

**REQUEST FOR AMENDMENT BY ALL
REGULATORY AUTHORITIES AGREED AT THE
ENERGY REGULATORS' FORUM**

ON

**ALL NEMO's PROPOSAL FOR
BACK-UP METHODOLOGY SUBMITTED IN
ACCORDANCE WITH ARTICLE 36(3) OF THE
COMMISSION REGULATION (EU) 2015/1222 OF 24
JULY 2015 ESTABLISHING A GUIDELINE ON
CAPACITY ALLOCATION AND CONGESTION
MANAGEMENT**

24 July 2017

I. Introduction and legal context

This document elaborates an agreement of All Regulatory Authorities, agreed at the Energy Regulators' Forum on 24 July 2017, on the **All NEMOs' proposal for a Back-up Methodology submitted in accordance with Article 36(3) 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 All 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 All Regulatory Authorities will each subsequently request an amendment to the proposal pursuant to Article 9(12) of Regulation 2015/1222.

The legal provisions relevant to the submission and approval of the proposal and this All Regulatory Authority agreement on the proposal, can be found in Articles 3, 7, 9, 36, 39, and 52 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 7 of Regulation 2015/1222

1. *NEMOs shall act as market operators in national or regional markets to perform in cooperation with TSOs single day-ahead and intraday coupling. Their tasks shall include receiving orders from market participants, having overall responsibility for matching and allocating orders in accordance with the single day-ahead and intraday coupling results, publishing prices and settling and clearing the contracts resulting from the trades according to relevant participant agreements and regulations.*

With regard to single day-ahead and intraday coupling, NEMOs shall in particular be responsible for the following tasks:

- a. (...)

- b. (...)
- c. (...)
- d. (...)
- e. (...)
- f. (...)
- g. (...)
- h. *establishing jointly with relevant NEMOs and TSOs back-up procedures for national or regional market operation in accordance with Article 36(3) if no results are available from the MCO functions in accordance with Article 39(2), taking account of fallback procedures provided for in Article 44;*
- i. (...)
- j. (...)
- 2. (...)
- 3. (...)
- 4. (...)
- 5. (...)
- 6. (...)

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. *The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities:*
 - (a) (...)
 - (..) (...)
 - (f) *back-up methodology in accordance with Article 36(3);*
7. (...)
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 to 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. (...)
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.*

Article 36 of Regulation 2015/1222:

1. (...)
2. (...)
3. *By 18 months after the entry into force of this Regulation, all NEMOs shall in cooperation with TSOs develop a proposal for a back-up methodology to comply with the obligations set out in articles 39 and 52 respectively*
4. (...)

Article 39 of Regulation 2015/1222:

1. *In order to produce results, the price coupling algorithm shall use:*
 - a. *allocation constraints established in accordance with Article 23(3);*
 - b. *cross-zonal capacity results validated in accordance with Article 30;*
 - c. *orders submitted in accordance with Article 40. 2.*
2. *The price coupling algorithm shall produce at least the following results simultaneously for each market time unit:*
 - a. *a single clearing price for each bidding zone and market time unit in EUR/MWh;*
 - b. *a single net position for each bidding zone and each market time unit;*
 - c. *the information which enables the execution status of orders to be determined.*
3. *All NEMOs shall ensure the accuracy and efficiency of results produced by the single price coupling algorithm.*
4. *All TSOs shall verify that the results of the price coupling algorithm are consistent with cross-zonal capacity and allocation constraints.*

Article 52 of Regulation 2015/1222:

1. *All NEMOs, as part of their MCO function, shall ensure that the continuous trading matching algorithm produces at least the following results:*

- a. *the execution status of orders and prices per trade;*
 - b. *a single net position for each bidding zone and market time unit within the intraday market.*
2. *All NEMOs shall ensure the accuracy and efficiency of results produced by the continuous trading matching algorithm.*
3. *All TSOs shall verify that the results of the continuous trading matching algorithm are consistent with cross-zonal capacity and allocation constraints in accordance with Article 58(2).*

II. The NEMO Proposal

The All NEMO Back-up methodology proposal, dated 14 February 2017, was received by the last Regulatory Authority on 17 February 2017. The proposal includes proposed timescales for its implementation and a description of its expected impact on the objectives of Regulation 2015/1222 as requested by Article 9.9 of Regulation 2015/1222.

