

DECISION No 02/2023
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 10 January 2023

**on the Nominated Electricity Market Operators proposal for the
harmonised maximum and minimum clearing price methodology for the
single intraday coupling**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

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 5(2) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Articles 9(5), 9(6)(i) and 9(13) as well as Article 54 thereof,

Having regard to the outcome of the consultation with the concerned regulatory authorities and nominated transmission operators,

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

Having regard to the favourable opinion of the Board of Regulators of 6 January 2023, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

¹ OJ L 158, 14.6.2019, p. 22.

² OJ L 197, 25.7.2015, p. 24

1. INTRODUCTION

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the ‘CACM Regulation’) laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. These requirements also include specific provisions for the single intraday coupling (‘SIDC’) in accordance with Chapter 5 of the CACM Regulation and, particularly, for setting the harmonised maximum and minimum clearing prices in accordance with Article 54 of the CACM Regulation.
- (2) On 14 November 2017, ACER issued its Decision No 05/2017 on the nominated electricity market operators’ (‘NEMOs’) proposal for harmonised maximum and minimum clearing prices (‘HMMCP’) for SIDC according to Article 54 of the CACM Regulation (the ‘HMMCP for SIDC methodology’).³
- (3) The present Decision follows from the NEMOs’ proposal to amend the HMMCP for SIDC as approved by Decision No 05/2017. Annex I to this Decision sets out the amended HMMCP for SIDC, pursuant to Article 54(1) of the CACM Regulation, as approved by ACER.

2. PROCEDURE

- (4) On 24 May 2022, the All NEMO committee, on behalf of the NEMOs, launched a public consultation on a reassessment of the HMMCP for SIDC methodology. The consultation lasted until 15 July 2022.
- (5) By email of 15 September 2022, the All NEMO committee submitted, on behalf of all designated NEMOs, a proposal for amendments to the HMMCP for SIDC methodology in accordance with Article 54(1) of the CACM Regulation (the ‘Proposal of amendment’).
- (6) On 15 September, a teleconference with the NEMOs and the regulatory authorities was organised for NEMOs to present the Proposal for amendment.
- (7) On 19 September 2022, ACER launched a public consultation on the Proposal for amendment, inviting all market participants to submit their comments by 9 October 2022. The consultation documents focused on the Proposal for amendment with additional questions aiming at defining the stakeholders’ views on potential evolutions of the

³ Decision No 05/2017 of 14 November 2017 on the NEMOs’ proposal for harmonised maximum and minimum clearing prices for single intraday coupling:
https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2005-2017%20on%20NEMOs%20HMMCP%20for%20single%20intraday%20coupling.pdf

Proposal for amendment. The summary and evaluation of the responses received are presented in Annex II to this Decision.

- (8) By email of 20 September 2022, the All NEMO committee specified its Proposal for amendment and clarified the proposed textual changes. The specified Proposal for amendment documents were uploaded to the ACER public consultation.⁴
- (9) Between 21 September 2022 and 31 October 2022, ACER cooperated closely with the NEMOs and the regulatory authorities and consulted them on various amendments suggested by ACER during teleconferences and via email communication. In particular, the following procedural steps were taken:
- 21 September: discussion with the regulatory authorities during the CACM Task Force meeting⁵;
 - 21 September: discussion with the regulatory authorities at the meeting of the Board of Regulators;
 - 27 September: discussion with the NEMOs, Transmission System Operators ('TSOs') and regulatory authorities during the CACM pentilateral coordination group meeting⁶;
 - 3 October: public workshop presenting the Proposal for amendment to the stakeholders and providing them with clarifications;
 - 5 October: discussion with the regulatory authorities during the AEWG⁷;
 - 6 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team⁸;
 - 13 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team;
 - 20 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team;
 - 27 October: discussion with a sub-group of regulatory authorities in the CACM Algorithm Expert Team;

⁴ Having as objective to conduct the procedure in an expedited manner, ACER decided to not wait for the documents submitted by the NEMOs on 20 September to open its public consultation. Those documents bringing only specifications and minor content change to the Proposal for amendments submitted on 15 September 2022, ACER considers that this decision did not affect the quality of the public consultation.

⁵ ACER's platform for discussing all issues connected to the CACM Regulation with the regulatory authorities.

⁶ Joint platform between ACER, NEMOs, TSOs, the European Commission and regulatory authorities for discussing issues connected to the CACM Regulation.

