs and TSOs. Would however need a form of triage to manage proposals for amendments. One option, allowing only NRAs to raise amendments, would at least allow all stakeholders, including TSOs and NEMOs, the same opportunity to initiate proposals via NRAs.
- Amending the Regulation. The process to amend Network Codes should be included for Guidelines. It was noted that Article 7 allows the Commission to allocate the MCO function to another entity. Not clear why the Regulation includes a specific provision for the Commission to be able to make a change but does not provide a clear process for this, which creates regulatory risk. It was also noted however that the Commission has the right to initiate amendments in any case, making this specific provision unnecessary.

- All proposals (TSOs, NEMOs), and all decisions (NRAs, ACER, Commission) on amendments, and in terms of the overall design of the European Internal Electricity Market, should be linked to the objectives of European Regulation.

#### **b. Decision-making**

- The code explicitly states some decisions by TSOs and NEMOs, which may place obligations on other commercial entities, will not require an NRA approval. Stakeholders stressed that everything should be consulted on and everything should be subject to NRA approval. As such it would be better to replace the list of approvals in Article 9 with a simple statement that all decisions require a consultation and approval by the competent authority.
- However, some stakeholders stressed commercial sensitivities of some requirements and decisions need to be taken into account. For example, why should there be any consultation on the congestion income distribution methodology? On the other hand, other stakeholders felt there was no reason why all methodologies should not be open and transparent. It was noted where there is no consultation there should be NRA approval which mitigates lack of earlier stakeholder consultation.
- DECC ask stakeholders to provide specific written examples of any gaps on consultation or NRA approvals.

#### **c. TSO roles and responsibilities**

- All TSOs need to know their roles and responsibilities.
- DECC said that comments are welcome on Article 1 for allocating responsibilities to TSOs within Member States.

#### **d. NEMOs**

- NRA approval of NEMO designation incorrectly included in the list in Article 9.
- NEMO designation criteria requires NRAs to be independent from TSOs – not clear what this means and whether it will be possible given many NEMOs will likely be part owned by TSOs. Article 6.2e and g inconsistently refer to market participants and TSOs. Not clear what the criteria on market surveillance means.
- NEMO issues to be picked up in more detail with the PXs.

#### **e. Cost sharing**

- Clarity needed on process, roles and responsibilities.

### **2. Bidding Zone Reviews**

- Clarity needed on who is responsible for what, the timings for the assessment and review, and the legal basis for processes and decisions. In particular, clarity is needed on stakeholder engagement in the processes and decision-making.

### 3. Clarity of Drafting: definitions, inconsistencies, errors

- Request stakeholders to provide specific examples of drafting issues. DECC can then provide specific issues in writing to the Commission. DECC will think about how best for stakeholders to provide these examples.
- Specific example discussed: if FM is to be included in the Regulation it must be applied to everyone consistently, not just TSOs.

### 4. Subsidiary and proportionality

- These are central principles for all EU Regulation. The Third Package requires minimum harmonisation necessary to complete the IEM. Legal text not proportionate because: the Regulation is now 2 years out of date and implementation has already happened; there is no need to legislate on specific timings of the operation of market coupling; Regulation currently allows ACER and Commission to extend market coupling to third party states, but cross-border arrangements with third parties should be for Member State to determine; and the Regulation includes arbitrary requirements for harmonisation, for example deadline of 2018 for harmonising capacity calculation.

### 5. Firmness

- The Regulation needs to recognise risks that merchant IC can and cannot control.
- Not sure why 'Guarantee' has been added to firmness and what this means.

