

Mr Andrew Claxton,
All NEMOs Committee

Cc Mr Klaus-Dieter Borchardt
Director,
Internal Energy Market,
DG ENER,
European Commission

Cc Mr Alberto Pototschnig,
ACER Director

9 February 2017,

Dear Mr Claxton,

I write on behalf of all Regulatory Authorities regarding the amended plan on joint performance of MCO functions (MCO Plan) proposal (hereafter referred to as the “MCO Plan Proposal”) provided by all NEMOs on 14 December 2016, in accordance with Article 7(3) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management (CACM).

The all NEMOs’ MCO Plan proposal has been received by all NRAs on 15 April 2016, within the deadline under Article 7(3) of the Regulation 2015/1222 GL (8 months after entry into force of the Regulation). According to Article 9(10) of the Regulation 2015/1222, all Regulatory Authorities shall approve or request amendments regarding terms and conditions or methodologies submitted by TSOs or NEMOs within 6 months after the receipt of the proposal. All Regulatory Authorities received the MCO Plan by 15 April 2016; thus, the deadline for approving the MCO Plan or requesting amendments ended on 15 October 2016. On 26 September 2016 all Regulatory Authorities at the Energy Regulators’ Forum unanimously agreed to submit a request for amendment of the MCO Plan submitted by NEMOs according to Article 9(6) of the Regulation 2015/1222. On this basis each Regulatory Authority has taken an individual decision at national level and has sent the request for amendment to their respective NEMO.

All Regulatory Authorities received the amended MCO Plan proposal by all NEMOs on 14 December 2016, within the deadline under Article 9(12) of the Regulation 2015/1222.

After assessing the amended version of the MCO Plan, we came to the conclusion that NEMOs omitted important parts of the requested amendments when amending the original MCO plan. Among those, but not exhaustively, the following three topics are of paramount importance and must be dealt with in the MCO proposal.

- First, provisions dealing with costs are still in the MCO Plan although Regulatory Authorities several times clarified that questions dealing with costs should not be decided within the MCO Plan. This is disappointing particularly given that the MCO Plan and the respective request for amendment were discussed multiple times among NEMOs and Regulatory Authorities during NEMOs/RAs Coordination Group Meetings. During each of these meetings the position of **all Regulatory Authorities to remove any cost provisions from the MCO Plan was confirmed**. Furthermore, this statement by all Regulatory Authorities was reiterated by e-mail to the NEMOs Committee prior to the submission of the amended MCO Plan. Besides, the actual request for amendment was unambiguous and clear on this matter.
- Secondly, **provisions restricting NEMOs’ liability on MCO functions** have to be considered outside the scope of the MCO Plan and, therefore, must be **completely removed**.

- Finally, it is essential that the MCO plan ensures, as a general rule, that there is **no discrimination among NEMOs**. This aspect is particularly crucial regarding the decision-making process involving serviced and servicing NEMOs. Any provision introducing or implying a differentiated treatment among NEMOs – for example between co-owners of the day ahead asset and NEMOs that are not co-owners - needs to be duly justified against the objectives set out in Article 3 of the CACM Guidelines.

All Regulatory Authorities, therefore, reconfirm their initial request for amendment (of 26 September 2016) and strongly insist that NEMOs fully comply with the requirements therein with no derogation being possible. We expect that all NEMOs resubmit the amended final proposal of the MCO plan by 14 April 2017.

On the basis of the agreement by all Regulatory Authorities at the Energy Regulators' Forum, each Regulatory Authority will resubmit the original request for amendment to their respective designated NEMO(s) by 14 February 2017 together with this cover letter. Please be informed that annex 1 of the initial request for amendment has been removed as the references to the structure of the initial MCO plan are not valid anymore.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Mogg', with a stylized flourish at the end.

Lord Mogg

Attachment: Request for amendment by all Regulatory Authorities agreed at the Energy Regulators Forum on all NEMOs' proposal for the plan on joint performance of MCO functions (MCO plan).