

**APPROVAL BY SOUTH-EAST EUROPE REGULATORY  
AUTHORITIES**

**OF**

**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**

**31 March 2021**

## I. Introduction and legal context

This document elaborates an agreement of the South-East Europe Regulatory Authorities (hereinafter referred to as “SEE NRAs”), agreed on 31 March 2021 at South-East Europe Energy Regulators’ Regional forum, on the fallback procedures (hereinafter referred to as “SEE 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 (hereinafter referred to as “CACM”).

This agreement of the SEE NRAs shall provide evidence that a decision on the SEE Fallback Procedures does not, at this stage, need to be adopted by ACER pursuant to Article 9(11) of CACM. It is intended to constitute the basis on which SEE NRAs will each subsequently make national decisions to approve the SEE Fallback Procedures pursuant to Article 9(10) of CACM.

The legal provisions that lie at the basis of the SEE Fallback Procedures, and of this SEE NRAs agreement, can be found in Article 3, 8, 9, and 44 of 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 to 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.*

## **II. The South-East Europe TSO proposal**

Following the approval of the first version of the SEE Fallback Procedures by SEE NRAs on 18 April 2018, the TSOs of the SEE CCR (hereinafter referred to as “SEE TSOs”) developed an amended methodology aimed to introduce JAO as the Allocation Platform which will perform the Shadow Auctions for the RO-BG bidding zone border and to include in the proposal of an Annex reporting the Shadow Auction Rules version 1.5, instead of mentioning only a reference to the version published on the Single Allocation Platform website.

The new version of the SEE Fallback Procedures was consulted by the SEE TSOs through ENTSO-E from 28 July 2020 to 28 August 2020, in line with Article 44 and Article 12 of CACM<sup>1</sup>. The final proposal was received by the last Regulatory Authority of the South-East Europe Capacity Calculation Region on 2 November 2020. Article 9(10) of CACM requires SEE NRAs to consult and closely cooperate and coordinate with each other in order to reach agreement and make decisions within six months following receipt of submissions of the last Regulatory Authority concerned. A decision is therefore required by 2 May 2021.

The new version of the SEE Fallback Procedures foresees covers the following:

- a) Fallback Procedure on Romania-Bulgaria (RO-BG) bidding zone border and
- b) Fallback Procedure on Bulgaria-Greece (BG-GR) bidding zone border.

The Fallback Procedure on each bidding zone border is based on explicit day-ahead auctions, the Shadow Auctions. The auction specification of a Shadow Auction on a specific bidding zone border

---

<sup>1</sup> The public consultation is available on the ENTSO-e website:  
[https://consultations.entsoe.eu/markets/fallback-procedures\\_see-ccr/](https://consultations.entsoe.eu/markets/fallback-procedures_see-ccr/)

for the contract day will be published by the Allocation Platform in advance according to the Shadow Allocation Rules. The Allocation Platform which will perform the Shadow Auctions for both RO-BG and BG-GR bidding zone borders is JAO.

SEE NEMOs performing MCO function shall inform SEE TSOs in the event of risk of Full or Partial decoupling. In the event of Full decoupling, the Fallback Procedure on both bidding zone borders is initiated. In the event of Partial decoupling affecting the RO-BG (or BG-GR respectively) bidding zone border, the Fallback Procedure on RO-BG (or BG-GR respectively) bidding zone border is initiated.

If a Fallback Procedure cannot be implemented in time, the Shadow Auction will be postponed. If postponement of a Shadow Auction is not considered by the Allocation Platform as being possible, the Shadow Auction will be cancelled and all bids already submitted will automatically be deemed null and void, based on objective grounds and in compliance with Shadow Allocation Rules. When the Single Day-Ahead Coupling process (SDAC) is declared failed and the associated Fallback Procedure for RO-BG or BG-GR bidding zone border is also cancelled, the daily offered capacity is allocated to the subsequent relevant intraday allocation processes relevant for that border, where applicable.

Following the introduction of the SDAC on RO-BG bidding zone border or on BG-GR bidding zone border, any change of the Shadow Allocation Rules and/or the Allocation Platform performing the Shadow Auctions related to that border shall imply an amendment of the SEE Fallback Procedures, according to Article 9(13) of CACM.

The SEE Fallback Procedures shall be applicable once SDAC is introduced on the Romania-Bulgaria (RO-BG) bidding zone border or on the Bulgaria-Greece (BG-GR) bidding zone border, where relevant. SEE Fallback Procedures shall be implemented within the window from 1 April 2021 to 1 July 2021; its implementation shall coincide with the implementation of the amended SDAC operational timings foreseeing the postponement of the formal decoupling declaration by 10 minutes from 13:50 till 14:00 on the day proceeding the delivery. The exact date of the implementation of the SEE Fallback Procedures and the new SDAC operational timings shall be published on the website of the Allocation Platform operator at least 30 calendar days before the implementation.

For the transitional period till the Shadow Auction Rules included in Annex I enter into force according to paragraph 2, in derogation to Articles 4(5) and 5(5), the execution of Shadow Auctions is based on the version 1.4 of the Shadow Allocation Rules of 21 November 2018 published on the website of the Allocation Platform<sup>2</sup>.

### **III. South-East Europe Regulatory Authority position**

#### **NRAs position**

The new version of the SEE Fallback Procedures confirms the approach already approved by SEE NRAs on 18 April 2018.

