

**DECISION OF THE AGENCY FOR THE COOPERATION OF ENERGY  
REGULATORS No 10/2018**

**of 27 September 2018**

**ON THE CORE CAPACITY CALCULATION REGION TRANSMISSION  
SYSTEM OPERATORS' PROPOSAL FOR FALLBACK PROCEDURES**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to the Treaty on the Functioning of the European Union,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>1</sup>, and, in particular, Article 8(1) thereof,

HAVING REGARD to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management<sup>2</sup>, and, in particular, Article 9(12) thereof,

HAVING REGARD to the outcome of the consultation with the concerned regulatory authorities and transmission system operators,

HAVING REGARD to the favourable opinion of the Board of Regulators of 19 September 2018, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

**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 establishment of fallback procedures, in accordance with Article 44 of the CACM Regulation.
- (2) Pursuant to Articles 9(1), 9(7)(e) and 44 of the CACM Regulation, all transmission system operators ('TSOs') of a capacity calculation region ('CCR') are required to develop a proposal for fallback procedures and submit it to all regulatory authorities of the concerned

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<sup>1</sup> OJ L 211, 14.8.2009, p. 1.

<sup>2</sup> OJ L 197, 25.7.2015, p. 24.

CCR for approval. Then, according to Article 9(10) of the CACM Regulation, the regulatory authorities receiving the proposal for the fallback procedures should reach an agreement and take a decision on that proposal, in principle, within six months after the receipt of the proposal by the last regulatory authority in the CCR. According to Article 9(11) of the CACM Regulation, if the concerned regulatory authorities fail to reach an agreement within the six-month period, or upon their joint request, the Agency is called upon to adopt a decision concerning the TSOs' proposal. According to Article 9(12) of the CACM Regulation, if the regulatory authorities request an amendment to approve the proposal for the fallback procedures, the concerned TSOs have to submit an amended proposal within two months following the request from the regulatory authorities. The relevant regulatory authorities should decide on the amended proposal within two months following its submission. Where the relevant regulatory authorities are not able to reach an agreement or upon their joint request, the Agency becomes responsible for adopting a decision concerning the TSOs' proposal.

- (3) The present Decision of the Agency follows from the regulatory authorities' request that the Agency adopts a decision on the TSOs' amended proposal for fallback procedures of the Core CCR. Annexes I and II to this Decision set out the Core CCR fallback procedures with its annexed shadow allocation rules as decided by the Agency.

## **2 PROCEDURE**

### **2.1 Proceedings before regulatory authorities**

- (4) Article 44 of the CACM Regulation requires TSOs of each CCR to develop proposals for the establishment of robust and timely fallback procedures within 16 months after the entry into force of the CACM Regulation on 14 August 2015, i.e. by 14 December 2016. As the Agency's Decision on the definition of the CCRs (from which follows which TSOs are actually involved in each CCR) was issued on 17 November 2016 (i.e. less than one month before the formal deadline to submit the regional fallback procedures for the regulatory authorities' approval), the TSOs of the newly defined Core CCR informed the relevant regulatory authorities<sup>3</sup> that the new timeline date for the submission of their proposals for the establishment of the Core CCR fallback procedures would be shifted to 6 months after the Agency's CCR Decision, i.e. by 17 May 2017.
- (5) On 27 March 2017, the Core CCR TSOs published the '*Draft All Core TSOs' proposal for the 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*' for public consultation. The consultation lasted from 27 March until 27 April 2017.

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<sup>3</sup> The Agency notes that it should also have been informed about the new timeline in accordance with Article 9(4) of the CACM Regulation.

