

April 2022

UFE's response to European Commission Consultation on the revision of the Capacity Allocation and Congestion Management Regulation

Please provide feedback only on the questions that are relevant for you; questions can be left blank.

The questions follow the structure of the new CACM draft text as proposed by ACER in its recommendation (and the numbering of articles in this proposal), and target some specific points.

1 Title I - General provisions

1. While in the original CACM the market coupling was based on exchange of electricity across bidding zones, ACER proposal is based on exchanges of electricity between Nominated Electricity Market Operator (NEMO) trading hubs. ACER concludes that this would make it easier for individual NEMOs in the market to get access to market coupling as they would no longer need to agree on separate multi-NEMO arrangements (MNA) with existing NEMOs/TSOs in a bidding zone. Do you agree with this approach and the stated benefits? If not, why?
2. Publication of information and transparency: do you consider the new article 8 sufficient to address current transparency concerns? Would you see further aspects to tackle or data to be published?

UFE welcomes the additional provisions on information to be provided (inclusion of the new article 8) introduced by ACER and believes the list of datas could be improved in line with market participants needs.

3. Do you have any other comments on Title I - General Provisions?

2 Title II - Organisation of market coupling and of capacity calculation

Chapter 1 – designation of NEMOs

4. Do you consider the review of national legal monopolies proposed in article 11 a necessary/sufficient measure? Which alternatives would you see?

Chapter 2 - Market coupling governance and organisation

5. The article 13 sets that NEMOs together with TSOs shall establish a joint decision making body, taking decisions related to the management of the integrated single day-ahead and intraday coupling based on the qualified majority voting rules set in article 4.

Do you see any risks or inadequacies to this proposal? If so, what alternative/improvement would you suggest?

6. The article 14 provides for the establishment of a single legal entity performing the MCO tasks. In your view, what would be the challenges and conditions for a successful set-up? Do you have any suggestions to improve the current proposal (for example in terms of accountability/liability of the entity, regulatory oversight, efficient and effective decision making, etc.) ?

This question of MCO governance has given rise to many reactions. UFE however considers that there are many other fundamental issues to be addressed in CACM.

UFE takes note that the option with the centralized MCO single entity is proposed by ACER. Regarding this option, UFE underlines **that no evidence of benefits for market coupling operations and implementation has been provided so far**. UFE considers that this option also induces **transition costs** that will be financed by the market participants/TSOs and will ultimately be **at the expense of the final consumers**.

UFE takes note that the deadline for implementation has been set 5 years after the entry into force of new CACM GL. If the centralized MCO single entity option was to be introduced, UFE stresses that this should not delay the implementation of CACM GL and lead to no step back in terms of MCO functionalities for market participants. UFE underlines that the required changes should not jeopardize the existing processes and the CACM development/implementation projects for the coming years.

7. If no single legal entity were set up, would you have further proposals to improve the current governance framework (including current voluntary set up), and strengthen effectiveness of the decision making process?

The TSOs and NEMOs counter proposal seems less risky insofar as it does not entail a radical change but allows for the improvement of the existing organization by adjusting the principles of governance with mutual governance between NEMOs and TSOs through a joint decision-making body. The qualified majority voting among NEMOs and TSOs is also welcomed for a more efficient decision making.

UFE believes that the following additional improvements do not require the creation of a single entity:

- (i) **the transparency of the current governance bodies can be improved** by, among other things, making public more information such as the annual work programs of the joint decision-making body or full minutes of the joint decision-making body meetings, etc.
- (ii) **Stakeholder involvement can be increased** by providing more visibility on the issues to be addressed and the solutions to be provided, while taking better into account market needs.

In any case, UFE agrees that NEMOs' competitive activities should not interfere with MCO activities.

8. Article 16 proposes a framework for a NEMO of last resort in case no NEMO is operating in a bidding zone: Would you suggest other alternatives?
9. Do you have any suggestions on how regulatory oversight can be further improved, in order to ensure a smooth and efficient development of the market coupling?

Chapter 3 - MCO tasks and responsibilities

10. Do you agree with the proposed definition of tasks and responsibilities, and their assignment to the different entities? If not, what would you change and why?