⁷ ACER's high level platform for discussing all issues connected to all network codes and guidelines

⁸ Subgroup of the CACM TF involving regulatory authorities experts on algorithm and market coupling operation topics such as the HMMCP for SIDC

- 9 November: discussion with the regulatory authorities during the CACM Task Force meeting;
- (10) On 31 October 2022, ACER shared its preliminary position on the Proposal for amendment with the NEMOs and the regulatory authorities and invited them to submit their written observations and any requests for an oral hearing by 11 November 2022.
- (11) Between 16 November and 24 November, ACER consulted the AEWG, including a discussion during the 22 November AEWG meeting. The AEWG provided its advice on the draft decision on 25 November 2022 (see Section 5.3).
- (12) On 6 January 2023, the Board of Regulators issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942 on the draft decision.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL FOR AMENDMENT

- (13) According to Article 5(2)(b) of Regulation (EU) 2019/942, ACER shall revise and approve proposals for terms and conditions or methodologies, based on network codes and guidelines adopted before 4 July 2019, which require the approval of all regulatory authorities.
- (14) According to Articles 9(5) and 9(6)(i) of the CACM Regulation, as initially adopted, namely as a guideline before 4 July 2019, the proposal for the HMMCP for SIDC in accordance with Article 54(1) of the same Regulation was subject to approval by all regulatory authorities. Following the amendment of these provisions by Commission Implementing Regulation (EU) 2021/2808, the proposal for the HMMCP for SIDC and any amendments thereof have been explicitly subjected to approval by ACER.
- (15) According to the second sentence of Article 9(13) in joint reading with Articles 9(1), 9(6)(i) and 54(1) of the CACM Regulation, NEMOs responsible for developing the proposal to the HMMCP for SIDC (i.e. all NEMOs) may propose amendments to this methodology and submit them to ACER for approval.
- (16) According to Article 5(6) of Regulation (EU) 2019/942 and Article 9(5) of the CACM Regulation, ACER, before approving the proposal for amendment, shall revise it where necessary, after consulting the respective NEMOs, in order to ensure that the methodology is in line with the purpose of the CACM Regulation and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (17) The Proposal for amendment has been submitted by the NEMO committee, on behalf of all NEMOs, to ACER for approval. It aims to amend the HMMCP for SIDC, under Article 54 of the CACM Regulation, as approved by Decision No 05/2017 of 14 November 2017.

- (18) Therefore, based on Article 5(2)(b) of Regulation (EU) 2019/942 as well as Articles 9(5), 9(6)(i) and 9(13) of the CACM Regulation, ACER is competent to decide on the Proposal for amendment.

4. SUMMARY OF THE PROPOSAL FOR AMENDMENT

- (19) The Proposal for amendment includes the following elements:

- a) a ‘Whereas’ section;
- b) general provisions, including on the scope of application and on harmonised definitions, in Title 1;
- c) provisions on the maximum and minimum prices, including the values of the harmonised maximum and minimum clearing prices for SIDC, criteria and process for establishing and amending maximum and minimum price for SIDC , in Title 2;
- d) final provisions on the timeline for implementation and language disclaimer, in Title 3;

- (20) The Proposal for amendment, therefore, consists of the complete HMMCP for SIDC as contained in Annex I to ACER’s Decision No 05/2017, subject to the following NEMOs’ amendments:

- a) Whereas:
 - i. addition of a clarification that the document includes a mechanism for amending both the maximum and minimum clearing price;
 - ii. introduction of the intraday auctions (‘IDAs’)
 - iii. addition of one paragraph to the recitals that describes that the document considers the context leading to an increase of the harmonised maximum price in single day-ahead coupling (‘SDAC’) in May 2022 and the outcomes of the public consultation that all NEMOs organized;
- b) Article 3:
 - i. introduction of the IDAs to the harmonised maximum and minimum clearing price definitions
- c) Article 4:
 - i. addition of a paragraph replicating the increase of the harmonised maximum clearing price limit for SIDC to the reduction of the harmonised minimum

clearing price limit for SIDC in case the SDAC harmonised maximum or minimum clearing price limits reaches its value; and

- ii. modification of the NEMOs' obligation to announce the new harmonised maximum or minimum clearing prices for SIDC.

5. OBSERVATIONS RECEIVED BY ACER

5.1. Public consultation one the Proposal

(21) Responses to ACER's public consultation are summarised in Annex II to this Decision.

5.2. Consultation on ACER's preliminary position

(22) ACER's preliminary position contained one major change compared to the Proposal for amendment:

- a) ACER introduced an automatic mechanism to adjust the harmonised maximum and minimum price limits for SIDC based on triggering conditions applying to the IDAs.