- (6) On 17 May 2017, the Core CCR TSOs submitted to the regulatory authorities a ‘*Core CCR TSOs’ Fallback Procedures Proposal in accordance with Article 44 of the Commission Regulation (EU) 2015/1222*’ (the ‘Proposal’).
- (7) On 3 October 2017, the Core CCR regulatory authorities issued a ‘*Request for amendment by the Core NRAs agreed at the Energy Regulators’ Regional Forum of the “Core CCR TSOs’ Fallback Procedures Proposal in accordance with Article 44 of the Commission Regulation (EU) 2015/1222”*’, pursuant to Article 9(12) of the CACM Regulation.
- (8) On 26 January 2018, the Core CCR TSOs submitted to the regulatory authorities an amended proposal for ‘*Core CCR TSOs’ Fallback Procedures in accordance with Article 44 of the Commission Regulation (EU) 2015/1222*’ (the ‘Amended Proposal’). The Amended Proposal included 5 annexes and was received by the last regulatory authority on 14 February 2018.

## **2.2 Proceedings before the Agency**

- (9) In a letter dated 27 March 2018 and received by the Agency on the same day, the Chair of the Core Energy Regulators’ Regional Forum<sup>4</sup>, on behalf of the Core CCR regulatory authorities, informed the Agency that the Core CCR regulatory authorities agreed to request the Agency to adopt a decision on the Amended Proposal, pursuant to Article 9(11) of the CACM Regulation.
- (10) This letter explains that the Core CCR regulatory authorities have not been able to agree on the approval of the fallback procedures. The approval was opposed by one regulatory authority on the grounds that it does not have the authority to approve the Amended Proposal, since the shadow allocation rules are annexed to it. According to this regulatory authority, the shadow allocation rules are of contractual nature containing liability rules, provisions on *force majeure* and other aspects, which are usually regulated by private law and therefore cannot be regulated and approved by that regulatory authority.
- (11) On 1 August 2018, the Agency launched a public consultation on the Amended Proposal, inviting all market participants to submit their comments by 24 August 2018. The consultation document asked stakeholders to provide views on two topics: (i) the harmonisation of the Core CCR fallback procedures; and (ii) general remarks on the Core CCR fallback procedures. The summary and the evaluation of the responses received are presented in Annex III to this Decision.
- (12) The Agency cooperated with the Core CCR TSOs and the Core CCR regulatory authorities and further consulted on the proposed amendments during teleconferences and meetings. More specifically, the proposed amendments were discussed in the following teleconferences and meetings (all in 2018):

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<sup>4</sup> This Forum is the Core CCR regulatory authorities’ platform to consult and cooperate for reaching a unanimous agreement on NEMO’s and TSOs’ proposals.

- (i) 9 April: teleconference with the regulatory authorities allowing them to present the case and the regulatory authority which opposed the approval further to assess the issue which caused the referral to the Agency;
  - (ii) 18 June: teleconference with representatives of the regulatory authority which opposed the approval;
  - (iii) 4 July: teleconference with Core CCR regulatory authorities;
  - (iv) 26 July: teleconference with Core CCR regulatory authorities;
  - (v) 7 August: teleconference with Core CCR TSOs;
  - (vi) 31 August: teleconference with Core CCR TSOs;
  - (vii) 4 September: teleconference with Core CCR TSOs; and
  - (viii) 5 September: discussion with all regulatory authorities at the Agency's Electricity Working Group<sup>5</sup> meeting;
- (13) In the context of the above additional consultations, the discussions focused, with the Core CCR regulatory authorities, on the scope of the fallback procedures in accordance with Article 44 of the CACM Regulation and, with the Core CCR TSOs, on the possibility and requirements for a harmonisation of the Core CCR fallback procedures.

