Explanatory note to the proposal of EU NEMOs explaining the MCO Integration Plan in accordance with Article 7(3) of EnC CACM

31 January 2025

Contents

1 Introduction

This explanatory document aims to provide background information and the rationale behind the proposal for the MCO Integration Plan (hereinafter the "MCO IP"). This is a common proposal developed by all Nominated Electricity Market Operators from Member States ("EU NEMOs") pursuant to Article 7(3) of the CACM adapted pursuant to Article 6 of the Energy Community Ministerial Council Decision D/2022/03/MC-EnG (hereinafter the "EnC CACM"), in conjunction with article 9(6) of the EnC CACM.

The official submission, under the recommendation of the European Commission and ACER, has been delayed from the 15 December 2023 to a later date when a full transposition of the Electricity Integration Package is expected to be completed by at least one of the Contracting Parties of the Energy Community (hereinafter "EnC"). The Package includes: the EnC CACM, Regulation (EU) 2019/944, Regulation (EU) 2019/943, Regulation (EU) 2019/942 and Regulation (EU) 1227/2011 as adapted and adopted in the EnC.

However, due to further delays in the transposition of EnC CACM and the other abovementioned Regulations, and subsequent delay in NEMO designation, the European Commission (hereinafter the "EC") requested a submission of the MCO IP by EU NEMOs only, in contradiction with Article 7(3) of the EnC CACM, which foresees a common submission of this proposal of EU NEMOs and EnC NEMOs. This matter is also explained in Recital 5 of the MCO IP.

NEMOs would like to outline the difficulty NEMOs encountered as regards to interpreting and considering legal acts provided under a legal framework outside of the EU. NEMOs were in a position where they faced the challenge of working with contradictory legal provisions stemming from two legal frameworks, it should be therefore considered that the MCO IP reflects the EU NEMOs interpretation of these contradictory pieces of legislation.

The Explanatory Note is structured as follows:

The section titled **Background** provides a short summary of the legal background of the MCO IP, while the following section describes the reasoning behind specific **High-level principles** that are applied throughout the MCO IP related to the differences between EU NEMOs and EnC NEMOs. The section High-level principles and the section entitled **List of divergences compared to the MCO Plan** are partially based on the *"Shadow opinion" of All EU Regulatory Authorities and ACER coordinated through the CACM TF on All NEMOs' proposal for Market Coupling Operation Integration Plan* (hereafter just "Shadow Opinion").

The proposal for the MCO IP is hereafter in this Explanatory note referred to as the MCO IP or the "Proposal".

2 Background

2.1 Relevant legislative acts

The Proposal submitted to ACER, all NRAs and the Energy Community Regulatory Board (hereinafter "ECRB") was developed by the EU NEMOs pursuant to article 7(3) of the EnC CACM. The EnC CACM provides a timeline for the delivery of this MCO IP in article 7(3), which was twelve months after the entry into force of the EnC CACM, i.e. the 15th of December 2023 (the reasons behind this delayed submission are explained in the **Introduction**).

2.2 Consistency with the plan on joint performance of MCO Functions

Article 7(3) of EnC CACM states that the MCO IP "shall be consistent with the plan drafted in **accordance with Regulation (EU) 2015/1222 and shall** include a detailed description and the proposed timescale for implementation, **<...>** and a description of the expected impact of **such integration** on the **<...>** performance of the MCO functions in **Article 7 (2) of Regulation (EU) 2015/1222."**

In the understanding of EU NEMOs, the MCO IP is a methodology developed pursuant to a different legal framework compared to the MCO plan, which has been conceived to be applicable only to the EnC NEMOs. The MCO IP was therefore created as a standalone document, which does not constitute an amendment of the existing MCO Plan developed pursuant to Article 7(2) and 7(3) of the Regulation (EU) 2015/1222 (hereinafter just "CACM Regulation").

The EU NEMOs provided a draft of the MCO IP to ACER, ECRB and all NRAs via the Joint Expert Team on the Energy Community (hereinafter "JET EnC"). The EU NEMOs received the Shadow Opinion, after which the initial approach to the draft was abandoned, the Proposal was fully restructured, to take into account the guidance of the competent regulatory authorities and ACER.

The proposal is structured as a document that first lists High- level principles applicable to the EnC NEMOs, which broadly describes their roles and responsibilities and how they differ from those of the EU NEMOs. A separate, more detailed section of the MCO IP addresses specifically the divergences between the wording of the MCO IP and the wording of the MCO Plan. This section points out all the identified differences and highlights each identified and foreseen difference between EU NEMOs and EnC NEMOs.