These priority issues are added to a table setting out previous priorities identified at the 5 November 2012 and 17 December 2013 prioritisation sessions below:

5 November 2012	17 December 2013	20 August 2014
1) Bidding Zones (Frequency of review and role of Member States)	1) Governance / stakeholder engagement	1) Governance (amendments, decision-making, TSOs and NEMOs, cost-sharing)
2) Governance / stakeholder engagement (consultation, amendments, data provision)	2) Bidding Zones (Frequency of review and role of Member States)	2) Bidding Zones (process, timings, frequency of review, and role of Member States)
3) Technical constraints on ICs (ID gate closure time, allocation constraints, re-dispatch)	3) TSO responsibilities (SO, SCOTO, IC, OFTO)	3) Clarity of Drafting: definitions, inconsistencies, errors (e.g. force majeure, firmness, 714/2009)
4) TSO responsibilities (SO, SCOTO, IC, OFTO)	4) Consistency of definitions (force majeure, firmness, 714/2009)	4) Subsidiary and Proportionality (harmonisation, amendments)
5) Consistency of definitions (force majeure, firmness, 714/2009)		5) Firmness

## **CACM Implementation**

Following the stakeholder prioritisation session on CACM, DECC distributed a note setting out briefly how DECC, advised by Ofgem and working with the industry, will implement the proposed CACM Regulation. The note is set out in Annex 2.

The approach set out in this note should be understood as indicative and provisional based on the latest version of the CACM sent to Member States. DECC invited stakeholders to provide comments on the proposal to [Jonathan.robinson@decc.gsi.gov.uk](mailto:Jonathan.robinson@decc.gsi.gov.uk) Jon would also be happy to discuss the proposals.

## ANNEX 1: anonymous individual attendee comments at CACM prioritisation session

- **Governance (Decision-making)** 2/3 majority for decision-making is not good.
- **Governance (Decision-making)** processes don't work and creates regulatory risk and uncertainty.
- **Governance (Delegation of functions)** risk that CACM wording on delegation of roles to third parties sets a precedent for other codes which may not work for current GB structures, for example the Elexon and National Grid Electricity Transmission relationship. CACM should instead allow Member States and NRAs to assign all or part of any function assigned to a TSO or a NEMO to one or more third parties.
- **Governance (TSOs)** need clarity on roles and responsibilities for all TSOs. Happy with article 1(3) but need to see if the actual process for establishing the responsibilities works. Scottish Independence would complicate this and might see the certain of a new NETSO for Scotland.
- **Governance (TSOs)** Article 3.1 requires non-discriminatory treatment of TSOs, but current text does discriminate against merchant ICs because of separation between SO and ICs on information flows, grid model, and capacity calculation, and IC risks on firmness that are not in their control.
- **Governance (TSOs)** Article 3.1 requires non-discriminatory treatment of TSOs, but current text does discriminate against merchant ICs because of separation between SO and ICs on information flows, grid model, and capacity calculation, and IC risks on firmness that are not in their control.
- **Governance (NEMOs)** Article 6 designation criteria: how do you determine cost-efficient? What does 'subject to market surveillance' mean, by who/how? Article 7 refers to restricting cooperation of NEMOs to delivering the MCO, but text elsewhere requires NEMO coordination.
- **Governance (Cost sharing)** Articles 73-77 – a lot of unknowns. Need clarity.
- **Governance (monitoring and reporting)** not clear where the overall design authority for all the network codes sits to ensure codes are working together and delivering optimal benefits. No individual party with a commercial interest, like ENTSO-e, should be involved in this unless all commercial parties are involved.
- **BZR** should be an annual review because this allows frequent transparent assessment and is less likely to result in a sudden unexpected change.
- **BZR** frequency of reviews – should be less frequent to provide greater stability.
- **BZR** frequency of reviews – should be less frequent to provide greater stability.
- **BZR** need certainty on potential reviews and changes. The periodic assessments should be less frequent to provide greater certainty.
- **BZR** want clarity on review of bidding zones
- **BZR** remove reference to 'negligible impact' for undertaking a review in a specific bidding zone/Member State. Don't see there being a change in zones that doesn't impact others.

