

RESOLUCIÓN POR LA QUE SE APRUEBA LA MODIFICACIÓN DE LOS PROCEDIMIENTOS DE CONTINGENCIA PARA EL HORIZONTE DIARIO EN LA REGIÓN SUDOESTE (SWE) PREVISTA EN EL REGLAMENTO (UE) 2015/1222 DE LA COMISIÓN DE 24 DE JULIO DE 2015 POR EL QUE SE ESTABLECE UNA DIRECTRIZ SOBRE LA ASIGNACIÓN DE CAPACIDAD Y LA GESTIÓN DE LAS CONGESTIONES

DCOOR/DE/017/17

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En Madrid, a 25 de marzo de 2021

El artículo 9(7)(e) del Reglamento (UE) 2015/1222 de la Comisión de 24 de julio de 2015 por el que se establece una directriz sobre la asignación de capacidad y la gestión de las congestiones, establece que las autoridades reguladoras de la región interesada, deberán aprobar las propuestas relativas a los procedimientos de contingencia, de conformidad con el artículo 44 del mencionado Reglamento.

En cumplimiento de la función de aprobación prevista en dicho artículo, la Sala de Supervisión Regulatoria aprueba la siguiente Resolución:

ANTECEDENTES DE HECHO

El 30 de septiembre de 2020 tuvo entrada en el registro de la CNMC escrito de Red Eléctrica de España, S.A.U., presentando la propuesta de modificación de los procedimientos de contingencia para el horizonte diario, así como una nueva versión de las reglas de asignación de respaldo incorporada como anexo a los efectos de su consideración, y, en su caso, aprobación.

Los procedimientos de contingencia propuestos vienen a modificar los que están actualmente en vigor aprobados el 19 de julio de 2018. Dichos

procedimientos establecen que, en caso de fallo del mecanismo de acoplamiento de mercado diario gestionado por los operadores de mercado, la frontera con Francia se gestionará mediante una subasta explícita ('shadow auction') activada por los operadores de sistema, mientras que la frontera con Portugal será objeto de un mecanismo de acoplamiento de mercado regional en el que se hace una casación para las zonas de precio de España y Portugal.

La nueva versión propuesta por los operadores de sistema tiene por objeto alinear los tiempos de activación de estos procesos de respaldo con los nuevos plazos de casación que se van a dar en los procesos de acoplamiento europeo. En concreto modifica el tiempo para publicación de resultados de 13:58 a 14:08 CET, debido a que la declaración formal del inicio del proceso de respaldo en los procesos europeos pasa de 13:50 a 14:00

Tras ser objeto de consulta pública entre el 24 de julio y el 24 de agosto de 2020, la propuesta fue finalmente remitida el 30 de septiembre de 2020 a los reguladores de la región SWE.

Haciendo uso del artículo 5(6) del Reglamento (UE) 2019/942 del Parlamento Europeo y del Consejo, de 5 de junio de 2019, por el que se crea la Agencia de la Unión Europea para la Cooperación de los Reguladores de la Energía, las autoridades reguladoras de la región SWE, consideraron la necesidad de introducir un cambio relativo a la fecha de entrada en vigor incorporada en la propuesta, a efecto de hacerla más flexible y más fácilmente adaptable a los cambios de plazos en el acoplamiento europeo.

La modificación propuesta fue objeto de trámite de audiencia con los operadores de sistema de la región, en el que recibió opinión favorable.

Posteriormente, las Autoridades Reguladoras en el seno de la SWE Energy Regulators' Regional Forum (ERF) de fecha 11 de marzo de 2021 acordaron aprobar la versión modificada de la metodología, concluyendo que la citada metodología cumple con los requerimientos previstos por el Reglamento 2015/1222 y, debe, por tanto, ser aprobada por las Autoridades Reguladoras Nacionales antes del 31 de marzo de 2021 (seis meses, a partir de la fecha de recepción de la última autoridad reguladora afectada).

La decisión nacional adoptada por cada Autoridad Reguladora Nacional será remitida al TSO, quien deberá publicar la nueva versión de los procedimientos de contingencia, de acuerdo al artículo 9.14 del Reglamento 2015/1222, y cumplir con los plazos de implementación requeridos en el art. 6 de la propuesta de metodología.

FUNDAMENTOS DE DERECHO

El artículo 9 del Reglamento (UE) 2015/1222 regula la aprobación de las condiciones y metodologías de asignación de capacidad y gestión de las congestiones.

En los apartados 2, 3 y 4 de este artículo se regula la fase previa de adopción de estos documentos, en el seno de los gestores de la red de transporte o de los operadores de mercado designados. Tanto el apartado 1 como el apartado 5 de ese artículo 9 prevén que, tras esa fase inicial, las condiciones y metodologías se han de remitir a las Autoridades Nacionales de Regulación para su aprobación:

- *“Los GRT¹ y los operadores designados elaborarán los términos y condiciones o las metodologías exigidos por el presente Reglamento y remitirlos para aprobación a las autoridades reguladoras competentes dentro de los plazos correspondientes previstos en el presente Reglamento...” (art. 9.1).*
- *“Cada autoridad reguladora aprobará las condiciones o metodologías que se utilicen para calcular o establecer el acoplamiento único diario o intradiario desarrollado por los GRT y los operadores designados. Las autoridades reguladoras serán responsables de la aprobación de las condiciones o metodologías a los que se hace referencia en los apartados 6, 7 y 8.” (art. 9.5).*

Hay tres supuestos diferentes de aprobación (que se distinguen en los apartados 6, 7 y 8 del artículo 9):

- Los casos en que se requiere aprobación de las condiciones y metodologías por parte de todas las Autoridades Nacionales de Regulación de la Unión Europea (ap. 6): *“Las propuestas relativas a las siguientes condiciones o metodologías deberán ser aprobadas por todas las autoridades reguladoras: (...)”*
- Los casos en que se requiere la aprobación de las condiciones y metodologías por parte de las Autoridades Nacionales de Regulación de la región afectada (ap. 7): *“Las propuestas relativas a las siguientes condiciones o metodologías deberán ser aprobadas por todas las autoridades reguladoras de la región interesada: (...)”*
- Los casos en que se requiere la aprobación de las condiciones y metodologías por parte de una Autoridades Nacionales de Regulación individualmente considerada (ap. 8): *“Las siguientes condiciones o*

¹ Gestores de Redes de Transporte

metodologías quedarán sujetas a la aprobación individual de cada autoridad reguladora u otra autoridad competente de los Estados miembros interesados: (...)

La propuesta sobre procedimientos de contingencia para el horizonte diario en la región sudoeste (SWE) aparece contemplada en el segundo de estos supuestos (en concreto, en la letra e) del apartado 7 del artículo 9), debiendo, por tanto, ser aprobada por todas las Autoridades Reguladoras de la región afectada, al tratarse de una actuación que supera el ámbito de intereses de un Estado Miembro, requiriendo de un único documento aplicable en todos los países de la Unión Europea.

La falta de acuerdo en el plazo previsto entre las autoridades reguladoras con respecto a la propuesta de que se trata, determinaría la necesidad de que la Agencia para la Cooperación de Reguladores de Energía (ACER) adopte la correspondiente decisión, en los términos establecidos en el artículo 9.11 del Reglamento (UE) 2015/1222.

Finalmente cabe destacar que el artículo 5(6) del Reglamento (UE) 2019/942 del Parlamento Europeo y del Consejo, de 5 de junio de 2019, por el que se crea la Agencia de la Unión Europea para la Cooperación de los Reguladores de la Energía permite introducir modificaciones a las propuestas recibidas:

“Antes de proceder a la aprobación de las condiciones o metodologías a que se refieren los apartados 2 y 3, las autoridades reguladoras o, en caso de que sea competente, la ACER las revisarán y modificarán, si fuera necesario tras consultar con la REGRT de Electricidad, la REGRT de Gas o la entidad de los GRD UE, con el fin de garantizar que concuerdan con el objetivo del código de red o las directrices y contribuyen a la integración del mercado, a la no discriminación, a la competencia efectiva y al correcto funcionamiento del mercado. La ACER adoptará una decisión sobre la aprobación en el plazo especificado en los códigos de red y las directrices pertinentes. Este plazo comenzará a contar a partir del día siguiente al de la notificación de la propuesta a la ACER.”