3 High-level principles

Principle 1

Following the Shadow opinion, the logic of providing a general reference to the MCO Plan is followed in the Proposal. Via High-level principle 1, EnC NEMOs accept the partial applicability of the MCO Plan and the necessity for the MCO IP to be read in parallel and in conjunction with this MCO IP.

Principle 2

Due to the possible interpretation that the MCO IP, in Article 9(6) of the EnC CACM, replaces the MCO Plan for EnC NEMOs, the proposal establishes that EnC NEMOs commit to complying with all the provisions of the MCO Plan that are considered applicable to them.

Principle 3

In accordance with Article 7(2) of EnC CACM and the Shadow opinion, the Proposal foresees that EU NEMOs will continue carrying out the MCO Functions, without including the EnC NEMOs in the development, maintenance and operation of the algorithms.

Principle 4

A general principle on the acceptance by EnC NEMOs of the existing structure of the SDAC and SIDC and a commitment to integrate into this structure, without hampering the cooperation and the well-functioning of the SDAC/SIDC.

Principle 5

A general principle that EnC NEMOs need to accept the operational requirements of the SDAC and SIDC, as established by the MCO Plan, other methodologies stemming from CACM Regulation and SDAC/SIDC agreements, to ensure a successful integration into the SDAC and SIDC.

Principle 6

Based on the textual differences between the CACM Regulation and the EnC CACM, as well as the reasoning provided in the Shadow Opinion, the Proposal foresees a clear distinction between EU NEMOs and EnC NEMOs concerning the following aspects:

- Pursuant to Article 7(2) of the CACM Regulation, only the EU NEMOs have a clear responsibility for the development, maintenance and operation of the algorithms. The EnC CACM only foresees the possibility - but not the obligation - indicated by the word “may”, that EnC NEMOs take responsibility for these MCO Functions.
- Specific limitation on voting rights, which is also further described in High-level principle 13.
- Prevalence of EU legislative requirements over requirements set forth in the EnC CACM and the MCO IP.

Principle 7

The textual difference between Article 7 and Article 36 of the CACM Regulation, and EnC CACM respectively, leads to the conclusion that EnC NEMOs do not have the same obligations in relation to the development of algorithms.

Principle 8

Due to the differences described in the previous High-level principles, the Proposal foresees that EnC NEMOs can act only in the capacity of serviced NEMOs, both for SDAC and SIDC. As a consequence of this provision:

- Out of the 3 options that are available to EU NEMOs to become Operational NEMOs in SDAC, only the Serviced NEMO option is available to the EnC NEMOs, with certain limitations as described throughout the Proposal.
- This MCO IP establishes a different, limited, scope for the participation of the EnC NEMOs in the existing contractual framework established by the EU NEMOs based on the MCO Plan.

Principle 9

According to the MCO Plan, Serviced NEMOs cannot perform the roles of Coordinator and Back-up Coordinator, the EnC Serviced NEMOs shall not have this possibility either. Additionally, due to the limitations related to the responsibility over the algorithms, it is proposed that the performance of the Operator role, as described in Section 6.1.2.2 of the MCO Plan, is automatically delegated to its EnC Servicing NEMO.

Principle 10

The EnC NEMOs participation in the contractual framework of NEMOs is foreseen as diverging from that of EU NEMOs.

Specifically, EnC NEMOs shall:

- Adhere to ANCA, which shall be amended following the approval of the MCO IP by ACER. This Amendment will lead to the creation of a dedicated Annex, which will describe the differences between EU NEMOs and EnC NEMOs, and which shall take into account all the diverging responsibilities of EU NEMOs and EnC NEMOs. This dedicated Annex will also deal with all relevant provisions related to operational activities.
- Not adhere to All NEMO DA Operational Agreement (diverging from current practice applicable for EU NEMOs).
- Not adhere to All NEMO ID Operational Agreement (diverging from current practice applicable for EU NEMOs).

Principle 11

Due to their EnC NEMO Serviced status, EnC NEMOs will not enter into contracts with DA Service Providers (this set of contracts was established pursuant to Annex 1 of the MCO Plan and is further addressed in Section 6 of this Explanatory Note).