UFE takes note of an additional task for the MCO to perform, namely the co-optimised allocation process pursuant to Article 40 of the Balancing Regulation. The benefits of this process however remain unclear and UFE considers it should be subject to a cost-benefit analysis that should prove positive and be made public.

Chapter 4 - Costs

11. Do you consider the new methodology on eligible costs of MCO and joint decision making body will increase transparency and help to improve the current cost sharing/cost recovery process? Do you have suggestions for improvement?
12. Do you detect any risks in the current cost sharing/recovery provisions, or have any suggestions for improvement?
13. Do you have any other comments on Title II- Organisation of market coupling and of capacity calculation?

3 Title III - Capacity calculation

Chapter 1 – General requirements

14. Do you agree with ACER's reasoning and necessity for allowing some specific bidding zone borders to be in two Capacity Calculation Regions (CCRs)? If not, why and which alternative do you propose to solve the underlying problems?

Chapter 2 - Capacity calculation methodologies and Chapter 3 – Capacity calculation process

15. The Electricity Regulation 2019/943 (article 16(8)) requires that a minimum target apply to capacity calculation timeframes covered by CACM Regulation, which means day-ahead and intraday market coupling: Which solution do you propose to solve any issue related to the implementation of this target across these timeframes?

ACER's proposal does not mention the timeframe to which the 70% threshold available for cross-zonal trade constraint would apply, which by default would make it mandatory in day-ahead and intraday.

When it comes to the provisions related to the 70% threshold stemming from Article 16(8) of the Electricity Regulation, the compliance with this threshold that could be required for the day-ahead and intraday capacity calculation methodology **should not impede TSOs to implement all the remedial actions that resolve congestions considered as certain on the day-ahead within a timeframe compatible with their lead time**. The costly remedial actions identified in intraday should only be implemented for variations that were not certain the day before.

Since Article 16(8) of the Electricity Regulation does not provide for a specific timeframe to which to apply the 70% threshold and, in light of ACER's own findings in its decision 29/2020 on the bidding zone review methodology¹, **UFE would rather be favorable to apply the 70% threshold to the day-ahead timeframe only. UFE considers indeed that applying the 70% threshold to**

¹ Alinea 93 of part 6.4.11 of the said decision provides that “The cost of remedial actions may be higher than the cost of the same unit for the day-ahead dispatch, due to, inter alia, additional readiness costs and opportunity costs reflecting lost opportunity on other markets. This effect relates to the additional costs induced in other processes (e.g. in intraday and/or balancing markets) which are not explicitly modelled within the BZR; they thus do not lead to a transfer between parties, but rather to an increase in overall system costs”. In addition, the same decision describes how to estimate the additional costs induced by an application of the 70% threshold to the intraday timeframe.

the intraday timeframe raises questions about network security, with potential very significant modifications up to one hour before the delivery time. Some of the remedial actions that have to be taken by the TSOs require indeed an implementation time that can be longer than the neutralization lead time (period of 1 hour following the Gate Closure) and are not compatible with the 70% threshold to the intraday timeframe.

At the same time, ID markets are gaining importance given the increase of intermittent and renewable electricity generation, whose production forecast may be improved thanks to more accurate weather forecasts close to real time. These short-time forecast evolutions require market liquidity near to real time to be valued at the best price for both producers and consumers. UFE therefore insists in improving ID markets through (i) setting a proper ID capacity (re)calculation, ensuring through transparent methodologies that cross-border capacities made available for the market amount to the highest possible commercial exchanges while respecting security limits and (ii) using cross product matching. Such rules for the availability of cross-zonal capacities in intraday shall be developed in the capacity calculation methodologies at CCR level. This was for instance the case of the current CWE ID capacity calculation methodology through Long Term Allocation inclusion and 20%minRAM (minimal reliable availability margin).

