

Input from the AESAG working group on governance for the governance guideline for single intra-day coupling¹ day-ahead and intraday implicit allocation mechanisms

Preambles

[for later]

Definitions

[to be fully co-ordinated with definitions in the capacity allocation and congestion management network code]

'TSO' = transmission system operator as in Directive 2009/72/EC

'day-ahead spot market' = trading facility which collects energy bids from wholesale market participants and matches them using single auction into contracts to deliver electricity over the next day

'single day-ahead coupling' = coordinated electricity price setting and cross-zonal capacity allocation mechanism performing simultaneously with matching energy orders, using bids of the day-ahead spot markets per bidding zone and capacities between bidding zones.

'single intra-day coupling' = implicit cross-zonal capacity allocation facility which collects energy bids per bidding zone from wholesale market participants and matches them continuously into contracts to deliver electricity while respecting cross-zonal capacities, available once the day-ahead spot market has taken place

'market operator' = entity operating a day-ahead spot market or a continuous intra-day market, additionally, the same entity may operate a local auction intra-day market

'bidding zone' = the smallest geographical area for which one single clearing price in the day-ahead spot market is always applicable

'NEMO' = Nominated Electricity Market Operator, whose roles and responsibilities and tasks are described in [reference]

'MCO' = Market Coupling Operator, whose functions are described in [reference]

Objective and scope

The objective of this guideline is to establish a robust, reliable and non-discriminatory European Union governance framework for a European single price coupling and for a European single intra-day coupling through a legally binding guideline which strives for a

¹ This paper is presented by the chair of the Governance working group established under AESAG and continuing the work of the Governance work stream established under AHAG. The group consisted of ACER, Europex, ENTSO-E and the European Commission who chaired it. The group had meetings from February 2010 until May 2012. This paper is not binding to opinion of the organisations participating in the governance working group.

high level of harmonization of local single day-ahead coupling and single intra-day coupling governance arrangements including the relation between TSOs and Market Operators. This shall include particularly definitions and descriptions on the relationship between involved entities, cooperation and decision making structures, definitions of tasks and responsibilities including liability, cost allocation and regulatory oversight. The guideline takes also into account the different legal statuses and situations of market operators in different Member States.

Evolution of single day-ahead coupling and single intra-day coupling

Preferably implementation of the European single price coupling and the European intra-day market may initially develop in appropriate regional initiatives, which shall in all cases ensure compatibility with and lead to a single day-ahead coupling and single intra-day coupling system implemented at a European level. Single day-ahead coupling and single intra-day coupling shall as far as possible make use of existing market operators.

In case the cooperation and implementation process via the designation processes and the cooperation structures described in the guideline do not provide for an implementation by 30 June 2014, the European Commission in cooperation with ACER shall create or appoint a single regulated entity to perform the common functions of single day-ahead coupling and single intra-day coupling based on a tendering process as defined in [reference].

The Member States which do not have yet the necessary market conditions for participating in the single day-ahead coupling and single intra-day coupling shall develop the market conditions in order to participate as soon as possible.

A bidding zone shall join single day-ahead coupling and single intra-day coupling once the following participation criteria are fulfilled:

- a) Cross-zonal capacity to another eligible bidding zone in Europe exists,
- b) The Member State has designated at least one Nominated Electricity Market Operator, hereinafter NEMO,
- c) The NEMOs and TSOs have entered in appropriate arrangements defined under [reference] for operating the single day-ahead coupling and single intra-day coupling in the bidding zone,

The rights and responsibilities of new NEMOs and TSOs shall be fair and non-discriminatory and consistent with the functioning of the single day-ahead coupling and single intra-day coupling system implemented at the European level.

NEMOs, designation and de-designation

For the purpose of efficient implicit cross-zonal capacity allocation, all Member States electrically connected to another eligible bidding zone in another Member State shall ensure that one or more NEMOs, covering jointly in all required functions the whole territory of the Member State, participate in the single day-ahead coupling and the single intra-day coupling. When designating the entities the fulfilment of the tasks defined in [reference to NEMO tasks and MCO functions] in a coordinated manner has to be ensured. Designation of NEMOs shall be for a period of time to be determined by the Member States having regard to considerations

of economic efficiency, competition and liquidity. After NEMO designation, a reasonable preparatory period shall be allowed for NEMO to become fully operational.

