

**Decision on NEMO Designation for Northern Ireland
under Article 4 of the European Commission
Regulation on Capacity Allocation and Congestion
Management**

2 October 2015

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2 EXECUTIVE SUMMARY

The European Commission Regulation on Capacity Allocation and Congestion Management (CACM or the Regulation) entered into force on 14 August 2015 and requires a designation of a Nominated Electricity Market Operator (NEMO) for performance of day ahead and intraday market coupling for I-SEM by 14 December 2015¹.

The CER and UR invited candidates to submit NEMO designation applications no later than 24 June 2015, to be designated through an initial designation process. One application was received from EirGrid plc for designation in Ireland and from SONI Ltd in Northern Ireland.

This document designates SONI as the Designated NEMO for Northern Ireland under Article 4 of CACM subject to the terms and meaning of designation which are outlined in Section [7]. A separate document designates EirGrid as the Designated NEMO for Ireland.

¹ See: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1222&from=EN>

3 BACKGROUND

On 6 March 2015, the SEM Committee published a consultation paper (SEM-15-016) on proposed roles and responsibilities for the new Integrated Single Electricity Market (I-SEM)², due to be implemented on the island of Ireland by Quarter 4 of 2017. The consultation paper was subject to a 6-week consultation period with receipt of responses due by 17 April 2015.

The purpose of the I-SEM Roles & Responsibilities consultation was to provide our minded-to position on the assignment of roles and responsibilities, and to invite stakeholder views on our interpretation of the Nominated Electricity Market Operator (NEMO) designation criteria outlined in Article 6 of the Regulation on Capacity Allocation and Congestion Management (the CACM Regulation), which applicants must meet in order to be designated a NEMO. A decision on the assignment of I-SEM Roles & Responsibilities will be published separately.

The Utility Regulator (UR) and the Commission for Energy Regulation (CER) now each publish the initial designation of Nominated Electricity Market Operators (NEMOs) for the performance of day ahead and intraday market coupling for I-SEM under Article 4 of the CACM Regulation, adopted by EU Member States on 5 December 2014 and which entered into force on 14 August 2015. Although a separate NEMO designation has been published by each designating authority for Ireland and Northern Ireland respectively, it should be noted that the designating authorities (UR and the CER) cooperated in assessing the NEMO application(s) and that the decisions of each designating authority are aligned.

The CER and UR invited candidates to submit NEMO designation applications no later than 24 June 2015, to be designated through an initial designation process. We subsequently received one application from SONI Ltd. in Northern Ireland and EirGrid in Ireland, seeking designation as a NEMO in Northern Ireland and Ireland respectively. This decision sets out the UR's decision for the SONI application. In addition it sets out next steps for the wider regulatory framework for NEMOs in Northern Ireland and Ireland.

²http://www.allislandproject.org/en/TS_Current_Consultations.aspx?article=5d172226-e065-4bba-9ff9-80512012c885&mode=author

4 DESIGNATION AND ASSESSMENT PROCESS

The CACM Regulation requires designated NEMOs to establish and operate single day ahead and intraday coupling in coordination with TSOs and other NEMOs. It also sets out a governance framework for NEMOs, which requires at least one NEMO to be designated in each Member State by a designating authority within four months of entry into force of the CACM Regulation i.e. by 14 December 2015.

In addition, the CACM Regulation requires that designating authorities must determine whether candidates meet the criteria set out in Article 6 of the regulation, and must apply these criteria regardless of whether one or more NEMOs are appointed and avoid discrimination between applicants. It also states that designating authorities shall only refuse designations where the criteria are not met or in case of a national legal monopoly for trading services³.

In the Invitation for NEMO applications for I-SEM (SEM-15-033n) published on 13 May 2015⁴, and with reference to a letter received from DCENR to the Commission for Energy Regulation (CER), the Regulatory Authorities indicated that Ireland did not intend to invoke Article 5 of CACM⁵; with reference to a letter received from DETI to the Utility Regulator, the RAs confirmed that a National Legal Monopoly does not exist in Northern Ireland. Accordingly both RAs indicated that they would follow the NEMO designation process outlined in Article 6 of CACM⁶.

The RAs indicated that the NEMO Designation process for Ireland and Northern Ireland would be carried out in a coordinated manner with close cooperation between the RAs. CACM provides that a NEMO that is designated in one Member State shall have the right to offer day ahead and intra-day trading services in another Member State. Therefore we intend that designation of NEMOs by the RAs will apply to the I-SEM as a whole, reinforcing our coordinated and joined up decision-making process for implementation of European Network Codes.