UFE also shares ENTSO-E's analysis published in its advocacy paper (published on 1st March 2022) on the operational risks related to the implementation of the 70% rule in the intraday timeframe. **UFE therefore proposes not to consider the 70% target at the intraday timeframe, before extensive analysis of the impacts of such a measure.**

16. In article 27 and 32, option 1 seeks to better align flow-based and coordinated NTC methodologies. ACER concludes that this would improve transparency, reporting and monitoring of 70% requirements. Do you see any risk in this approach?

The options proposed by ACER are about the way 70% threshold is taken into the cNTC-based calculation procedure. UFE prefers option 2 in Article 27, as it keeps the existing way of representing the reliability margin (calculation of reliability margin per border for the cNTC approach, and per critical network element for the flow-based approach) as well as in Article 32 since it is like a status quo with a reference to the 70% threshold, allowing capacity calculation to remain adapted to regional specifics.

Third countries

17. Under which conditions the flows resulting from capacity calculation and allocation with third countries could be counted within the 70% of minimum capacity of critical network elements that needs to be offered to the market? Please motivate your response: why and under which conditions?

As ACER does, UFE calls for a clarification of “the legal framework under which all (or specific where necessary) third countries are allowed to participate in the capacity calculation and in the single day-ahead and intraday coupling within EU”.

First, UFE would like to recall that usually any coordination or cooperation with third countries is of mutual interest, and that the lack of it can be of prejudice to both parts, not just the third country.

Beyond political issues and as matter of market efficiency and operational security, UFE calls for the definition of an **appropriate framework for third countries in the framework of the revision of CACM Regulation, notably regarding coordinated capacity calculation process and congestion management**. For such aspects, UFE requests at least no step back with respect to the current situation.

UFE asks the European Commission to ensure that the flows from third countries are taken into account in a non-discriminatory way in the cross-zonal capacity calculation process.

For France, this is in particular impactful concerning Switzerland and United-Kingdom. Taking the example of the commercial exchanges between France and Switzerland, if these flows are not taken into account for the monitoring of the 70% threshold (e.g. excluded from the MACZT), TSOs may have to drastically reduce cross-border exchanges between these both countries for the benefit of commercial exchanges between Member States (e.g. with Germany and Italy in the given example). Such a flow rearrangement may reduce economic opportunities and could endanger security of supply of both the European Union and Third-Countries. Moreover, since the electric network is highly meshed in that part of Europe, increasing commercial flows between Members States at the expense of Switzerland may require more virtual capacities and the use of more remedial actions to ensure the physical feasibility of these commercial flows.

In fact, in case of third countries with a high level of interconnections with EU countries – like Switzerland for example, third country flows which are not taken into account could lead to social welfare losses for EU Member States (in the case of capacity reductions used to ensure 70% compliance but affecting transit flows).

18. How to ensure proper coordination of capacity calculation and allocation on borders with third countries and that there is no discrimination towards internal EU trade?

UFE believes CACM should include provisions for the borders with third countries in the capacity calculation and coordinated congestion management process, based on: either a CCR-like concept or bilateral/multilateral agreements for borders with third countries.

In a proper approach, the perimeter of activities to be covered by a coordination are: (i) the consideration of third country internal network constraints for intra-EU capacity calculation, (ii) the calculation of cross-zonal capacities and congestion rent allocation at borders with third countries, and (iii) the activation and cost sharing of remedial actions.

19. Do you have any other comments on Title III- capacity calculation?

UFE welcomes the last ACER recommendation on the CBA requirement concerning allocation constraints in article 29. However, UFE calls for an EU methodology to perform the cost-benefit analysis complementing the justification of allocation constraints. This methodology, supposed to show that allocation constraints are the economically most efficient measure among all alternatives to address operational security issues and the results of associated CBAs should be made available to all market participants of the concerned CCRs.

Under Article 31 (Methodology for remedial actions in capacity calculation), it should be clarified which remedial actions are “indispensable to ensure operational security in real time operation” (cf. point (1)(b)). More transparency and clarity on this provision (which was not present in the first proposal from ACER in 2021) is needed.

4 Title IV - Market coupling

Chapter 1 - Market coupling development

20. Regarding the SDAC and SIDC algorithm, do you agree that the algorithms’ source codes should be published? Which benefits in particular would you see in the algorithm code publication? Which risks? Do you have any alternative proposals?

