

DECISION No 13/2024
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 25 September 2024

**on amendments to products that can be taken into account in the single
day-ahead coupling**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Regulators¹, and, in particular, Article 5(2)(b) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management², and, in particular, Articles 9(5), 9(6)(h), 9(13) and 40(1) thereof,

Having regard to the outcome of the consultation with the regulatory authorities and the nominated electricity market operators,

Having regard to the outcome of the consultation with ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 18 September 2024, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management ('CACM Regulation') laid down a range of requirements for cross-zonal capacity allocation and congestion management in the

¹ OJ L158, 14.6.2019, p. 22.

² OJ L 197, 25.7.2015, p. 24.

day-ahead and intraday markets in electricity. Chapter 5 of the CACM Regulation specifies requirements for the single day-ahead coupling ('SDAC'), including products that can be taken into account in the SDAC ('SDAC products').

- (2) The terms and conditions for the SDAC products were developed by all nominated electricity market operators ('NEMOs') and approved by all regulatory authorities in 2018.³
- (3) According to Article 9(13) in joint reading with Articles 9(6)(h) and 40(1) of the CACM Regulation, all NEMOs may propose amendments to the SDAC products and, since the entry into force of Regulation (EU) 2019/942, they must submit their proposal directly to ACER for revision and approval. The SDAC products were so far amended once, in 2020 by ACER Decision 37/2020.
- (4) On 26 April 2024, all NEMOs submitted to ACER a proposal for amending the terms and conditions for the SDAC products to ensure that the SDAC algorithm supports the 15 minutes (15') market time unit ('MTU') products as of January 2025. As explained by the NEMOs, the introduction of the 15' MTU in SDAC will impact the performance of the algorithm and necessitates changes to the SDAC products.
- (5) The present Decision follows from the assessment and revision of the NEMOs' amendment proposal submitted to ACER ('Proposal'). Annex I to this Decision sets out the amended terms and conditions for the SDAC products, as revised and approved by ACER.

2. PROCEDURE

- (6) On 26 April 2024, the NEMO Committee, on behalf of all NEMOs, submitted the Proposal to ACER for decision.
- (7) Between May and July 2024, ACER engaged in discussions with the NEMOs and the regulatory authorities on the proposed amendments, through working meetings with the NEMOs and the regulatory authorities (3 meetings), exchanges of documents and regular updates provided to ACER's Electricity Working Group ('AEWG') and the CACM Task Force.⁴
- (8) On 15 July 2024, ACER shared its preliminary position on the Proposal with the NEMOs asking for their views in writing by 29 July. The NEMOs provided their written views by the above deadline and did not ask for an oral hearing.

³ Approval by all regulatory authorities of 23 January 2018, available at https://www.ceer.eu/wp-content/uploads/2024/05/ERF_DA-Product-Proposal-position-paper_FINAL.pdf

⁴ ACER's platform for discussing CACM-related aspects with the regulatory authorities.

- (9) Having read the NEMO submission, ACER decided to organise an oral hearing on its own initiative to further discuss with the NEMOs and clarify their written comments. The oral hearing took place on 31 July 2024.
- (10) The AEWG was consulted on ACER's draft Decision between 26 and 29 August and provided its advice on 2 September 2024.
- (11) ACER's Board of Regulators issued a favourable opinion on 18 September 2024.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (12) Pursuant to Article 5(2)(b) of Regulation (EU) 2019/942, ACER shall approve proposals for common terms and conditions or methodologies for the implementation of those network codes and guidelines adopted before 4 July 2019 and which require the approval of all regulatory authorities.
- (13) Pursuant to Article 9(6)(h) of the CACM Regulation, which has been adopted as a guideline before 4 July 2019, the proposal for the terms and conditions for the SDAC products, and any amendments thereof, shall be subject to approval by ACER.
- (14) Pursuant to the second sentence of Article 9(13) in joint reading with Article 9(6)(h) and 40(1) of the CACM Regulation, the NEMOs responsible for developing the proposal for the terms and conditions for the SDAC products (i.e. all NEMOs) may propose amendments to these terms and conditions to ACER.
- (15) Pursuant to Article 9(5) in joint reading with Article 9(6)(h) of the CACM Regulation, ACER, before approving the proposal for amendment of the terms and conditions for the SDAC Products, shall revise it where necessary, after consulting all NEMOs, in order to ensure that it is in line with the purpose of the CACM Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (16) Since all NEMOs, through the NEMO Committee, submitted the Proposal to ACER for approval, ACER is competent to decide on the Proposal based on Article 5(2)(b) of Regulation (EU) 2019/942 as well as Article 9(6)(h) in joint reading with Article 9(13) of the CACM Regulation.

