

**DECISION BY ITALY NORTH REGULATORY  
AUTHORITIES**

**OF**

**THE FALLBACK PROCEDURES IN ACCORDANCE WITH  
ARTICLE 44 OF THE COMMISSION REGULATION (EU)  
2015/1222 OF 24 JULY 2015 ESTABLISHING A  
GUIDELINE ON CAPACITY ALLOCATION AND  
CONGESTION MANAGEMENT**

**15 March 2021**

## I. Introduction and legal context

This document elaborates an agreement of the Italy North Regulatory Authorities, agreed on 15 March 2021 at Italy North Energy Regulators' Regional forum, on the fallback procedures (hereinafter referred to as: IN Fallback Procedures) in accordance with Article 44 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management (hereinafter referred to as: CACM).

This agreement of the Italy North Regulatory Authorities (hereinafter referred to as: IN NRAs) shall provide evidence that a decision on the IN Fallback Procedures does not, at this stage, need to be adopted by ACER pursuant to Article 9(11) of CACM. It is intended to constitute the basis on which IN NRAs will each subsequently make national decisions pursuant to Article 9(10) of CACM to approve the IN Fallback Procedures.

The legal provisions that lie at the basis of the IN Fallback Procedures, and of this IN NRAs agreement, can be found in Article 3, 8, 9, and 44 of CACM and in Article 5 of the Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) (in the following: recast ACER Regulation). They are set out here for reference.

### CACM

#### Article 3

##### **Objectives of capacity allocation and congestion management cooperation**

*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 8

##### **TSOs' tasks related to single day-ahead and intraday coupling**

- 1. In Member States electrically connected to another Member State all TSOs shall participate in the single day-ahead and intraday coupling.*
- 2. TSOs shall:*
  - [...]*
  - (i) establish and operate fallback procedures as appropriate for capacity allocation in accordance with Article 44;*

#### Article 9

##### **Adoption of terms and conditions or methodologies**

- 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.

[...]

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.

(...)

7 The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities of the concerned region:

(...)

e) the fallback procedures in accordance with Article 44;

(...)

(...)

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 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.

(...)

13 TSOs or NEMOs responsible for developing a proposal for terms and conditions or methodologies or regulatory authorities responsible for their adoption in accordance with paragraphs 6, 7 and 8, may request amendments of these terms and conditions or methodologies. The proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedure set out in Article 12 and approved in accordance with the procedure set out in this Article.

14 TSOs and NEMOs responsible for establishing the terms and conditions or methodologies in accordance with this Regulation shall publish them on the internet after approval by the competent regulatory authorities or, if no such approval is required, after their establishment, except where such information is considered as confidential in accordance with Article 13.

## **Article 44**

### **Establishment of fallback procedures**

By 16 months after the entry into force of this Regulation, each TSO, in coordination with all the other TSOs in the capacity calculation region, shall develop a proposal for robust and timely fallback procedures to ensure efficient, transparent and non-discriminatory capacity allocation in the event that the single day-ahead coupling process is unable to produce results.

The proposal for the establishment of fallback procedures shall be subject to consultation in accordance with Article 12.

## **Recast ACER Regulation**

### **Article 5**

## **Tasks of ACER as regards the development and implementation of network codes and guidelines**

[...]

3. Where one of the following legal acts provides for the development of proposals for terms and conditions or methodologies for the implementation of network codes and guidelines which require the approval of all the regulatory authorities of the region concerned, those regulatory authorities shall agree unanimously on the common terms and conditions or methodologies to be approved by each of those regulatory authorities:

- (a) a legislative act of the Union adopted under the ordinary legislative procedure;
- (b) network codes and guidelines that were adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines; or
- (c) network codes and guidelines adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011.

The proposals referred to in the first subparagraph shall be notified to ACER within one week of their submission to those regulatory authorities. The regulatory authorities may refer the proposals to ACER for approval pursuant to point (b) of the second subparagraph of Article 6(10) and shall do so pursuant to point (a) of the second subparagraph of Article 6(10) where there is no unanimous agreement as referred to in the first subparagraph.