If there are no suitable organisations in a Member State to be nominated as a NEMO, then the Member State shall foresee national measures for the establishment of such operators, or make arrangements which allow for NEMOs in other Member States to perform the necessary single day-ahead coupling and single intra-day coupling functions in their bidding zones.

In cases where more than one NEMO is designated within in one Member State, the applicable designation criteria and operational arrangements shall ensure that competition between NEMOs is organized in a fair and non-discriminatory manner, in particular with respect to the no-preferential status to the national designation process and prevention of free-riding strategies between NEMOs exploiting the pooling of liquidity within the same single day-ahead coupling and single intra-day coupling mechanism.

NRAs shall ensure monitoring of compliance of the NEMOs with the designation criteria [reference]. A Member State shall revoke the designation where the market operator fails to maintain compliance with the criteria and is not able to restore compliance in a period of six months from the notification of the failure to the NEMO by the NRA.

The designation and de-designation of NEMOs shall be notified to the European Commission and published in the Official Journal of the European Union.

NEMO Designation Criteria

NEMOs shall fulfil the following designation criteria:

- a) The market operators shall have or contract adequate resources for a common, coordinated and compliant operation of a single spot market and a single intra-day coupling, including fulfilment of the MCO functions, financial resources, necessary information technology, technical infrastructure and operational procedures or provide necessary proof that they are able to create these prerequisites within a reasonable preparatory period.
- b) The market operators shall promote and maintain high standards of integrity and fair dealing in the conduct of business by ensuring that the participants have equally open access to relevant information, that the business is conducted in an orderly manner and appropriate measures are adopted to prevent abuse of the market including abuse of market power, facilitate its detection and monitor its incidence.
- c) .
- d) The market operators shall treat all market participants in a non-discriminatory way and the market surveillance at the market operator shall be appropriate.
- e) The market operators shall have non-discriminatory bid collection and appropriate transparency and confidentiality agreements with market participants and the TSOs.
- f) The market operators shall operate anonymous, cleared markets with provision of the necessary clearing services.

NEMO roles and responsibilities

The NEMOs shall be responsible for the following functions regarding single day-ahead coupling and single intra-day coupling:

- a) Operate local markets including receiving electricity bids from market participants, overall responsibility for matching bids in accordance with the single day-ahead coupling and single intra-day coupling results, publish prices and settle and clear the contracts according to relevant participant agreements and regulations,
- b) Establish NEMO market requirements for the single day-ahead coupling and single intra-day coupling coordinated matching function and algorithm for all aspects related to electricity market functioning,
- c) Establish together with other NEMOs one or several MCOs to perform the MCO functions defined in [reference], having regard to considerations of economic efficiency and liquidity, [does several MCOs apply also for intra-day?]
- d) Make anonymous and send received bid information to the MCOs,
- e) Check the results calculated by the MCOs and validate them as final results in case they are considered correct and take responsibility for them,
- f) Publish the market results including prices and bidding area net positions,
- g) Clear and settle the commercial cross-zonal transactions resulting from the single day-ahead coupling and intra-day market, including participating in any contractually agreed or regulated arrangements for collecting the congestion rents,
- h) In cooperation with TSOs, implement and operate backup procedures for local/sub-regional market operation, consistent with overall procedures, if no European results are available from the MCOs,
- i) Comply with the relevant single day-ahead coupling and single intra-day coupling rules and procedures,
- j) provide input to the committees established under [reference] supporting the governance and decision making on single day-ahead coupling and single intra-day coupling, and
- k) provide the single day-ahead coupling and single intra-day coupling cost information to NRAs according to [reference] and to TSOs where NEMO or MCO costs are to be covered by contribution of TSOs.

MCO functions

The MCOs functions are as follows:

- a) Develop and maintain together with other MCOs the algorithms, systems and procedures for MCO functions in compliance with the agreed market and capacity allocation requirements for the single day-ahead coupling, and likewise for the single intra-day coupling,
- b) receive bid information from NEMOs,
- c) receive parameters for ATC or flow-based capacity allocation,
- d) operate the single day-ahead coupling and the single intra-day coupling,
- e) validate and sending single day-ahead coupling and single intra-day coupling results to the NEMOs, and

- f) provide input to the committees established under [reference] supporting the governance and decision making on single day-ahead coupling and single intra-day coupling.

