

**RECOMMENDATION No 02/2021
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 17 December 2021

on reasoned proposals for amendments to the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to 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 Regulators¹, and, in particular, Article 3(1) thereof,

Having regard to Regulation (EU) 2019/943 on the internal market for electricity², and, in particular, Article 60 and 61 thereof,

Having regard to the outcome of the public consultation,

Having regard to the outcome of the consultation with ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 15 December 2021, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

I. INTRODUCTION

- (1) Following the Commission's invitation to ACER, announced at the Florence Forum of 8 December 2020, to prepare reasoned proposals for amendments to the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (hereafter: CACM Regulation)³, ACER made

¹ OJ L158, 14.6.2019, p. 22.

² OJ L 158, 14.6.2019, p. 54–124

³ OJ L 197, 25.7.2015, p. 24–72; OJ L 62, 23.2.2021, p. 24–40

an assessment about the scope of the reasoned proposals on amendments to the CACM Regulation.

- (2) On 23 December 2020, ACER sent a letter informing the Commission of the results of the scoping assessment. The assessment proposed improvements to the CACM Regulation with regard to market coupling operators' governance, single day-ahead and intraday coupling, costs and congestion income distribution, capacity calculation, remedial actions, bidding zone review, as well as general improvements.
- (3) In the same letter, ACER noted that, in its recommendation for amendments to the CACM Regulation, ACER would give special attention to interactions with other existing regulations, in particular with the Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation (hereafter: SO Regulation)⁴ and the Commission Regulation (EU) 2017/2195 establishing a guideline on electricity balancing (hereafter: Balancing Regulation)⁵, and asked for the Commission's guidance on whether it would be possible to propose limited changes to those regulations if such an amendment is considered to ensure the most efficient and consistent legal structure.
- (4) On 20 January 2021, acknowledging the outcome of ACER's scoping assessment for the possible areas of amendment to the CACM Regulation, the Commission invited ACER to prepare, by the autumn of 2021, reasoned recommendations for amendments to the CACM Regulation in line with Article 60(3) of the Electricity Regulation. The Commission added that recommending limited changes notably to the SO Regulation and the Balancing Regulation *could be considered, but only in so far as they are intrinsically linked to the changes under discussion for the CACM Regulation*.

II. PROCEDURE

- (5) In accordance with Article 60(3) of Regulation (EU) 2019/943 on the internal market for electricity (hereafter: Electricity Regulation) and Article 14 of Regulation (EU) 2019/942, ACER conducted a public consultation with all stakeholders from 15 April to 10 June 2021. The evaluation of responses to the public consultation is detailed in Annex 6 to this Recommendation.
- (6) In addition to the public consultation, ACER held two workshops with stakeholders on 10 May 2021, with the purpose to introduce the proposed amendments, assist stakeholders in providing feedback to the public consultation and allow stakeholders to pose questions to ACER and the regulatory authorities involved in the drafting of the amendments.
- (7) After the public consultation, ACER involved all TSOs and all NEMOs in the further review of the amendments in order to ensure that they had sufficient opportunity to

⁴ OJ L 220, 25.8.2017, p. 1–120; OJ L 62, 23.2.2021, p. 24–40

⁵ OJ L 312, 28.11.2017, p. 6–53; OJ L 62, 23.2.2021, p. 24–40

express their concerns and views. All TSOs and NEMOs were involved in the area of market coupling operation (hereafter: MCO) governance and development, organisation and operation. All TSOs were also involved in the meetings where the draft amendments on capacity calculation, bidding zone review, data exchange, common grid model, scheduling and redispatching and countertrading. These meetings took place from June to October 2021.