4. SUMMARY OF THE PROPOSAL

- (17) The Proposal consists of a document which integrates the proposed amendments into the existing terms and conditions for the SDAC products approved by ACER Decision 37/2020, provided in a clean and a tracked version, and is accompanied by an explanatory note as well as a list of submitting NEMOs. To avoid duplication and because in this case ACER does not see the need to reassess the Proposal in its entirety, ACER will focus on the NEMOs' proposed amendments and the additional amendments proposed by ACER.
- (18) The most relevant amendments proposed by the NEMOs are as follows:

- a) The NEMOs proposed to remove two types of optional products that are currently supported by the algorithm: the prezzo unico nazionale (PUN) orders and the minimum income condition/maximum payment condition (MIC/MP) orders (the latter referred to as ‘Complex Orders’ in the Proposal). The NEMOs explain that any calculation including the PUN orders and/or MIC/MP orders, in association with the 15’ MTU product, takes too long to reach a result. The NEMOs note that in any case, the PUN orders will no longer be an outcome of the SDAC algorithm as of 1 January 2025 as a result of changes to the Italian law. The PUN orders can therefore be removed from the optional products as of 1 January 2025. Regarding MIC/MP orders, the NEMOs propose to retain the option of offering them (as Complex Orders) during a fallback period of 6 months after the go-live of 15’ MTU in case the 15’ MTU change is reverted. The proposed approach is specified in the Proposal through the following amendments:
- (i) Additional explanatory recitals in the ‘Whereas’ section;
 - (ii) Removal of the ‘PUN orders’ in Article 2 (definitions) and Article 5;
 - (iii) Rewording of the (Scalable) MIC/MP orders and load gradient orders sections into (Scalable) Complex Order sections, and retaining the possibility to offer Complex Orders during after the go-live of 15’ MTU during a fallback period of six months, in case the 15’ MTU change is reverted, in Article 5(1), points (b) and (c).
- b) The NEMOs also proposed to add specifications for supporting the 15’ MTU product in the SDAC algorithm, such as acceptance/rejection criteria, and a requirement that hourly, half-hourly and quarter-hourly products must be supported by the SDAC algorithm covering one MTU at least equal to the imbalance settlement period of the relevant bidding zone, reflecting the requirements of Articles 8(2) and 8(4) of Regulation (EU) 2019/943 (‘Electricity Regulation’). The related amendments are in Articles 3 and 4 of the Proposal.
- c) Lastly, the NEMOs proposed to activate the relevant provisions related to the 15’ MTU by the 15’ MTU go-live in SDAC. This amendment is in Article 6 of the Proposal.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1 Consultation on ACER’s preliminary position

- (19) NEMOs’ response to ACER’s preliminary position, and the subsequent oral hearing focused on ACER’s intention to make the offering of 30-minute and 60-minute curve orders (defined as ‘Period Orders’ in Annex I to this Decision) optional. As a result of ACER’s proposed amendment, the algorithm would no longer be required to support those curve orders. The NEMOs are of the view that for the time being, Period Orders should remain in the category of ‘mandatory’ products, together with the (new) MTU Orders and the Simple Block Orders (‘SBOs’). NEMOs’ concerns and ACER’s assessment are discussed in detail in section 6.2.

5.2 Consultation of the AEWG

- (20) The Luxembourg regulatory authority (ILR) submitted a comment during the AEWG consultation period. It was unclear to ILR why there is a specific mention of the Continental Europe Synchronous Area in paragraph (31) of draft Decision, since the terms and conditions for the SDAC products are applied EU-wide.
- (21) On 2 September 2024, the AEWG endorsed ACER's draft Decision asking to consider ILR's remark. ACER agrees with ILR and has deleted the reference to the Continental Europe Synchronous Area to avoid confusion.