### **3 THE AGENCY'S COMPETENCE TO DECIDE ON THE AMENDED PROPOSAL**

- (14) Pursuant to Article 9(12) of the CACM Regulation, where the regulatory authorities have requested the relevant applicants to amend the proposal and have not been able to reach an agreement on the amended terms and conditions or methodologies within two months after their resubmission, or upon the regulatory authorities' joint request, the Agency shall adopt a decision concerning the amended terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.
- (15) According to the letter of the Chair of the Core Energy Regulators' Regional Forum of 27 March 2018, the Core CCR regulatory authorities agreed to request the Agency to adopt a decision on the Amended Proposal pursuant to Article 9(11) of the CACM Regulation.
- (16) As regard the regulatory authorities' reference to an Agency's decision pursuant to Article 9(11) of the CACM Regulation, it is to note that this provision refers to an Agency's decision in a situation where the regulatory authorities did not request the TSOs to amend their proposal and referred the initial proposal to the Agency. In the present case, there is, however, no such situation as the regulatory authorities did request amendments from the TSOs. By contrast, the Agency's decision-making competence in the event of the regulatory authorities' disagreement or joint request under Article 9(12) of the CACM Regulation does refer to a proposal which, following a request by the regulatory authorities, has been amended by the TSOs. Accordingly, the Agency considers that, given the substance of the regulatory authorities' request and the fact that an Amended Proposal was referred to the Agency by the regulatory authorities, its decision on the Amended Proposal should be based on Article 9(12) of the CACM Regulation.

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<sup>5</sup> The Agency's and regulatory authorities' platform for discussing all electricity-related regulatory issues.



- (17) Therefore, under the provisions of Article 9(12) of the CACM Regulation, the Agency became responsible to adopt a decision concerning the submitted Amended Proposal by the referral of 27 March 2018.

#### **4 SUMMARY OF THE AMENDED PROPOSAL**

- (18) The Amended Proposal includes the following elements:
- (a) the ‘Whereas’ section and Articles 1 and 2 contain general provisions, the scope of application and the definitions;
  - (b) Articles 3 and 4 contain the fallback procedures for the two different kind of market coupling systems in the Core CCR;
  - (c) Article 5 and 6 contain provisions on the publication, the implementation and the applicable language; and
  - (d) Annexes 1 to 5 contain the shadow allocation rules applicable on different borders of the Core CCR.

#### **5 ASSESSMENT OF THE AMENDED PROPOSAL**

##### **5.1 Legal framework**

- (19) Article 9(7)(e) of the CACM Regulation requires TSOs to provide the fallback procedures in accordance with Article 44 of the CACM Regulation to all regulatory authorities of the concerned region for their approval.
- (20) According to Article 44 of the CACM Regulation, a proposal for robust and timely fallback procedures needs to be developed by all TSOs of each CCR within 16 months after the entry into force of the CACM Regulation. These fallback procedures should 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 fallback procedures should be consulted in accordance with Article 12 of the CACM Regulation.
- (21) As a general requirement, Article 9(9) of the CACM Regulation demands 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 set out in Article 3 of the CACM Regulation.

##### **5.2 Assessment of the requirements of the CACM Regulation**

###### **5.2.1 Requirement of Article 9(7)(e) of the CACM Regulation**

- (22) The Amended Proposal fulfils the requirement of Article 9(7)(e) of the CACM Regulation, as all Core CCR TSOs collectively established and took responsibility for operating the Core CCR fallback procedures and submitted the Proposal for approval to all regulatory authorities of the Core CCR.

### 5.2.2 Requirements of Article 44 of the CACM Regulation

- (23) As indicated in Recital (6) above, the Proposal was not developed within the 16 months after the entry into force of the CACM Regulation as required by Article 44 of the CACM Regulation. However, this delay was due to the necessary completion of the preceding process for defining the CCRs, as described in Recital (4) above.
- (24) The Amended Proposal contains, in addition to the general structure of the fallback procedure, the detailed rules of the shadow allocation rules to provide transparency and allow the relevant regulatory authorities a sufficient oversight to ensure an efficient, transparent and non-discriminatory capacity allocation through the fallback procedures.
- (25) Therefore, the Amended Proposal, though submitted late, is relevant for the purpose of Article 44 of the CACM Regulation and includes the relevant content in accordance with the same Article.