Principle 12

As proposed throughout the Proposal, due to the diverging obligations of the EnC NEMOs, their participation in contracts with ID Service Providers is not foreseen and follows the same logic as their non-participation in contracts with DA Service Providers. The only foreseen contract in which they shall participate is the PMO contract.

EU NEMOs concluded that for those EU NEMOs, who can be considered as Serviced NEMOs, their participation as contractual parties to contracts with ID Service Providers was only due to the obligation stemming from Section 5.2.2, paragraph 8, of the MCO Plan.

EnC NEMOs participation in agreements which govern the development and maintenance of the continuous trading matching algorithm, is not considered as necessary since they do not have the same responsibility as EU NEMOs, related to the development/maintenance of this algorithm.

Principle13

Specific limitations in principle 13 related to EnC NEMO voting rights are further explained below:

Pursuant to Article 9(6) of the EnC CACM, the EnC NEMOs shall **apply** the terms and conditions or methodologies developed according to CACM Regulation. Since Article 9(2) of the CACM Regulation has not been included in the EnC CACM, it is understood that the EnC NEMOs do not have the same voting rights as EU NEMOs and they cannot vote on terms and conditions or methodologies adopted pursuant to the CACM Regulation.

- Stemming from textual differences between EnC CACM and CACM Regulation, in relation to responsibilities for the development, maintenance and operation of the algorithms, EU NEMOs concluded that EnC NEMOs are not entitled to participate in voting on these aspects, however they can express opinions that can be taken into account.
- EnC NEMOs are entitled to vote on operational decisions that directly affect the resolution of incidents that concern their area, however for other operational decisions, EnC NEMOs are not entitled to vote.
- EnC NEMOs are entitled to request changes, however the final decision is taken by EU NEMOs only, without the participation of EnC NEMOs in the voting.

4 List of divergences compared to the MCO Plan (explanation of the most important divergences between the MCO IP and the MCO Plan)

The divergences further explained below are a result of the textual differences between CACM Regulation and EnC CACM and of the understanding of the NEMOs of the Shadow Opinion. The specific divergences follow the logic applied in the Principles 1-13, as described in Section 3 of this Explanatory Note.

The most important divergences between EU and EnC NEMOs concern:

4.1 Validation of results

NEMO validation (preliminary result validation): Since EnC NEMOs can only act in the capacity of serviced NEMOs (as explained in the MCO IP Section 3, Point 8), technically they have no direct connection/access to the MCO Function. This means that, in all instances, the validation of the results for the EnC NEMO shall be forwarded to the SDAC Coordinator by its Servicing NEMO, in accordance with the bilateral service provision agreement between the Servicing NEMO and the EnC NEMO.

- TSO validation (final result validation): Since TSO validation to confirm the final results is forwarded by the NEMOs to the MCO function, the EnC NEMOs are also required to forward this validation via their Servicing NEMO.
- NEMOs deem it necessary to inform ACER about the potential risks associated with this issue. Under the SDAC operational procedures, considering the same process will be followed by EnC NEMOs, an EnC NEMO rejecting the results, if unsolved, could lead to a full decoupling of SDAC. This scenario would have EU-wide implications.
- EU NEMOs highlight the importance of addressing this concern to avoid the risk of full decoupling stemming from the rejection of results by an EnC NEMO or an EnC TSO. NEMOs

would like to point out that such a solution currently does not exist, and possible solutions need to be explored and identified. Therefore, when such a solution is identified, this would necessitate changes to existing procedures in operational agreements.

4.2 Creation of a level playing field for EnC NEMOs

Section 1.1.9 of the MCO Plan is fully applicable, from the perspective of EU NEMOs, only to the level playing field among EU NEMOs. However, the Proposal shall ensure the creation of a level playing field among EnC NEMOs, since the same rules applies to them throughout the Proposal.

4.3 Approval of budget, high-level investment and planning

The divergences are compared to the Section 3, Paragraph 7 and Paragraph 8 of the MCO Plan. The process related to these tasks is subject to MCO Plan and CACM Regulation and the Proposal foresees that EnC NEMOs may contribute to the process of deliberation on these topics, but the final approval is done by EU NEMOs.

5 Go-live windows

The proposal reflects specific go-live windows for both the SDAC and SIDC. NEMOs would like to note that the decision-making process related to actual go-lives, as well as related preconditions and planning, is a joint decision-making process of all NEMOs and all TSOs, therefore the current proposals reflect the current joint decisions.