- **BZR** Article 31.1.e (launching reviews), can MS launch a review of any bidding zone in Europe? Article 31.4.d, appears to suggest a TSO conducting a review of a bidding zone in its responsibility area it does not need to consult.
- **BZR** need as much clarity as possible on bidding zone reviews
- **Clarity of Drafting: definitions, inconsistencies, errors** definition of remedial actions, not clear what technical actions constitute a remedial action, for example does the operation of phase transformers count?
- **Clarity of Drafting: definitions, inconsistencies, errors** large number of typos potentially change substantive meaning of the Regulation.
- **Clarity of Drafting: definitions, inconsistencies, errors** large number of typos potentially change substantive meaning of the Regulation.
- **Clarity of Drafting: definitions, inconsistencies, errors** not clear what are defined terms, and some definitions are missing or changed. For example the definition of firmness has changed and now includes the word 'guarantee'. What does this mean? It appears to be slightly dubious. Also, lack of clarity on Force Majeure Article 69, for example situation where interconnector has unplanned outage that may not be, force majeure or an emergency situation, or to preserve system security. The publication of cross-zonal capacity and of allocation constraints to the market in Article 44 is also stated at being at the latest 11:00 market time D-1 when North-West Europe Market Coupling uses 11:25. Why is the time different?
- **Clarity of Drafting: definitions, inconsistencies, errors** not clear where the text refers to defined terms. For example definition of trade used inconsistently through the text, which undermines the application and enforcement of the Regulations.
- **Clarity of Drafting: definitions, inconsistencies, errors** Article 32, typo.
- **Subsidiary and proportionality**, harmonisation of requirements, such as 2018 deadline to harmonise capacity calculation is not justification, not helpful, and potentially not possible.
- **Subsidiary and Proportionality** - Unnecessary requirements for harmonisation.
- **Subsidiary and Proportionality** - Unnecessary requirements for harmonisation.
- **Article 19** Current wording of the Flow-Based capacity calculation methodology is open enough to allow BritNed and NGIC to propose a suitable methodology with the relevant TSOs, rather than an entire region – should retain.
- **Article 30.5** – publication of capacity methodology - why is all or part of the report on capacity calculation a secret?

## **Implementation of the proposed Commission Regulation Establishing a Guideline on Capacity Allocation and Congestion Management (CACM)**

August 2014

### *Introduction*

1. The aim of this paper is to set out briefly how DECC, advised by Ofgem and working with the industry, will implement the proposed Commission Regulation establishing a Guideline on Capacity Allocation and Congestion Management (CACM) in GB. In particular, we would like to help you (as someone with an interest in the application of cross-border electricity trading in GB) understand when and how decisions are likely to be made, who they will be made by and when you are likely to be able to feed in your views to those decisions. Member States have yet to agree the CACM text. The approach we are setting out here should therefore be understood as indicative and provisional based on the latest version of the CACM sent to Member States (circulated to stakeholders on 7<sup>th</sup> August).
2. This note is therefore the start of an on-going conversation about implementation, which will provide a range of opportunities to engage in the detail. This will include formal consultations by DECC, Ofgem and other organisations as appropriate for the different implementation steps. As the CACM text is not yet agreed, the processes we set out here are provisional and indicative and not all the details have been determined yet. We will provide updates through JESG and other fora as the implementation plans develop. We welcome your views on the broad direction set out here or on any particular aspect of implementation.

### *Guideline on Capacity Allocation and Congestion Management*

3. CACM creates rules for operating pan-European day ahead and intraday electricity markets, explains how cross-zonal capacity is calculated and congestion is managed, and sets out the process to review the configuration of bidding zones.