### 5.2.3 Public consultation

- (26) A draft of the Proposal was consulted with stakeholders from 27 March to 27 April 2017.
- (27) The comments received from stakeholders, their assessment and the explanation of why comments have or have not been taken into account were published by ENTSO-E under the title '*Report on the public consultation on Core CCR TSOs' Fallback Procedures Proposal in accordance with Article 44 of the Commission Regulation (EU) 2015/1222*', together with the Proposal, on 17 May 2017.
- (28) Therefore, the Proposal, on which the Amended Proposal is based, has been subject to a public consultation in accordance with Article 12 of the CACM Regulation and complies with Article 44 of the CACM Regulation.

### 5.2.4 Proposed timescale for implementation

- (29) Article 5 of the Amended Proposal provides that the fallback procedures shall be implemented and operational as of their approval. It also describes an implementation timeline for the different shadow allocation rules.
- (30) Therefore, the Amended Proposal complies with the implementation timescale requirement in accordance with Article 9(9) of the CACM Regulation.

### 5.2.5 Expected impact on the objectives of the CACM Regulation

- (31) Recitals (5) to (13) of the Amended Proposal describe the expected impact on the objectives of the CACM Regulation. They explicitly mention the objectives referred to in Article (3)(a), (b), (c), (d), (e), (f), (h), (i) and (j) of the CACM Regulation and describe the expected impact of the fallback procedures.
- (32) Therefore, the Amended Proposal complies with the expected impact description requirement in Article 9(9) of the CACM Regulation.

- (33) As regards the substance of the described impact, the Agency generally agrees with the description in the above mentioned Recitals of the Amended Proposal.

### **5.3 Recitals**

- (34) The Agency deems it necessary to amend Recital 2 of the Amended Proposal to reflect the changes in the Articles of the Amended Proposal. The Agency also added an additional Recital to describe the involvement of the Single Allocation Platform in accordance with Article 48 of Commission Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (hereafter the ‘FCA Regulation’).

### **5.4 Assessment of the point of disagreement among Core CCR regulatory authorities**

- (35) The Amended Proposal contains 5 annexes setting out shadow allocation rules which contain, among other things, provisions on liability, *force majeure* and other aspects typically governed by private law.
- (36) Article 44 of the CACM Regulation does not specifically refer to the above private law aspects as a content requirement of the fallback procedures.
- (37) In view of the absence of an express reference to private law aspects in the wording of Article 44 of the CACM Regulation, the Agency understands the concerns of the regulatory authority opposing the approval of the Amended Proposal with regard to its approval competence.
- (38) However, the Agency agrees with the majority of the Core CCR regulatory authorities that the shadow allocation rules are an essential component of the fallback procedures. As such, their inclusion can be considered as inherently covered by Article 44 of the CACM Regulation. This is also supported by the fact that, in accordance with Article 37(6)(c) of Directive 2009/72/EC, regulatory authorities are responsible for fixing or approving methodologies used to calculate or establish the terms and conditions for access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management, and, in that context, can and also do regulate aspects which are otherwise governed by private law. Similarly, the methodology for the establishment of a single allocation platform<sup>6</sup> in accordance with Article 49 of the FCA Regulation sets a recent example of a methodology approved by all regulatory authorities, which includes similar provisions governing private law aspects (e.g. liability), though not explicitly required by the FCA Regulation. Finally, the annexation of the Core CCR shadow allocation rules was explicitly requested by all Core CCR regulatory authorities in their request for amendment of 3 October 2017.
- (39) For all these reasons, the Agency is of the opinion that the shadow allocation rules should be annexed to the Core CCR fallback procedures and can be subject to regulatory approval.