Vistos los citados antecedentes de hecho y fundamentos de derecho, la Sala de Supervisión Regulatoria de la CNMC,

RESUELVE

ÚNICO. Aprobar la metodología de procedimientos de contingencia para el horizonte diario, prevista en el artículo 44 del Reglamento (UE) 2015/1222 de la Comisión, de 24 de julio de 2015, por el que se establece una directriz sobre la asignación de capacidad y la gestión de las congestiones, junto con reglas de asignación de respaldo incorporadas como anexo a la metodología. Se adjunta la metodología como anexo al presente Acuerdo.

Notifíquese esta resolución a Red Eléctrica de España, S.A.U. y publíquese en la página web de la CNMC.

El presente documento está firmado electrónicamente por D. Joaquim Hortalà i Vallvé, Secretario del Consejo, con el Visto Bueno del Presidente de la Sala, Ángel Torres Torres.

**APPROVAL BY THE SOUTH-WEST EUROPE
REGULATORY AUTHORITIES AGREED AT THE SOUTH-
WEST EUROPE ENERGY REGULATORS' REGIONAL
FORUM
ON
THE SOUTH-WEST EUROPE DAY AHEAD FALLBACK
PROCEDURES**

I. Introduction and legal context

This document elaborates an agreed opinion of the South-west Europe (SWE) Regulatory Authorities on the amended Day Ahead 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 (Regulation 2015/1222).

This agreement of the SWE Regulatory Authorities shall provide evidence that a decision does not need, at this stage, to be adopted by the Agency for Cooperation of Energy Regulators (ACER) pursuant to Article 9(11) of the Regulation 2015/1222. This agreement is intended to constitute the basis on which SWE Regulatory Authorities will each subsequently make national decisions to approve the **Day Ahead Fallback Procedures methodology (“Fallback Procedures”)** pursuant to Article 9(10) of Regulation 2015/1222.

The legal provisions relevant to the submission and approval of the Fallback Procedures and this SWE Regulatory Authority agreement, can be found in Articles 3, 9, and 44 of the Regulation 2015/1222 (hereinafter referred to as “CACM”), and in Article 5 of the 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 Regulators (recast) (hereinafter referred to as “recast ACER Regulation”). They are set out here for reference.

CACM

Article 3

Objectives of capacity allocation and congestion management cooperation

This Regulation aims at:

- (a) Promoting effective competition in the generation, trading and supply of electricity;
- (b) Ensuring optimal use of the transmission infrastructure;
- (c) Ensuring operational security;
- (d) Optimising the calculation and allocation of cross-zonal capacity;
- (e) Ensuring fair and non-discriminatory treatment of TSOs, NEMOs, the Agency, regulatory authorities and market participants;
- (f) Ensuring and enhancing the transparency and reliability of information;
- (g) Contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union;
- (h) Respecting the need for a fair and orderly market and fair and orderly price formation;
- (i) Creating a level playing field for NEMOs;
- (j) Providing non-discriminatory access to cross-zonal capacity

Article 8

TSOs' tasks related to single day-ahead and intraday coupling

1. In Member States electrically connected to another Member State all TSOs shall participate in the single day-ahead and intraday coupling.
2. TSOs shall:
- [...]

- (i) *establish and operate fallback procedures as appropriate for capacity allocation in accordance with Article 44;*

Article 9

Adoption of terms and conditions or methodologies

1. TSOs and NEMOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO or NEMO, the participating TSOs and NEMOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, and all NEMOs shall regularly inform the competent regulatory authorities and the Agency about the progress of developing these terms and conditions or methodologies.

[...]

5 Each regulatory authority shall approve the terms and conditions or methodologies used to calculate or set out the single day-ahead and intraday coupling developed by TSOs and NEMOs. They shall be responsible for approving the terms and conditions or methodologies referred to in paragraphs 6, 7 and 8.

[...]

7 The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities of the concerned region:

[...]

e) the fallback procedures in accordance with Article 44;

[...]

9 The proposal for terms and conditions or methodologies shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of this Regulation. Proposals on terms and conditions or methodologies subject to the approval by several or all regulatory authorities shall be submitted to the Agency at the same time that they are submitted to regulatory authorities. Upon request by the competent regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.

10 Where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order reach an agreement. Where applicable, the competent regulatory authorities shall take into account the opinion of the Agency. Regulatory authorities shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6, 7 and 8, within six months following the receipt of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.

[...]

14 TSOs and NEMOs responsible for establishing the terms and conditions or methodologies in accordance with this Regulation shall publish them on the internet after approval by the competent regulatory authorities or, if no such approval is required, after their establishment, except where such information is considered as confidential in accordance with Article 13.

Article 44

Establishment of fallback procedures

By 16 months after the entry into force of this Regulation, each TSO, in coordination with all the other TSOs in the capacity calculation region, shall develop a proposal for robust and timely fallback procedures to 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 establishment of fallback procedures shall be subject to consultation in accordance with Article 12.

Recast ACER Regulation

Article 5

Tasks of ACER as regards the development and implementation of network codes and guidelines

[...]

3. Where one of the following legal acts provides for the development of proposals for terms and conditions or methodologies for the implementation of network codes and guidelines which require the approval of all the regulatory authorities of the region concerned, those regulatory authorities shall agree unanimously on the common terms and conditions or methodologies to be approved by each of those regulatory authorities:

- (a) a legislative act of the Union adopted under the ordinary legislative procedure;
(b) network codes and guidelines that were adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines; or
(c) network codes and guidelines adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011.

The proposals referred to in the first subparagraph shall be notified to ACER within one week of their submission to those regulatory authorities. The regulatory authorities may refer the proposals to ACER for approval pursuant to point (b) of the second subparagraph of Article 6(10) and shall do so pursuant to point (a) of the second subparagraph of Article 6(10) where there is no unanimous agreement as referred to in the first subparagraph.

The Director or the Board of Regulators, acting on its own initiative or on a proposal from one or more of its members, may require the regulatory authorities of the region concerned to refer the proposal to ACER for approval. Such a request shall be limited to cases in which the regionally agreed proposal would have a tangible impact on the internal energy market or on security of supply beyond the region. [...]

6. Before approving the terms and conditions or methodologies referred to in paragraphs 2 and 3, the regulatory authorities, or, where competent, ACER, shall revise them where necessary, after consulting the ENTSO for Electricity, the ENTSO for Gas or the EU DSO entity, in order to ensure that they are in line with the purpose of the network code or guideline and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market. ACER shall take a decision on the approval within the period specified in the relevant network codes and guidelines. That period shall begin on the day following that on which the proposal was referred to ACER.

The first version of the SWE Fallback Procedures was agreed and subject to national approval by all Regulatory Authorities (NRAs) of the concerned region by July 2018 and entered in force on that date. This first version of the Fallback Procedures for the SWE Region consists in the execution of Shadow Auctions in the France-Spain interconnection as soon as any risk that single day-ahead coupling process may be unable to produce results is known by TSOs. Once NEMOs confirm an effective unavailability, results of the shadow auction are published, and a market coupling process will take place in the bidding zones of Spain and Portugal, decoupled from the rest of Europe. For this regional coupling process, order books will be reopened, and the EUPHEMIA algorithm will be used (SIOM algorithm if a second attempt is needed).