### *Implementing European Regulations*

4. Network codes and guidelines will be made by Commission Regulation and therefore will be directly applicable, taking precedent over existing GB regulatory regimes. To make Regulations work fully, however, domestic legal and/or administrative action may be required, in particular to enable enforcement of the Regulation. We will also have to remove any inconsistencies in the GB framework.
5. Implementing European Regulations in full and on time is important. The UK Government will face the risk of infraction proceedings from the Commission if it does not implement European law in a timely and compliant manner.
6. Ofgem is the National Regulatory Authority (NRA) for GB and the Utility Regulator is responsible NRA for Northern Ireland.

## *Timing*

7. The implementation timescales in CACM are generally set with reference to the date it enters into force (i.e. x must be done within y months after it enters into force).
8. In order to meet the tight implementation timescales some work needs to start after the text has been agreed but before CACM enters into force. The exact timings for having an agreed text and for the Regulation coming into force are not known at present.
9. The diagram circulated with the CACM text illustrates the sequential nature of CACM implementation, the “propose then approve process” and the tight timeframes involved. In addition to setting out the CACM requirements for implementation, we explain in the annexes the processes that we are proposing to use to address the particular issues arising from the first implementation tasks. Those are:
  - assigning TSO responsibilities (Annex A)
  - designating NEMOs<sup>1</sup> (Annex B)
10. It is likely that many of the timings discussed below will change if CACM milestones change. It is also possible that the timing for particular implementation tasks will change if the text of CACM changes.

## *CACM's implementation requirements*

11. CACM sets out the roles for responsible parties and the process to develop and approve terms, conditions and methodologies. The implementation of CACM relies on the development and approval of detailed methodologies as can be seen in the diagram circulated.
12. Specifically, CACM requires:
  - responsible parties to work together at national (Member State), regional (capacity calculation region) and pan-European levels;
  - responsible parties (TSOs and NEMOs) to cooperate to develop and submit terms, conditions and methodologies to NRAs for approval (Article 9);
  - TSOs and NEMOs to consult stakeholders for at least a month when developing proposals for terms, conditions and methodologies (Article 10);
  - Ofgem together with other NRAs to review and approve terms, conditions and methodologies, monitor compliance and enforce requirements; and
  - NRAs to consult stakeholders in making any regional or pan-European decision.
13. In carrying out its responsibility for approval (on its own or with other NRAs), Ofgem will, as always, take into account the views of stakeholders.

**Jon Robinson**

[Jonathan.robinson@decc.gsi.gov.uk](mailto:Jonathan.robinson@decc.gsi.gov.uk)

---

<sup>1</sup> Nominated Electricity Market Operators



Assigning TSO responsibilities

1. GB currently has 16 electricity TSOs certified under the Third Package. Several new interconnectors and OFTOs are also at different stages of development. The default position in CACM is that each TSO complies with every TSO responsibility. However, CACM enables Member States to provide that the responsibility for compliance for a CACM requirement is assigned to one or more TSO where not all TSOs have a relevant function (Article 1(3)). DECC, assisted by Ofgem needs to assess and decide on which tasks each TSO should perform. Other Regulations may have similar, though not necessarily identical, provisions so we may need to develop an approach for assigning responsibilities for each Regulation.
2. DECC, assisted by Ofgem, is already working with TSOs to understand the implications of the CACM requirements. To assign TSO responsibilities for CACM we intend to follow the five-step process below. This will take about five months to complete.

- Step 1** DECC, assisted by Ofgem, forms an initial high level view, in a spreadsheet, of which GB TSOs can/cannot perform each TSO task required by CACM. This step will identify: (1) the TSO task each article requires; and (2) which GB TSOs currently perform a relevant function. The aim, where possible, is for each category of TSOs (Scottish TOs, interconnectors and OFTOs) to have the same set of responsibilities.
- Step 2** DECC will ask each TSO to populate a spreadsheet that sets out every article containing a TSO task in CACM. The spreadsheet will show the default position. Each TSO will specify any task they are unable to perform, and hence comply with, as well as providing a brief explanation for their view.
- DECC, assisted by Ofgem, will compare these completed spreadsheets. Ideally, the two will correlate. Where discrepancies exist, DECC, assisted by Ofgem, will work with the TSOs to seek consensus and understand their views.
- Step 3** Using steps 1 and 2, DECC will then need to decide whether to assign specific tasks away from one or more TSOs. If it does, it will make an interim decision and consult with the wider industry.
- Step 4** Using the output from steps 1-3 (the analysis, assessment and stakeholder feedback on the interim decision), DECC will be in a position to make a final decision on assignment of tasks before CACM enters into force. DECC will publish this decision.
- Step 5** Responsibilities will be formally assigned to the TSO through the least onerous mechanism once the CACM Regulation enters into force.