Alongside our Invitation for NEMO applications, we published a document entitled 'Clarification of the RAs' interpretation of the NEMO Designation Criteria outlined in CACM Article 6' (SEM-15-033). A summary of each interpretation can be sourced in Appendix 2.

Following receipt of the application from EirGrid plc and SONI Ltd on 24 June 2015, the CER and the Utility Regulator have worked in cooperation to conduct an evidence-based

³ CACM Regulation, Article 5

⁴ http://www.allislandproject.org/en/TS_Decision_Documents.aspx?article=5d172226-e065-4bba-9ff9-80512012c885&mode=author

⁵ http://www.allislandproject.org/en/TS_Current_Consultations.aspx?article=5d172226-e065-4bba-9ff9-80512012c885&mode=author

⁶ http://www.allislandproject.org/en/TS_Current_Consultations.aspx?article=5d172226-e065-4bba-9ff9-80512012c885&mode=author

assessment of whether we consider the application meets the designation criteria set out in Article 6 of the CACM Regulation. The assessment consists of analysis of the application submitted by EirGrid plc and SONI Ltd to the RAs, together with assessment meetings and additional information submitted to the RAs upon request.

5 EXECUTIVE SUMMARY OF SUBMISSION

In response to the RAs Invitation for NEMO applications for the I-SEM (SEM-15-033n), SONI Ltd and EirGrid Plc via “SEMO” are seeking designation in Northern Ireland and Ireland respectively; with both companies intending to work together to jointly deliver NEMO services for the I-SEM.

The application states that SEMO⁷ has a track record in implementing and operating the wholesale Single Electricity market in Northern Ireland and Ireland since 2007. It also states that SEMO has successfully operated the SEM, which includes executing market scheduling and pricing runs, along with performing all market settlements including constraints, imbalance and the capacity payment mechanism, without any market failure or incident. This was achieved alongside delivery of a number of major market releases, such as Intraday Trading, which were introduced without interruption to normal market operations. The applicant stated that it will be possible to leverage this existing operational system and process knowledge to develop NEMO capability.

The applicant states that the proposed resources have expertise in terms of I-SEM design and how it links to the target model and all of its component parts. Furthermore, extensive analysis by SEMO of the day-ahead EUPHEMIA algorithm has been carried out for the purposes of ensuring that the pricing and scheduling algorithm for core I-SEM day ahead market is fit for purpose for Ireland and Northern Ireland.

In addition the candidate provided evidence around its ongoing process to potentially procure a partner power exchange to capture synergies across wider market places. As this is an ongoing process that cannot reach conclusion before designation is finalised, details cannot be provided within this paper. However, the RAs have been provided with the information they requested on a confidential basis, and this has been used to inform this decision.

⁷ , The Single Electricity Market Operator (SEMO) is a contractual joint venture between EirGrid Plc and SONI Ltd. Who together are the licenced market operator for the Single Electricity Market.

6 ASSESSMENT OF APPLICATION AGAINST CACM CRITERIA

Article 6 of CACM states that an applicant shall only be designated as a NEMO if it complies with all of the ten listed requirements. The RAs outline below their assessment of how the applicant EirGrid plc and SONI fulfil these requirements:

6.1 Article 6.1(a)

It has contracted or contracts adequate resources for common, coordinated and compliant operation of single day-ahead coupling and/or single intraday coupling, including the resources necessary to fulfil the NEMO functions, financial resources, the necessary information technology, technical infrastructure and operational procedures or it shall provide proof that it is able to make these resources available within a reasonable preparatory period before taking up its tasks in accordance with Article 7;

Adequate Resources:

The applicant has submitted that staffing will be provided by SONI, EirGrid and a partner power exchange⁸. EirGrid plc and SONI have engaged with potential partners to develop an understanding of the resourcing levels of the Power Exchange potential partners, the outcome of which is currently subject to a procurement process by the TSOs in anticipation of NEMO designation.

Furthermore, resources provided by SONI and EirGrid to the NEMO will support key functions that will be set up where appropriate as synergy services across the market timeframes in I-SEM – including registration, customer care and market surveillance. The applicant is of the view that offering common services across markets will provide value to customers, by reducing the number of entities that customers interact with. The precise split of resourcing is subject to the ongoing negotiations.