From the perspective of EU NEMOs, these expected dates are feasible in the event of:

1. Full transposition of the relevant package by EnC Contracting Parties, which EU NEMOs consider a basic prerequisite;
2. Valid NEMO designation;
3. Approved MCO IP by ACER.

Additionally:

1. Following the approval of the MCO IP, EU NEMOs will require time to amend NEMO-only contracts to include all the specific rules and obligations related to EnC NEMOs;
2. Even though contracts between all NEMOs and all TSOs are outside of the scope of the MCO Plan and this MCO IP, NEMOs also expect necessary amendments to some of these contracts to include all the specific rules and obligations related to EnC NEMOs;
3. From the perspective of EU NEMOs, EnC NEMOs can only adhere, to both sets of contracts only after these necessary amendments are in place. Sequentially, EnC NEMOs shall first adhere to NEMO-only contracts;
4. EnC NEMOs are required to reach the technical readiness in line with MCO Plan, MCO IP and contractual arrangements, with successful testing activities concluded.

EU NEMOs fully acknowledge the feedback received via the Shadow Opinion, specifically on Page 5 thereof, where ACER and EU NRAs note the following:

"ACER and all EU NRAs will, however, not accept any negative impact on project planning and on the deliverables in the SDAC and SIDC project pipeline/project prioritisation stemming from the delay of submitting the MCO Plan.'

As a consequence, the decision-making body under Intraday Operations Agreement and Day-ahead Coupling Operations Agreement (i.e. the Market Coupling Steering Committee – MCSC) agreed the following principles that would apply to the Go-live windows and EnC accession planning:

- One go-live window per year for SDAC and one go-live window per year for SIDC;
- Planning of fixed accessions within a defined quarter with a note that the remaining part of the year shall be exclusively used for EU projects (also with the possibility to use the quarters dedicated to EnC countries if needed);
- 1st go-live window for SDAC should be within Q4 2026 – Q1 2027 to allow for a certain level of flexibility and the subsequent windows should be fixed to a specific quarter.

- **Illustrative overview of go-live windows based on the above principles:**

Go-live cycle	SDAC		SIDC	
	Formal request for accession by	Go-live window	Formal request for accession by	Go-live window
1	April - July 2025	Q4 2026 – Q1 2027	April 2025	Q4 2026*[1]
2	July 2026	Q1 2028	April 2026	Q4 2027
3	July 2027	Q1 2029	April 2028	Q4 2028
4	July 2028	Q1 2030	April 2029	Q4 2029

Table 1 - Go-live Windows for EnC Accession

The 18-month timeline for accession for the respective go-live window starts, as visible in Table 1. above, with the submission of a formal request for accession by EnC parties provided that the relevant legislation is transposed and confirmed by EnC Secretariat and that the MCO IP is approved by ACER.

Last but not least, the MCO IP is a NEMO - only TCM, and as such the go-live dates should be considered mainly indicative, since the actual go-live decision is subject to joint TSO and NEMO decisions in the relevant decision-making bodies, mainly the Market Coupling Steering Committee (MCSC). In case a unanimous agreement is reached in the MCSC, more windows could be added in the future (in case they would not interfere with EU projects).

[1] From the perspective of the MCSC, the SIDC go-live window in Q4 2026 (with Baltic Cable and Celtic interconnector) could be used in case EnC parties are ready to go live in SDAC and SIDC and all prerequisites are met.

6 Description of contractual structure

The existing contractual structure between EU NEMOs was established pursuant to the MCO Plan and will be affected by this Proposal. The EU NEMOs foresee a period after the approval of MCO IP, during which the NEMO-only contracts will need to be amended, to take into account the specific divergences of the EnC NEMOs. Currently the contracts do not foresee this kind of differentiation. A period of at least 6 months is foreseen for the amendments.

Additionally, the MCO IP will also likely by extension impact the Intraday Operations Agreement (IDOA) and Day-ahead Coupling Operations Agreement (DAOA) with TSOs, which are outside of the scope of this MCO IP and are also common Agreements with TSOs.