UFE is very satisfied of the new provision in Article 41(2) concerning the publication of “the source code of each of these algorithms [...] by no later than 3 years after the approval publication of the methodology”. However, **UFE regrets that the publication of the continuous trading algorithm is conditioned to a positive cost-benefit analysis**. UFE asks to delete this specific condition for the publication of the source code of the continuous trading algorithm.

21. Regarding algorithm objectives, what are your views on the possibility to introduce non-uniform pricing? Which benefits and drawbacks?

UFE is skeptical about the possibility introduced in CACM GL to use the **non-uniform pricing for the DA and ID auctions**, which allows for the inclusion of paradoxically accepted bids in the coupling.

This is very difficult to precisely assess the benefits and drawbacks of non-uniform pricing given the absence of formal detailed information on this concept. UFE regrets the lack of visibility and stakeholder involvement on this topic that was discovered one year ago by market participants. Since 2021, UFE has been requesting a more informed debate. UFE asks for a complete description of the design of the approach (which is not defined in any EU legislation) in particular the way the side-payments would be calibrated and financed and a state of play of works performed so far. Assessment studies with the impact on algorithms' performance, on market prices and levels of side-payments are needed before introducing such an approach in CACM GL.

Considering the major potential impacts, any changes envisaged to the present pricing rules for DA and ID markets should be conditioned to a positive cost-benefit analysis and submitted to public consultation with all the necessary explanatory and justification documents.

22. Regarding the suspension of intraday continuous trading during intraday auctions, would you favour suspending all continuous trading (national and cross-zonal) or only cross-zonal continuous trading? Why? Do you have further views on the introduction of intraday auctions?

In Article 43 (Intraday timings and procedures), ACER proposes two options. UFE prefers option 2 since option 1 is too constraining for the continuous trading. Option 2 leaves the possibility for continuous trading in local markets (without cross border exchanges).

UFE still considers continuous trading to be the main solution and the target model for intraday market. Intraday auctions have been introduced following ACER decision n01/2019 with the sole purpose to explicitly price capacity in intraday. This has not been proven that explicit pricing of capacity improves the social welfare and with the introduction of ID auctions, there is a risk of fragmentation of market liquidity between intraday auctions and continuous intraday markets (XBID). Instead of confirming the introduction of ID auctions, CACM 2.0 could have also been the opportunity to clarify the intraday market design by removing the need to price capacity in intraday.

Shall ID auctions nevertheless be introduced, UFE requests to use the same formulation as in Article 16(5) of Electricity Regulation (“For intraday trade, continuous trading, **which may be** complemented by auctions, shall be used.”). UFE requests that the design of IDAs preserves ID market liquidity by shortening the interruptions of the continuous market as much as possible. UFE also requests that the number of ID auctions remains limited and that CACM GL mentions explicitly that there will not be more than three ID auctions at 3 p.m. D-1, 10 p.m. D-1 and 10 a.m. delivery day. In addition, UFE regrets the lack of obligation of a regular review/assessment of the implementation of ID auctions, which should be explicitly introduced in CACM GL. Such a review should analyze the effects of IDAs in terms of efficiency, cross-zonal capacity allocated, and impact on the liquidity of the continuous SIDC. The assessment should result in the publication of an annual report based on relevant indicators to demonstrate improvements in congestion

management and capacity allocation; as well as to challenge the number of auctions. Alternatively, such a reporting could be included as part of the Biennial report on market coupling (Article 60).

23. Would you find it useful to centralize clearing and settlement between NEMO trading hubs (even if there is no single legal entity) and why/why not ?(Please note that this refers to clearing and settlement between NEMOs or NEMOs and MCO and not to clearing and settlement between NEMOs and its clients).

24. Do you have any other comments on Title IV- market coupling?

UFE welcomes the addition of key principles for DA auctions, continuous trading and ID auctions algorithms but requests more ambitious provisions.