If NEMOs fail to establish the MCOs for single day-ahead coupling and/or single intra-day coupling for either the intraday or the day-ahead timeframe, the European Commission may decide to create or appoint a single regulated entity to which the functions of the MCOs for the single day-ahead coupling and/or for intra-day market will be assigned. ACER shall evaluate the progress by NEMOs in establishing the MCOs, in particular regarding the contractual and regulatory framework and regarding the technical preparedness to fulfil the MCO functions. ACER shall make a recommendation latest by 30 June 2014, whether the European Commission shall decide to proceed in procuring the MCO function. Detailed appointment and selection criteria shall be subject to an ACER opinion.

TSO roles and responsibilities

The TSOs shall be responsible for the following functions regarding single day-ahead coupling and single intra-day coupling.

- a) In cooperation with NEMOs, establish TSO requirements for the single day-ahead coupling and single intra-day coupling algorithm for all aspects related to capacity allocation, system security, security of supply
- b) Validate the algorithm against above-mentioned requirements,
- c) Define and send parameters for ATC or flow-based capacity allocation,
- d) Validate price coupling results in terms of capacity allocation,
- e) Where required, calculate and publish commercial cross-zonal exchanges on borders between bidding zones,
- f) Operate the transmission system according to the commercial cross-zonal exchanges resulting from single day-ahead coupling and single intra-day coupling,
- g) Publish and make available relevant data in a common platform,
- h) Establish and operate, decoupling and fall-back procedures for capacity allocation if no European results are available from the NEMOs before a predefined deadline,
- i) Establish TSO requirements for collection and distribution of congestion income, and
- j) Provide input to the committees established under [reference] supporting the governance and decision making on single day-ahead coupling and single intra-day coupling.

Shipping function

Shipping comprises the following functions:

- a) Determination of cross-zonal schedules,
- b) Nomination of cross-zonal schedules,
- c) Settlement of energy transactions,
- d) Distribution of congestion revenue

The shipping functions may be arranged on an interconnector-specific (or group of interconnectors) basis, performed by NEMOs, TSOs or assigned third party, and are subject to agreement (or direct regulation) between the relevant NEMOs, TSOs and NRAs.

Rules regarding the single intra-day coupling

The following provisions are not applicable for the single intra-day coupling [list of provisions if any].

Cost sharing principles

Charges for establishing and performing the NEMO and TSO tasks and MCO functions directly related to single day-ahead coupling and single intra-day coupling shall be clearly identified and auditable. Any operational charges should make reasonable allowance for the full costs of providing the implicit allocation of cross-zonal capacity. This charging structure shall be for NRA approval (to be provided within [6] months). NEMOs, MCOs and TSOs shall provide a yearly reporting to NRAs in which the initial costs for establishing the single day-ahead coupling and single intra-day coupling, costs for amending the single day-ahead coupling and single intra-day coupling and operating costs are shown and explained in detail.

Costs shall be distinguished in common costs for the overall establishment of the European single day-ahead coupling and single intra-day coupling and national implementation costs for national participation in the European single day-ahead coupling and single intra-day coupling. Common costs shall be assessed by NRAs. NRAs shall provide a coordinated summary on whether the common costs of the coupling can be considered to be efficient. Common costs shall be shared proportionally to the consumption and to [a second distribution key] of the participating Member States.

The costs of the TSOs to perform the functions under this governance guideline shall be assessed by national NRAs and be recovered, if approved as an efficient cost level by the NRA, via the national tariffs. The Member States' share of the common costs and the national implementation costs of NEMO may be recovered via TSO grid tariffs or NEMO fees. In cases where it is recovered from grid tariffs, the NRA decides for the amount to be considered in the TSO grid tariffs and the remaining costs are to be covered via NEMO trading fees. When deciding on the remuneration, and shall coordinate with other NRAs to avoid market distortions.

