

Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (Text with EEA relevance)

TITLE I

**GENERAL PROVISIONS**

*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.

2 TSOs or NEMOs deciding on proposals for terms and conditions or methodologies in accordance with Article 9(6) shall decide with qualified majority if no consensus could be reached among them. The qualified majority shall be reached within each of the respective voting classes of TSOs and NEMOs. A qualified majority for proposals in accordance with Article 9(6) shall require a majority of:

- a TSOs or NEMOs representing at least 55 % of the Member States; and
- b TSOs or NEMOs representing Member States comprising at least 65 % of the population of the Union.

A blocking minority for decisions in accordance with Article 9(6) must include TSOs or NEMOs representing at least four Member States, failing of which the qualified majority shall be deemed attained.

For TSO decisions under Article 9(6), one vote shall be attributed per Member State. If there is more than one TSO in the territory of a Member State, the Member State shall allocate the voting powers among the TSOs.

For NEMO decisions in accordance with Article 9(6), one vote shall be attributed per Member State. Each NEMO shall have a number of votes equal to the number of Member States where it is designated. If more than one NEMO is designated in the territory of a Member State, the Member State shall allocate the voting powers among the NEMOs, taking into account their respective volume of transacted electricity in that particular Member State in the preceding financial year.

3 Except for Articles 43(1), 44, 56(1), 63 and 74(1) TSOs deciding on proposals for terms and conditions or methodologies in accordance with Article 9(7) shall decide with qualified majority if no consensus can be reached among them and where the regions concerned are composed of more than five Member States. The qualified majority shall be reached within each of the respective voting classes of TSOs and NEMOs. A qualified majority for proposals in accordance with Article 9(7), shall require a majority of:

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- a TSOs representing at least 72 % of the Member States concerned; and
- b TSOs representing Member States comprising at least 65 % of the population of the concerned region.

A blocking minority for decisions in accordance with Article 9(7) must include at least the minimum number of TSOs representing more than 35 % of the population of the participating Member States, plus TSOs representing at least one additional Member State concerned, failing of which the qualified majority shall be deemed attained.

TSOs deciding on proposals for terms and conditions or methodologies in accordance with Article 9(7) in relation to regions composed of five Member States or less shall decide based on consensus.

For TSO decisions under Article 9(7), one vote shall be attributed per Member State. If there is more than one TSO in the territory of a Member State, the Member State shall allocate the voting powers among the TSOs.

NEMOs deciding on proposals for terms and conditions or methodologies in accordance with Article 9(7) shall decide based on consensus.

4 If TSOs or NEMOs fail to submit a proposal for terms and conditions or methodologies to the national regulatory authorities within the deadlines defined in this Regulation, they shall provide the competent regulatory authorities and the Agency with the relevant drafts of the terms and conditions or methodologies, and explain what has prevented an agreement. The Agency shall inform the Commission and shall, in cooperation with the competent regulatory authorities, at the Commission's request, investigate the reasons for the failure and inform the Commission thereof. The Commission shall take the appropriate steps to make possible the adoption of the required terms and conditions or methodologies within four months from the receipt of the Agency's information.

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.

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

- a the plan on joint performance of MCO functions in accordance with Article 7(3);
- b the capacity calculation regions in accordance with Article 15(1);
- c the generation and load data provision methodology in accordance with Article 16(1);
- d the common grid model methodology in accordance with Article 17(1);
- e the proposal for a harmonised capacity calculation methodology in accordance with Article 21(4);
- f back-up methodology in accordance with Article 36(3);
- g the algorithm submitted by NEMOs in accordance with Article 37(5), including the TSOs' and NEMOs' sets of requirements for algorithm development in accordance with Article 37(1);
- h products that can be taken into account by NEMOs in the single day-ahead and intraday coupling process in accordance with Articles 40 and 53;
- i the maximum and minimum prices in accordance with Articles 41(1) and 54(2);
- j the intraday capacity pricing methodology to be developed in accordance with Article 55(1);

- k the intraday cross-zonal gate opening and intraday cross-zonal gate closure times in accordance with Article 59(1);
- l the day-ahead firmness deadline in accordance with Article 69;
- m the congestion income distribution methodology in accordance with Article 73(1);

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

- a the common capacity calculation methodology in accordance with Article 20(2);
- b decisions on the introduction and postponement of flow-based calculation in accordance with Article 20(2) to (6) and on exemptions in accordance with Article 20(7);
- c the methodology for coordinated redispatching and countertrading in accordance with Article 35(1);
- d the common methodologies for the calculation of scheduled exchanges in accordance with Articles 43(1) and 56(1);
- e the fallback procedures in accordance with Article 44;
- f complementary regional auctions in accordance with Article 63(1);
- g the conditions for the provision of explicit allocation in accordance with Article 64(2);
- h the redispatching or countertrading cost sharing methodology in accordance with Article 74(1).

8 The following terms and conditions or methodologies shall be subject to individual approval by each regulatory authority or other competent authority of the Member States concerned:

- a where applicable, NEMO designation and revocation or suspension of designation in accordance with Article 4(2), 4(8) and 4(9);
- b if applicable, the fees or the methodologies used to calculate the fees of NEMOs relating to trading in the day-ahead and intraday markets in accordance with Article 5(1);
- c proposals of individual TSOs for a review of the bidding zone configuration in accordance with Article 32(1)(d);
- d where applicable, the proposal for cross-zonal capacity allocation and other arrangements in accordance with Articles 45 and 57;
- e capacity allocation and congestion management costs in accordance with Articles 75 to 79;
- f if applicable, cost sharing of regional costs of single day-ahead and intraday coupling in accordance with Article 80(4).

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

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of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.

11 Where the regulatory authorities have not been able to reach agreement within the period referred to in paragraph 10, or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.

12 In the event that one or several regulatory authorities request an amendment to approve the terms and conditions or methodologies submitted in accordance with paragraphs 6, 7 and 8, the relevant TSOs or NEMOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the regulatory authorities. The competent regulatory authorities shall decide on the amended terms and conditions or methodologies within two months following their submission. Where the competent regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies pursuant to paragraphs (6) and (7) within the two-month deadline, or upon their joint request, the Agency shall adopt a decision concerning the amended terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009. If the relevant TSOs or NEMOs fail to submit a proposal for amended terms and conditions or methodologies, the procedure provided for in paragraph 4 of this Article shall apply.

13 TSOs or NEMOs responsible for developing a proposal for terms and conditions or methodologies or regulatory authorities responsible for their adoption in accordance with paragraphs 6, 7 and 8, may request amendments of these terms and conditions or methodologies.

The proposals for amendment to the terms and conditions or methodologies shall be submitted to consultation in accordance with the procedure set out in Article 12 and approved in accordance with the procedure set out in this Article.

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.