The TSOs of the SWE CCR (hereinafter referred to as “SWE TSOs”) developed an amended methodology proposal aimed at aligning the fallback procedures with the updated timeline for post-coupling activities agreed at European level by all the parties participating in the Single Day-Ahead Coupling.

The new version of the SWE Fallback Procedures was consulted by the SWE TSOs through ENTSO-E from 24 July 2020 to 24 August 2020¹, in line with Article 44 and Article 12 CACM¹. The final proposal was received by the last Regulatory Authority of the SWE Capacity Calculation Region on 30 September 2020.

Article 9(10) CACM requires the concerned Regulatory Authorities to consult and closely cooperate

¹ https://consultations.entsoe.eu/markets/fallback-procedure_swe-ccr/

and coordinate with each other to reach an agreement on this new proposal, and subsequently take national decisions within six months following the receipt of the proposal by the last Regulatory Authority. A national decision based on the agreement reached between the concerned Regulatory Authorities is therefore required by each Regulatory Authority by 31 March 2021.

II. The SWE TSOs Proposal

The amended SWE TSO Fallback Procedures proposal, submitted on 30 September 2020, does not change the overall procedures defined in the version which is currently in force, consisting in the execution of Shadow Auctions in the France-Spain interconnection as soon as any risk that single day-ahead coupling process may be unable to produce results is known by TSOs. Once NEMOs confirm an effective unavailability, results of the shadow auction will be published, and a market coupling process will take place in the bidding zones of Spain and Portugal decoupled from the rest of Europe. For this regional coupling process, order books will be reopened, and the EUPHEMIA algorithm will be used (SIOM algorithm if a second attempt is needed). In case this process is unable to allocate capacity in any of the two borders, the capacity for the border affected will be offered in the intraday allocation processes.

The changes proposed in the version received in 30 September 2020 by SWE TSOs with respect to the first version are:

- a) The shift of the publication of the results from 13.58 to 14.08 CET due to a shift of the formal decoupling declaration from 13.50 to 14.00 CET agreed by all the parties involved in the Single Day-Ahead Coupling in order to allow more time to the Euphemia algorithm to find a solution; this shift is reflected both in the methodology and in the annexed Shadow Auction Rules.
- b) The inclusion in the proposal of an Annex reporting the Shadow Auction Rules version 1.5, substituting a reference to the version published on the Single Allocation Platform website. For the sake of clarity, before the implementation of this amendment, that shall happen on a date announced sufficiently in advance by TSOs, as provided for in Article 6 of the Procedures, the version of the Shadow Auction Rules that is available on the JAO platform shall be applied.

III. SWE Regulatory Authorities' position and amendments

The SWE Regulatory Authorities acknowledge that the fallback procedure proposal submitted by SWE TSO introduces only a minor change regarding the publication of the results which are required, as final decoupling hour will be postponed from 13:50 to 14:00.

It should be also noted that the new version of Shadow Auction Rules (1.5) will be approved as an annex to the Fallback Procedures methodology.

SWE Regulatory Authorities consider that, for the sake of the coordination of the Single Day-Ahead Coupling, a flexible approach for the implementation date of this amendment is necessary. As such, all concerned Regulatory Authorities and ACER have agreed with all concerned TSOs and ENTSO-

E on the determination of a “go-live window” spanning from April 1st to July 1st, 2021, for TSOs to implement the changes provided for in the methodology. The date in which such change will be applied shall be communicated to market participants with sufficient anticipation. Consequently, SWE Regulatory Authorities have applied Article 5(6) of the ACER Regulation, that allows for revising proposals for Terms and Conditions or Methodologies “*in order to ensure that they are in line with the purpose of the network code or guideline and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market*”, to modify the provisions of Article 6 in order to allow for the coordinated approach described above.

Consequently, SWE Regulatory Authorities consider that the Fallback Procedures, as amended, meet the requirements of Regulation CACM.

IV. Conclusions

SWE Regulatory Authorities welcome the submitted proposal and have assessed, consulted and closely cooperated and coordinated to reach an agreement about the Fallback Procedures methodology. By virtue of the provisions of Article 5(6) of the ACER Regulation, SWE NRAs agreed to directly modify the implementation date of the methodology in order to allow for a go-live within the window described above. SWE NRAs consulted ENTSO-E and SWE TSOs during a “hearing phase” period that took place between 24 February and 3 March 2021, during which no concerns were raised by the consulted parties. SWE Regulatory authorities consider that the Fallback Procedures as amended meet the requirements of CACM and can thus be approved by SWE Regulatory Authorities.

SWE Regulatory Authorities therefore will issue their national decisions, on the basis of this agreement, before 31 March 2021.

Following national decisions by SWE Regulatory Authorities, SWE TSOs will be required to publish the Fallback Procedures methodology on the internet in line with Article 9.14 of CACM, and must meet the implementation deadlines required by its Article 6.

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- Fallback Procedures for SWE Region consist in the execution of Shadow Auctions in the France-Spain interconnection and a market coupling process in the bidding zones of Spain and Portugal decoupled from the rest of Europe. The Shadow Auctions are executed by the Allocation Platform, which is a unique platform for all market participants acting on France-Spain interconnection, already used for the allocation of capacity in long term timeframes. Moreover, the registration for the Shadow Auctions is free of charge.

Article 3(b) of CACM Regulation aims at ensuring optimal use of the transmission infrastructure.

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- Fallback Procedures for SWE Region rely on transparent market rules that are approved by the relevant national regulatory authorities after a consultation period.

- The Fallback Procedures for SWE Region are performed through the execution of Shadow Auctions in the France-Spain interconnection and a market coupling process in the bidding zones of Spain and Portugal decoupled from the rest of Europe which rely on mechanisms described in public market rules. Both algorithms calculate moreover a marginal price for the offered capacity according to the bids of the market participants and are thus market based.

- The SWE Fallback Procedures ensure a transparent and non-discriminatory approach towards facilitating cross zonal capacity allocation in the event that the single day-ahead coupling process is unable to produce results.

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- ## Article 4 – Shadow Auctions process unable to be initiated

- ## Article 5 – Market coupling process in the bidding zones of Spain and Portugal unable to be initiated

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DA Fallback Procedures in SWE region

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CHAPTER 1

General Provisions

Article 1

Subject-matter and scope

In the event that the single day-ahead coupling is unable to produce results, a fallback procedure is established. The fallback procedure for the allocation of Cross Zonal Capacity in the day-ahead market timeframe is an Explicit Allocation in the form of Physical Transmission Rights (PTR) of electrical energy on a daily basis.

These Shadow Allocation Rules contain the terms and conditions for the allocation of Transmission Rights, on the borders included in the Applicable Bidding Zone Borders, as fallback procedure for the single day-ahead coupling, it being understood that the Registered Participant will accede these rules by the signature of the Participation Agreement. In particular, the Shadow Allocation Rules set out the rights and obligations of Registered Participants as well as the requirements for participation in Shadow Auctions, they describe the process of the Shadow Auction, including the determination of Marginal Price as a result of Shadow Auction and invoicing/payment.

The fallback procedure refer to Cross Zonal Capacity only and Registered Participants may invoke no other right in connection with the allocated Physical Transmission Rights allocated to them than the rights in accordance with the provisions of these Shadow Allocation Rules.