The proposed fallback procedures represent the most efficient, robust and timely solutions that can be implemented on the different borders belonging to SEE CCR. On the Romania-Bulgaria (RO-BG) bidding zone border and on the Bulgaria-Greece (BG-GR) bidding zone border, the usage of explicit Shadow Auctions operated by the Single Allocation Platform grants a good level of efficiency and transparency, allocating capacity to market participants according to their willingness to pay.

The only changes with respect to the first version are:

- a) the inclusion in the proposal of an Annex reporting the Shadow Auction Rules version 1.5, instead of mentioning only a reference to the version published on the Single Allocation Platform website;

---

<sup>2</sup> <http://www.jao.eu/support/resourcecenter/overview>

- b) the introduction of JAO as the Allocation Platform which will perform the Shadow Auctions for the RO-BG bidding zone border also.

SEE NRAs are fine with the above-mentioned changes. However, SEE NRAs are concerned by the specific version of the Shadow Auction Rules that could be adopted once SDAC is introduced on the Romania-Bulgaria (RO-BG) bidding zone border or on the Bulgaria-Greece (BG-GR) bidding zone border. The go-live of the BG-GR day-ahead market coupling is expected for 11 May 2021. Before entering into force, Shadow Auction Rules version 1.5 need to be approved by the regulatory authorities of all the CCRs applying shadow auctions as fallback procedures. This is not an easy process and it involves ACER in the case of lack of agreement among the concerned regulatory authorities. For this reason, SEE NRAs deem it useful for the transitional period till the Shadow Auction Rules included in Annex I enter into force (version 1.5) (which is within the window from 1 April 2021 to 1 July 2021), the execution of Shadow Auctions to be based on the version 1.4 of the Shadow Allocation Rules of 21 November 2018 published on the website of the Allocation Platform.<sup>3</sup>

SEE NRAs are nonetheless aware of the urgency to have the new version of the SEE Fallback Procedures approved before the go-live of the coupling between Greece and Bulgaria Day-Ahead markets: the first version cannot, in fact, apply since it includes a reference to the version 1.3 of the Shadow Auction Rules that is no longer valid.

SEE NRAs intend thus to exploit the provision included in Article 5(6) of recast ACER Regulation, about the duty for regulatory authorities to revise terms and conditions and methodologies where necessary, before approving them: according to SEE NRAs a revision of the SEE Fallback Procedures is needed in order to clarify which version of the Shadow Auction Rules applies from the go-live of the coupling between Greece and Bulgaria. In this context a direct revision by SEE NRAs is also the most efficient and even unique way to proceed, in order to have the SEE Fallback Procedures timely approved with a proper reference to a valid version of the Shadow Auction Rules

## NRAs amendments

SEE NRAs include several amendments to the SEE Fallback Procedures. They can be summarized as follows:

- a) Removal of the word proposal, since the methodology is directly changed by the SEE NRAs and can no longer be considered as a SEE TSOs proposal;
- b) Editorial changes to improve the readability of the document and to align with the wording used in other methodologies developed according to CACM;
- c) Inclusion of some definitions to improve the overall understandability;
- d) Deletion of a reference to a future amendment of the proposal in case of a new version of the Shadow Auction Rules is adopted; being the Shadow Auction Rules attached to the SEE Fallback Procedures, any change to these rules should lead automatically to an amendment of the methodology according to Article 9(13) of CACM, without the need to further explicit this provision in the text;
- e) Definition of a transitory period during which the Shadow Auctions are based on the version 1.4 of the Shadow Auction Rules, pending the approval of version 1.5 by the regulatory authorities of all the involved CCRs and ACER;

The amendments were scrutinized by SEE TSOs, who provided suggestions on Article 3 regarding the communication channels' establishment and on Article 8 regarding the modification of the SEE Fallback Procedures with respect to the most updated version of the Shadow Auction Rules. The SEE TSOs suggestions were adopted by SEE NRAs.

---

<sup>3</sup> <http://www.jao.eu/support/resourcecenter/overview>

## Intraday coupling implementation

In case the Shadow Auction for RO-BG or BG-GR bidding zone border is cancelled, the SEE Fallback Procedures foresee the allocation of the cross-zonal capacity in the subsequent intraday process: unfortunately, this will be feasible only once the Intraday coupling is implemented on these bidding zone borders either through the continuous trading or by the mean of pan-european intraday auctions. A timeline for such implementation has not been finalized yet: SEE NRAs recommend SEE TSOs to finalize this project in due time.

## Conclusions

SEE NRAs have consulted and closely cooperated and coordinated to reach the agreement that they amend and approve the SEE Fallback Procedures submitted by SEE TSOs pursuant to Article 44 of CACM: the legal basis for the direct amendments by SEE NRAs lies on Article 5(6) of recast ACER Regulation.

SEE NRAs must make their national decisions to approve the SEE Fallback Procedures, on the basis of this agreement.

Moreover, SEE NRAs would like to make the SEE TSOs aware that

- the proposal for fallback procedures shall be amended every time the Shadow Auction Rules version attached to the document are amended;
- the intraday coupling process shall be implemented in due time in order to allow a cross-zonal capacity allocation also in case both SDAC and the Shadow Auctions are unable to produce results.

## Annexes

Annex I - Fallback Procedures for the South-East Europe CCR 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, as amended by SEE NRAs