(23) The following paragraphs provide a summary of views on ACER's preliminary position received during the hearing phase between 31 October and 16 November 2022. ACER did not receive any requests for oral hearings. ACER received a written comment from the all NEMO committee on behalf of all NEMOs, from Energie Control Austria ('E-Control'), Institut Luxembourgeois de Régulation ('ILR'), Bundesnetzagentur ('BNetzA'), Energimarknadsinspektionen ('Ei') and Comisión Nacional de los Mercados y la Competencia ('CNMC').

(24) On behalf of the NEMOs, the NEMO committee stated in its hearing input the following:

- a) NEMOs can confirm, that an immediate implementation as described in Article 5(2) of ACER's preliminary position is possible; and
- b) NEMOs provided an updated list of NEMOs subject to the approved requirements for the HMMCP for SIDC.

(25) E-Control introduced the following in their hearing input:

- a) addition of a question regarding the link between the SDAC harmonised maximum clearing price and SIDC harmonised maximum clearing price, indicating that the Proposal for amendment in Article 4(1) seemed more elegant;
- b) addition of a comment stating that comments made for ACER's preliminary position on the HMMCP for SDAC are to be considered in the HMMCP for SIDC;
- c) addition of a question regarding the triggering conditions to increase the harmonised maximum clearing price for SIDC;

- d) addition of a question to clarify if with Articles 4(3) and 4(4) of the Proposal for amendments, the HMMCP for SDAC will always be higher than the HMMCP for SIDC; and
 - e) wording suggestions with no content changes.
- (26) ILR stated the following in their hearing input that the wording “capped” in ACER preliminary position Article 4(1)(d) and 4(2)(d) should be replaced by “limited” as it is a technical limit and not a political “cap”.
- (27) BNetzA stated the following in their hearing input:
- a) the HMMCP for SIDC methodology is defining technical price limits and not price caps/emergency measures which are decided upon by the EU-legislator, also, Articles 3(b), 7(2) limit the broad interpretation of Article 10(2) of the Electricity Regulation, which should be considered when defining the different parameters leading to adjustments of the harmonised maximum or minimum price limits;
 - b) the transition period should therefore be as short as possible and limited to a period that covers the technical needs of the implementation; and
 - c) to cover from snowballing effects, smaller increase steps should be introduced which would be better representing the requirements of the Electricity Regulation Article 10(2);
- (28) Ei shared in their hearing input that the wording “capped” in ACER preliminary position Article 4(1)(d) and 4(2)(d) should be replaced by “limited”.
- (29) CNMC shared in their hearing input that to ensure that no trade restriction takes place during the transition period, the harmonised maximum clearing price for SIDC can be forced to be 1000€/MWh higher than the harmonised maximum clearing price for SDAC.

5.3. Consultation of the AEWG

- (30) The AEWG provided its advice on 25 November 2022 and endorsed the draft Decision.

6. ASSESSMENT OF THE PROPOSAL FOR AMENDMENT

6.1. Legal framework

- (31) According to Article 10(1) of Regulation (EU) 2019/943 (‘the Electricity Regulation’), there shall be neither a maximum nor a minimum limit to the wholesale electricity price.
- (32) According to Article 10(2) of the Electricity Regulation, the harmonised limits on maximum and minimum clearing prices for intraday applied by the NEMOs shall be sufficiently high so as not to unnecessarily restrict trade, be harmonised for the internal

market and take into account the maximum VoLL. NEMOs shall also implement a transparent mechanism to automatically adjust the technical bidding limits in due time in the event that the set limits are expected to be reached. The adjusted higher limits shall remain applicable until further increases under that mechanism are required.

- (33) Article 54 of the CACM Regulation sets out specific requirements for the HMMCP for SIDC.
- (34) According to Article 54(1), the proposal for HMMCP for SIDC shall be developed by all NEMOs and shall take into account an estimation of the VoLL. It shall be subject to consultation in accordance with Article 12 of the CACM Regulation. Moreover, in accordance with Article 9(13) of the CACM Regulation, the NEMOs' proposals for amendment to the terms and conditions or methodologies shall also be subject to consultation in accordance with Article 12 of the CACM Regulation.
- (35) As a general requirement, Article 9(9) of the CACM Regulation sets out that every proposal for terms and conditions or methodologies includes a proposed timescale for their implementation and a description of their expected impact on the objectives of the CACM Regulation.
- (36) Further, for coherence reasons and as confirmed by Article 9(9) of the CACM Regulation, the proposal for terms and conditions or methodologies must be in line with the objectives of the CACM Regulation defined in its Article 3.

6.2. Assessment of the legal requirements

- (37) The Proposal for amendment includes not only specific amendments to the HMMCP for SIDC approved by ACER Decision No 05/2017, but also the rest of the approved HMMCP for SIDC. To avoid duplication and because ACER does not see the need to reassess the Proposal for amendment in its entirety, ACER will focus on the NEMOs' proposed amendments and the additional amendments made by ACER.