The contractual framework of the NEMOs and expected impact once the MCO IP is approved by ACER are described per contract below:

- **All NEMO Cooperation Agreement (ANCA)**.
  Pre-condition to adhere to ANCA: valid NEMO designation and the follow-up amendment of the ANCA, based on the MCO IP.
  Description[2]: Contractual framework for the governance and coordination of common European NEMO responsibilities by the NEMO Committee regarding the implementation of the MCO Plan and the CACM Regulation. The scope is also described in Section 4 of the MCO Plan.
  Impact: Once the MCO IP is approved by ACER, the ANCA shall be amended in order to be compliant with the MCO IP and set up the rights and obligations of the EnC NEMOs and their integration into the NEMO cooperation.
  Applicable Law: Belgian Law

- **All NEMO Day Ahead Operational Agreement (ANDOA)**
  Divergence: According to the MCO Plan, the ANDOA shall be entered into by all DA Operational NEMOs, including Serviced NEMOs. Entering into the ANDOA is a precondition for being an Operational NEMO.
  The MCO IP, in high level principle 10, foresees a divergence from this process and EnC NEMOs will become Operational NEMOs without entering into the ANDOA. Instead, all operational provisions related to EnC NEMOs will be described in a specific dedicated annex to ANCA.
  The summary of the content of the ANDOA is set out in Annex 2 of the MCO Plan.

[2] NEMOs would like to note the following: currently NEMOs are in the process of merging the ANCA, ANDOA and ANIDOA. This means that ANDOA and ANIDOA will become integral parts of ANCA as annexes and the contractual framework will be unified in order to simplify it. The proposal for specific annex related to EnC NEMOs stems from different legal obligations with respect to the development, maintenance and operation of the algorithms. Additionally, the intention is to preserve the content of the operational annexes as they are now without introducing divergencies and specificities derived from the MCO IP. The dedicated annex to EnC NEMOs will contain all relevant aspects in terms of rules and obligations of EnC NEMOs.

- **All NEMO Intraday Operational Agreement (ANIDOA)**
  Divergence: According to the MCO Plan, the ANIDOA shall be entered into by all ID Operational NEMOs, including Serviced NEMOs. Entering into the ANIDOA is a precondition for being an Operational NEMO.
  The MCO IP, in high level principle 10, foresees a divergence from this process and EnC NEMOs will become Operational NEMOs without entering into the ANIDOA. Instead, all operational provisions related to EnC NEMOs will be described in a specific dedicated annex to ANCA.
  The summary of the content of the ANIDOA is set out in Annex 3 of the MCO Plan.

- **DA service provider contracts**. Due to their status as Serviced EnC NEMOs and the differences mentioned throughout the Proposal, related to the obligations on algorithms, EnC NEMOs will not adhere to the following contracts with DA service providers listed in Annex 2 of the MCO Plan: PMB Service Provider, Algorithm Service Provider and Communication Network Supplier Contract (MPLS)).

- **ID service provider contracts**. Due to their status as Serviced EnC NEMOs and the differences mentioned throughout the Proposal, related to the obligations on algorithms, EnC NEMOs will not adhere to the following contracts with ID service providers listed in Annex 3 of the MCO Plan: ID System Supplier[3] and Communication Network Supplier.

Additionally, as mentioned above, it is expected that common agreements with TSOs, the Intraday Operations Agreement (IDOA) and the Day-ahead Coupling Operations Agreement (DAOA) will be impacted by the Proposal and the final version of the MCO IP approved by ACER. According to the MCO Plan, these agreements are outside the scope of the Proposal. However, NEMOs deem it important to mention the abovementioned impact via this Explanatory Note. After the final approval of the MCO IP, NEMOs and TSOs foresee a similar 6-month period for the amendments to IDOA and DAOA.

7 Clarification on Impact assessment(s) for SIDC and SDAC

EU NEMOs would like to highlight that the Impact assessments for SIDC and SDAC are almost identical to the versions provided unofficially in December 2023.

For the SIDC Impact assessment, the indicative timeline was updated with new deadlines.

[3] The PCA (as described in Section 11.2 of the MCO Plan) no longer exists and the aspects are governed in its successor, the ANIDOA.

For the SDAC Impact assessment, only small changes were made, as no further information was received and no further work was conducted on this aspect. The changes made were to fulfil the requests from the "Other remarks" part of the Shadow Opinion.