RA Response:

The submission provides evidence at the time of designation that the applicant is capable of putting adequate resources in place to ensure CACM compliance and in particular Article 7 compliance by I-SEM Go-live. This criterion will be monitored on an ongoing basis by the RAs notably through the close monitoring of the outcome of the ongoing negotiations and contracting of the planned outsourced NEMO and MCO functions (subject to the outcome of the ongoing negotiations).

⁸ Subject to ongoing negotiations

Financial Resources:

The NEMO is responsible for trading operations for the day-ahead and intraday market timeframes, the Market coupling Operator functions, and the Central Counterparty functions. The CCP turns each matched trade into two separate trades i.e. the CCP buys from the generator and sells to the supplier, with the CCP responsible for financial delivery (guarantor) of these trades. If, for example there is a default by the buyer (supplier) the CCP guarantees payment to the seller. The applicant is currently in the process of procuring clearing house services to take on the CCP role in any model and these clearing services have been included in the tender for a partner power exchange⁹.

RA Response:

This service is within the scope of the ongoing procurement process which is designed to award a contract to the Most Economically Advantageous Tenderer.

Information Technology, Technical Infrastructure and Operational Procedures:

In its submissions, EirGrid plc and SONI Ltd indicated that there are three key components to costs associated with information technology, technical infrastructure and operational procedures and they include: implementation costs, infrastructure costs and ongoing development costs. These are being assessed through the ongoing procurement process.

RA Response:

-The applicants have provided information about the ongoing procurement process and the RAs are of the view that adequate resources (Article 6.1(a)) and cost efficiencies (Article 6.1(c)) are criteria that will continue to be monitored by the RAs particularly in light of the fact that full verification of the outsourcing component can only be achieved once the designated NEMOs' procurement process has taken place and negotiations are complete.

Specifically we intend to use our monitoring powers under CACM to ensure that milestones are established and adhered to on this criterion to ensure that adequate resources are in place for suites of day ahead and intraday market coupling functions in sufficient time for I-SEM Go-Live.

The RAs propose to arrange further meetings with the applicant at appropriate milestones and may require further detailed submissions from the applicant at that juncture.

In addition we expect that the applicants shall devote adequate resources to the carrying out of its NEMO obligations regarding the development of methodologies and procedures required to be in place for day ahead and intra day market coupling as set out for the NEMO Tasks provided for under Article 7 of CACM.

⁹ Subject to ongoing negotiations

6.2 Article 6.1(b)

It shall be able to ensure that market participants have open access to information regarding the NEMO tasks in accordance with Article 7;

The applicant submitted that under the requirements of CACM, SEMO are aware and have taken account of the need to publish information related to Day-ahead and Intraday market outcomes. The submission states that EirGrid and SONI have developed the capability of providing market and operational data to relevant information platforms and that currently this capability supplies the Market Operator (SEMO) with the data required to operate the market on a daily basis. This technology was enhanced to submit data to EMFIP and is currently being scaled to deliver the responsibilities of SEMO, SONI and EirGrid for REMIT. The applicant stated that this capability for information gathering could be utilised in presenting or transferring relevant information to a public system if required. Furthermore, options for the re-use of this capability are currently being investigated as part of the implementation project and the final decision on a technical solution would be dependent on cost/benefit analysis performed as part of the partnering process. Details of potential partner power exchanges' capabilities in relation to the CACM criteria were provided in confidential submissions to the RAs.

RA Response:

Given that evidence of capability to comply with Article 6.1(b) was submitted by the applicant as well as details of the capabilities of potential partner power exchanges, the RAs propose to confirm compliance with Article 6.1(b) at the time of application subject to continuous monitoring of the criteria with respect to Article 7. The RAs propose to arrange further meetings with the applicant at appropriate milestones and may require further detailed submissions from the applicant at that juncture.

6.3 Article 6.1(c)

It shall be cost-efficient with respect to single day-ahead and intraday coupling and shall in their internal accounting keep separate accounts for MCO functions and other activities in order to prevent cross-subsidisation;

The applicant has provided details of its ongoing procurement exercise, which is designed to obtain the most economically advantageous solution. As this is an ongoing process, these were provided on a confidential basis.