Article 2

Definitions and interpretation

1. Capitalised terms used in these Allocation Rules shall have the meaning given to them in Article 2 of Regulation (EU) 2019/943, Article 2 of Regulation (EC) 2013/543, Article 2 of Regulation (EU) 2015/1222, Article 2 of Directive (EU) 2019/944 and in Regulation (EU) 2016/1719.
2. In addition, the following definitions shall apply:

Allocation Platform means either the responsible TSO(s) at the respective Bidding-Zone border(s) or an entity appointed and commissioned by them or nominated in accordance to national regulations to act on their behalf and on its own for the attribution of Cross Zonal Capacity through the Shadow Auctions as defined in the Participation Agreement;

Applicable Bidding Zone Borders means all the bidding zone borders in the CCRs as well as the NO2-NL and NO2-DE borders to which the fallback procedures which have been established under Article 44 of the CACM Regulation and include these Shadow Allocation Rules apply¹;

Auction Specification means a list of specific characteristics of a particular Shadow Auction, including the nature of offered products and relevant dates;

Auction Tool means the information technology system used by the Allocation Platform to perform Auctions and to facilitate other procedures described in these Shadow Allocation Rules;

Bid means a pair of Bid Quantity and Bid Price offered by a Registered Participant participating in an Auction:

¹ The NO2-NL and NO2-DE borders where relevant TSOs have entered into a contract following the same requirements as Article 44 of the CACM Regulation until CACM is implemented in Norway.

Bid Price means the price which a Registered Participant is willing to pay for one (1) MW and hour of Transmission Rights;

Bid Quantity means the amount of Transmission Rights in MW requested by a Registered Participant;

Bidding Period means the time period within which the Registered Participants wishing to participate in an Auction may submit their Bids. Bidding Period is only available for Shadow Auction known in advance;

Business Account means, a dedicated deposit account opened at the financial institution selected by the Allocation Platform in the name of the Allocation Platform or at the discretion of the Allocation Platform opened by the Registered Participant, but with the Allocation Platform as the beneficiary of the dedicated cash deposit, which may be used for payments by the Registered Participant;

EIC Code means the ENTSO-E Energy Identification Coding Scheme identifying the parties in a cross-border trade;

Force Majeure means any unforeseeable or unusual event or situation beyond the reasonable control of a Party and/or the relevant TSOs, and not due to a fault of the Party and/or the relevant TSOs, which cannot be avoided or overcome with reasonable foresight and diligence, which cannot be solved by measures which are from a technical, financial or economic point of view reasonably possible for the Party and/or the relevant TSOs, which has actually happened and is objectively verifiable, and which makes it impossible for the Party and/or the relevant TSOs to fulfil, temporarily or permanently, its obligations;

Information System Rules means the terms and conditions for access to and use of the Auction Tool by Registered Participants as published on the Allocation Platform's website;

Marginal Price means the price determined at particular Auction to be paid by all the Registered Participants for each MW and hour of acquired Transmission Right;

National Regulatory Authorities means the regulatory authorities referred to in Article 35(1) of Directive 2009/72/EC;

Day-Ahead Nomination means the day-ahead notification of the use of Cross Zonal Capacity by a Physical Transmission Rights holder and, its counterparty, or an authorized third party, to the respective Transmission System Operator(s);

Day-Ahead Nomination Rules means the rules with regard to the day-ahead notification of use of Transmission Rights to the relevant Transmission System Operator(s);

Participation Agreement means, the agreement, by which the Parties undertake to comply with the terms and conditions for daily Cross Zonal Capacity Allocation as contained in these Shadow Allocation Rules;

Party/ Parties means the Allocation Platform and/or a Registered Participant referred to individually as Party or collectively as Parties;

Physical Transmission Right means a right entitling its holder to physically transfer a certain volume of electricity in a certain period of time between two Bidding Zones in a specific direction;

Price Coupling means the mechanism where the market clearing prices and the net positions are determined in a single step utilizing physical hourly ATC and/or Flow Based capacities;

Product Period means the time and date on which the right to use Transmission Right commences and the time and date on which the right to use the Transmission Right ends For Shadow Allocation the Product Period covers a calendar day of a period of 24 hours beginning at 0:00 and ending at 23:59:59. The days on which the legal time changes (daylight saving time) will be composed of either 23 hours or 25 hours;

Registered Participant means a market participant which has entered into a Participation Agreement with the Allocation Platform

Rights Document means a document containing the information of the maximum amount of allocated Transmission Rights that can be nominated by a market participant per Bidding Zone border per day per hour and per direction taking into account the volume of Transmission Rights initially acquired and any possible curtailments which occurred before the issuance of the Rights Document;

Shadow Allocation Rules means the rules for the fallback procedure for the allocation of Cross Zonal Capacity in the day-ahead market timeframe applied by the Allocation Platform;

Shadow Auction means the explicit auction run by Allocation Platform(s) by which daily Cross Zonal Capacity is offered as fallback procedure for the single day-ahead coupling and allocated to market participants who submit Bid(s);

TSO Border means set of power lines interconnecting two TSOs, this specificity only concerns Bidding Zone borders linked to German TSOs

Working Day means the calendar days from Monday to Friday, with the exception of public holidays as specified on the website of the Allocation Platform;

Use It Or Lose It (UIOLI) means an automatic application by which the underlying daily Cross Zonal Capacity of the non-nominated Physical Transmission Rights irrevocably fall back to the relevant TSO(s) and whereby Transmission Right holders that do not nominate to use their rights have no right to receive a pay-out;

Working Hours means the hours on Working Days specified within the Participation Agreement.

3. In these Shadow Allocation Rules unless the context requires otherwise:
- (a) Any reference to the word Bidding Zone border may cover all interconnectors collectively or only one or a subset of interconnector(s) at this Bidding Zone border as included in the Applicable Bidding Zone Borders
 - (b) the singular indicates the plural and vice versa;
 - (c) references to one gender include all other genders;
 - (d) the table of contents, headings and examples are inserted for convenience only and do not affect the interpretation of the Shadow Allocation Rules;
 - (e) the word “including” and its variations are to be construed without limitation;
 - (f) any reference to legislation, regulations, directive, order, instrument, code or any other enactment shall include any modification, extension or re-enactment of it then in force;
 - (g) any reference to another agreement or document, or any deed or other instrument is to be construed as a reference to that other agreement, or document, deed or other instrument as amended, varied, supplemented, substituted or novated from time to time;
 - (h) a reference to time is a reference to CET/CEST time unless otherwise specified;
 - (i) where the Allocation Platform is required to publish any information under these Shadow Allocation Rules, it shall do so by making the information or data available on its website and/or via the Auction Tool and /or sending an email to the Registered Participants and
 - (j) when using the term Transmission Rights it refers to Physical Transmission Rights acquired in the Shadow Auction triggered by the fallback procedure.

- (I) The list of Bidding Zone borders where the Registered Participant wants to participate in Shadow Auctions and copies of the signed agreements needed with the concerned TSOs or other legal entities depending on the relevant national legislation to be entitled nominate the allocated Transmission for the corresponding Bidding Zone borders as published on the website of the Allocation Platform.
2. A Registered Participant shall ensure that all data and other information that it provides to the Allocation Platform pursuant to these Shadow Allocation Rules (including information in its Participation Agreement) is and remains accurate and complete in all material respects and must promptly notify the Allocation Platform of any change.
3. A Registered Participant shall notify the Allocation Platform if there is any change to the information, submitted in accordance with paragraph 1 of this Article, at least nine (9) Working Days before the change comes into effect and, where that is not possible, without delay after the Registered Participant becomes aware of the change.
4. The Allocation Platform will confirm the registration of the change or send a refusal note of registration of the change to the Registered Participant, at the latest, seven (7) Working Days after the receipt of the relevant notification of change. The confirmation or refusal note will be sent via email to the commercial and operational contact person specified by the Registered Participant in accordance with paragraph 1 of this Article. If the Allocation Platform refuses to register the change, the reason shall be provided in the refusal note.
5. The change becomes valid on the day of the delivery of the confirmation to the Registered Participant.
6. If additional information is required from a Registered Participant as a consequence of an amendment to these Shadow Allocation Rules, then the Registered Participant shall submit the additional information to the Allocation Platform within twelve (12) Working Days after the request for such submission by the Allocation Platform.