Concerning evolutions of the DA and ID market coupling algorithms, **UFE is worried regarding potential step backs in terms of products accommodated by the algorithms**, whose performance is already threatened by an increasing complexity (geographical extension, 15-minutes imbalance settlement pricing, etc.). The priority for products accommodation should be to keep an efficient pricing and trading in the European target models available, providing an efficient DA and ID market price formation. Contrary to ACER's decisions of 2020 that consider complex products as optional, **UFE requests that any product traded in more than three Member States should be considered as mandatory for the DA and ID market coupling algorithms (in Article 39) while ensuring that algorithms performance is not endangered taking into account all available solutions for improving algorithm performance and/or increasing time dedicated to algorithm runs**. In a general way, UFE proposes to explicitly introduce in CACM GL in Article 38 the provision of an **additional principle of adequacy with market needs for the three coupling algorithms**.

5 Title V - Bidding zone review process

In the Commission's view, some further adaptations are needed to this chapter to fully align the CACM text with the bidding zone review process defined in the Electricity regulation.

25. In addition, further clarification could be provided on the process when one Member State intends to review its internal bidding zones or establish a new bidding zone to improve locational price signals. Do you agree and what are the most important considerations in these cases?

UFE does not see the need for further complementing the provision on bidding zone reviews as already defined in the Electricity and CACM regulations.

On the first point, when reviewing internal bidding zones, the Electricity Regulation foresees that a Member State has to ensure there is no negligible impact on its neighbours. The notion of negligible impact could be clarified. The provisions should also ensure that Member States consult the national stakeholders prior to any such decision. Of course, such a change has to be anticipated and sufficient time (at least five years before implementation) should be left to market participants so that they can assess the impacts on their activities.

26. In order to reach the decarbonisation targets, a significant rollout of offshore renewable energy is expected, and the TEN-E Regulation sets out the process for developing integrated offshore network development plans for each sea-basin. Do you agree that these plans should be used as a basis for establishing or reviewing offshore bidding zones, instead of doing so on an ad-hoc basis as projects are developed ? If not, why not and what alternatives do you propose?

UFE does not see why there should be a specific process for offshore infrastructure. A parallel mode for hybrid offshore wind projects should be avoided. In the context of the ambitious EU offshore wind strategy relying notably on hybrid offshore projects, UFE believes that the BZR process should be improved to simply correctly consider the development of these projects that require stable long term price signals and a bidding zone delineation stability. In any case, UFE considers that no one at this stage should prejudge the best Bidding Zone delineation (the creation of an OBZ or a reconfiguration/extension of an existing onshore Bidding Zone).

27. Do you have any other comments on Title V- Bidding zone review process?

Concerning the bidding zone review Process, UFE notices many changes with respect to the version proposed in April 2021 and welcomes more alignment with Electricity Regulation. UFE nevertheless requests clarifications to ensure that an advisory stakeholder committee composed of representatives of relevant stakeholders is set up and consulted by the TSOs throughout the bidding zone review process for any critical decision. Furthermore, UFE asks for intermediate public consultations on proposals on methodology and assumptions and alternative bidding zone configurations rather than a single consultation at the end of the process. In addition, UFE regrets that the criterion about “transition costs” is not clarified to cover the amount of potential stranded costs associated with configuration changes. The fact that bidding zone configuration can change is per se a regulatory risk that is very difficult to anticipate for investors and the financial risks leads to additional investment costs. UFE thus requests to introduce the calculation of stranded costs for merchant assets in the criteria needed in BZR.

6 Title VI - Reporting and implementation monitoring

28. In article 62 detailing the regular reporting on current bidding zone configuration by ENTSO-E, it is envisaged to introduce an objective criterion for reporting purposes. Do you agree with the proposal to define a threshold for frequency of occurrence when reporting on structural congestion, to ensure consistency in reporting among Member States? If not, why and which alternative do you propose?

With regard to reporting on bidding zone configuration (in Article 62), UFE recognizes that a threshold might be useful to define a structural congestion. However, we believe that CACM GL is not the right place to set the level of a threshold. In case a threshold is to be defined, a detailed methodology should be developed and made public, to assess per Member State the adequate level of the threshold. At this stage, UFE considers that it is more cautious to keep some latitude to determine this threshold in the frame of a subsequent methodology to be developed.