The Market Coupling Operator (MCO) Role

The Market Coupling Operator is a core role under CACM and is responsible for matching orders from the day-ahead and intraday markets for different bidding zones and simultaneously allocating cross-zonal capacities. The applicant notes that there are Multi-Region Coupling (MRC) operational agreements in place for the day ahead market coupling which provide that at any given time one NEMO will be carrying out the MCO and with a second NEMO as a backup. As this role is carried out across Europe under the aegis of the established MRC group, the applicant stated that it did not propose to deploy a parallel capability in the first instance. Further details of the Market Coupling Operator functions provided by the established power exchanges that the applicant would have access to¹⁰ as the designated NEMO were provided.

The Central Counterparty (CCP) Role

The applicant has included the clearing and credit management function and liabilities to another party within the ongoing procurement exercise. Further details on the Central Counterparty functions that could be provided by the established power exchanges were submitted on a confidential basis.

The applicant noted that irrespective of the particular business structure, [SEMO] will be able to establish cost separation as appropriate and to report on such costs separately. It noted that SEMO is subject to both regulatory and statutory audit review and that SEMO reports on and is independently audited on the regulatory accounts of a separate licenced business as part of its licence obligations. Furthermore SEMO's year-end financial statements are audited both on an individual entity basis and on an overall Group basis by independent auditors.

RA Response:

While noting that cost efficiency may be maximised through using established Power Exchanges to achieve synergies that are available when operating across multiple markets making them cheaper than building and maintaining individual country trading platforms for day-ahead and intra-day trading; Nonetheless, the RAs acknowledge that full verification of this assumption can only be achieved once the TSOs have completed negotiations in Power Exchanges in Q1 2016.

Regarding the MCO function we note that under Article 7.3., one of the first requirements on NEMOs is to submit to regulatory authorities a plan for implementation of the MCO functions: *'by eight months after the entry into force of this Regulation all NEMOs shall submit to all regulatory authorities and the Agency a plan that sets out how to jointly set up*

¹⁰ Subject to ongoing negotiations

and perform the MCO functions set out in paragraph 2, including necessary draft agreements between NEMOs and with third parties

The RAs will continue to monitor compliance with criteria 6.1(c) of CACM on an ongoing basis with the aim of revisiting this issue at appropriate milestones. As part of this monitoring process the RAs will review the plan for the establishment of the MCO functions to be submitted in Q2 2016.

6.4 Article 6.1(d)

It shall have an adequate level of business separation from other market participants;

Article 6.1(d) of CACM provides that the NEMO shall have an adequate level of business separation from other market participants, including TSOs.

SONI Ltd and EirGrid Plc intend to work together to jointly deliver NEMO services for the I-SEM across the island of Ireland bidding zone. Currently SONI Ltd and EirGrid Plc deliver Market Operator services under separate licences through a contractual joint venture, SEMO. The applicant submits that it is intended that SONI Ltd and EirGrid would jointly deliver the NEMO services through an appropriate joint arrangement. Furthermore, that consideration could be given to how this might best be achieved considering that any arrangements may involve domicile, taxation and jurisdiction issues. The applicant submits that SEMO has worked with the RAs in managing the various separate legal and licence responsibilities required of it under the current SEM arrangements which include:

- Separate accounts for each licensed activity;
- Obligation to provide information to the regulatory authorities;
- Restrictions on the disposal of assets;
- Restrictions on the use of confidential and commercially sensitive information;
- Obligation to be independent of interests in generation and/or supply of electricity (independently certified by the European Commission); and
- Obligation to not unduly or unfairly discriminate against any person or class of persons, user or classes of system user.

The applicant stated that it will be important that the new arrangements are not undermined through an absence of market confidence and are rather underpinned by a regulatory framework which will ensure that any conflicts or indeed perceptions of conflict are suitably managed. Furthermore, it acknowledged that the perception of conflict of interest has been raised by some participants and that it is therefore in the common

interest to deal effectively and conclusively with these. It noted that any mitigating measures to address conflict whether real or perceived should, however, be proportionate and not impose unnecessary additional costs on customers or indeed the working and operation of the industry.

RA Response:

In Q4 of this year, the RAs will carry out a review of the governance framework underpinning I-SEM to include consideration of Market Operator, Systems Operator and Interconnector licences with a view to *inter alia* addressing any conflicts of interest, actual or perceived to exist between the NEMO and the TSOs and implement mitigation measures to deal with these. We intend that adequate business separation of NEMO functions from wider TSO activities will be considered as part of this process. The RAs will continue to monitor compliance with Article 6.1(d) of CACM from designation.