Article 9

Warranties

1. By the signature of the Participation Agreement the market participant warrants that:
 - (a) it has not commenced any proceedings seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights;
 - (b) no insolvency, bankruptcy or other similar legal proceeding affecting creditors' rights have been commenced in relation to the applicant;
 - (c) no winding-up or liquidation proceedings have been commenced with regard to the applicant; and
 - (d) it has no overdue payment obligations towards any current, previous or future Allocation Platform.

Article 10

Dedicated Business Account

As part of the submission of the information in accordance with Article 6 and 8, the market participant shall declare to the Allocation Platform whether it intends to open a dedicated Business Account for the purposes of depositing cash collaterals and/or for the purposes of making payments on the basis described in Article 43.

- ## Article 15

The Allocation Platform may develop and publish additional standard financial terms to be accepted by the Registered Participants, as long as these additional financial terms comply with the Shadow Allocation Rules.

Article 16

It is the responsibility of each market participant to ensure that it complies with national and European legislation, including requirements of any relevant competent authority, and obtained all necessary authorizations in connection with its participation in Shadow Auctions and the use of Transmission Rights allocated in the day-ahead market timeframe.

3. The Allocation Platform shall publish the Auction Specification for the Shadow Auctions which are known in advance as soon as possible in order to give the opportunity to Registered Participants to update their Bids according to Article 20, 21 and 22.
4. If an Auction Specification is published, they shall state in particular:
 - (a) the code identifying the Auction in the Auction Tool;
 - (b) identification of the Bidding Zone border(s) or a subset of the Interconnectors on the Bidding Zone border and direction covered;
 - (c) the Product Period;
 - (d) The Bidding Period;
 - (e) the deadline for the publication of the provisional Shadow Auction results;
 - (f) the contestation period if the Shadow Auction is decided in advance in accordance with Article 26;
 - (g) the Offered Capacity;
 - (h) any other relevant information or terms applicable to the product or the Shadow Auction.

Article 20

Default Bid

1. Registered Participants willing to participate in Shadow Auctions shall via the Auction Tool place default Bids for Shadow Auctions per Bidding Zone border and per direction for which they are entitled as stated in the Participation Agreement.
2. A default Bid, once identified as such by the Registered Participant, shall apply automatically to each subsequent relevant Shadow Auction for a specific Bidding Zone border, period and direction.
3. If a default Bid Quantity or a quantity calculated as a sum of the Bid Quantity for several default Bids submitted for the same hour, Bidding Zone border and direction by a Registered Participant exceeds the relevant Offered Capacity, the Bids with the lowest Bid Price shall be rejected one (1) by one (1) until the total allowed Bid Quantity is lower than or equal to the Offered Capacity. In case where the Information System Rules allows submission of Bids with the same Bid Price by one Registered Participant the Allocation Platform may apply additional criteria or rules to decide which Bid shall be rejected. Such additional criteria or rules shall be included in the information System Rules and shall be one or more from the following:
 - (a) chronological submission (time stamp); and/or
 - (b) Bid identification assigned by the Auction Tool; and/or
 - (c) rejection of all relevant Bids with the same Bid Price.
4. A Registered Participant who wants to modify a default Bid for a future Shadow Auction shall change the Bid Quantity and the Bid Price of its default Bids before the launch of a Shadow Auction.
5. If the Shadow Auctions are decided in advance for one or several daily sessions, Registered Participants have the opportunity to modify their Bids according to the information published in the relevant Auction Specification. A Registered Participant not wishing to submit the default Bid on the Auction Tool for future Shadow Auctions shall set the Bid Quantity and the Bid Price of its default Bids to zero before the subsequent launch of a Shadow Auction.

2. The provisional or final Shadow Auction results determination shall include the following:
 - (a) determination of the total quantity of the allocated Transmission Rights per Bidding Zone border and direction;
 - (b) identification of winning Bids to be fully or partially satisfied; and
 - (c) determination of the Marginal Price per Bidding Zone border and direction.
3. The Allocation Platform shall determine the provisional or final Shadow Auction results using an optimization function aiming at maximization of the sum of the Registered Participant's surplus and the Congestion Income generated by the winning Bids while respecting the constraints of the optimization function in form of relevant Offered Capacities. The Allocation Platform shall publish additional explanatory information on the optimization function of the algorithm on its website.
4. The Allocation Platform shall determine the Marginal Price at each Bidding Zone border and direction based on the following criteria:
 - (a) if the total quantity of Cross Zonal Capacity for which valid Bids have been submitted is lower than or equal to the relevant Offered Capacity for the relevant Auction, then the Marginal Price shall be zero;
 - (b) if the total quantity of Cross Zonal Capacity for which valid Bids have been submitted exceeds the relevant Offered Capacity for the relevant Auction, the Marginal Price shall be set at the lowest Bid(s) Price(s) allocated in full or in part using the respective Offered Capacities.
5. If two (2) or more Registered Participants have submitted for one Bidding Zone border and direction valid Bids with the same Bid Price, that cannot be accepted in full for the total requested quantity of Transmission Rights, the Allocation Platform shall determine the winning Bids and the quantity of the allocated Transmission Rights per Registered Participant as follows:
 - (a) the Cross Zonal Capacity available for the Bids which set the Marginal Price shall be divided equally between the number of the Registered Participants which submitted these Bids;
 - (b) in case the quantity of Transmission Rights requested by a Registered Participant at Marginal Price is lower than or equal to the share calculated according to item (a) above, the request of this Registered Participant shall be fully satisfied;
 - (c) in case the requested quantity of Transmission Rights by a Registered Participant at Marginal Price exceeds the share calculated according to item (a) above, the request of this Registered Participant shall be satisfied up to the amount of the share as calculated according to item (a) above;
 - (d) any remaining Cross Zonal Capacity after the allocation according to items (b) and (c) shall be divided by the number of the Registered Participants whose requests have not been fully satisfied and allocated to them applying the process described in items (a), (b) and (c) above.
6. Bidding Zone borders with existing a ramping constraints should consider these constraints within their Shadow Auction. These applied constraints shall be listed on the website of the Allocation Platform.
7. Whenever the calculation set forth in paragraphs 3 of this Article does not result in a whole MW amount in accordance with Article 21 the Transmission Rights shall be rounded down to the nearest full MW. The case when Transmission Rights allocated to individual Registered Participants are equal to zero after rounding shall not impact the Marginal Price determination.

- (d) name, e-mail address and telephone number of the Registered Participant;
 - (e) detailed description of the facts and the reason for contestation; and
 - (f) evidence of erroneous Shadow Auction results;
5. The Allocation Platform shall reply to the Registered Participant no later than 1 hour and 30 minutes after the provisional Auction results have been notified to the registered participants.
6. 1 hour and 30 minutes after the provisional Shadow Auction Results have been notified and unless a Shadow Auction is cancelled due to erroneous results, the provisional Shadow Auction results shall be considered as final and binding with no further notification.
7. If the Registered Participant does not contest the provisional auction results within the deadline and under the condition specified above or in the Auction Specification, the Registered Participant shall be irrevocably deemed to renounce to any contestation. After the contestation period, the Shadow Auction results shall be considered as final and binding with no further notification.

Article 27

Shadow Auction cancellation

1. In case the Allocation Platform cancels a Shadow Auction, all Bids already submitted and any results of the respective Auction shall be deemed null and void.
2. The Allocation Platform shall inform all Registered Participants without undue delay, of the Shadow Auction cancellation by notification published in the Auction Tool and on webpage of Allocation Platform and by e-mail.
3. A Shadow Auction cancellation may be announced in the following cases:
 - (a) before the Cross Zonal Capacity is deemed to be allocated in case the Allocation Platform faces technical obstacles during the Shadow Auction process like a failure of standard processes; and
 - (b) during the contestation period, in the event of erroneous results due to incorrect Marginal Price calculation or incorrect allocation of Transmission Rights to Registered Participants or similar reasons.
4. In case of Shadow Auction cancellation before the Cross Zonal Capacity is deemed to be allocated, no compensation shall be paid to the Registered Participants.
5. Capacity is deemed to have been allocated to a Registered Participant from the moment the Registered Participant has been informed of the Auction results and the Contestation Period is closed if relevant.
6. The Allocation Platform shall publish on its website, without undue delay, the reasons for the Shadow Auction cancellation.