8 List of abbreviations used in this Explanatory Note:

ACER – Agency for the Cooperation of Energy Regulators

ANCA – All NEMO Cooperation Agreement

ANDOA – All NEMO Day-ahead Operational Agreement

ANIDOA – All NEMO Intraday Operational Agreement

CACM – Capacity Calculation and Congestion Management (guideline)

DA – Day-Ahead

DAOA – Day-Ahead Coupling Operations Agreement

EC – European Commission

ECRB – Energy Community Regulatory Board

EnC – Energy Community

EnC CACM – CACM adapted by EnC Ministerial Decision

EnC NEMO – Nominated electricity market operator active in an EnC Contracting Party

EU NEMO – Nominated electricity market operator in an EU member state

ID – Intraday

IDOA – Intraday Operations Agreement

MCO – Market Coupling Operator

MCO IP – MCO Integration Plan

MCSC – Market Coupling Steering Committee

MPLS – Multi Protocol Label Switching

PCA – NEMO Cooperation Agreement (no longer exists, replaced by ANIDOA)

PMB – Matcher and Broker (part of MCO function)

NRA – National Regulatory Authority

SDAC – Single Day-ahead Coupling

SIDC – Single Intraday Coupling

TSO – Transmission System Operator

9 NEMOs decision-making in relation to the approval of the Proposal

The approval of the MCO IP was subject to a Qualified majority voting principle (QMV). Some aspects of the Proposal were not accepted by one NEMO and the different position is provided below in Annex 1.

Annex 1: Different NEMO positions

OPCOM position

1) *Introduction*

OPCOM participated in the drafting and submission of the MCO Integration Plan ("MCO IP") pursuant to Article 7(3) of the EnC CACM, in collaboration with EU NEMOs. The process of drafting the MCO Integration Plan presented significant complexities, particularly due to the need to adapt its provisions to reflect the specific requirements of the EnC NEMOs. In OPCOM's view, this necessitated striking a delicate balance between, on the one hand, identifying and addressing the distinctions inherent to the Energy Community NEMOs and, on the other hand, preserving the overarching objective of achieving comprehensive and coherent integration across the broader framework.

While OPCOM fully understands and refrains from contesting the interpretation put forth by the majority of EU NEMOs, it considers it imperative, given the critical nature of the legislative process, to present its concerns regarding certain interpretations of the applicable legal provisions which may result in slightly different conclusions. OPCOM's objective is not to oppose the prevailing interpretation but rather to highlight these alternative perspectives to ensure that ACER and the EnC Secretariat duly consider such distinctions when evaluating and deciding upon the final draft of the MCO IP.

By drawing attention to these differences, OPCOM seeks to uphold the principles of transparency and inclusivity throughout the legislative process. This approach ensures that the final version of the MCO IP is developed with due consideration of all relevant nuances and perspectives, thereby fostering a transparent and robust legislative outcome that accounts for all peculiarities involved.

In the following, we shall address the aspects identified by OPCOM that should be examined including from different perspectives.

2) *With regards to Principle 6, Principle 7 and Principle 8 as outlined in the Explanatory note submitted by all NEMOs*

Through the amendments introduced by replacing the term "shall" with "may" and clarifying that "EnC NEMOs may carry out MCO functions jointly with other NEMOs from Member States," it can

be interpreted that EnC NEMOs are not explicitly obligated to perform MCO functions but are permitted to do so. This shift from a mandatory to a discretionary term reflects legislative intent to provide flexibility, thereby allowing EnC NEMOs the opportunity to collaborate with EU Member State NEMOs without imposing an absolute requirement.

From a legal perspective, the use of "may" rather than "shall" typically indicates that the provision is permissive and not compulsory. By granting the option rather than imposing a mandate, the text ensures alignment with the broader principles of subsidiarity and proportionality, which underpin the legal framework of the Energy Community and the European Union.

Additionally, this interpretation is reinforced by the context of Article 7(2), letter (a), which has been adapted to explicitly define the functions EnC NEMOs may undertake. These include the maintenance, and application of algorithms, systems, and procedures necessary for the efficient and transparent operation of market coupling. By maintaining consistency with these functions, the amendment supports the view that EnC NEMOs are empowered—but not required—to carry out these roles in a collaborative framework.

Moreover, the discretionary language aligns with the overarching goal of facilitating cooperation between EnC and EU Member State NEMOs while respecting the distinct legal and operational frameworks applicable to the Energy Community. This approach ensures legal certainty, fosters inclusivity in decision-making, and allows for practical adaptation to the specificities of each NEMO’s operational context.

The modifications to Article 36, which state that while EU NEMOs shall develop, maintain, and operate price coupling and continuous trading algorithms, EnC NEMOs shall apply such algorithms, should be read in conjunction with Article 7(2)(c) of the EnC CACM, which explicitly provides that EnC NEMOs shall operate such algorithms.