6.5 Article 6.1(e)

If designated as a national legal monopoly for day-ahead and intraday trading services in a Member State, it shall not use the fees in Article 5(1) to finance its day-ahead or intraday activities in a Member State other than the one where these fees are collected.

In the Invitation for NEMO applications for I-SEM (SEM-15-033n) published on 13 May 2015, and with reference to a letter received from DCENR to the Commission for Energy Regulation (CER), the CER indicated that Ireland did not intend to invoke Article 5 of CACM¹¹. With reference to a letter received from DETI to the Utility Regulator, the RAs confirmed that a National Legal Monopoly does not exist in Northern Ireland. Accordingly, Article 6.1(e) does not apply.

6.6 Article 6.1(f)

It shall be able to treat all market participants in a non-discriminatory way;

The applicant stated that it envisages using a similar communication strategy and diversity of communication channels and forums to those utilised by SEMO in the current market to ensure participants are sufficiently informed and consulted on the day-to-day management and development of the single day-ahead and intraday coupling. Evidence as to how potential partner Power Exchanges would facilitate non-discrimination was provided on a confidential basis.

¹¹ http://www.allislandproject.org/en/TS_Current_Consultations.aspx?article=5d172226-e065-4bba-9ff9-80512012c885&mode=author

RA Response:

The RAs will continue to monitor compliance with this criterion on an ongoing basis.

6.7 Article 6.1(g)

It shall be subject to appropriate market surveillance arrangements;

The applicant has demonstrated its capability to instigate appropriate market surveillance arrangements which would take one of the following forms:

- Utilising existing ring-fenced market surveillance business units to report on any potential market abuse consistent with Regulation (EC) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT), and extend this surveillance to the I-SEM; or
- Implement a market surveillance business unit within SEMO, drawing on skills, experience and best practice from our partners' existing market surveillance business units.

The applicant submitted that it [SEMO] currently performs a number of activities which illustrate the capabilities required under REMIT market surveillance as well as ACER reporting requirements. SEMO's services induce market analysis and market modelling. The market analysis and market modelling functions perform a number of activities to include:

- Monitoring market results for anomalies in prices, schedules and settlement results;
- Investigating and responding to formal queries received from market participants in relation to market outcomes ranging from interpreting market rules and calculations related to market outcomes as well as analysing the extent and materiality of issues and identifying resolutions;
- Identification and resolution of market outcomes that do not surface through formal query process;
- Market design change considerations; SEMO has carried out studies and consultations on topics such as a comparative study of solvers, Frequency of Solver Use, market incident reports and DSU participation etc.;
- Supporting the Regulatory Authorities Market Monitoring Unit in the identification and analysis of market anomalies.
- Reporting on breaches of the Trading and Settlement Code;

RA Response:

The breadth of market surveillance and monitoring activities required as part of the NEMO role may be dependent on the decisions made as part of the market power mitigation work in I-SEM. The RAs will continue to monitor the level and type of market surveillance arrangements going forward to ensure compliance with Article 6.1(g).

6.8 Article 6.1(h)

It shall have in place appropriate transparency and confidentiality agreements with market participants and the TSOs;

The applicant envisages using similar control measures as those employed currently in the SEM as part of confidentiality agreements to ensure the security of market participant information. The applicant **expects** to partner with an established European power exchange for provision of key services to the NEMO. SEMO, as designated NEMO would retain primary accountability to ensure that transparency requirements are delivered as required by CACM and to identify all required confidentiality agreements and controls.

RA Response

The full set of agreements required between market participants and TSOs (and other parties) will need to be evaluated once the scope of the I-SEM rules and agreed procedures are better known. As such the RAs are content that appropriate transparency and confidentiality agreements will be in place for I-SEM go-live and will be CACM compliant. Furthermore, the RAs will monitor compliance of Article 6.1(h) going forward.

6.9 Article 6.1(i)

It shall be able to provide the necessary clearing and settlement services;

The applicant submitted that SEMO intend to partner with an established European power exchange for the provision of Clearing and Settlement services to the NEMO as required by the NEMO Trading Operations and Central Counterparty roles. Given SEMO's experience in the support and operation of clearing and settlement functions in the SEM, it is of the view that it has a strong basis of expertise from which to contract and oversee the delivery of the required services for the NEMO. Equally evidence of the capabilities of the potential partners to carry out these services from I-SEM go live was submitted to the RAs on a confidential basis.