Rights Document

1. The Rights Document shall contain the information about the volume in MW that eligible persons are entitled to nominate at specific Bidding Zone borders or subsets of interconnectors of Bidding Zone borders and directions and for hourly periods.
2. No later than fifteen (15) minutes after the Registered Participant to Shadow Auctions has been notified of the final results of its Bids, the Rights Document will be sent to the eligible person indicating the Transmission Rights acquired, for each Hourly Block, allocated at the Shadow Auction.

TSO Designation

1. On the borders Germany-France, Germany-Netherlands and Denmark-Germany Transmission Rights shall be attributed to one (1) or where applicable two (2) of the respective TSO Borders.
2. When signing the Participation Agreement, Registered Participants shall determine to which TSO border Transmission Rights shall be attributed according to the following the process:
 - (a) the initial TSO designation is defined, by the Registered Participant when signing the Participation Agreement;
 - (b) this designation may however be modified in accordance with the form published on the website of the Allocation Platform; and
 - (c) the Notification of the modification of the TSO designation must be made to the Allocation Platform no later than 7 Working Days before the start of the delivery period

CHAPTER 6

Curtailment

Article 35

Triggering events and consequences of curtailment on Transmission Rights

1. Transmission Rights allocated in Shadow Auctions shall not be curtailed except in the case of Force Majeure or emergency situation.
2. Each Registered Participant affected by curtailment shall lose its right to nominate for physical use the concerned Physical Transmission Rights.
3. In case of curtailment, the affected Registered Participant is entitled to receive reimbursement according to Articles 38 to 39.

Article 36

Process and notification of curtailment

1. In all cases curtailment shall be carried out by the Allocation Platform based on a request by one or more TSO(s) at the Bidding Zone border where Transmission Rights have been allocated.
2. Allocation Platform shall notify the affected holders of Transmission Rights as soon as possible of a curtailment of Transmission Rights, including the triggering event via email, the Auction Tool and on the webpage of the Allocation Platform. The notification shall identify the affected Transmission Rights, the affected volume in MW per hour for each concerned period, the triggering event for curtailment as described in Article 35 and the amount of Transmission Rights that remain after the curtailment.
3. The Allocation Platform shall publish the triggering events for curtailment in accordance with Article 35 including their estimated duration on its website as soon as possible.
4. The curtailment of Transmission Rights during a specific time period shall be applied to all Transmission Rights of the concerned periods on a pro rata basis, depending on when the curtailment takes place, which means in proportion to the held Transmission Rights, regardless of the time of allocation.
5. For each affected Registered Participant, remaining aggregate Transmission Rights which have not been curtailed shall be rounded down to the nearest MW.

Article 37

Day Ahead Firmness deadline

The Allocation Platform shall publish on its website and take into account for the calculation of compensation for curtailed Transmission Rights the Day Ahead Firmness Deadline as specified in the proposal pursuant to Article 69 of the Commission Regulation (EU) 2015/1222 approved by all concerned NRAs

3. Paragraph 2 of this Article does not apply with respect to any tax assessed on the Allocation Platform on any payment received in connection with the Shadow Allocation Rules under the laws of the jurisdiction in which the Allocation Platform is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Allocation Platform is treated as resident for tax purposes or has or is deemed for tax purposes to have a permanent establishment or a fixed place of business to which any payment under the Shadow Allocation Rules is attributable. Paragraph 2 of this Article does not apply to value added tax as provided for in the VAT directive 2006/112/EC as amended from time to time and any other tax of a similar nature.

Article 43

Invoicing and payment conditions

1. The payment will be settled at the next fixed invoice date.
2. The Allocation Platform shall issue invoices for payments for all Transmission Rights on a monthly basis and no later than the tenth (10th) Working Day of each month.
3. The invoices shall be issued for the amount due set forth in Article 41
4. The Allocation Platform shall send the invoice only by e-mail to the Registered Participant at the e-mail address of the financial contact person submitted in accordance with Article 8(h) or it should make it available to the Registered Participant via the Auction Tool. The date of issuance of the invoice shall be the date on which the email is sent or the date when the invoice is made available via the Auction Tool if this is done during Working Hours or the next Working Day if sent after Working Hours.
5. In the cases of curtailment of Transmission Rights, the invoices shall take into account any payments to be credited to the Registered Participant. The payments to be credited to the Registered Participants shall:
 - (a) be settled through self-billing mechanism which shall allow the Allocation Platform to issue invoices in the name and on behalf of the Registered Participant; and
 - (b) be notified through the same invoice as the one used for the payments of the Registered Participant as set forth in paragraph 4 of this Article.
6. The payments due shall be netted by the Allocation Platform taking into account the amount as set forth in paragraph 2 and 5 of this Article.
7. If the balance of the payments as set forth in paragraph 3 and 5 of this Article results in a net payment from the Registered Participant to the Allocation Platform, the Registered Participant shall settle this balance within five (5) Working Days after the date of issuance of the invoice.
8. Payments by the Registered Participant as set forth in paragraph 7 of this Article shall be collected as follows:
 - (a) based on the standard procedure, the Allocation Platform shall collect the payment automatically from the dedicated Business Account of the Registered Participant on the respective due date of the invoice; or
 - (b) alternatively, the Registered Participant shall ensure payment through a non-automated transaction to the account of the Allocation Platform specified on the invoice by indicating the invoice reference.
9. The alternative procedure may be used upon request of the Registered Participant and with the consent of the Allocation Platform. The Registered Participant shall notify the Allocation Platform by email the request to use the alternative procedure at least two (2) Working Days before the date of issuing of the next invoice as set forth in paragraph 2 of this Article. Once the alternative procedure is agreed, it shall be deemed to be valid until otherwise agreed between the Registered Participant and the Allocation Platform.

10. If the balance of the payments as set forth in paragraph 2 and 5 of this Article results in a net payment from the Allocation Platform to the Registered Participant, the Allocation Platform shall pay this balance within seven (7) Working Days after the date of issuance of the invoice to the bank account as announced during the accession process in accordance with Article 8 paragraph 1(g) by the Registered Participant who is entitled to the payments at the due date.
11. In case of an erroneous invoice resulting in an additional payment of the Allocation Platform or the Registered Participant the Allocation Platform shall correct the invoice and any due amount shall be settled as soon as they have been notified to Registered Participant.
12. Bank fees of the payer's bank shall be covered by the payer. Bank fees of the receiving bank shall be covered by the beneficiary. Bank fees of any intermediary bank, shall be covered by the Registered Participant.
13. The Registered Participant shall not be entitled to offset any amount, or withhold any debts arising in connection with obligations resulting from a Shadow Auction, against any claims towards the Allocation Platform, whether or not arising out of a Shadow Auction. Nevertheless, the right to offset and the right to withhold are not excluded in case the Registered Participant's claim against Allocation Platform is established by a legally binding judgment or is uncontested.