- (8) ACER's Electricity Working Group (hereafter: AEWG) was consulted between 10 November 2021 and 19 November 2021, and provided its advice on 22 November 2021).
- (9) In its advice, the AEWG broadly endorsed the draft ACER Recommendation on reasoned proposals for amendments to the CACM Regulation.
- (10) In its advice, the AEWG considers that the CACM Regulation is a legal cornerstone of the EU market design as it describes key elements for the functioning of short-term markets, but also elements which have an impact on transmission system operation. Therefore, in its advice, the AEWG considers that ACER and regulatory authorities need to strive for an ambitious and well-reasoned recommendation on enhancements of the CACM Regulation. The AEWG also acknowledged that, although the process aimed for a continuous and wide participation amongst regulatory authorities and with stakeholders, given the different interests and views, not for all substance items common positions or compromises could be achieved.
- (11) The AEWG further considers that having in mind that the recommendation to the European Commission will provide input to a legislative process, it is considered useful to in any case provide clear input from regulators even if no compromise text could be reached. Hence, the AEWG considers that it is welcomed that, although limited in number, for these areas different options are included.
- (12) Finally, in its advice, the AEWG invites ACER to take note of the comments raised and in particular pay attention to the following topics:
 - (a) The MCO governance defined in the current CACM Guideline proved to be a source of problems in terms of decision making and implementation of relevant features and projects. This experience suggests an appropriate restructuring of the MCO governance and ACER suggests a timeline for that. However, it could be explored how remarks from some regulatory authorities in relation to more balanced representation of the different options and cost/benefit considerations could still become accommodated into the recommendation.
 - (b) Monopoly NEMOs are an established practice in a number of Member States. The first CACM Regulation established competitive NEMOs as a standard model and monopoly as an exemption and although it is still appropriate to compare and evaluate the two models applied in practice, the assessment process should be adequate.
 - (c) The approach to capacity calculation differs regionally where the two applied models are flow-based and coordinated NTC. The requirements defined in

CACM need to provide for a level-playing field between the TSOs applying the two capacity calculation models when comparing their performance in relation to the 70% target. However, this should not lead to unnecessary additional cost (also for consumers).

- (13) On 15 December 2021, ACER’s Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

III. LEGAL GROUNDS FOR THE PRESENT RECOMMENDATION

- (14) According to its invitation of 20 January 2021, the Commission asked ACER to “*prepare reasoned recommendations for amendments to the CACM Regulation, in line with Article 60(3) of the Regulation (EU) 2019/943 on the internal market for electricity*”.
- (15) In that regard, it is first to note that the CACM Regulation is not a network code, as referred to by Article 60 of the Electricity Regulation, but a guideline pursuant to Article 61 of the Electricity Regulation.
- (16) While Article 60 of the Electricity Regulation defines a process for the amendment of network codes within the areas listed in Article 59(1) and (2) thereof, with ACER having a formal role for the proposal of such amendments, no detailed amendment process is provided for guidelines under Article 61 of the Electricity Regulation; Article 61(6) only requires the Commission to consult ACER, ENTSO for Electricity, the EU DSO entity and, where relevant, other stakeholders when adopting or amending guidelines.
- (17) Given the similarities of network codes and of guidelines adopted in areas where network codes could have been developed, ACER considers it as appropriate to apply the process defined in Article 60 of the Electricity Regulation for its proposals of amendments to network codes *mutatis mutandis* for the purpose of its proposals of amendments to guidelines in the network code areas.
- (18) Thus, according to the first sentence of Article 60(3) of the Electricity Regulation, ACER may make reasoned proposals to the Commission for amendments, explaining how such proposals are consistent with the objectives of the network codes set out in Article 59(3) of the same Regulation. Article 59(3) of the Electricity Regulation does not refer explicitly to objectives and states that the Commission should establish a priority list every three years, identifying the areas to be included in the development of network codes. Instead, subsequently, Article 59(4) and (11) of the Electricity Regulation do define objectives for the development of network codes, namely contribution to market integration, non-discrimination, effective competition, and the efficient functioning of the market. Accordingly, the reference in Article 60(3) of the Electricity Regulation to the objectives of Article 59(3) of that Regulation should be read together with Article 59(4) and (11) of the same Regulation and in light of the objectives listed therein. Therefore, these objectives are also relevant for the amendments proposed in this Recommendation (as detailed in the reasoning provided in Annexes 3, 4 and 5).

- (19) According to the second sentence of Article 60(3) of the Electricity Regulation, where ACER considers an amendment proposal to be admissible and where it proposes amendments on its own initiative, ACER should consult all stakeholders in accordance with Article 14 of Regulation (EU) 2019/942.
- (20) Pursuant to Article 14(1) of Regulation (EU) 2019/942, ACER, in the process of proposing amendments of network codes under Article 60 of the Electricity Regulation, has to *‘extensively consult at an early stage market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner, in particular when its tasks concern transmission system operators’*.
- (21) With regard to the amendment of the CACM Regulation, it is also to note that the CACM Regulation relates to the area of ‘capacity allocation and congestion-management rules’ under Article 59(1)(b) of the Electricity Regulation, which is specified as including rules on day-ahead, intraday and forward capacity calculation methodologies and processes, grid models, bidding zone configuration, redispatching and countertrading, trading algorithms, single day-ahead and intraday coupling, the firmness of allocated cross-zonal capacity, congestion income distribution, cross-zonal transmission risk hedging, nomination procedures, and capacity allocation and congestion management cost recovery.
- (22) While those specifications are subareas of the generic term ‘capacity allocation and congestion management rules’, this does not mean that they can or must be covered only in a single set of rules. In fact, they can be addressed through separate legal acts, as is the case e.g. for forward capacity calculation, which is currently governed within Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation. Consequently, capacity allocation and congestion-management rules may be included also in other legal acts than the CACM Regulation, and the latter may be also amended to the effect that rules currently included in the CACM Regulation are transferred to and incorporated in other legal acts.
- (23) Finally, according to Article 3(1) of Regulation (EU) 2019/942, ACER may, upon a request of the European Parliament, the Council or the Commission, or on its own initiative, provide an opinion or a recommendation to the European Parliament, the Council and the Commission on any of the issues relating to the purpose for which it has been established.
- (24) As indicated by Articles 60 and 61 of the Electricity Regulation, ACER’s contribution to the amendment of network codes and guidelines concerns issues relating to a purpose for which ACER has been established.