RA Response:

The RAs are of the view that sufficient evidence was submitted to indicate the applicant's capability to provide the necessary clearing and settlement services from I-SEM go live. The RAs will of course continue to monitor compliance with a view to obtaining an update upon the completion of the procurement process.

6.10 Article 6.1(j)

It shall be able to put in place the necessary communication systems and routines for coordinating with the TSOs of the Member State;

In its submission the applicant states that as a designated NEMO, SEMO would retain the primary accountability to ensure that the necessary communication and technical systems and agreements are identified and put in place. Within the I-SEM landscape the applicant noted a wide range of agreements and contractual relationships that the NEMO(s) will have to enter into. Evidence was provided as to the applicants experience in delivering the type of communication and technical systems and agreements for coordinating with the TSOs. It is envisaged that if designated, SEMO would use established technologies and capabilities to put in place similar arrangements for I-SEM.

RA Response:

We are content at this juncture that the applicant will have the capability for putting in place the necessary communication system and routines for coordinating with the TSOs.

The RAs will monitor compliance with Article 6.1(j) on an ongoing basis.

Decision of the Designating Authority for Northern Ireland

On the basis of our assessment of the applications submitted by SONI Ltd, we (the Utility Regulator) consider that this application meets the designation criteria set out in the CACM Regulation and that SONI Ltd should therefore be designated as NEMO in Northern Ireland for day ahead and intraday coupling.

We provide the designation order for SONI Ltd in Appendix 1.

A separate decision paper published alongside this paper outlines the CER's decision to designate EirGrid plc as a designated NEMO in Ireland.

8 MEANING AND TERMS OF A SUCCESSFUL DESIGNATION

The Regulatory Authorities are cognisant of the CACM Regulation obligation to designate at least one NEMO by 14 December 2015. Nonetheless the NEMO designation criteria apply regardless of whether one or more NEMOs are appointed. Therefore a successful designation in Ireland and Northern Ireland means that the applicant NEMO is considered by the CER and UR to meet the NEMO designation criteria laid out in Article 6 of the CACM Regulation; and is therefore a designated NEMO with ability to perform NEMO tasks as set out in Article 7 of the CACM Regulation.

The designation is conditional upon compliance with the NEMO designation criteria. The designation does not, and should not be considered as, an approval of ongoing compliance of a designated NEMO with the requirements of the CACM regulation, or compliance of the entity designated as a NEMO with wider requirements of EU law. A designated NEMO will be responsible for and be required to make sure it continues to comply with the criteria and its wider obligations and requirements set out in CACM and under EU, Irish and Northern Irish law. Monitoring will be carried out on an ongoing basis to ensure compliance with the designation criteria.

The assessment that an entity meets the criteria does not in any way prejudice future decisions taken under and in line with the CACM Regulation. Furthermore, designation should not be considered an approval of systems and processes required under the EU Regulation on energy market integrity and transparency (No 1227/2011)(REMIT), or be used as a defence to any potential breaches of the entity's obligations under REMIT.

The CACM Regulation sets out that the designating authority shall monitor all NEMOs performing single day-ahead and / or intra-day coupling within their Member State. In addition, the designating authority shall in accordance with Article 19 of Regulation 714/2009 ensure compliance with this Regulation by all NEMOs performing single day-ahead and/or intra-day coupling within their Member State¹².

In the event a designated NEMO fails to maintain compliance with the criteria and is not able to restore compliance within six months of being notified of such failure by the designating authority, the Member State where the NEMO has been designated shall ensure that designation is revoked¹³. We consider that as the designating authority we are also responsible for revoking a designation if a NEMO fails to maintain compliance with the criteria and is not able to restore compliance within six months of notification in line with Article 4.8 and 9.8.

¹² Article 4.3 of the CACM regulation

¹³ Article 4.8 of the CACM regulation

The RAs note that a number of market participants raised concerns in response to the I-SEM Roles and Responsibilities Paper (SEM-15-016) about potential conflicts of interest between the TSO and Market Operator functions. It should be noted that concerns raised will be considered by the RAs in their review of governance arrangements which will commence in Q4 2015. It should be noted further that adequate business separation as part of the CACM designation criteria will continue to be monitored.