Article 9(10) of the Regulation 2015/1222 requires All Regulatory Authorities to consult and closely cooperate and coordinate with each other to reach agreement, and make decisions within six months following receipt of submissions by the last Regulatory Authority concerned. A decision is therefore required by each Regulatory Authority by 17 August 2017.

The main elements of the Back-up methodology proposal as understood by All Regulatory Authorities are summarised here for reference.

The proposal aims at reducing the risk of market disruption associated with full or partial decoupling, by establishing measures preventing or mitigating the occurrence of an incident during the execution of a normal procedure.

The proposal sets forth the following general principles that NEMOs shall apply to develop, implement and operate the back-up procedures:

- Back-up procedures shall be regularly tested (Article 2(4) and 3(4)), ex-post publicly analysed (Article 2(6)) and made available to NRAs on request (Article 2(7) and 3(5)).
- Back-up procedures can derogate intermediate timelines of normal procedures when extreme circumstances occur (Article 2(5)).
- The deadline to switch from back-up procedures to fallback procedures shall be agreed with TSOs (Article 2(8)).
- Back-up procedures need to be distinguished for DA and ID timeframe (Article 3(1)).
- In case of incidents occurring in ID market normal procedure which affect only some specific areas or interconnectors, such areas or interconnectors shall be closed (3(28)).

With regard to each market timeframe, the proposal lists the possible sources of market disruption and set forth the obligation for NEMOs to develop, implement and operate the corresponding back-up procedures.

The main sources of risk for the DA market timeframe, according to NEMOs, are:

- Failure of the communication system, including the inability to provide the MCO Function with the inputs as of Article 39(1) of Regulation 2015/1222
- Failure of the datacenter
- Failure of the Coordinator
- Failure of the Price Coupling Algorithm

The main sources of risk for the ID market timeframe, according to NEMOs, are:

- Failure of the communication system, including file exchange between the transactional mechanism and the central ID system
- Failure of the datacenter
- Failure of operational procedures, including the inability of parties to perform their operational role (e.g. Central Admin or ID Coordinator)

NEMOs propose to implement the Back-up methodology, immediately after implementation of:

- The common grid model methodology (CGM M)
- The capacity calculation methodology (CC M)
- The MCO-function
- The arrangements to accommodate multiple NEMOs (MNA) in the ID timeframe in all Bidding Zones where there are multiple NEMOs.
- The relevant capacity calculation coordinator (CCC) had been set up.

III. All Regulatory Authorities' position

All Regulatory Authorities request All NEMOs to amend a number of areas of the proposal pursuant Article 9(12) of the Regulation 2015/1222.

The format of the proposal does not meet satisfactory standards required for a legally binding text.

The details of the request for amendment are explained in this section, followed by the requested actions.

1. The timeline for implementation is not justified.
It is not clear why only MNAs for the ID timeframe (Art. 57 of the Regulation 2015/1222) and not MNAs for DA timeframe (Art. 45 of the Regulation 2015/1222) are mentioned. Furthermore, it is also not clear why implementation is contingent upon MNAs for the ID timeframe being implemented in **all** Bidding Zones where there are multiple NEMOs (as opposed to, only the relevant Bidding Zones).
2. The proposal contains expressions that are not defined, in particular:
 - In Article 2(5) reference is made to “intermediate timelines” and “exceptional circumstances”.
 - In Article 2(16) reference is made to “common configuration parameters”.
 - In Article 2(27) reference is made to “ pre-tested configuration”.

As a general rule, if an expression is only mentioned once in the document, then it can be explained directly in the main text.
3. The proposal contains expressions that are ambiguously specified, in particular:
 - In Article 1(7), 1(8), 1(11), 1(12), definitions provided for Global and Local issues are ambiguous. Furthermore it is not clear the distinction between definitions of Global and Local issues for DA and Global and Local issues for ID.
 - In Article 2(6) reference is made to Article 52 of the Regulation 2015/1222 which deals with ID whereas Article 2(6) of the proposal deals with DA.
 - In Article 2(16) the availability of a secondary datacenter is not granted: “[...] an Operator may switch to the secondary datacenter, if available, [...]”. It is not clear whether the availability depends upon a discretionary decision of NEMOs or if an incident affecting also the secondary datacenter is taken into consideration.
 - In Article 3(2) reference is made to Local issues, while in Article 3(3) reference is made to Local pre/post coupling issues. The distinction (if any) is not clear.
 - In Article 3(27) reference is made to an “issue [...] that is confined to one or more, but not all, areas or to one or more, but not all, interconnectors”. Insufficient information is

provided about the nature of such issues. In particular it is not completely clear how areas or interconnectors can be affected by an incident. In fact, it seems that, if an incident occurs in the allocation process, it should affect a specific NEMO Trading Hub (as defined in the Algorithm Proposal submitted in accordance with Article 37(5) of Regulation 2015/1222), instead of the area or interconnector. Furthermore, the relation with definition of Local issues should be clarified.