The Director or the Board of Regulators, acting on its own initiative or on a proposal from one or more of its members, may require the regulatory authorities of the region concerned to refer the proposal to ACER for approval. Such a request shall be limited to cases in which the regionally agreed proposal would have a tangible impact on the internal energy market or on security of supply beyond the region.

[...]

6. Before approving the terms and conditions or methodologies referred to in paragraphs 2 and 3, the regulatory authorities, or, where competent, ACER, shall revise them where necessary, after consulting the ENTSO for Electricity, the ENTSO for Gas or the EU DSO entity, in order to ensure that they are in line with the purpose of the network code or guideline and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market. ACER shall take a decision on the approval within the period specified in the relevant network codes and guidelines. That period shall begin on the day following that on which the proposal was referred to ACER.

## **II. The Italy North TSOs' proposal**

Following the approval of the first release of the IN Fallback Procedures by IN NRAs on 11 January 2018, the TSOs of the Italy North CCR (hereinafter referred to as: IN TSOs) developed a second release of the methodology aimed to align the fallback procedures with the updated timeline for post coupling activities agreed at European level by all the parties participating in the Single Day-Ahead Coupling.

The new release of the IN fallback procedures was consulted by the IN TSOs through ENTSO-E from 24 July 2020 to 24 August 2020, in line with Article 44 and Article 12 of CACM<sup>1</sup>. The final proposal was received by the last Regulatory Authority of the Italy North Capacity Calculation Region on 1 October 2020. Article 9(10) of CACM requires IN NRAs to consult and closely cooperate and coordinate with each other in order to reach agreement, and make decisions within six months following receipt of submissions of the last Regulatory Authority concerned. A decision is therefore required by 1 April 2021.

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<sup>1</sup> The public consultation is available on the ENTSO-e website:  
[https://consultations.entsoe.eu/markets/fallback-procedures\\_it-north-ccr/](https://consultations.entsoe.eu/markets/fallback-procedures_it-north-ccr/)

The new version of the IN Fallback Procedures foresees the coexistence of two approaches:

- a) explicit day-ahead auctions (so called shadow auctions) on the Italy-France and on the Italy-Austria borders, based on the Shadow Allocation Rules version 1.5 attached to the proposal; the procedure is initiated as soon as the NEMOs inform the TSOs that there is a risk that the single day-ahead coupling may be unable to produce results (or as soon as the TSOs are aware of this risk, in case there is a lack of information from NEMOs); results shall be provided by 14.08 CET; in case the shadow auction is cancelled, a reallocation of the day-ahead cross-zonal capacity to the intraday timeframe is also foreseen;
- b) local day-ahead market (local MGP) on the Italy-Slovenia border managed by the Italian NEMO GME that acts as service provider for the Slovenian NEMO BSP; if the local MGP cannot be implemented on the border, shadow auctions are run as well..

The fallback procedures are immediately applicable once approved by IN NRAs.

The proposal includes a description of its expected impact on the objectives of CACM, in line with Article 9(9) of CACM itself.

### **III. Italy North Regulatory Authorities' position**

#### **NRAs position**

The new release of the IN Fallback Procedures confirms the approach already approved by IN NRAs on 11 January 2018.

The proposed fallback procedures represent the most efficient, robust and timely solutions that can be implemented on the different borders belonging to Italy North CCR. Where feasible and compatible with the other allocation processes in place, an implicit auction shall be preferred also as a fallback procedure: the local MGP foreseen on Italy-Slovenia border matches this requirement, allowing to exploit the experience gained by the parties in managing the voluntary coupling in force on that border since 2011. On the other borders the usage of explicit shadow auctions operated by the Single Allocation Platform still grants a good level of efficiency and transparency, allocating capacity to market participants according to their willingness to pay.