Although the language of Article 36 implies certain distinctions between the roles of EU NEMOs and EnC NEMOs, it is clear from the broader legislative context that EnC NEMOs are equally entitled to operate the algorithms. This interpretation is supported by the fact that "operation" of algorithms, as specified in Article 7(2)(c), inherently requires active engagement with their functioning and application, aligning the operational capacities of EnC NEMOs with those of their EU counterparts.

From a legal perspective, the principle of equal treatment within the scope of the Energy Community's acquis Communautaire supports the notion that EnC NEMOs should not be excluded from exercising functions analogous to those of EU NEMOs. The legislative intent appears to ensure that EnC NEMOs, as integral participants in market coupling, could operate algorithms where it is technically and legally feasible.

Furthermore, the principle of systemic coherence within the legal framework suggests that the specific provision in Article 7(2)(c)—granting operational rights to EnC NEMOs—should take

precedence over the broader implications of Article 36. This ensures that the roles of EnC NEMOs are not unduly restricted and that the legislative provisions are interpreted harmoniously.

Finally, the principle of proportionality, enshrined in both EU law and the Energy Community Treaty, mandates that any distinctions between the roles of EU and EnC NEMOs must be justified by objective and necessary reasons. Absent such justification, there is no legal basis to deny EnC NEMOs the same operational capacities regarding algorithms.

Given their recognized capacity to operate algorithms, it follows that, wherever technically and legally feasible, equality in this respect must be maintained between EU and EnC NEMOs. This approach not only ensures compliance with the principles of equal treatment and proportionality but also fosters greater market integration and operational consistency across the Energy Community and the European Union.

In OPCOMs understanding that these limitations (i.e. operating), as derived from the interpretation of EnC CACM, are intended to prevent EnC NEMOs from directly undertaking operational roles, such as Coordinator or Backup Coordinator, as defined in the cooperation agreements. However, EnC NEMOs could still be considered operational NEMOs under conditions similar to those applied to EU serviced NEMOs. In this case, their servicing NEMO would perform the Operator's activities on their behalf. Should specific criteria be met, EnC NEMOs could potentially assume an operational status similar to that of serviced NEMOs, allowing them to contribute within the framework established by the cooperation agreements. This interpretation warrants further consideration, particularly regarding the implications of the principles that will be addressed in the subsequent sections.

3) With regards to Principle 10 as outlined in the Explanatory note submitted by all NEMOs

As previously explained, in OPCOM's understanding, while there are differences in the activities that may be undertaken by EnC NEMOs, it is essential to ensure equal treatment regarding the functions they can perform, even if subject to specific limitations. This equal treatment should extend to both substantive and formal aspects to align with the principles of fairness and non-discrimination.

We understand that EnC NEMOs should be regulated within the ANCA framework as part of a general category of NEMOs with limited operational roles, similar to the approach adopted for EU serviced NEMOs, rather than through the creation of a distinct annex.

Integrating the specific limitations applicable to EnC NEMOs directly into ANCA—and, where necessary, the related ANDOA/ANIDOA —through tailored provisions would address their roles without isolating them as a separate category. This approach is consistent with the purpose of ANCA, which is to streamline cooperation among NEMOs to facilitate smooth and efficient market coupling. Introducing a separate annex for EnC NEMOs could unnecessarily complicate the framework and potentially result in inconsistencies in implementation, contrary to the principles of clarity and proportionality in regulatory design.

Furthermore, the precedent set by the treatment of EU serviced NEMOs, which also operate with limited roles, supports this approach. Serviced NEMOs were integrated into ANCA without the need for an independent annex, and their roles were defined within the general framework while accounting for their specific operational limitations. This demonstrates that EnC NEMOs, similarly, can be effectively incorporated into the existing framework, ensuring coherence and efficiency without creating additional regulatory fragmentation.

In OPCOM's view, by regulating EnC NEMOs within ANCA alongside other categories of NEMOs, the framework would ensure uniformity and inclusivity, allowing for the effective participation of EnC NEMOs while respecting their unique limitations.

On the other hand, OPCOM asserts that there is no legal basis to exclude EnC NEMOs from participation in the ANDOA/ANIDOA agreements. The principle of equal treatment requires their inclusion, as the EnC CACM does not explicitly prohibit their involvement. Any exclusion would need to be legally grounded and justified, as arbitrary exclusion could result in inefficiencies, operational challenges, and unnecessary complexity. Furthermore, any restrictions on their participation must be proportionate, ensuring alignment with the overarching objectives of market coupling.