6.2.1. Legal assessment of the conditions for adjusting the harmonised maximum and minimum clearing prices for SIDC

- (38) As described in recital (20), in Article 4(2) of the Proposal for amendment, the NEMOs replicated Article 4(1), describing the adjustment of the harmonised maximum clearing price for SIDC in case of increase of the harmonised maximum clearing price for SDAC to its levels, to the harmonised minimum clearing price for SIDC. ACER considers that the introduction in the Proposal for amendment of conditions for adjusting the harmonised minimum clearing price for SIDC is compliant with Article 10(2) of the Electricity Regulation, given that this provision does not differentiate upper and lower limits, but instead refers to limits in general: *'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached'*.
- (39) ACER considers that the Proposal for amendment is not compliant with the requirement of an automatic adjustment mechanism under the third sentence of Article 10(2) of the

Electricity Regulation (*'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached'*) In that the Proposal for amendment does not contain any mechanism to adjust automatically the harmonised maximum and minimum clearing prices for SIDC in the event that the set limits are expected to be reached.

- (40) ACER therefore introduced Articles 4(1) and 4(2) of the HMMCP for SIDC methodology, replicating the automatic mechanisms ruling the adjustments of the HMMCP for SDAC and applying to the IDAs. ACER considers that such mechanisms are fit for both the SDAC and the SIDC IDAs, both having a very similar functioning. The complete justifications for the different parameters and their values that compose these mechanisms can be found in ACER Decision 01/2023⁹ recitals (47) to (67). Accordingly, ACER introduced recital (5) of the “Whereas” section of the HMMCP for SIDC Methodology to introduce the transition period.
- (41) ACER considers that an automatic mechanism for adjusting the harmonised maximum and minimum clearing prices for SIDC based on the SIDC continuous segment would not be able to correctly represent the legal requirements of Article 10(2) of the Electricity Regulation: *'NEMOs shall implement a transparent mechanism to adjust automatically the technical bidding limits in due time in the event that the set limits are expected to be reached'*. Considering the functioning of the SIDC continuous market segment (remunerating market participants based on the price of their bids and not based on a clearing price and displaying more frequent extreme individual with little correlations to the market fundamentals), such mechanism would not be able to correctly adjust the technical bidding limits in the event that the set limits are expected to be reached. Furthermore, Article 10 of the Electricity Regulation only mentions intraday limits without any differentiation of the mechanism (IDA versus continuous) (*'NEMOs may apply harmonised limits on maximum and minimum clearing prices for day-ahead and intraday timeframes'*). As long as there is an automatic mechanism determining the harmonised maximum and minimum clearing price for SIDC (and independent from the HMMCP for SDAC), there is no need for an automatic adjustment mechanism applying specifically to the SIDC continuous market segment. This would not constitute a discriminatory treatment of a segment over another. Indeed, the continuous and IDA market segments of SIDC having the same price limits at all time, there would be, from the market participants perspective, no incentive, purely from the perspective of the price limits, to prefer a segment over the other.

6.2.2. Assessment of the requirements in Article 54(1) of the CACM Regulation

- (42) The Proposal for amendment does not affect the finding in ACER’s Decision No 05/2017 that the requirements of Article 54(1) of the CACM Regulation are fulfilled.

⁹ ACER Decision 01/2023 on the NEMOs’ proposal for the harmonised maximum and minimum clearing price methodology for single day-ahead coupling

- (43) Therefore, the Proposal for amendment fulfils the requirements of Article 54(1) of the CACM Regulation.

6.2.3. Assessment of the requirements for consultation

- (44) The NEMOs, through the All NEMO committee, consulted the public on the reassessment of the HMMCP for SIDC methodology for more than one month, i.e. from 14 May 2022 until 15 July 2022 and published the responses received and summaries thereof.
- (45) In addition, ACER consulted the public on the draft Proposal for amendment from 19 September 2022 until 9 October 2022, thereby complementing the public consultation ran by the NEMOs before submitting their Proposal for amendment.
- (46) Therefore, ACER considers that the Proposal for amendment and its subject matter has been consulted with the public in such a way that stakeholders could present their views effectively and that Article 12 of the CACM Regulation and Article 9(13) of the CACM Regulation can be deemed as satisfied.