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<sup>6</sup> <https://www.acer.europa.eu/en/Electricity/MARKET-CODES/FORWARD-CAPACITY-ALLOCATION/03%20SAP/Action%201%20-%20SAP%20proposal%20approved.pdf>

## 5.5 Specific issues related to the provision of Core CCR fallback procedures

- (40) According to Article 44 of the CACM Regulation, the fallback procedures shall ensure efficient, transparent and non-discriminatory capacity allocation in the event that the single day-ahead coupling process is unable to produce results. The scope of their application is therefore alternative cross-zonal capacity allocation on those bidding zone borders participating in the single day-ahead coupling. The Amended Proposal contains two different approaches for fallback procedures in the Core CCR. Article 3 of the Amended Proposal applies to bidding zone borders of the Core CCR where capacity is allocated in the framework of the multi-regional coupling (hereafter ‘MRC’), while Article 4 of the Amended Proposal applies to bidding zone borders of the Core CCR where capacity is allocated in the framework of the four markets market coupling (hereafter ‘4M MC’).
- (41) Even though the single day-ahead coupling is not yet implemented on all bidding zone borders of the Core CCR, the Agency deems it important to provide a common set of fallback procedures for the single day-ahead coupling within the Core CCR, which includes common shadow allocation rules for the explicit allocation of cross-zonal capacities in case the single day-ahead coupling is unable to produce results. As the events leading to the single day-ahead coupling being unable to produce results are expected to be very rare and exceptional, they are likely to cause confusion and concerns among market participants when occurring. For this reason, it is important that fallback procedures are simple and easy to understand for all market participants. The Agency thus finds it important that the fallback procedures in the Core CCR establish harmonised shadow allocation rules and a single point of contact for all bidding zone borders in the Core CCR. The Agency is satisfied that the shadow allocation rules attached to the Amended Proposal as Annex 2 represent a good basis for this harmonisation, since the same allocation rules are also used on other bidding zone borders outside the Core CCRs which are also participating in the single day-ahead coupling in the framework of the MRC project. Similarly, the Agency considers that the shadow auctions pursuant to the shadow allocation rules should be performed by the single allocation platform established pursuant to the FCA Regulation, since this is currently the case for all bidding zone borders participating in the single day-ahead coupling in the framework of the MRC project.
- (42) Nevertheless, the TSOs competent on the bidding zone borders currently participating in the 4M MC project (i.e. Czech Republic-Slovakia, Slovakia-Hungary, Hungary-Romania) are not yet able directly to apply the harmonised shadow allocation rules on the single allocation platform, because those bidding zone borders currently apply different timings, procedures and operational rules for market coupling (e.g. gate closure time). For this reason, transitional arrangements are needed for these bidding zone borders until they join the MRC project and apply the same timings, procedures and rules. As those bidding zone borders are expected to merge with the MRC project in 2020, the Agency finds it reasonable that until this time, those bidding zone borders can continue using the allocation platforms and the specific shadow allocation rules already applicable on these bidding zone borders. Therefore, the Agency provides those bidding zone borders with a transitional arrangement until the 4M MC borders are coupled with the MRC project and apply the same timings, procedures



and rules. Nonetheless, the Agency clarified that the corresponding transitional shadow allocation rules should be equivalent to the harmonised shadow allocation rules to the maximum possible degree.