Article 44

Payment disputes

1. A Registered Participant may dispute the amount of an invoice including any amounts to be credited to the Registered Participant. In this case, the Registered Participant shall notify the nature of the dispute and the amount in dispute to the Allocation Platform as soon as practicable and in any event within fifteen (15) Working Days after the date of issuance of the invoice or credit note by registered mail and email. Beyond this period, the invoice shall be deemed to have been accepted by the Registered Participant.
2. If the Registered Participant and the Allocation Platform are unable to resolve the difference within ten (10) Working days after the notification, the procedure for the dispute resolution in accordance with Article 48 shall apply.
3. A dispute shall in no way relieve the Party from the obligation to pay the amounts due as set forth in Article 43.
4. If it is agreed or determined based upon the dispute resolution procedure as set forth in Article 48 that an amount paid or received by the Registered Participant was not properly payable, the following process shall apply:
 - (a) the Allocation Platform shall refund any amount including interest to be calculated according to Article 41 the Registered Participant in case that the amount paid by the Registered Participant as set forth in Article 43 was higher or the amount paid by the Allocation Platform was lower than the due amount. The Allocation Platform shall make the payment to the bank account indicated by the Registered Participant for this reimbursement in accordance with Article 8.
 - (b) the Registered Participant shall pay any amount including interest to be calculated according to Article 41 to the Allocation Platform in case that the amount paid by the Registered Party as set forth in Article 43 was lower than the due amount. The Registered Participant shall make the payment in accordance with the procedure set forth in Article 43.
5. The interest paid in case of a payment in accordance with paragraph 4 of this Article shall be applied from the first (1st) day following the date on which the payment was due up to the date on which the disputed amount was refunded and it shall apply also to all taxes and levies required by law.

3. A Registered Participant shall indemnify and keep indemnified the Allocation Platform and its officers, employees and agents from and against any and all loss or liability (including legal costs) related to a damage that it has caused, which any of them may suffer or incur by reason of any claim by any third party on account of any and all loss (whether direct or indirect) suffered by the claimant or any of the claimant's officers, agents, subcontractors or employees in connection with these Shadow Allocation Rules.
4. The Allocation Platform and each Registered Participant acknowledges and agrees that it holds the benefit of paragraph 3 of this Article for itself and as trustee and agent for its officers, employees and agents.
5. The Registered Participant shall be solely responsible for its participation in Shadow Auctions including but not limited to the following cases:
 - (a) the timely arrival of Bids by the Registered Participant;
 - (b) technical failure of the information system on the side of the Registered Participant preventing the communication via the channels foreseen in accordance with these Shadow Allocation Rules.
6. In case of curtailment compensation due to Force Majeure or emergency situation in accordance with Article 38 and Article 39 Registered Participants shall not be entitled to other compensation than the compensation described in these Shadow Allocation Rules.
7. The Registered Participant shall be liable with respect to any sanctions, penalties, or charges that may be imposed by financial authorities on the Allocation Platform for incorrect tax treatment due to wrong or incomplete information provided by the Registered Participant.
8. This Article survives the termination of the Registered Participant's Participation Agreement.

Article 48

Dispute resolution

1. Without prejudice to paragraphs 6 and 8 of this Article, where there is a dispute the Allocation Platform and the Registered Participant shall first seek amicable settlement through mutual consultation pursuant to paragraph 2. For this purpose, the Party raising the dispute shall send a notification to the other party indicating:
 - (a) the existence of a Participation Agreement between the Parties;
 - (b) the reason for the dispute; and
 - (c) a proposal for a future meeting, physical or not, with a view to settle the dispute amicably.
2. The Parties shall meet within twenty (20) Working Days after the matter has been referred to them and seek to resolve the dispute. If no agreement is reached or no response received within a period of thirty (30) Working Days from the date of the aforementioned notification, either Party may refer the matter to the senior management of the Parties to resolve the dispute pursuant to paragraph 3.
3. The senior representative of each of the Allocation Platform and the Registered Participant with authority to resolve the dispute shall meet within twenty (20) Working Days of a request to meet and seek to resolve the dispute. If the representatives are unable to resolve the dispute within twenty (20) Working Days of the meeting or such longer time as may be agreed then the dispute shall be determined by arbitration in accordance with paragraph 4.
4. Where a dispute is to be referred to arbitration under paragraph 3, either the Allocation Platform or the Registered Participant may give notice to the other stating the nature of the dispute and referring the dispute to arbitration. Arbitration shall be conducted in accordance with the Rules of Arbitration of the Chamber of Commerce (ICC). The arbitration shall be conducted before one (1)

arbitrator to be nominated upon agreement of the Parties unless a Party requests the appointment of three (3) arbitrators. In case of one (1) arbitrator, the Parties shall agree on the nomination of the arbitrator within two (2) months after the notice was given by the Party referring the dispute to arbitration. If no agreement can be found, the arbitrator shall be appointed by the ICC Court. In case of three (3) arbitrators, the claimant shall nominate one (1) arbitrator and the respondent shall nominate one (1) arbitrator. The arbitrators nominated by each Party shall then nominate the chairman of the arbitral tribunal within three (3) Working Days from the confirmation of the appointment of the second arbitrator by the respondent. If the arbitrators nominated by each party cannot agree on the appointment of the chairman, the chairman shall be appointed by the ICC Court. The arbitration shall take place in the location of the Allocation Platform unless otherwise defined in the Participation Agreement and in accordance with the governing law of these Shadow Allocation Rules while the language of the arbitration proceedings shall be English. The emergency arbitrator provisions according to the Rules of Arbitration of the Chamber of Commerce shall not apply but the interim or injunctive relief measures under the governing law shall apply.

5. Arbitration awards shall be final and binding on the Allocation Platform and the relevant Registered Participant as from the date that they are made. The Allocation Platform and the Registered Participant shall carry out any award of an arbitrator relating to any dispute without delay and each waive their right to any form of appeal or recourse to a court of law or other judicial authority, in so far as such waiver may validly be made.
6. Notwithstanding paragraphs 3 and 4 of this Article, the Parties may jointly agree to apply court proceedings instead of arbitration to settle a dispute arisen in connection with these Shadow Allocation Rules.
7. In cases of late payment and notwithstanding Article 45 and paragraphs 1 to 4 of this Article, a Party may bring court proceedings against the other Party for any amount due under or in connection with these Shadow Allocation Rules and unpaid for more than twenty (20) Working Days after the date the amounts were due.
8. The Parties agree that proceedings referred to in paragraph 6 or paragraph 7 may be brought in any competent court to hear such claim. The Registered Participant irrevocably waives any objection which it may have now or hereafter regarding the venue of such proceedings in any competent court and any claim that any such proceedings have been brought in an inconvenient forum.
9. Notwithstanding any reference to amicable settlement, expert resolution or arbitration under this Article, the Allocation Platform and the Registered Participant shall continue to perform their respective obligations under these Shadow Allocation Rules and the Registered Participant's Participation Agreement.
10. This Article survives the termination of the Registered Participant's Participation Agreement.

Article 49

Suspension of the Participation Agreement

1. The Allocation Platform may by notice to the Registered Participant suspend temporarily the Registered Participant's rights in connection with these Shadow Allocation Rules with immediate effect if the Registered Participant commits a major breach of an obligation in connection with these Allocation Rules which may have a significant impact to the Allocation Platform as follows:
 - (a) if a Registered Participant fails to pay any amount properly due and owing to the Allocation Platform pursuant to Article 45;
 - (b) any breach which may have a significant financial impact to the Allocation Platform;
 - (c) the Allocation Platform has reasonable grounds that the Registered Participant no longer

that any instalment includes an amount in respect of use after the date of termination, to be calculated pro-rata from the date termination takes effect.