6.2.4. Assessment of the requirements in Article 9(9) of the CACM Regulation

- (47) Article 5 of the Proposal for amendment provides that the HMMCP for SIDC shall apply *'immediately after the MCO function has been implemented in accordance with Article 7(3) of the CACM Regulation'*. ACER amended Article 5 of the Proposal for amendment to correct the implementation date as it referred to outdated events.
- (48) Recitals (7) to (14) of the 'Whereas'-section in the Proposal for amendment describe the expected impact of the HMMCP for SIDC on the objectives listed in Article 3 of the CACM Regulation and remained unchanged in comparison to the version of the HMMCP for SIDC according to ACER's Decision No 05/2017.
- (49) Therefore, the Proposal for amendment complies with the requirement of the inclusion of the implementation timescale and of the description of the expected impact on the objectives, in accordance with Article 9(9) of the CACM Regulation.

6.2.5. Assessment of other points of the Proposal for amendment

- (50) ACER adjusted recital (3) of the 'Whereas' section of the Proposal for amendment to refer to the public consultation organised by ACER.
- (51) ACER adjusted recital (3) of the 'Whereas' section of the Proposal for amendment to remove the reference to the context of the increase of the SDAC harmonised maximum price limit change of May 2022 described in recital (20)a)ii considering that the context of this increase is already included in the public consultations to which references are made in the recital.

- (52) ACER adjusted recital (10) of the ‘Whereas’ section of the Proposal for amendment to remove the reference to the public consultation organised by the NEMOs described in recital (4) considering that the objective of this consultation was not to present the Proposal for amendment.
- (53) ACER amended the ‘Whereas’ section of the Proposal for amendment to rely on the wording used in Article 10(2) of the Electricity Regulation when referring to adjustment of the harmonised maximum or minimum clearing price limits.
- (54) ACER amended Article 1 of the Proposal for amendment to specify the personal scope of application of the methodology and to introduce an Annex 1, containing a list of all the NEMOs to which the HMMCP for SIDC would apply. This amendment is necessary to allow provide clarity on changes in the group of NEMOs to which the HMMCP for SIDC should apply, making those changes transparent by amendments to the methodology, namely the list of TSOs in Annex I.
- (55) ACER amended Article 2(2) of the Proposal for amendment to define the term “Transition period” in order to simplify Article 4 of the Proposal for amendment.
- (56) ACER amended Article 3 of the Proposal for amendment to introduce the terms “reference harmonised maximum and minimum clearing prices” and to clarify the values that such limits should take at the entry into force of the HMMCP for SIDC.
- (57) ACER amended Article 5 of the Proposal for amendment to introduce the publication of the document required according to Article 9(14) of the CACM Regulation.
- (58) ACER amended Article 6 of the Proposal for amendment to correct the reference to Article 9(6)(i) of the CACM Regulation.
- (59) Finally, ACER introduced some necessary editorial changes to improve the readability and the form.

7. CONCLUSION

- (60) For all the above reasons, ACER considers the Proposal for amendment in line with the requirements of the Electricity Regulation and the CACM Regulation, provided that the amendments described in this Decision are integrated in the Proposal for amendment, as presented in Annex I to this Decision. The amendments, which have been consulted with the NEMOs, are necessary to ensure that the Proposal is in line with the purpose of the Electricity Regulation and the CACM Regulation and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (61) Therefore, ACER approves the Proposal for amendment subject to the necessary amendments. To provide clarity, Annex I to this Decision sets out the Proposal for amendment as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The harmonised maximum and minimum clearing price methodology for single intraday coupling pursuant to Article 54 of Regulation (EU) 2015/1222 is amended and approved as set out in Annex I to this Decision.

Article 2

This Decision is addressed to:

EXAA AG

Independent Bulgarian Power Exchange (IBEX)

CROPEX Ltd

OTE a.s.

EPEX SPOT SE

HEnEx SA

HUPX Zrt.

SONI Ltd

EirGrid plc

GME Spa

Towarowa Gielda Energii S.A.

OPCOM S.A.

OKTE a.s.

BSP Regionalna Energetska Borza d.o.o.

OMIE S.A.

NORD POOL EUROPEAN MARKET COUPLING OPERATOR AS

Nasdaq Spot AB

Done at Ljubljana, on 10 January 2023.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Harmonised maximum and minimum clearing prices to be applied in all bidding zones which participate in single intraday coupling pursuant to Article 54 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management

Annex Ia – Harmonised maximum and minimum clearing prices to be applied in all bidding zones which participate in single intraday coupling pursuant to Article 54 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management in track change compared to the Proposal (for information only)

Annex II - Evaluation of responses to the consultation of regulatory authorities, NEMOs, TSOs and other market participants on the Proposal (for information only)

In accordance with Article 28 of Regulation (EU) 2019/942, the addressee(s) may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of ACER within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressee(s) may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.