Third country participation

The European single day-ahead coupling and single intra-day coupling may be open to third countries adjacent to countries which are coupled on the condition that the applicable national law implements the main provisions of the EU electricity market legislation. The coupling of third countries shall be decided by the European Commission based on assessment by ACER. The rights and responsibilities of third country NEMOs, MCOs and TSOs joining the single day-ahead coupling shall be consistent with the functioning of the single day-ahead coupling and single intra-day coupling system implemented at the European level. All aspects involving ACER according to this guideline are to be bilaterally agreed between ACER and the relevant authorities of third countries.

Committees

In order to ensure proper functioning of day-to-day operations and further development of the European single day-ahead coupling and single intra-day coupling system, three committees will be established.

Operational committee for single day-ahead coupling and single intra-day coupling

TSOs and NEMOs shall establish an operational committee with the tasks outlined in this article. [Do day-ahead and intra-day need separate committees?]

The number of Members in the operational committee shall be [number] representatives nominated by TSOs and [number] nominated by NEMOs. Such nominations shall ensure a balanced representation, with participation of all involved regions, taking into account [criteria]. The operational committee shall not have more than 15 members in total. Additionally, the European Commission and ACER may participate with one representative each as observer and NRAs with two observers.

The operational committee shall:

- a) Propose based on this Governance Guideline, a framework agreement for the relations between NEMOs, MCOs and TSOs involved in single day-ahead coupling and single intra-day coupling. All parties of the agreement shall be entitled to provide their opinions to this proposal. This proposal is subject to an opinion of the ACER and approval by the European Commission or the NRAs. This proposal shall accommodate NEMOs which are governed by licenses or detailed national regulation giving these operators the same rights as the other NEMOs when it can be ensured that the obligations incurring from the framework agreement are implemented through licenses or detailed national regulation. [this provision needs further elaboration]
- b) Establish and maintain day-to-day single day-ahead coupling and single intra-day coupling operational rules and procedures,
- c) identify need for developing single day-ahead coupling and single intra-day coupling operational rules and procedures and propose accordant changes,
- d) ensure proper maintenance of the related documentation material,
- e) propose consistent European procedures including test procedures, in accordance with local procedures, report conflicts and need for change and document these procedures,
- f) coordinate regular publishing of information to stakeholders and communicating information to authorities, including algorithm design, market information, changes, developments, achievements of the single day-ahead coupling and the single intra-day coupling and ensure proper and timely communication in the case of incidents,
- g) monitor common costs associated with single day-ahead coupling and single intra-day coupling as specified in the capacity allocation and congestion management network code [reference] and prepare regular report on common costs for ACER and NRAs,
- h) monitor the processes for the correct operation of the single day-ahead coupling and single intra-day coupling system in compliance with the rules, including proper documentation and change management,
- i) assess proposed changes in the price coupling system and algorithm with respect to operational performance, compliance with prescribed requirements and costs incurred,
- j) monitor backup procedures to manage day-to-day unforeseen incidents or extreme situations, including procedures to go to fall-back,
- k) In case of incidents, the committee shall coordinate the investigations and propose remedial changes in the algorithm, the single day-ahead coupling and single intra-day coupling system or the procedures.
- l) Establish the NEMO committee and the stakeholder committee.

Each member of the operational committee shall bear its own costs.

NEMO committee for coordination

A NEMO committee for co-ordinating the co-operation between NEMOs and MCOs shall be established. All NEMOs and MCOs shall be represented in the committee. NEMO committee shall be a sub-committee of the operational committee.

The NEMO-committee has the following tasks:

- a) Set detailed NEMO-related single day-ahead coupling and single intra-day coupling participation criteria,
- b) Establish and maintain a NEMO cooperation agreement between all NEMOs to establish the joint governance, delivery and operation of the joint NEMO obligations including the MCOs,
- c) establish common requirements for any separate service agreements for NEMOs wishing to access single day-ahead coupling and single intra-day coupling via another NEMO. Fair and non-discriminatory rights and obligations shall apply to all NEMOs without regards if they participate on single day-ahead coupling and single intra-day coupling directly or via another NEMO.
- d) identify the needs for development and changes of the single day-ahead coupling and single intra-day coupling operational rules and procedures.

In case of dispute between the NEMOs in the NEMO committee, NEMOs shall solicit ACER for a regulatory opinion on the dispute.

Stakeholder committee for single day-ahead coupling and single intra-day coupling

The operational committee shall be responsible for establishing a stakeholder committee.