- (43) The Agency also investigated a solution to harmonise shadow allocation rules for all bidding zone borders in the Core CCR, i.e. those within the MRC project and those within the 4M MC project. However, the Agency's analysis revealed that such harmonised allocation rules (designed also to accommodate the 4M MC specificities) would significantly differ from the shadow allocation rules currently applied outside the Core CCR. For this reason, the Agency concluded that it is more beneficial for market participants to maintain materially the same shadow allocation rules<sup>7</sup> for all bidding zone borders participating in the MRC project (in different CCRs), than fully to harmonise the shadow allocation rules within the Core CCR (between bidding zone borders within the MRC and 4M MC projects) and consequently significantly deviate from the shadow allocation rules currently applied outside the Core CCR.
- (44) Due to the above mentioned reasons, the Agency decides to amend the Core CCR fallback procedures in order to establish harmonised shadow allocation rules and common allocation platform (i.e. single application platform) and to provide transitional arrangements for those bidding zone borders which cannot yet apply the harmonised shadow allocation rules. This solution requires the following amendments to the Amended Proposal:
- (a) the Agency deems it necessary to amend Recital (2) of the Amended Proposal to change the wording from the provision of two different procedures to the provision of one procedure applying harmonised shadow allocation rules;
  - (b) in Article 1 of the Amended Proposal, the subject matter and scope of the Amended Proposal is described. The Agency deems it necessary to delete the last sentence of paragraph (2) in this Article as it describes the application of two separate procedures within the Core CCR;
  - (c) the Agency finds it necessary to add a new Article 3 to clarify the geographical scope of the Core CCR fallback procedures such that these apply to all bidding zone borders participating in the single day-ahead coupling. In this Article, the Agency also adds the requirement that the allocation platform should publish the list of bidding zone borders where the shadow allocation rules apply. This should allow for an automatic application of the Core CCR fallback procedures to new bidding zone borders once they start participating in the single day-ahead coupling, without the need to amend the Core CCR fallback procedures in such cases. The corresponding annexes to the shadow allocation rules defining their applicability can therefore be omitted;
  - (d) in Article 3 of the Amended Proposal, the fallback procedures for bidding zone borders of the Core CCR where capacity is allocated in the framework of the MRC is described. To transform this Article to a more general Article covering fallback procedures for the single day-ahead coupling, the Agency deems it necessary to delete or replace all MRC references in the heading and the paragraphs, to change the reference to one

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<sup>7</sup> The Agency notes that some changes to the shadow allocation rules are unavoidable as explained in Section 5.6.

- annexed set of shadow allocation rules and to establish a link to the single allocation platform;
- (e) in Article 4 of the Amended Proposal, the fallback procedures for the bidding zone borders of the Core CCR where capacity is allocated in the framework of the 4M MC is described. As one set of fallback procedures for the single day-ahead coupling is described in Article 3 of the Amended Proposal, the Agency deems it necessary to delete this Article;
  - (f) the Agency deems it necessary to add an Article describing the transitional arrangements for the bidding zone borders applying market coupling in the framework of the 4M MC project.
- (45) Article 2 of the Amended Proposal provides the definitions for the Amended Proposal. The Agency deems it necessary to align the definition ‘shadow auction’, ‘allocation platform’ and ‘shadow allocation rules’ in the Core CCR fallback procedures with the ones of the annexed shadow allocation rules.
- (46) In Article 5(2) of the Amended Proposal, the implementation timeline for the Amended Proposal and its five annexed shadow allocation rules is described. The Agency deems it necessary to amend this paragraph to provide an adequate implementation timeline taking into account the amendments made to the Core CCR fallback procedures. As Annex 2 to the Amended Proposal is used as a basis for the harmonised shadow allocation rules and should be applicable as of 1 January 2019, this should be the implementation deadline to provide sufficient implementation time and to provide one set of rules for the full delivery year.
- (47) In Article 5(4) of the Amended Proposal, the timeline for the implementation of harmonised Core CCR fallback procedures is described. Given the provision of a single set of harmonised Core CCR fallback procedures, the Agency deems it necessary to delete this paragraph.

## **5.6 Specific issues related to the annexed shadow allocation rules**

- (48) In order to harmonise the shadow allocation rules, the Agency takes Annex 2 to the Amended Proposal as a basis for these rules. This annex represents the latest version of the existing shadow allocation rules applied by the Joint Allocation Office for all bidding zone borders applying market coupling in the framework of the MRC Project and is therefore the most appropriate basis for harmonisation. They are also very similar to the harmonised allocation rules established pursuant to the FCA Regulation and therefore market participants are familiar with and accustomed to them. The Agency deems it necessary to delete all other annexes to the Core CCR Fallback Procedures.
- (49) Although Annex 2 to the Amended Proposal is a good basis for the harmonisation of the shadow allocation rules, some amendments, which are described in the following recitals, are needed in order to ensure that:
- a) the scope of these allocation rules only applies to the bidding zone borders in the Core CCR;