3. If any of the termination events in paragraph 4 occurs in relation to a Registered Participant, the Allocation Platform may by notice to the Registered Participant terminate the Participation Agreement, including the Registered Participant's rights connected with these Shadow Allocation Rules. A termination under this paragraph takes effect from the time of the notice or any later time specified in it. The Registered Participant may not at a later stage enter into the Participation Agreement with the Allocation Platform until the circumstances of termination continue to exist or it is not sufficiently guaranteed that the breach may not occur again.
4. The termination events referred to in paragraph 3 shall be the following:
 - (a) if the rights of the Registered Participant are suspended for longer than thirty (30) Working Days;
 - (b) if a Registered Participant does not qualify for the participation in the Shadow Auction as set forth in Article 13;
 - (c) if a Registered Participant repeatedly breaches these Shadow Allocation Rules or a Participation Agreement, whether or not the breach is capable of remedy;
 - (d) if a competent authority (i) determines that the Registered Participant has committed a misuse or fraudulent act and (ii) requests the Allocation Platform to terminate the Participation Agreement to which such Registered Participant is a Party or (iii) agrees that the Allocation Platform has reasonable grounds to believe that the Registered Participant has committed a misuse or fraudulent act in participating in Shadow Auctions; or
 - (e) if the Registered Participant has taken any action which may lead to the damaging or reduction in effectiveness of the Auction Tool (it being understood that such an action is deemed to happen in case of any behavior that can be assimilated to an attack on the information system such as, but not limited to, deny of service, spam, virus, brute forcing, Trojan horse attack).
5. After the termination takes effect in accordance with paragraphs 1 to 3 of this Article and from that time, the Registered Participant may no longer participate in a Shadow Auction. CHAPTER 4 shall not apply to such acquired Transmission Rights. For the avoidance of doubt, the Transmission Rights, which the Registered Participant is prohibited from using as a result of termination, may be offered by the Allocation Platform in subsequent Auctions.
6. Termination of a Participation Agreement does not affect any rights and obligations under or in connection with the Participation Agreement and these Shadow Allocation Rules which arose prior to that termination unless otherwise specified in this Article. Accordingly, any Registered Participant whose Participation Agreement is terminated will remain liable, subject to and in accordance with the Shadow Allocation Rules, in respect of all such rights and liabilities. This paragraph shall apply without prejudice to other remedies available to the Allocation Platform under these Shadow Allocation Rules.

Article 51

Force Majeure

1. The Allocation Platform or a Registered Participant, which invokes Force Majeure, shall promptly send to the other Party a notification describing the nature of Force Majeure and its probable duration and shall continue to furnish reports with respect thereto with reasonable frequency during the period of Force Majeure. The Party invoking the Force Majeure shall make every possible effort to limit the consequences of the Force Majeure.
2. The affected obligations, duties and rights of a Party subject to Force Majeure shall be suspended

- (c) in the case of email, when delivered to the other party but only if an acknowledgement of receipt is requested and obtained by the Party sending the e-mail.
5. If a notice or other communication has been received outside normal Working Hours on a Working Day), it is deemed to have been received at the opening of business on the next Working Day.

Article 53

Confidentiality

1. The Participation Agreement and any other information exchanged relating to its preparation and the application of a market participant shall be considered as confidential.
2. Subject to paragraph 3 of this Article, the Allocation Platform and each Registered Participant who is a recipient of confidential information in relation to these Shadow Allocation Rules shall preserve the confidentiality of such information and shall not directly or indirectly reveal, report, publish, disclose, transfer or use any item of the confidential information otherwise than for the purpose for which it was disclosed.
3. Notwithstanding paragraph 2 of this Article, the Allocation Platform or a Registered Participant may disclose confidential information of a disclosing Party to a third party with the other Party's prior consent expressed in writing and subject to the condition that the receiving Party has given assurance that such third party is bound by equivalent confidentiality obligations as set out in these Allocation Rules directly enforceable by the other Party.
4. Notwithstanding paragraph 2 of this Article the Allocation Platform or a Registered Participant may disclose confidential information of a disclosing Party:
 - (a) to the extent expressly permitted or contemplated by the Shadow Allocation Rules;
 - (b) to any person who is one of the directors, officers, employees, agents, advisers or insurers of the recipient and who needs to know the confidential information in connection with these Shadow Allocation Rules; as far as required in order to comply with applicable national or EU legislation or any other relevant domestic administrative acts such as grid codes;
 - (c) as far as required in order to comply with applicable national or EU legislation such as REGULATION (EU) No 1227/2011 and REGULATION (EU) No 543/2013 or any other relevant domestic administrative acts such as grid codes;
 - (d) as far as required by a court, arbitrator or administrative tribunal or an expert in the course of proceedings before it to which the recipient is a Party;
 - (e) as may be required by the relevant TSOs for the proper fulfilment of their mission and their obligations in accordance with applicable laws and these Shadow Allocation Rules by themselves or through agents or advisers; or
 - (f) as far as required in order to obtain clearances or consents from a competent authority.
5. Moreover, the obligations arising from this Article shall not apply:
 - (a) if the Party which receives the information can prove that at the time of disclosure, such information was already publicly available;
 - (b) if the receiving Party provides proof that, since the time of disclosure, the said information has been legally received from a third party or has become publicly available;
 - (c) to confidential information communicated, in accordance with the legal and regulatory provisions, in an incorporated form from which no item of information specific to a market participant can be deduced;

- (d) to information whose publication is explicitly provided for by the present Shadow Allocation Rules.
6. The obligations of confidentiality in this Article shall remain valid for a period of five (5) years after termination of the Registered Participant's Participation Agreement.
7. The signature of a Participation Agreement and the exchange of confidential information do not confer any rights to patents, knowledge or any other form of intellectual property concerning information or tools made available or sent by one Party to the other under the terms of these Shadow Allocation Rules.

Article 54

Assignment and subcontracting

1. The Allocation Platform may assign, novate or otherwise transfer any of its rights or obligations under a Participation Agreement or these Allocation Rules to another Allocation Platform. The Allocation Platform shall notify the Registered Participants of the change by sending an email with acknowledgment of receipt as soon as possible and in any event at least ten (10) Working Days before the date on which the change takes effect.
2. A Registered Participant may not assign, novate or otherwise transfer any of its rights or obligations under its Participation Agreement or these Shadow Allocation Rules without the prior written consent of the Allocation Platform.
3. Nothing in this Article shall prevent an Allocation Platform or Registered Participant from entering into a subcontracting agreement in relation to this Shadow Allocation Rules. Entry into a subcontracting agreement by a Registered Participant does not relieve the Registered Participant of any obligation or liability under its Participation Agreement or these Shadow Allocation Rules. Entry into a subcontracting agreement by the Allocation Platform does not relieve the Allocation Platform of any obligation or liability under these Allocation Rules.

Article 55

Governing law

These Shadow Allocation Rules shall be governed by and construed in all respects in accordance with the law of the location of the registered office of the Allocation Platform unless otherwise specified in the Participation Agreement.

Article 56

Language

The applicable language for these Shadow Allocation Rules shall be English. For the avoidance of doubt, where TSOs need to translate these Shadow Allocation Rules into their national language, in the event of inconsistencies between the English version published by the Allocation Platform and any version in another language, the English version published by the Allocation Platform shall prevail.

Article 57

Intellectual property

No Party shall acquire any right, title, license or interest in or to any intellectual property rights of the other Party in connection with these Shadow Allocation Rules.

Article 62

Remedies exclusive

The rights and remedies provided by these Shadow Allocation Rules and the Participation Agreement to the Allocation Platform and each Registered Participant are exclusive and not cumulative and, to the extent permissible by law, shall exclude and be in place of all substantive (but not procedural) rights or remedies expressed or implied and provided by law or statute in respect of the subject matter of these Allocation Rules and the Participation Agreement. Accordingly, the Allocation Platform and each Registered Participant hereby waives to the fullest extent possible all such rights and remedies provided by law or statute, and releases each other of them if it is liable to any other of them, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by law or statute in respect of the matters dealt with in these Shadow Allocation Rules and the Participation Agreement and undertakes not to enforce any of the same except as expressly provided herein.

Article 63

Severability

If any provision of these Shadow Allocation Rules or a Participation Agreement is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or pursuant to arbitration or by order of any competent authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of these Shadow Allocation Rules and the Participation Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality. Any invalid, illegal, void and/or unenforceable part(s) or provision(s) shall be replaced by valid, legal and/or enforceable part(s) or provision(s) in order to achieve the intended economic and legal effect.