29. Do you have any other comments on Title VI- Reporting and implementation monitoring?

7 Provisions moved to Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation

30. The new article 76 “Proposal for regional operational security coordination” envisages two options for sharing of costs of remedial actions, one simply referring to article 16(13) of the Electricity Regulation, the other providing more detail in its interpretation. Which option do you favour and why?

Redispatching and countertrading cost-sharing methodology:

Regarding the redispatching and countertrading cost-sharing methodology which provisions are moved from CACM Regulation into the System Operation guidelines (SO GL), UFE notices that ACER’s proposal provides two options, the second one being based on ACER’s decision n°30/2020 establishing a cost-sharing methodology for the Core Capacity Calculation Region (CCR).

UFE stresses that it has supported both RTE and CRE's appeals in 2021 against this decision which, by unduly prioritizing loop flows over internal flow among polluting flows contributing to cross-border congestions and by sharing between TSOs the cost of remedial actions on network elements covered by an action plan implemented at national level, is not compliant with the Electricity Regulation's requirements.

UFE is therefore highly unfavorable to the inclusion of such an option in the CACM Regulation, since it would result in an excessively and unduly detrimental cost sharing for countries that already have invested in their networks, while decreasing incentives for defaulting TSOs/countries to invest in theirs. The first option should be preferred since it leaves more room for properly taking into account the specific situation of each CCR that may require different cost sharing schemes (as it is the case today).

8 Other comments:

31. Do you find any gaps in the current ACER proposal (for example, due to existing provisions in the original CACM that are not reflected in the current text following its restructuring). If so, which ones?

Regarding the provisions on RD & CT in CACM Regulation

UFE is not in favor of deleting completely the mention of redispatching and countertrading (Article 35) from CACM Regulation on the sole justification that all provisions are moved into the System Operation guidelines (SO GL). UFE would rather prefer to keep the principles for coordinated redispatching and countertrading, either in a shortened Article 35 or in a "Whereas" of CACM Regulation explicitly mentioning that:

- remedial actions have to be optimized and determined according to the provisions for regional operational security coordination (ROSC) pursuant to SO GL Articles 75-78;
- the use of redispatching and countertrading resources shall take into account their impact on operational security and economic efficiency.

Regarding deletion of articles 64 and 65 of CACM

Regarding capacity allocation, UFE notices the deletion of the previous articles 64 and 65 of CACM dealing with explicit allocation in the frame of transitional intraday arrangements, without any justification or prior debate on the issue. The provisions themselves foresee that any removal is subject to some conditions, which to our knowledge have not been fulfilled. UFE therefore calls for a prior analysis of the economic impact of such a removal before any deletion is envisaged as explicit access allocation on top of the implicit (XBID) access provides for additional flexibility in the ID and Balancing timeframes.

Regarding other changes to SO GL

UFE questions the need to extend the scope of application of SO to type A power generating modules (cf. Article 1(1)). These are usually small units and shall be left upon national discretion. Article 51.4 (Data exchange between TSOs and DSOs concerning significant power generating modules) should be modified to clarify that provisions for type A power generating modules shall be agreed at national level in order to find the most suitable approach according to the existing situation in the country. UFE regrets the absence of justification of this new provision (which was not present in the initial ACER proposal in 2021) and calls for a justification of the benefits of such extension, for congestion management and security of operations.

Article 46 (Scheduled data exchange) of the SO Regulation shall clarify that forecasted/scheduled data are not firm and represent the best available data from significant grid users (SGUs) at the moment of their submission (these may change with network and market conditions).

On common grid models, UFE requests more transparency for concerned market participants and proposes that a paragraph be added in Article 64 of SO.

9 Consultation

The Commission would welcome feedback from stakeholders on the questions listed above.

Input to the consultation should be sent by 27 April 2022 by e-mail to ENER-NETWORK-CODES@ec.europa.eu.

All responses will be published in full unless it is specifically indicated that the information contained within the response is confidential. Following the consultation period, the Commission will evaluate the input received and propose amendments to the Comitology process.