

Response to consultation on amendments to procedural provisions in electricity network codes and guidelines

The following response is submitted on behalf of all NEMOs and elaborates on two key issues of the proposal under consultation:

- As per Regulation 2019/942 (ACER Regulation) and Regulation 2019/943 (Electricity Regulation), EU-wide terms, conditions and methodologies (TCMs) are now directly adopted by ACER i.e. proposals for common terms and conditions or methodologies must be submitted to ACER for revision and approval. The Commission proposes alignment of the Electricity Guidelines (CACM, FCA, EB GL, SO GL) with ACER Regulation Article 5(2). The amendment also clarifies the right of NRAs and ACER to revise and amend the proposals for TCMs submitted by TSOs and NEMOs.

- After recent judgements of the General Court (24 October 2019. Cases T—332/17 Energie-Control Austria vs ACER and T-333/17 APG vs ACER), the Commission proposes to align procedure for requests for TCM amendments to the practice of coordinated amendment requests.

NEMOs understand the reasons and the efficiency gains of an extended role of ACER on EU-wide TCMs as established in Regulation 2019/942.

NEMOs understand that the proposed amendment support and help to avoid any impractical situation where multiple, uncoordinated individual amendment requests are made by different NRAs and also help to avoid legal uncertainty created from these circumstances.

Therefore, NEMOs support the proposed amendments.

In particular, with regard to Art. 9.1 of CACM, NEMOs consider that the option of extending deadlines for either proposing, approving or implementing TCMs due to whatever justified reasons according to ACER, should be available in order to facilitate realistic and sound developments in SDAC and SIDC. Therefore, the wording of the relevant paragraph may further clarify that:

- ACER may prolong deadlines for proposing, approving or implementing TCMs.
- Whatever valid reason in ACER's opinion can justify such prolongation.
- NEMOs and TSOs may request to ACER such prolongation of deadlines for TCMs

Lastly, NEMOs would like to highlight the following suggested change to Art. 9.5 of CACM:

“Before approving the terms, conditions and methodologies, the Agency or the competent regulatory authorities shall revise the drafts where necessary, after consulting the respective TSOs or NEMOs, in order to ensure that they are in line with the purpose of this Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.”

The proposed process seems to suggest that ACER or the NRAs may revise draft TCMs after consulting TSOs or NEMOs. It should be ensured that any proposal modified significantly by ACER or the NRAs after it was consulted should be subject to consultation again. In other words, NEMOs opinion is that a consultation can only make real sense if the revised proposal is subject to consultation again. Any revisions done in proposed TCMs by NRAs and ACER after a consultation should be subject to motivation in ACER’s decision or the NRAs’ decisions to ensure that principles of due procedure are complied with.