The number of members in the stakeholder committee shall be [number] representatives from TSOs, [number] from NEMOs and MCOs, [number] from traders, [number] from generation companies, [number] from industrial consumers, [number] from small supply companies, one from consumer organisations, one from European Commission, one from ACER and two from NRAs.

The task of the stakeholder committee is to discuss and give advice regarding day-to-day operation and development of single day-ahead coupling and single intra-day coupling.

The stakeholder committee shall meet at least twice per year.

Common tasks of each committee

Each committee shall draft its rules of procedures including duration of memberships. These rules of procedures are subject to an opinion of the ACER and approval by the European Commission. The rules of procedures shall establish the voting rights for decisions and a dispute resolution mechanism. [to be elaborated, any decision shall be taken by simple majority voting with each member having one vote?]

The committees shall ensure a high level of transparency and make publicly available relevant documents including rules of procedures, terms of references, day-to-day operational rules and procedures. Each committee shall publish summary minutes and relevant documents of the committee meetings. [Documents containing confidential information to be elaborated]

Liability

The NEMOs, MCOs and TSOs in the single day-ahead coupling and single intra-day coupling shall agree on the liability of each party regarding damage caused from failure to execute its assigned tasks and responsibilities. This agreement is subject to an opinion of the ACER and approval by the European Commission. It shall be in line with the following liability principles:

- a) Each party shall be liable for the tasks and responsibilities they have been assigned under this guideline.
- b) No party shall be held liable for consequential losses resulting from failure to execute its assigned responsibilities.
- c) The liability shall be enforceable.

Approval of rules

In accordance with Article 37(6) of Directive 2009/72/EC, for the purpose of implicit allocation of cross-zonal capacity, NRAs shall be responsible for fixing, or approving sufficiently in advance of their entry into force, the terms and conditions for access to cross-border infrastructure, including the algorithm and the procedures for the allocation of capacity and congestion management for single day-ahead coupling and single intra-day coupling.

In accordance with Article 37(9) of Directive 2009/72/EC, for the purpose of implicit allocation of cross-zonal capacity, NEMOs, MCOs and TSOs shall submit the terms and conditions for implicit access to cross-zonal capacity for single day-ahead coupling and for the single intra-day coupling, including procedures for the allocation of capacity and congestion management and day-to-day operational rules and procedures referred to in [reference] to the NRAs. Regulatory authorities may require amendment to those rules.

To facilitate development of identical terms and conditions for implicit access to cross-zonal capacity including procedures for the allocation of capacity and congestion management, NEMOs, MCOs and TSOs shall ensure the development and amendment process is coordinated.

Regulatory authorities shall ensure that the rules submitted for implicit allocation are in line with the requirements set out in [reference] and further the objectives set out in [reference].

For the purpose of single day-ahead coupling and single intra-day coupling, regulatory authorities shall ensure that the approved terms and conditions for access to cross-border infrastructure, including procedures for the allocation of capacity and congestion management, are identical. To facilitate an efficient approval process the relevant regulatory authorities shall ensure that approval is sufficiently coordinated.

Monitoring

In accordance with Regulation 713/2009, ACER shall monitor and promote regional cooperation between NEMOs, and TSOs and cooperation of NRAs in the development and amendment and approval of rules for implicit allocation of cross-zonal capacity in the single day-ahead coupling and in the single intra-day market. ACER shall take due account of the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where ACER considers that binding rules on such cooperation are required, it shall make appropriate recommendations to the Commission. NEMOs and TSOs shall provide ACER with the information necessary for monitoring of operation.

NRAs shall monitor the continued compliance of NEMOs and TSOs with the requirements of [reference]. The Operational committee shall report to regulatory authorities at least on an annual basis on the operational performance of the single day-ahead coupling and single intra-day coupling.

In accordance with Article 22 of Regulation 714/2009 Member States shall lay down rules on penalties applicable to infringements of the requirements of [reference] by NEMOs.

Dispute settlement

For the purpose of implicit allocation single day-ahead coupling or intraday market, in case of a dispute between regulatory authorities, in relation to the terms and conditions for access to cross-border infrastructure, including procedures for the allocation of capacity and congestion management, the dispute shall be formally notified to ACER. Dispute resolution process is set out in regulation 713/2009.