- b) it relates to the single day-ahead coupling rather than to the MRC Project;
  - c) the definitions of the main document (i.e. Core CCR fallback procedures) are improved and aligned;
  - d) the necessary changes similar to the ones already provided through the Agency's Decision No 03/2017 on the TSOs' proposal for harmonised allocation rules for long-term transmission rights are implemented; and
  - e) the general readability of the text is increased.
- (50) To provide a common set of general shadow allocation rules, the Agency deems it necessary to delete all references to MRC or replace them with a more general reference to the 'single day-ahead coupling', throughout the whole Annex 2 to the Amended Proposal.
- (51) Annex 2 to the Amended Proposal has two annexes listing the bidding zone borders to which the shadow allocation rules apply (i.e. those currently participating in the MRC) and the corresponding contractual frameworks. The Agency deems it necessary to amend Annex 2 to the Amended Proposal by removing these annexes, because:
- (a) the list of these bidding zone borders includes also borders not included in the Core CCR; and
  - (b) the Agency wants these shadow allocation rules automatically to apply to any new bidding zone borders joining the single day-ahead coupling, without the need to amend the shadow allocation rules or Core CCR fallback procedures.
- (52) Instead of listing the applicable bidding zone borders expressly in the annex to the shadow allocation rules, the Agency considers that the scope of the bidding zone borders covered by the shadow allocation rules follows from the participation of the respective bidding zone borders in the single day-ahead coupling and that therefore a general reference to this causality in the Core CCR fallback procedures and in the shadow allocation rules is appropriate. To provide sufficient certainty also for market participants other than the concerned TSOs in identifying to which bidding zone borders the shadow allocation rules apply, the Agency considers it also appropriate that the single allocation platform publish a list of bidding zone borders from the Core CCR currently participating in the single day-ahead coupling on its web-page, based on the notification from the responsible TSOs, and keep it up-to-date. To that end, the Agency deems it necessary to make the following amendments:
- (a) deleting both annexes to the shadow allocation rules which list the bidding zone borders and the agreements required to nominate on these borders;
  - (b) replacing references to specific borders applying ramping constraints in Article 24(6) of Annex 2 to the Amended Proposal through a general reference to possible borders with ramping constraints which shall be listed on the website of the allocation platform;
  - (c) deleting the last sentence of Article 17(1) of Annex 2 to the Amended Proposal mentioning the special arrangement for the Slovenia-Italy border; and
  - (d) replacing the references to the annexed bidding zone border lists with a reference to the participation of bidding zone borders in the single day-ahead coupling and to a list

of applicable bidding zone borders which must be published on the website of the Allocation Platform.

- (53) In Article 2 of Annex 2 to the Amended Proposal, the definitions and interpretations of the shadow allocation rules are described. As the definition of ‘transmission right’ is redundant regarding the definition of ‘physical transmission right’ in combination with Article 2(3)(f) of Annex 2 to the Amended Proposal, the Agency deems it necessary to delete this definition. The defined terms of ‘nomination’ and ‘nomination rules’ are already existing definitions in the FCA Regulation covering the long-term time frame. As the definitions of the FCA Regulation are also generally applied according to Article 2(1) of Annex 2 to the Amended Proposal, these two definitions need to be amended to refer to the day-ahead timeframe. To establish the amendments presented in Recital (52(d)) in a practical way, the definition of ‘listed bidding zone borders’ is added by the Agency.
- (54) In Article 4 of Annex 2 to the Amended Proposal, the effective date and application of the shadow allocation rules are described. Following the amendments made to the amendment process in Article 46 of Annex 2 to the Amended Proposal, described in Recital 57 and some additional comments of the Core CCR TSOs, the Agency deems it necessary to amend paragraph 1. Additionally, the Agency deems it necessary to delete paragraph 2 of this Article to adjust the Article to the scope of the day-ahead timeframe.
- (55) In Article 18 of Annex 2 to the Amended Proposal, the shadow auction process is described. The Agency deems it necessary to add a sentence in order to clarify the different steps of this process.
- (56) In Article 33 of Annex 2 to the Amended Proposal, the fallback for data exchange of the shadow allocation rules is described. As explained by the TSOs, paragraph 1(g) of this Article intends to ensure that the allocation platform is not responsible for unsuccessful communication with market participants caused by IT issues on the side of the market participant. The last part of this paragraph takes the responsibility from the allocation platform if ‘*it fails to enter the data correctly via the fallback procedure*’. As IT issues of market participants do not influence data input by the allocation platform, the Agency deems it necessary to delete this last part of paragraph 1(g).
- (57) In Article 46 of Annex 2 to the Amended Proposal, the duration and amendment process of the shadow allocation rules are described. However, the shadow allocation rules are part of the Core CCR fallback procedures as an annex and therefore part of a proposal for terms and conditions to which Article 9(13) of the CACM Regulation applies. To comply with the amendment process requirements set by Article 9(13) of the CACM Regulation, the Agency deems it necessary to amend Article 46 of Annex 2 to the Amended Proposal.
- (58) In Article 54(3) of Annex 2 to the Amended Proposal, an ‘allocation platform’ or ‘registered participant’ is allowed to enter into a subcontracting agreement in relation to the shadow allocation rules. For the case of the registered participant, there is a clause that the entry into