The only changes with respect to the first release are:

- a) the inclusion in the Annex of the Shadow Auction Rules version 1.5, substituting the Shadow Auctions version 2018 included in the first release;
- b) the shift of the publication of the results from 13.58 to 14.08 CET due to a shift of the formal decoupling declaration from 13.50 to 14.00 CET agreed by all the parties involved in the Single Day-Ahead Coupling in order to allow more time to the Euphemia algorithm to find a solution; this shift is reflected both in the methodology and in the annexed Shadow Auction Rules.

IN NRAs are fine with the above mentioned changes: giving more time to the coupling algorithm is of utmost importance to keep complex orders in the Single Day-Ahead Coupling.

Despite this global positive evaluation, IN NRAs are concerned about the implementation of the Shadow Auction Rules. Before entering into force, Shadow Auction Rules version 1.5 need to be approved by the regulatory authorities of all the CCRs applying shadow auctions as fallback procedures. This is not an easy process and it involves also ACER for the Core CCR due to the referral agreed by the Core NRAs. For this reason, IN NRAs deem it useful to postpone the entry into force of version 1.5 no earlier than 1<sup>st</sup> April 2021 and no later than 1<sup>st</sup> July 2021, in coherence with what will be included by ACER in the decision about Core CCR.

IN NRAs intend thus to exploit the provision included in Article 5(6) of recast ACER Regulation, about the duty for regulatory authorities to revise terms and conditions and methodologies where necessary, before approving them, in order to directly include the implementation window.

## NRAs amendments

IN NRAs include a number of amendments to the IN Fallback Procedures. They can be summarized as follows:

- a) Removal of the word proposal since the methodology is directly changed by the NRAs and can no longer be considered as a TSOs proposal;
- b) Editorial changes to improve the readability of the document and to align with the wording used in other methodologies developed according to CACM;
- c) Definition of the implementation window between 1<sup>st</sup> April 2021 and 1<sup>st</sup> July 2021, with an alignment of the entry into force of the new shadow auction rules with the go-live of the new Single Day Ahead Coupling timings.

The amendments were scrutinised by IN TSOs that suggested avoiding a fixed implementation window to prevent any issues that may delay the go-live of the new timings: better – in the TSOs' view – simply referring to this go-live without mentioning any dates. IN NRAs acknowledge the concern and intend to keep the only reference to the implementation no earlier than 1<sup>st</sup> April 2021. IN NRAs anyhow point out that the implementation window may be nonetheless included in the decision ACER intend to issue with respect to the fallback procedure for Core CCR.

## Further TSOs proposal

While sending their scrutiny to the amended IN Fallback Procedures, IN TSOs informed the Italy North NRAs that the local MGP currently foreseen on the Italy-Slovenia border may be kept as a proper fallback only till the implementation of the flow based allocation in Core CCR. After then shadow auctions shall be used on this border as well.

IN NRAs regret that this information was shared only at the very end of the approval process: the implementation of the flow based in Core CCR has been expected for months and its impact on the fallback procedures on Italy-Slovenia border could have been assessed properly even before the submission of the new IN Fallback Procedures.

Theoretically such a change should be duly consulted with the stakeholders, and, as such, a new release of the IN Fallback Procedures should be prepared and submitted by IN TSOs according to Article 9(13) of ACM Regulation. Nonetheless since this change is compulsory in order to allow the implementation of the flow based allocation in Core CCR and since at the current stage the explicit shadow auctions are the only feasible fallback procedures in such context, IN NRAs deem it useful to include this punctualization yet in the current release, avoiding the unproportionate administrative burden should the process be reopened again.

This behaviour represents however an exception: IN TSOs are strongly recommended to evaluate and consider all the issues well ahead while preparing new terms and conditions or methodologies or releases of the already approved ones

## Conclusions

IN NRAs have consulted and closely cooperated and coordinated to reach agreement that they amend and approve the IN Fallback Procedures submitted by IN TSOs pursuant to Article 44 of CACM: the legal basis for the direct amendments by IN NRAs lies on Article 5(6) of recast ACER Regulation.

IN NRAs will make their national decisions to approve the IN Fallback Procedures, on the basis of this agreement.