- In Article 3(28) a closure of affected areas or interconnectors is proposed in order to solve issues. It is not explained why it is not possible to close only the affected NEMO Trading Hub. Furthermore, it is not clarified the impact of the closure on other NEMO Trading Hubs neither is explained which measures can be adopted to prevent other NEMOs from a potential problem.
4. The proposal contains some descriptions of normal procedures which are not related to any corresponding back-up procedure, in particular:
 - In article 2(28) reference is made to NEMO results confirmation procedure. However, the possible occurrence of incidents is not taken into consideration and no back-up procedure is foreseen.
 - In Article 2(29) reference is made to TSO results confirmation procedure. However, the possible occurrence of incidents is not taken into consideration and no back-up procedure is foreseen.
 5. In Article 2(8) the deadline when fallback procedures have to be initiated is not specified.
 6. Requirements for back-up communications in ID market lacks flexibility, in particular:
 - In Article 3(7) it is prescribed that all TSOs shall be connected to the central ID hosting service provider, without taking into consideration i) the possibility for a TSO to request another TSO to act as backup; ii) the possibility that only one TSO performs the backup task for a bidding zone border.
 - In Article 3(8) it is prescribed that a switch between primary and secondary communication line is automatically performed, without taking into consideration the possibility to have a manual switch, since this is nowadays also feasible at TSO side.
 7. Some responsibilities are not clearly assigned, in particular:
 - In many articles (e.g. Articles 3(9), 3(18), 3(23)) it is stated that when a problem occurs it will be analyzed and back-up procedures will apply. However there is no clear reference to the entity that is responsible for carrying out the analysis and for the activation of a specific back-up procedure. The usage of the active voice is required to avoid confusion as to *who* is responsible of performing an obligation.
 - In Article 3(19) the responsibility for deciding whether the support of the ID algorithm provider is needed is not clearly assigned.

8. Article 7(1)(h) of Regulation 2015/1222 is understood as meaning NEMOs and TSOs shall jointly establish back-up procedures, and Article 8(2)(i) of Regulation 2015/1222 states that TSOs shall establish and operate fallback procedures. According to Article 44 of Regulation 2015/1222, the TSOs shall propose the fallback methodology, whereas the procedure is to be jointly implemented by the TSOs and NEMOs. In those instances where the fallback procedures developed by TSOs (according to Article 44 of Regulation 2015/1222, but also Articles 45 and 57 when relevant) describe national or regional coupling, the back-up methodology should include a general obligation for NEMOs to execute national and regional coupling in case of partial decoupling, in accordance with regional and local procedures developed by TSOs.

IV. Actions

Based on the above rationale, all Regulatory Authorities agree to request an amendment to the Back-up procedure Methodology Proposal. This amendment should contain the following elements:

1. To justify the timescale for implementation.
2. To properly define all the expressions used in the proposal (including those reported as examples in point-2 of § III).
3. To replace any ambiguous expression with a corresponding expression which makes the provision clearly enforceable (including those reported as examples in point-3 of § III).
4. To elaborate measures aiming at closing only the NEMO Trading Hub affected by an incident and at preventing the impact on other NEMO Trading Hubs.
5. To specify back-up procedures for any normal procedure mentioned in the proposal (including those reported as examples in point-4 of § III).
6. To specify in the algorithm proposal the deadline when fallback procedures shall be activated.
7. To introduce more flexibility in back-up communication for ID market (taking into account also the remarks raised in point of § III).
8. To assign the responsibilities for analyzing the arising issues and for deciding to activate the corresponding back-up procedure (including those reported as examples in point-6 of § III).
9. In those instances where the fallback procedures developed by TSOs (according to Article 44 of Regulation 2015/1222, but also Articles 45 and 57 when relevant) describe national or regional coupling, the back-up methodology should include a general obligation for NEMOs to execute national and regional coupling in case of partial decoupling, in accordance with regional and local procedures developed by TSOs.