IV. MAIN FINDINGS

- (25) ACER found that amendments to the CACM Regulation would be required in the areas set out in recitals (26) to (31).

- (26) On the general provisions, ACER proposes amendments to the adoption of terms and conditions or methodologies, definitions, publication of information and delegation of tasks.
- (27) On the organisation of market coupling and capacity calculation, ACER proposes amendments to the designation of NEMOs, MCO governance and organisation, MCO tasks and responsibilities and costs provisions.
- (28) On the capacity calculation, ACER proposes amendments to capacity calculation regions, general requirements for capacity calculation, capacity calculation methodologies and the capacity calculation process.
- (29) On market coupling, ACER proposes amendments to market coupling development, timings and procedures, scheduled exchanges, congestion income collection and distribution, clearing and settlement and market coupling operation.
- (30) On the bidding zone review process, ACER proposes amendments to the bidding zone review procedure and the criteria for bidding zone review.
- (31) On the implementation monitoring and reporting, ACER proposes amendments to the reporting on market coupling, capacity calculation and bidding zone configuration and implementation monitoring.
- (32) ACER has proposed the amendments in these areas in Annex 1 to this Recommendation for the reasons detailed in Annexes 3 and 4 to this Recommendation explaining how such proposals are consistent with the objectives in Article 59(4) of the Electricity Regulation. The amendments proposed by ACER take into consideration the advice received from the AEWG, summarised above in paragraphs (8)-(12); ACER's consideration of the views from regulatory authorities on the different contested topics is indicated, where pertinent, in Annexes 3 and 4 to this Recommendation.
- (33) In line with the Commission's request, and taking into account the outcome of its extensive consultation with the relevant stakeholders, ACER has prepared reasoned proposals for amendments to the CACM Regulation as well as to the SO Regulation; with regard to the latter, ACER proposed limited changes that are intrinsically linked to the changes proposed to the CACM Regulation, as explained in detail in Annex 4 to this Recommendation.
- (34) ACER found that amendments to the SO Regulation linked to the removal of these provisions from the CACM Regulation would be required in the areas: generation and load data provision, common grid model and scenarios, redispatching and countertrading coordination and cost sharing and scheduling.
- (35) ACER has proposed the amendments in these areas in Annex 2 to this Recommendation for the reasons detailed in Annexes 5 to this Recommendation explaining how such proposals are consistent with the objectives in Article 59(4) of the Electricity Regulation.

- (36) Finally, while no amendments are proposed in the areas of application of the CACM Regulation to third countries and the minimum capacity targets pursuant to Article 16(8) of the Electricity Regulation, ACER encourages the Commission to examine these areas and consider potential amendments.

HAS ADOPTED THIS RECOMMENDATION:

1. ACER recommends to amend Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, as amended by Commission Implementing Regulation (EU) 2021/280 of 22 February 2021, in accordance with Annex 1, for the reasons explained in Annex 3 and 4.
2. ACER recommends to amend Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation, as amended by Commission Implementing Regulation (EU) 2021/280 of 22 February 2021, in accordance with Annex 2, for the reasons explained in Annex 5.

This Recommendation is addressed to the European Commission.

Done at Ljubljana, on 17 December 2021.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

- Annex 1 – Amended CACM Regulation
- Annex 1a – Amended CACM Regulation TC compared to the current Regulation
- Annex 2 – Amended SO Regulation
- Annex 2a – Amended SO Regulation TC compared to the current Regulation
- Annex 3 – Initial impact assessment on market coupling organisation
- Annex 4 – Reasoning to proposed amendments to the CACM Regulation
- Annex 5 – Reasoning to proposed amendments to the SO Regulation
- Annex 6 – Evaluation of responses to the public consultation (based on Power BI report)