

# **TSO Obligations under Capacity Allocation and Congestion Management Regulation**

**Consultation Paper**

**13 May 2015**

## 1 BACKGROUND

Many elements of the I-SEM design are underpinned by draft European Regulations (e.g. Capacity Allocation and Congestion Management Guidelines (CACM), the Forward Capacity Allocation Network Code and the Electricity Balancing Network Code<sup>1</sup>) and therefore will be directly applicable without need for transposition into national law and take precedence over the existing SEM legal framework in the event of conflict or inconsistency.

As set out in the SEM Committee's recent Consultation Paper on Roles and Responsibilities in the I-SEM, implementation of the I-SEM in Ireland and Northern Ireland is being undertaken in parallel with the implementation of the Electricity Target Model across the European Union. The Capacity Allocation and Congestion Management Guidelines (CACM) Regulation, which is the first of the European Regulations designed to create a single pan-European electricity market under the aegis of the EU's Third Energy Package, was adopted by Member States on 5 December 2014<sup>2</sup>. The CACM Regulation, following a period of scrutiny by the European Council and the European Parliament is due to enter into force in mid-2015. The CACM Regulation sets out rules for the operation of day ahead and intraday market coupling, provides for the development of methodologies and rules that underpin these markets and sets out a high level governance structure for the management and regulatory oversight of the TSOs and market operators.

## 2 TSO OBLIGATIONS UNDER CACM REGULATION

The CACM Regulation places a number of obligations on all TSOs in EU Member States. All TSOs within a Member State are required to comply with the obligations placed on TSOs under CACM unless in the case of Member State where more than one transmission system operator exists, these obligations are assigned under Article 1(3) of CACM. Article 1(3) of the CACM Regulation provides:

*"In Member States where more than one transmission system operator exists, this Regulation shall apply to all transmission system operators within that Member State. Where a transmission system operator does not have a function relevant to one or more obligations under this Regulation, Member States may provide that the responsibility for complying with those obligations is assigned to one or more different, specific transmission system operators."*

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<sup>1</sup> While the CACM is due to be formally adopted as an EC Regulation, the rules for Forward Capacity Allocation and Balancing are currently Network Codes. It is likely that all three market Codes will be adopted as European Commission Regulations. The terms Guidelines, Regulations and Network Codes are used interchangeably in this paper.

<sup>2</sup> <http://ec.europa.eu/energy/en/content/draft-regulation-establishing-guideline-capacity-allocation-and-congestion-management-0>

Given the text of Article 1(3) of the CACM Regulation, the CER and UR consider that Article 1(3) of CACM Regulation provides a discretion to a Member State, where a transmission system operator in that Member State “does not have a function relevant to one or more obligations under [the CACM Regulation]”, to determine whether all TSOs in that Member State are obliged to comply with all of the new obligations placed on TSOs under the CACM Regulation.

Both the Department of Communications, Energy and Natural Resources (DCENR) in Ireland and the Department of Enterprise, Trade and Investment (DETI) in Northern Ireland have asked their respective Regulatory Authority, the Commission for Energy Regulation (the CER) and the Utility Regulator (UR) to consider whether each Regulatory Authority would propose to use the discretion under Article 1(3) of CACM. The CER has the responsibility for determining the assignment of TSO responsibilities under CACM in Ireland. The UR has the responsibility for determining the assignment of TSO responsibilities under CACM in Northern Ireland.

There are currently a number of TSOs which operate in the all-island market. These include EirGrid plc and SONI, Moyle Interconnector Limited and East West Interconnector Limited (which is expected to be certified as a TSO); all will be required to comply with the CACM regulation upon its entry into force. It may be the case that not all of the TSOs operating in the all-island market will be required to comply with all of the obligations under the CACM Regulation as outlined above. In line with a parallel process constructed by Ofgem for TSOs operating in Great Britain, the CER and UR will therefore assign responsibilities between the TSOs operating in Ireland and Northern Ireland as per Article 1(3) of CACM<sup>3</sup>.

It should be noted that we do not consider that Article 1(3) requires us to decide how TSOs will comply with obligations once assigned. We are of the view that the TSOs are best placed to determine the method of compliance with these new obligations. It should also be noted that any TSO may choose to delegate all or part of any task assigned to it under CACM to one or more third parties under Article 81 of CACM.

Annex 1 sets out our minded to position on assignment of TSO roles and responsibilities and aligns with Ofgem’s proposed assignment for the Moyle and East West Interconnectors.

### 3 PROCESS TO DETERMINE ASSIGNMENT OF TSO RESPONSIBILITIES

The CER and UR are engaging with TSOs to provide information to inform their decisions on TSO assignment of Responsibilities.

We are inviting comments and submissions on our minded to decision to [egallagher@cer.ie](mailto:egallagher@cer.ie) and [Leigh.Greer@uregni.gov.uk](mailto:Leigh.Greer@uregni.gov.uk) to be received by close of business on 24 June 2015 at

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<sup>3</sup> <https://www.ofgem.gov.uk/ofgem-publications/94210/consultation-pdf>

5.00p.m.

A final decision on the assignment of TSO Responsibilities under CACM will be published in October 2015.

#### 4 CONSULTATION ON MINDED TO DECISION

We invite stakeholders to provide their views on our minded to decision with particular reference to the following questions:

1. Do you agree with the CER and UR's application of Article 1(3) in assigning obligations to the TSOs operating in the all-island market as outlined in the Annex to this Consultation Paper?
2. Do you agree that we have correctly identified the Articles of CACM Regulation which place an obligation on the TSOs?
3. How do you think the CER and UR should determine future changes to the assignment of TSO obligations under the CACM Regulation?

#### 5 NEXT STEPS

The CER and UR recognise that the assignment of obligations under the CACM Regulation for TSOs in Ireland and Northern Ireland may change over time. Accordingly, our minded to position is to oblige the TSOs to provide evidence as to why their obligations should change and to justify any such position. We welcome views on this.

Any comments or queries in relation to this paper should be sent to Elaine Gallagher ([egallagher@cer.ie](mailto:egallagher@cer.ie)) and Leigh Greer ([Leigh.Greer@uregni.gov.uk](mailto:Leigh.Greer@uregni.gov.uk)) by **17:00 on 24 June 2015**.