In conclusion, OPCOM stresses the importance of allowing EnC NEMOs to adhere to all cooperation agreements, including ANDOA/ANIDOA, as their participation is crucial for effective market coupling. Furthermore, EnC NEMOs should be integrated within the ANCA framework, alongside other NEMOs with limited operational roles, ensuring equal treatment and regulatory clarity without unnecessary complexity.

4) *With regards to Principle 11 and Principle 12 as outlined in the Explanatory note submitted by all NEMOs*

Although the MCO Plan establishes as a general principle that all NEMOs designated for SIDC will be entitled and required to join the contracts with the ID MCO Function Service Providers and the ID MCO Function System Supplier, we consider that this legal framework is not the sole basis enabling EU serviced NEMOs to enter into direct agreements with service providers. Even in the absence of such explicit provisions, EU serviced NEMOs would still have this capacity under the principle of equal treatment, which ensures that their rights and obligations align with those of other NEMOs unless explicitly restricted by law.

Similarly, we appreciate that EnC NEMOs should be treated in a manner consistent with EU serviced NEMOs, as derived from the interpretation of the modifications introduced by the EnC CACM. This includes their ability to establish direct relationships with third-party service providers. Such an approach ensures consistency and uniformity across the regulatory framework for all NEMOs while avoiding arbitrary distinctions that lack legal or practical justification.

From a legal perspective, the principle of proportionality requires that any differentiation in treatment among NEMOs be justified by an objective necessity and proportionate to the aims

pursued. Since the EnC CACM does not explicitly impose distinct responsibilities or limitations on EnC NEMOs compared to serviced NEMOs, any attempt to create such differences could be considered legally unfounded.

Lastly, creating unnecessary distinctions between EnC NEMOs and EU serviced NEMOs could lead to fragmentation and inefficiencies within the market coupling framework, contravening the overarching goals of harmonization and integration established by the CACM Regulation.

In conclusion, as the EnC CACM does not explicitly impose additional limitations on EnC NEMOs, these entities should be entitled to engage with service providers in a manner consistent with EU serviced NEMOs. In our understanding such approach promotes consistency, avoids unjustified distinctions, and aligns with the fundamental principles of proportionality, equal treatment, and regulatory harmonization.

5) With regards to Principle 13 as outlined in the Explanatory note submitted by all NEMOs

We appreciate that the modifications introduced in the EnC CACM regarding EnC NEMOs' roles, and consequently their voting rights in operational decisions, are open to interpretation and do not explicitly preclude their participation. The language of the amendments suggests a potentially limited role for EnC NEMOs, but it leaves room for flexibility, cautioning NEMOs against imposing overly strict limitations that may hinder cooperation and market integration. A rigid interpretation of these modifications, which excludes EnC NEMOs from operational voting rights, could result in an over-restriction and may not accurately reflect the regulation's intent, which aims to foster cooperation among all NEMOs. Given the absence of a clear prohibition, it would be prudent for NEMOs to approach these areas with careful consideration to ensure that the legislative framework supports inclusive participation.

Article 7(2) of the EnC CACM supports this flexibility, as it does not explicitly exclude EnC NEMOs from performing MCO functions but instead employs non-restrictive language. This enables EnC NEMOs to participate in certain roles under specific conditions, reinforcing the notion that their involvement should be considered on a case-by-case basis, subject to the technical and legal feasibility of each function. The phrasing in Article 7(2) indicates that EnC NEMOs are not entirely excluded from the operational framework but are rather allowed to contribute to specific functions in a manner that is consistent with their capacity and the operational needs of the market coupling system.

Similarly, Article 10 of the EnC CACM uses language such as "contribute to organization" without providing specific limitations on the role of EnC NEMOs, including their participation in decision-making or voting rights. This lack of specificity suggests that EnC NEMOs are envisioned to play a supporting role, but not necessarily to be excluded from active participation. The language does not mandate their exclusion from operational decisions, thus implying that, where appropriate, EnC NEMOs should be allowed to contribute fully to decision-making processes, including voting, under conditions comparable to EU serviced NEMOs.

In conclusion, OPCOM believes that there should be no significant difference in the treatment of EnC NEMOs and EU serviced NEMOs, including in regard to voting rights. The regulatory framework, as currently articulated, supports flexibility and equal treatment.