6. ASSESSMENT OF THE PROPOSAL

6.1 Legal framework

- (22) Article 40 of the CACM Regulation sets out requirements for the terms and conditions for the SDAC products. In particular, all NEMOs are required to ensure that orders resulting from these products are expressed in euros and make reference to the market time, and that the price coupling algorithm is able to accommodate orders resulting from these products covering one MTU and multiple MTUs.
- (23) The 15' MTU is expected to be introduced in SDAC as of 1 January 2025 based on Article 8 of the Electricity Regulation which governs the length of the imbalance settlement period (ISP). According to Article 8(4) of this Regulation, as of 1 January 2025, ISP must be 15 minutes in all scheduling areas with no derogation possible.⁵ According to Article 8(2) of this Regulation, NEMOs are required to provide market participants with the opportunity to trade in energy in time intervals which are at least as short as ISP for both day-ahead and intraday markets, i.e. 15' MTU in SDAC, once introduced.
- (24) More generally, in terms of content of any proposal for terms and conditions or methodologies, Article 9(9) of the CACM Regulation states that it must include a proposed timescale for their implementation and a description of their expected impact on the objectives set out in Article 3 of the CACM Regulation.
- (25) Article 9(13) of the CACM Regulation requires that all proposals for amendment to the terms and conditions and methodologies are subject to a consultation under Article 12, which, for EU-wide terms and conditions or methodologies, requires a stakeholder consultation at Union level of not less than one month. Specifically in relation to the terms and conditions for the SDAC products, Article 40(3) of the CACM Regulation requires their biennial revisions, including a consultation of market participants, all TSOs and all regulatory authorities under Article 12 of the CACM Regulation. All NEMOs are

⁵ All regulatory authorities within a synchronous area may still grant an exemption for an imbalance settlement period up to 30 minutes. Such an exemption has been granted for the synchronous area of Ireland and Northern Ireland, where the imbalance settlement period is 30 minutes.

required to propose amendments to the SDAC products if needed pursuant to the results of Article 40(3) consultation and may do so at any time pursuant to Article 9(13) of the CACM Regulation.

6.2 ACER's assessment and revisions

6.2.1. Assessment of the requirements for the development and for the content of the Proposal

- (26) The Proposal was submitted by the NEMO Committee, on behalf of all NEMOs, who are the entities responsible for developing the terms and conditions for the SDAC products.
- (27) The proposed amendments do not directly follow the latest biennial consultation referred to in Article 40(3) of the CACM Regulation, which took place in 2023. The Proposal was subject to a separate public consultation of one month, between 5 February and 4 March 2024.⁶
- (28) The NEMOs propose a timescale for implementing the proposed amendments in Article 6 of the Proposal, and describe their expected impacts in light of the CACM Regulation and the Electricity Regulation. The relevant impacts are assessed in the amended recitals of the Proposal as well as in the explanatory note accompanying the Proposal.
- (29) The Proposal therefore complies with the requirements for the development and for the content of the Proposal specified in Articles 9(9), 9(13) and 12 of the CACM Regulation.

6.2.2. Deletion of the fallback period and the provisions on Complex Orders, and resulting changes concerning the implementation of the present amendment

- (30) ACER has deleted the proposed provisions on Complex Orders, including the proposed fallback period of 6 months, for the reasons set out below.
- (31) Article 8(2) of the Electricity Regulation requires NEMOs to provide the market participants with the opportunity to trade in energy in time intervals which are at least as short as ISP. Article 8(4) of the Electricity Regulation requires that from 1 January 2025, the ISP must be 15 minutes in all scheduling areas and is the basis for the introduction of 15' MTU products in SDAC. NEMOs consider that retaining the option of offering Complex Orders would not be compatible with the 15' MTU due to limited performance capabilities of the price coupling algorithm. Therefore, ACER understands that the offering of Complex Orders would interfere with NEMO's obligation to offer 15' MTU products as required by Articles 8(2) and 8(4) of the Electricity Regulation. Furthermore,

⁶ Following the biennial consultation of 2023, the NEMOs concluded that no changes to the SDAC products were necessary at that point in time and that any possible amendments to the SDAC products before the introduction of the 15' MTU in SDAC would be subject to a separate consultation, which took place at the beginning of 2024. More information on the two consultations is available at https://www.nemo-committee.eu/public_consultations.