The RAs consider that there may be circumstances where it would be appropriate to revoke a designation. A designated NEMO may itself wish to cease operation, in which case it should be able to request or otherwise agree in writing with the Authority for its designation to be revoked. However, we do not consider it possible for a designated NEMO to transfer or novate its designation to a different entity. This is because the CACM Regulation is clear that an entity can only be designated a NEMO if it is determined to have met the criteria by the designating authority. We also consider that in the case of insolvency, or if the Authority is satisfied that there has been a material misstatement of fact by or on behalf of a NEMO in making its application for designation as a NEMO, it may be appropriate to revoke a designation.

In revoking any designation, the RAs consider it may be necessary to allow for a reasonable period of time before revocation takes effect, taking into account both the implications of any non-compliance and of de-designation on the operation of the wholesale market and consumer interests. Therefore, in the case of failure to restore compliance after notification or if a NEMO requests or otherwise agrees for its designation to be revoked, the Authority will publish any decision with not less than 30 days of notice before the date revocation will take effect. In the case of insolvency the Authority would publish any decision with notice of not less than 24 hours, and in the case of any material misstatement of fact seven days.

Finally, the CACM regulation requires an initial designation term of four years. However, it does not set out the arrangements that follow this initial designation period.¹⁴ Given that only one application has been received with respect to NEMO Designation, the RAs consider that at least twelve months¹⁵ prior to the expiry of this initial period the designated NEMO in Ireland and Northern Ireland should confirm to the RAs if it wishes to continue to be a designated NEMO in Ireland and Northern Ireland together with evidence it continues to comply with the designation criteria. We will assess this evidence and publish a decision to extend the NEMOs designation before its expiry date. We consider that any re-designation following this initial four year designation should be for an ongoing basis.

¹⁴ Article 4.2 of the CACM regulation

¹⁵ This notice time period is required to ensure that at least one NEMO is designated in Ireland and Northern Ireland as is mandated by CACM.

The CACM Regulation entrusts the responsibility for monitoring all NEMOs performing single day-ahead and / or intra-day coupling to the designating authorities i.e. to the CER and UR in the case of Ireland and Northern Ireland. As CACM is directly applicable and binding across all EU Member States, the RAs' respective powers to ensure compliance with CACM are derived from this Regulation. In addition, the RAs will consider what changes are required to the regulatory and licence framework to ensure adequate governance of NEMOs. The European Commission is currently consulting on changes required for the energy market (the EU's summer package) including what governance arrangements are required for NEMOs. Any changes to the framework for governance of NEMOs and related roles will be progressed with the Departments.

In Q4 of this year, the RAs will carry out a review of the governance framework underpinning I-SEM to include consideration of governance and regulatory arrangements that will apply to NEMOs in general. The RAs will also liaise separately with the designated NEMO regarding the particular licensing arrangements for EirGrid and SONI as the initial NEMO designees for the I-SEM as part of the overall governance review.

Designated NEMOs in Ireland and Northern Ireland must still comply with their obligations under the CACM Regulation. Failure to do so may result in the revocation of designation by the RAs under Article 4(8) of the CACM Regulation.

As part of ongoing monitoring of compliance with the CACM Regulation, the RAs will in conjunction with other designating authorities across Europe monitor compliance with the designation criteria as outlined in Article 6 of CACM.

In addition through the RAs participation in the Agency for Cooperation of Energy Regulators, regular updates on compliance with designation criteria will be provided building on ongoing coordination of approaches to NEMO designation among designation authorities.

In addition, Article 82 of the CACM Regulation provides that the entity or entities performing the MCO functions shall be monitored by the regulatory authorities or relevant authorities of the territory where they are located, to ensure proper monitoring of single day-ahead and intraday coupling in accordance with Article 38 of Directive 2009/72/EC.

11 NEXT STEPS

The CACM Regulation entered into force on 14 August 2015. It is expected that NEMOs will be designated across Europe by 14 December 2015. Monitoring of compliance with CACM will take place by designating authorities across Europe going forward. National Regulatory Authorities across Member States will continue to cooperate to ensure consistent application of NEMO designation criteria and to keep Regulatory Authorities /designating authorities informed of any NEMO designation revocations and or any issues regarding compliance with Article 6 of CACM Regulation.

As part of an assessment of the I-SEM regulatory framework commencing in Q4 2015 discussions will take place with the TSOs and MO regarding necessary licencing modifications required to implement the I-SEM by Go Live in Q4 2017.