a subcontracting agreement does not relieve the registered participant of any obligation or liability under its 'participation agreement' on the shadow allocation rules. In order to ensure symmetry with the framework for registered participants, the Agency deems it necessary that the same clause is introduced in Article 54(3) of Annex 2 to the Amended Proposal for the case when the allocation platform enters into a subcontracting agreement.

### **5.7 Assessment of other points of the Amended Proposal**

(59) The Agency introduces several editorial amendments. The most significant one relates to the transformation of the document into a format which enables enforceability. Further, the position of Recital (2) and parts of Article 3(3) of the Amended Proposal, as well as the wording of some chapters, are changed in order to improve readability and clarity.

## **6 CONCLUSION**

(60) For all the above reasons, the Agency considers the Amended Proposal in line with the requirements of the CACM Regulation, provided that the amendments described in this Decision are integrated in the Amended Proposal, as presented in Annexes I and II to this Decision.

(61) Therefore, the Agency approves the Amended Proposal subject to the necessary amendments and to the necessary editorial amendments. To provide clarity, Annexes I and II to this Decision set out the Amended Proposal as amended and as approved by the Agency,

### **HAS ADOPTED THIS DECISION:**

#### *Article 1*

The Core CCR fallback procedures including its annexed shadow allocation rules, developed pursuant to Article 44 of Regulation (EU) 2015/1222, are adopted as set out in Annexes I and II to this Decision.

#### *Article 2*

This Decision is addressed to:

- 50Hertz Transmission GmbH
- Amprion GmbH
- Austrian Power Grid AG
- ČEPS, a.s.
- CREOS Luxembourg S.A.
- Croatian Transmission System Operator Ltd. (HOPS d.o.o.)
- ELES, d.o.o.
- ELIA System Operator NV/SA

- MAVIR Hungarian Independent Transmission Operator Company Ltd.
- PSE S.A.
- Slovenská elektrizačná prenosová sústava, a.s. (SEPS)
- RTE - Réseau de transport d'électricité
- TenneT TSO B.V.
- TenneT TSO GmbH
- Tranelectrica S.A.
- TransnetBW GmbH

Done at Ljubljana on 27 September 2018.

For the Agency:

  
Alberto Pototschnig  
Director *ad interim*

Annexes:

Annex I – Core CCR 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

Annex Ia – Core CCR 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 in track change compared to the Amended Proposal (for information only)

Annex II - Annex to the Core CCR fallback procedures: shadow allocation rules

Annex IIa – Annex to the Core CCR fallback procedures: shadow allocation rules in track change compared to Annex 2 of the Amended Proposal (for information only)

Annex III – Evaluation of responses to the consultation of NEMOs, TSOs and other market participants on the Amended Proposal

*In accordance with Article 19 of Regulation (EC) No 713/2009, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.*