3. DECC is currently considering the options for that formal assignment with Ofgem and others and will take into account any views on the process outlined here or the appropriate mechanism from stakeholders.

## Annex B [of implementation note]

### NEMO designation

#### *Background*

1. CACM requires pan-European coupling of electricity markets to complete the single European electricity market. Market coupling should optimise use of the transmission network and allow power to be produced where it is most efficient and transported to consumption where it is most valued, delivering lower prices and security of supply benefits for consumers.
2. To deliver market coupling, entities are needed to operate day ahead and intraday cross-zonal markets, and match all market orders taking into account cross-zonal capacity. These functions are currently delivered by power exchanges for NWE day ahead market coupling. To implement pan-European market coupling, the guideline establishes a new type of entity, Nominated Electricity Market Operators (NEMOs), to perform these functions.

#### *CACM Requirements*

3. Member **States must ensure that one or more NEMOs are designated**
4. Designation must be based on the designation criteria, be non-discriminatory, and allow both initial and future designations.
5. If the Member State decides to make the designation itself, the NRA (Ofgem) must give an opinion on the extent to which the applicant meets the NEMO designation criteria. At least one NEMO per bidding zone must be desingaed within two months from the Regulation entering into force.
6. **NEMOs** must develop and propose to NRAs the terms and conditions or methodologies and deliver the NEMO tasks set out in CACM.
7. **Ofgem** must approve terms and conditions or methodologies used to calculate or set out day ahead and intraday coupling developed by NEMOs, and monitor compliance of NEMOs designated in their territory.

#### *What this means for implementation of CACM*

8. In addition to the initial designation, we will consider whether we are likely to need to create an appropriate regulatory framework for monitoring and, if necessary, enforcement action around NEMO functions including a more formal mechanism for future designation and de-designation. This wider regulatory framework is not as urgent as the initial designation that forms part of the CACM implementation critical path.
9. Designation of NEMOs is urgent because of their central role in CACM implementation. For the purposes of planning, we are currently assuming the Regulation will enter into force at start of 2015.

#### *Approach to designation and regulation*

10. Designation (lasts for 4 years):

- It is necessary to undertake some of the work before CACM comes into force because of the expectation that NEMOs are designated soon after;
- We have been engaging with the two power exchanges in GB which are currently carrying out those market coupling functions allocated to NEMOs in CACM;
- Once the CACM text has been agreed, DECC will invite power exchanges to submit evidence to DECC that demonstrates they meet the criteria set out in the Regulation. This invitation will include guidance on the evidence required to make this assessment;
- DECC will pass this information onto Ofgem for their consideration and to enable them to provide the required opinion as to whether any applicant meets the NEMO designation criteria;
- Ofgem will use this evidence to form and consult on a draft opinion. Ofgem will consider responses and publish its final opinion on designation;
- DECC will then develop advice for Ministers taking into account the views of all parties;
- We expect Ministers to make the initial designation within two months of CACM entering into force date drawing on the Ofgem opinion.

11. Running in parallel, but over a longer timeframe, DECC and Ofgem will consider whether DECC needs to develop proposals for the wider regulatory framework, including whether future designation and de-designation is delegated to Ofgem. This will be based initially on discussions with stakeholders but we will consult on formal proposals.