

To all National Regulatory Authorities
within the EU, and the Agency for the
Cooperation of Energy Regulators
(ACER)

14 December 2016

Dear Sir or Madam

Subject: Submission of proposed plan for the joint performance of market coupling operator (MCO) functions in accordance with Article 7 Paragraph 3 of the CACM Regulation

The Interim NEMO Committee hereby formally submits a common proposal developed by all Nominated Electricity Market Operators (NEMOs) for a plan that sets out how NEMOs will jointly set up and perform the MCO functions (the “MCO Plan”).

The MCO Plan has been jointly developed by all NEMOs according to the general principles and objectives of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the “CACM Regulation”).

In particular, the MCO Plan meets the requirements of Article 7 Paragraph 3 of the CACM Regulation and has been adopted by all NEMOs by unanimous consent.

The MCO Plan has also been amended to incorporate the “request for amendment by all NRAs agreed at the energy regulators’ forum on the all NEMOs’ proposal for the plan on the joint performance of the MCO Functions (MCO Plan)” received on 14 October 2016 (the “NRA Request for Amendment”).

We recognise that submission of the MCO Plan in this form may not meet each NRA’s national statutory requirements. As discussed at the NEMO-NRA Coordination meeting, such submission will be the responsibility of the locally designated NEMO(s). NEMOs will also submit a redacted version of the MCO Plan locally, as some of the annexes describe commercial contracts between NEMOs and third parties which are commercially sensitive and should be treated as confidential. We expect NRAs to publish only the redacted version.

NEMOs believe that we have taken on board all of the amendments requested by NRAs. Where we have not completely introduced a requested change, this is explained in Annex One. NEMOs are committed to engage in an open and transparent process with NRAs in order to reach agreement on any outstanding issues.

Following the NRA Request for Amendment, NEMOs have now removed all references to costs in the MCO Plan. We also explain the background to NEMOs’ position on the treatment of costs under the CACM Regulation in Annex Two. The treatment of costs has been the subject of

extensive discussion between NEMOs and NRAs in the process to finalise and submit the MCO Plan proposal.

NEMOs would like to emphasise the need to agree rules together with NRAs (and TSOs where relevant) on the treatment of costs under the CACM Regulation. This is now an urgent topic as detailed rules for categorising, sharing and recovering costs under CACM are required for costs associated with the development, implementation and operation of the MCO Functions.

NEMOs also consider that any national decision on cost recovery should be in line with the objectives set out in Article 3 of the CACM Regulation. In that respect we have previously explained that a minimum level of coordination between NRAs is necessary to create a level playing field for NEMOs and to ensure fair and non-discriminatory treatment of NEMOs. This is driven by the fact that there are NEMOs that operate in multiple Member States and there are Member States with multiple NEMOs. Not to do so may trigger issues of fair competition.

CACM is not entirely unambiguous with respect to the treatment of costs, and there are still a number of open questions. NEMOs want to engage with NRAs and TSOs to answer the open questions, and to establish fair and reasonable rules for the treatment of costs, in line the principles and objectives of the CACM Regulation. These issues need to be dealt with on a consistent basis across Member States to ensure fair and non-discriminatory treatment of NEMOs, and the creation of a level playing field for NEMOs.

As a suggested way forward, NEMOs propose to engage with NRAs (and TSOs where necessary) in an intensive process to develop a common understanding of (at least) the detailed principles for the categorisation, sharing and recovery of MCO costs under the CACM Regulation by the time of MCO Plan approval. We are concerned about the lack of resolution to date on the cost issues that NEMOs have raised, and we see a need for stronger alignment at the regional and European level.

Yours sincerely,

All designated NEMOs as represented below:



Annex 1 – explanation of proposed MCO Plan amendments

Chapter 3, paragraphs 8 and 9

NRAs requested NEMOs to move paragraphs 8 and 9 of section four into a supporting document. NEMOs propose to retain these two paragraphs in the main body of the MCO Plan. This is because the paragraphs, together with the rest of Chapter 3, provide a high-level description the rights that each NEMO will have under the proposed contractual framework.

We consider that the high-level description is necessary to provide clarity for each NEMO with respect to its rights under the proposed contractual framework. This clarity is important to provide confidence and assurance that in developing, implementing or adhering to the contractual framework, each NEMO will be treated in a fair and non-discriminatory manner – and that there will be a level-playing field between NEMOs in relation to the development and operation of the MCO Functions.

Furthermore, NRAs should note that the detailed explanation of the proposed governance for the DA and ID MCO Functions has been removed from the main body of the MCO Plan (as requested by NRAs) and that, as requested, the overall governance structure is now described in only one chapter.

As a result of these amendments, NEMOs consider that the proposed MCO Plan now provides an appropriate balance between clarity, flexibility and non-discrimination of the proposed governance arrangements of the MCO Functions.