NEMOs' reasoning for the fallback i.e. potential failure to maintain the 15' MTU change, also cannot be accepted by ACER given that the 15' MTU in SDAC is required under Article 8(4) of the Electricity Regulation as of 1 January 2025. Only the regulatory authorities within a synchronous area can grant an exemption from this requirement.

- (32) The deletion of the proposed provisions on Complex Orders necessitates changes to the proposed implementation provisions. In Article 6 of the Proposal, NEMOs propose that the provisions related to the 15' MTU are activated by the NEMOs by the go-live of the 15' MTU in SDAC. This approach (of 'activating provisions') cannot be used for deletions. Given that the provisions on Complex Orders would be deleted through this amendment, ACER has specified in Article 6 that the (amended) terms and conditions would apply only as of the go-live of the 15' MTU in SDAC in accordance with Articles 8(2) and 8(4) of the Electricity Regulation. In practice, this means that the algorithm would continue to support the existing MIC/MP orders and PUN orders also after the amendment is adopted by ACER, which is intended by the NEMOs, but only until the go-live of the 15' MTU in SDAC.

6.2.3 The concept of 'MTU Order' and the definition of 'Period Orders'

- (33) In Article 3(5) of the Proposal, NEMOs specified the treatment of 'MTU Orders' consisting of multiple MTUs. An example of this is an order for 60 minutes in a bidding zone with 15' MTU. In ACER's view, this approach is not consistent with the definition of 'market time unit', defined as *'the period for which the market price is established or the shortest possible common time period for the two bidding zones, if their market time units are different'*.⁷
- (34) NEMOs explained that while such orders cover multiple MTUs, they are not considered as predefined SBOs with a 60-minute length but treated as curve orders, just like the orders with a granularity of a single MTU. To ensure consistency of the SDAC products with the existing definition of 'market time unit' and having discussed curve orders and the current needs of market participants with the NEMOs, ACER has defined 'curve orders' and specified different curve order product types. According to the new definition introduced by ACER in Article 2(3)(a) of Annex I, curve orders are demand or supply orders submitted per time period, which define the order quantity or different order quantities for the relevant price levels. A curve order has to include at least a quantity for the minimum and the maximum price defined in accordance with Article 41 of the CACM Regulation, and may additionally include a quantity for any price between.
- (35) For clarity, ACER has specified all the requirements applicable to curve order product types in a new Article 4 of Annex I, separating them from the existing general requirements applicable to all product types in Article 3 of Annex I. Any provisions

⁷ Article 2(19) of Commission Regulation (EU) 543/2013 on submission and publication of data in electricity markets, OJ L 163, 15.6.2013, p.1.

which relate to specific product types (e.g. paradoxically rejection) are addressed in the relevant parts of Articles 5 and 6 of Annex I.

- (36) ACER has categorised curve order products into different types due to their unique characteristics, and also to maintain the distinction between mandatory and optional products (paras (37)-(41)). The first type is MTU Orders, covering a single MTU. The second type are Period Orders, which are curve order products of 30 or 60 minutes, covering multiple MTUs. The third type are Merit Orders, which were already defined in the previous version of the terms and conditions for the SDAC products.
- (37) In its preliminary position, ACER intended to define Period Orders as optional SDAC products, meaning that the algorithm would no longer be required to support Period Orders. ACER argued that MTU Orders and SBOs, both being mandatory products, already meet the requirement of Article 40(2) of the CACM Regulation, according to which the algorithm must be able to accommodate orders resulting from SDAC products covering one MTU and multiple MTUs. While the CACM Regulation does not prevent the algorithm from supporting other categories of products (and the NEMOs may offer such products) requiring this from the NEMOs would, in ACER's view, unnecessarily burden the algorithm. The distinction between mandatory and optional products becomes relevant where the algorithm is no longer able to accommodate all the SDAC products, and the offering of some products must be reduced or cancelled to ensure its performance. In such cases, the NEMOs must ensure that the algorithm continues to support mandatory products and, in the first place, reduce or cancel the offering of the optional products.
- (38) In response to ACER's preliminary position, NEMOs expressed concerns about making Period Orders optional. In their view, Period Orders should remain in the category of 'mandatory' products, together with the MTU Orders and SBOs, for the following reasons:
- a) The categorisation of Period Orders as 'optional' would mean that their use might be reduced or even cancelled if the algorithm's performance is at risk and corrective measure must be applied. This adds uncertainty to using Period Orders and may incentivise market participants to switch to SBOs, since they, being mandatory, would not be affected by corrective measures. NEMOs consider that a change in bidding behaviour triggered by this amendment is likely even more so because market participants were not consulted on this specific amendment, neither by the NEMOs or by ACER. In addition, market participants have signalled high interest in the offering of 60-minute curve orders (i.e. Period Orders) in the past.
 - b) A potential change in bidding behaviour described in point (a) might, in turn, have a negative impact on the performance of the algorithm. SBOs are considered by the NEMOs more complex than Period Orders. Period Orders cover multiple periods, just like SBOs, but have no specific additional condition. This additional condition linked to the offering of SBOs means that market participant may add a minimum acceptance ratio to an SBO, which brings additional complexity, and is therefore more burdensome for the algorithm performance. In addition, submitting many SBOs would make it more difficult to detect an operational error in the orders

