

**APPROVAL BY THE SOUTH-WEST EUROPE  
REGULATORY AUTHORITIES AGREED AT THE SOUTH-  
WEST EUROPE ENERGY REGULATORS' REGIONAL  
FORUM  
ON  
THE SOUTH-WEST EUROPE DAY AHEAD FALLBACK  
PROCEDURES**

**11.03.2021**

## I. Introduction and legal context

This document elaborates an agreed opinion of the South-west Europe (SWE) Regulatory Authorities on the amended Day Ahead 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 (Regulation 2015/1222).

This agreement of the SWE Regulatory Authorities shall provide evidence that a decision does not need, at this stage, 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 SWE Regulatory Authorities will each subsequently make national decisions to approve the **Day Ahead Fallback Procedures methodology** ("**Fallback Procedures**") pursuant to Article 9(10) of Regulation 2015/1222.

The legal provisions relevant to the submission and approval of the Fallback Procedures and this SWE Regulatory Authority agreement, can be found in Articles 3, 9, and 44 of the Regulation 2015/1222 (hereinafter referred to as "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) (hereinafter referred to as "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.

[...]

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.

The first version of the SWE Fallback Procedures was agreed and subject to national approval by all Regulatory Authorities (NRAs) of the concerned region by July 2018 and entered in force on that date. This first version of the Fallback Procedures for the SWE Region consists in the execution of Shadow Auctions in the France-Spain interconnection as soon as any risk that single day-ahead coupling process may be unable to produce results is known by TSOs. Once NEMOs confirm an effective unavailability, results of the shadow auction are published, and a market coupling process will take place in the bidding zones of Spain and Portugal, decoupled from the rest of Europe. For this regional coupling process, order books will be reopened, and the EUPHEMIA algorithm will be used (SIOM algorithm if a second attempt is needed).

The TSOs of the SWE CCR (hereinafter referred to as “SWE TSOs”) developed an amended methodology proposal aimed at aligning 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 version of the SWE Fallback Procedures was consulted by the SWE TSOs through ENTSO-E from 24 July 2020 to 24 August 2020<sup>1</sup>, in line with Article 44 and Article 12 CACM<sub>1</sub>. The final proposal was received by the last Regulatory Authority of the SWE Capacity Calculation Region on 30 September 2020.

Article 9(10) CACM requires the concerned Regulatory Authorities to consult and closely cooperate

<sup>1</sup> [https://consultations.entsoe.eu/markets/fallback-procedure\\_swe-ccr/](https://consultations.entsoe.eu/markets/fallback-procedure_swe-ccr/)

and coordinate with each other to reach an agreement on this new proposal, and subsequently take national decisions within six months following the receipt of the proposal by the last Regulatory Authority. A national decision based on the agreement reached between the concerned Regulatory Authorities is therefore required by each Regulatory Authority by 31 March 2021.

## II. The SWE TSOs Proposal

The amended SWE TSO Fallback Procedures proposal, submitted on 30 September 2020, does not change the overall procedures defined in the version which is currently in force, consisting in the execution of Shadow Auctions in the France-Spain interconnection as soon as any risk that single day-ahead coupling process may be unable to produce results is known by TSOs. Once NEMOs confirm an effective unavailability, results of the shadow auction will be published, and a market coupling process will take place in the bidding zones of Spain and Portugal decoupled from the rest of Europe. For this regional coupling process, order books will be reopened, and the EUPHEMIA algorithm will be used (SIOM algorithm if a second attempt is needed). In case this process is unable to allocate capacity in any of the two borders, the capacity for the border affected will be offered in the intraday allocation processes.

The changes proposed in the version received in 30 September 2020 by SWE TSOs with respect to the first version are:

- a) 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.
- b) The inclusion in the proposal of an Annex reporting the Shadow Auction Rules version 1.5, substituting a reference to the version published on the Single Allocation Platform website. For the sake of clarity, before the implementation of this amendment, that shall happen on a date announced sufficiently in advance by TSOs, as provided for in Article 6 of the Procedures, the version of the Shadow Auction Rules that is available on the JAO platform shall be applied.

## III. SWE Regulatory Authorities' position and amendments

The SWE Regulatory Authorities acknowledge that the fallback procedure proposal submitted by SWE TSO introduces only a minor change regarding the publication of the results which are required, as final decoupling hour will be postponed from 13:50 to 14:00.

It should be also noted that the new version of Shadow Auction Rules (1.5) will be approved as an annex to the Fallback Procedures methodology.

SWE Regulatory Authorities consider that, for the sake of the coordination of the Single Day-Ahead Coupling, a flexible approach for the implementation date of this amendment is necessary. As such, all concerned Regulatory Authorities and ACER have agreed with all concerned TSOs and ENTSO-

E on the determination of a “go-live window” spanning from April 1<sup>st</sup> to July 1<sup>st</sup>, 2021, for TSOs to implement the changes provided for in the methodology. The date in which such change will be applied shall be communicated to market participants with sufficient anticipation. Consequently, SWE Regulatory Authorities have applied Article 5(6) of the ACER Regulation, that allows for revising proposals for Terms and Conditions or Methodologies “*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*”, to modify the provisions of Article 6 in order to allow for the coordinated approach described above.

Consequently, SWE Regulatory Authorities consider that the Fallback Procedures, as amended, meet the requirements of Regulation CACM.

#### **IV. Conclusions**

SWE Regulatory Authorities welcome the submitted proposal and have assessed, consulted and closely cooperated and coordinated to reach an agreement about the Fallback Procedures methodology. By virtue of the provisions of Article 5(6) of the ACER Regulation, SWE NRAs agreed to directly modify the implementation date of the methodology in order to allow for a go-live within the window described above. SWE NRAs consulted ENTSO-E and SWE TSOs during a “hearing phase” period that took place between 24 February and 3 March 2021, during which no concerns were raised by the consulted parties. SWE Regulatory authorities consider that the Fallback Procedures as amended meet the requirements of CACM and can thus be approved by SWE Regulatory Authorities.

SWE Regulatory Authorities therefore will issue their national decisions, on the basis of this agreement, before 31 March 2021.

Following national decisions by SWE Regulatory Authorities, SWE TSOs will be required to publish the Fallback Procedures methodology on the internet in line with Article 9.14 of CACM, and must meet the implementation deadlines required by its Article 6.