Chapter 6, explanation of serviced PX role

NRAs requested NEMOs to move the explanation of the role of Serviced NEMOs in the Section 5.2.2.3 of the MCO Plan submitted by NEMOs on 14 April 2016 to a supporting document.

NEMOs have moved section 5.2.2.3 to a supporting document (which NEMOs intend to submit to NRAs, and possibly publish, at a later date). However, we have retained some important principles to explain the roles and responsibilities of serviced and servicing exchanges in section 6.1.2.2 of the amended MCO Plan.

In accordance with the CACM Regulation and the NRA Request for Amendment, these provisions ensure that NEMOs have the same rights and obligations, but allows a NEMO to choose to delegate tasks to another NEMO (in accordance with Article 81 of the CACM Regulation). The text that NEMOs propose to retain provides an explanation of the principles under which NEMOs are able to delegate tasks associated with the MCO Functions.

These principles are important to ensure that the operational integrity of the MCO Functions is maintained while not preventing a NEMOs to delegate tasks should it choose to. The high-level principles that have been retained provide for clear, flexible and non-discriminatory delegation of tasks by NEMOs associated with the MCO Functions.

Chapter 6, name of PCR Co-owners and PCR Assets

NRAs requested NEMOs to change the name of the PCR Co-owners and the PCR Assets to the MCO Co-owners and the MCO Operational Assets – to reflect common asset ownership. NEMOs have kept the reference to the PCR Co-owners, as the proposed service providers for the DA MCO Functions, and the PCR Assets, as the proposed basis for the DA MCO Functions.

NEMOs note that this terminology is consistent with the approach taken in the section of the ID MCO Function, where the XBID System Supplier is the proposed service provider for the ID MCO Functions, and the XBID System is the proposed basis for the ID MCO Functions.

Annex 2 - Background to NEMOs concerns on the treatment of costs under CACM

The MCO Plan submitted to NRAs on the 14 April 2016 NEMOs included a detailed explanation of rules that NEMOs had been able to agree for the categorisation, sharing and recovery of costs associated with the MCO Functions under the CACM Regulation.

Such detailed rules are necessary because, while the Articles 75 and 80 of the CACM Regulation provide a framework for cost determination, sharing and recovery, there are a number of open issues that need to be resolved.

Potentially the MCO Plan offered provided a clear, transparent and unambiguous basis on which to proceed. In addition, the MCO Plan – as it is proposed by all NEMOs and approved by all NRAs – would provide a clear legal basis for the agreed rules going forward.

The inclusion of costs issues was also in line with the regulatory position stated in the “*statement of principles governing cost recovery for the European cross-border intraday (XBID) project*” published on 31 March 2015 (the “**Statement of Principles**”). Amongst other things, the Statement of Principles:

- Confirmed that costs incurred or necessarily committed prior to the formal adoption of XBID as the European solution under CACM will be recovered according to the January 2014 Letter of Comfort¹;
- Set the approval of the MCO Plan by all regulatory authorities as the point at which the XBID Solution would be formally adopted under CACM;
- Confirmed that NRAs will strive to take a coordinated approach to determining whether costs incurred are reasonable, efficient and proportionate; and
- Stated that any unjustified delay in delivering XBID would lead to NRAs considering the application of cost recovery less than 100 per cent of incurred costs.

Following submission of the MCO Plan, the NRA Request for Amendment stated that NRAs consider the following topics “*outside the scope of the MCO Plan and therefore (should) be completely removed [...]*”:

- *Provisions on cost recovery, inasmuch as they have to be based on national approvals and/or agreements between NEMOs, TSOs and the competent regulatory authority (art. 76(2) and 76(3)) in combination with art. 9(8)e;*
- *Provisions on cost sharing referring to costs incurred prior to the entry into force of CACM, inasmuch as they have to be based on existing agreements between NEMOs and TSOs (art. 80(5));*
- *Provisions on cost sharing referring to costs not specifically related to the MCO Functions.*
- *All other provisions on costs as they will be treated in a separate position paper by NRAs.”*

¹ The Letter of Comfort stated that, Power Exchanges, shall be entitled to recover from national TSOs 100 per cent of the reasonable, efficiently and economically incurred costs. The costs will be recoverable according to national arrangements.

At the NEMO-NRA Coordination meeting on the 3 November, NRAs re-confirmed, that they wished NEMOs to remove all reference to costs from the MCO Plan.

At the NEMO-NRA Coordination meeting, NRAs explained that, they acknowledged that there was some merit in including some cost issues in the MCO Plan, as the MCO Plan would provide a clearer legal basis for the necessary agreement on the treatment of MCO costs under CACM. However, NRAs did not consider that they would have enough time to be able to agree a common NRA position on costs issues included in the MCO Plan – i.e. to be able to establish a common NRA position within the two months after MCO Plan re-submission provided for by CACM. Therefore, in order to facilitate NRA approval of the MCO Plan in the timescales provided, the NRAs requested NEMOs to remove all references to costs.