submitted, both for the market participant and the NEMO. Using Period Orders would make operations more robust, in NEMOs' view.

- c) Lastly, and in view of point (b), it is not clear to the NEMOs why SBOs, being more complex, would remain mandatory, and Period Orders, being simpler, would only be optional.
- (39) ACER understands NEMOs' concerns about the limited capacity of the algorithm and expected performance impacts resulting from potentially excessive use of SBOs with the minimum acceptance ratio condition. Based on NEMOs' explanations, ACER sees the need to reevaluate the mandatory character of the 'minimum acceptance ratio' condition. ACER is of the view that the mandatory set of SDAC products should be kept to minimum required to comply with the CACM Regulation. This would ensure that NEMOs have maximum flexibility in applying the most appropriate and effective corrective measures, when algorithm's performance is at risk. SBOs, as currently defined, appear not to meet this criterion due to the minimum acceptance ratio condition. Similarly, Period Orders do not constitute the most basic type of products to cover multiple MTUs. Hence, the classification of SBOs and Period Orders as mandatory must be reconsidered in the future.
- (40) However, ACER agrees with the NEMOs that any substantial revisions of established products such as SBOs and Period Orders go beyond the scope of the present amendment and would require appropriate consultations with the market participants. ACER also sees merit in maintaining the current set of mandatory products for the time being, not to interfere with the planned go-live of the 15' MTU in SDAC.
- (41) Considering the above, ACER has decided to maintain, for the time being, the mandatory character of Period Orders and SBOs with minimum acceptance ratio, until the next revision of the SDAC products, which is reflected in a new paragraph 3 of Article 7 of Annex I.

6.2.4 Related amendments

- (42) ACER's revisions outlined above have also resulted in additional editorial/structural changes to the Proposal to ensure clarity and consistency of the amended terms and conditions. These editorial/structural changes are outlined in the attached Annexes but not discussed here.

7. CONCLUSION

- (43) For the above reasons, ACER considers the Proposal in line with the CACM Regulation and the Electricity Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I. The amendments ensure that the Proposal is in line with the purpose of the CACM Regulation and the relevant requirements of the Electricity Regulation, and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.

(44) Therefore, ACER approves the Proposal subject to the necessary amendments. Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The terms and conditions for the products that can be taken into account in the single day-ahead coupling pursuant to Article 40 of Commission Regulation (EU) 2015/1222 are amended and approved as set out in Annex I to this Decision.

Article 2

This Decision is addressed to:

Bursa Română de Mărfuri S.A.
BSP Energy Exchange LLC
CROATIAN POWER EXCHANGE Ltd
EirGrid plc
EPEX SPOT SE
EXAA Abwicklungsstelle für Energieprodukte AG
Gestore dei Mercati Energetici S.p.A.
Hellenic Energy Exchange S.A.
HUPX Hungarian Power Exchange Company Limited by Shares
Independent Bulgarian Energy Exchange EAD
Nord Pool European Market Coupling Operator AS
OKTE, a.s.
OMI Polo Español S.A.
Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA
OTE, a.s.
SONI Limited
Towarowa Giełda Energii S.A.

Done at Ljubljana, on 25 September 2024.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I Products that can be taken into account in the single day-ahead coupling in accordance with Article 40 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

Annex Ia Products that can be taken into account in the single day-ahead coupling in accordance with Article 40 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (amendments in track changes, for information only).

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressees may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.