At the NEMO-NRA Coordination meeting NEMOs expressed a willingness to remove the cost issues from the MCO Plan. However, NEMOs expressed a strong concern, that they faced considerable uncertainty with regard to the treatment of costs under the CACM Regulation, and proposed to include the following contingencies in the MCO Plan:

1. The adoption of PCR and XBID as the DA MCO Function and the ID MCO Function would be dependent on agreement with NRAs (and TSOs where relevant) on arrangements for development cost recovery for the DA MCO Function and the ID MCO Function; in the case of the ID MCO Function this should be in line with Statement of Principles;
2. The go-live of the DA MCO Function and the ID MCO Function would be dependent on agreement with NRAs (and TSOs where relevant) on arrangements for operational cost recovery for the DA MCO Function and the ID MCO Function.

The proposed approach was intended to allow the XBID and PCR project to continue under existing arrangements for cost categorisation, cost sharing and cost recovery, until NEMOs and NRAs (and TSOs where relevant) had agreed on (and could apply) the detailed rules necessary for the treatment of MCO costs under CACM. The approach was intended to avoid any delay to the XBID and PCR project, related to potential uncertainty regarding the treatment of costs, while allowing for a smooth and managed transition to the CACM rules.

In NEMO's view, the proposal was broadly in line with the NRA Request for Amendment as the references to cost recovery, did not seek to place a restriction on NRAs mandate to decide on national arrangements for cost recovery except to the extent that NEMOs expect NRAs to continue to honour the commitments made in the Statement of Principles.

To enable NRAs to consider the proposal, NEMOs provided a preliminary draft of the proposed text on the "cost contingencies" to NRAs on Thursday the 24 November. On Monday 12 December NRAs provided feedback, reiterating the All NRA position in the NRA Request for Amendment, that cost issues should not be included in the MCO Plan. To comply with this request, NEMOs have now removed any reference to costs from the MCO Plan.

NEMOs will incur significant costs for the development, implementation and operation of the MCO Functions and currently lack clarity over the treatment of these costs under the CACM Regulation.

These issues were first highlighted by NEMOs to NRAs in the paper provided to NRAs on 11 March 2016, and subsequently elaborated with additional cost information in June.

NEMOs understand that Articles 75 to 80 of the CACM Regulation provide a framework for cost determination, sharing and recovery. However, as noted on several occasions, there are a number of important open issues that need to be resolved in order to be able to implement the CACM cost framework in practice. Until these open issues have been answered, NEMOs face considerable uncertainty over the classification, sharing and recovery of costs for Single Day Ahead Coupling (SDAC) and Single Intraday Coupling (SIDC) (including the DA and ID MCO Functions) under the CACM Regulation.

To facilitate NRA decision making in this respect NEMOs have provided NRAs with:

- A high-level estimation of the costs for single day ahead coupling and single intraday coupling, with a focus on common (European) costs;
- A NEMO Cost sharing and recovery document explaining open issues that need to be solved for NEMOs to be able to apply the CACM rules on costs in practice, and including key principles for cost recovery necessary to ensure compliance with the objectives listed in Article 3 of the CACM Regulation;
- The examples of outcome from different sharing key decision application as an annex to above mentioned document
- A joint NEMO-TSO paper setting out a common position on the categorisation and sharing of costs under the CACM Regulation.

Incurrence of costs for SDAC and SIDC in the absence of a common understanding on the classification, sharing and recovery of those costs under the CACM Regulation would expose NEMOs to considerable and unacceptable regulatory uncertainty.

Furthermore, there are already well established arrangements in place for PCR, XBID MRC, 4MMC, IBWT, CWE etc. and NEMOs understand that the rules on cost determination and sharing may have to change as a result of CACM. However, would like to note that CACM does not *require* any change to the existing arrangements for cost recovery.

This is of particular importance for the XBID Project, which is currently operating under the “*statement of principles governing cost recovery for the European cross-border intraday (XBID) project*” published on 31 March 2015 (the “**Statement of Principles**”). The XBID Project is in the final stages, and significant development costs will be incurred between February 2017 and expected go-live at September 2017. If the XBID Project is adopted as the basis for the ID MCO Function² following the approval of the MCO Function, it is of critical importance for NEMOs to understand how costs associated with the project will be categorised, shared and recovered under the CACM Regulation.

² It is important to note that the XBID Project is delivering both MCO Functions and TSO modules, including the capacity calculation module and the shipping module. In other words, the MCO Function are a subset of the modules being delivered by the XBID Project.

NEMOs anticipate that the treatment of development costs associated with the ID MCO Function will be in line with the Statement of Principles, and we regret that NRAs has so far been unable to confirm this (e.g. by providing a response to the letter of June 2016 sent by XBID parties).