

SEM Committee

5 May 2023

To -

Emer Gerrard

Simon O'Hare.

## Ref: SEM-23-024 Consultation on Compensation Arrangements for Net Transfer Capacity (NTC) Reductions

EirGrid in its capacity as Transmission System Operator (TSO) in Ireland (EirGrid TSO) welcomes the opportunity to respond to the SEM Committee (SEM-C) Consultation on Compensation Arrangements for NTC Reductions (the Consultation Paper).

For the avoidance of any doubt, EirGrid TSO's position in this consultation response represents our view of how the issues being consulted upon should most properly be addressed on a forward looking basis only and nothing in this consultation response should be taken as representing an indication or acceptance or otherwise of any rights and/or obligations of any market participants, interconnector owners (ICOs) or TSOs as they currently stand under the applicable regulatory and legal framework as at the date of this consultation response.

EirGrid TSO notes that the SEM-C Consultation Paper sets out the existing arrangements under the Interim Cross Zonal Arrangements (ICZA), details the methodology adopted in 2021 in Great Britain and provides an overview of certain elements of the applicable EU legal and regulatory framework, including an overview of how cross-zonal capacity (CZC) is currently calculated in the Ireland-UK capacity calculation region.

EirGrid TSO believes that the EU legal and regulatory framework should form the basis for the application of compensation principles within the Single Electricity Market (SEM). This approach will avoid the introduction of discriminatory principles that may arise against interconnector owners and investors developing interconnection across different borders from SEM.

The following background is provided to clarify relevant aspects of the EU legal and regulatory framework referenced in the Consultation Paper applicable to the answers to the consultation questions set out later in this response:

### System Operation Guideline (Commission Regulation (EU) 2017/1485)<sup>1</sup>

The System Operation Guideline (SOGL) sets out what actions are to be taken by transmission system operators while managing their grid, including requirements and principles concerning operational security<sup>2</sup>. EirGrid TSO performs a range of tasks associated with the assessment of how the system should remain within operational security limits.

In particular, EirGrid TSO would like to draw SEM-C's attention to Articles 20 to 23 (inclusive) of SOGL which addresses:

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<sup>1</sup> Available [here](#)

<sup>2</sup> As per Article 3(2)(1) of SOGL; “operational security’ means the transmission system’s capability to retain a normal state or to return to a normal state as soon as possible, and which is characterised by operational security limits;”

- (a) *"Remedial actions in system operation"*,
- (b) *"Principles and criteria applicable to remedial actions"*,
- (c) *"Categories of remedial action"* and
- (d) *"Preparation, activation and coordination of remedial actions"*.

Article 21(1)(a) of SOGL notes that remedial actions should be applied for operational security violations and should be activated *"to restore the system to the normal state and to prevent the propagation of the alert or emergency state outside of the TSO's control area"*. Article 22 of SOGL provides a wide range of possible (and importantly non-exhaustive) remedial actions that can be used by TSOs to ensure operational security, including the option under Article 22(1)(d) to *"re-calculate day-ahead and intraday cross-zonal capacities in accordance with Regulation (EU) 2015/1222"* (CACM). This is consistent with Article 74 of SOGL which sets out how the TSOs shall perform *"Day-ahead, intraday and close to real-time operational security analysis"*. EirGrid TSO is strongly of the view that all of its activities to ensure operational stability, including the near time use of TSO remedial actions such as the recalculation of CZC in advance of relevant firmness deadlines, are

in compliance with EirGrid TSO's legal obligations under SOGL and CACM.

In addition to the listed categories of TSO Remedial Actions in Article 22(1) of SOGL, SEM-C should note that Article 22(2) of SOGL provides that *"Where necessary and justified in order to maintain operational security, each TSO may prepare and activate additional remedial actions and shall report and justify those instances to the relevant regulatory authority and, where applicable, the Member State, at least once every year, after the activation of the additional remedial actions"*. EirGrid TSO considers the use of Temporary Emergency Generation (TEG) as a type of SEM-specific TSO Remedial Action, which is permissible under Article 22(2) of SOGL, and which should be classified as such alongside other TSO Remedial Actions as part of the capacity calculation process within the ICZA.

EirGrid TSO notes that in this context the Consultation Paper refers to compensation obligations against remedial actions with reference to paragraph 11(2) of the initially approved IU Intraday and Day Ahead Methodology. EirGrid TSO does not believe that the IU Intraday and Day Ahead Methodology, which was superseded by the published ICZA is fully compliant with the above referenced applicable EU legislation. In this regard, EirGrid TSO also refers the SEM-C to relevant articles addressing remedial actions for day ahead intraday capacity calculation methodologies in various Capacity Calculation Regions across Europe (HANSA, CORE, Baltic, Italy North, Greece/Italy, Nordic etc)<sup>3</sup> where no such compensation principle is applied. EirGrid TSO considers that the earlier IU Intraday and Day Ahead Methodology which are derived from UK proposals are non-compliant with EU law and with SOGL and CACM in particular.

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<sup>3</sup> [Capacity Calculation Regions \(entsoe.eu\)](http://entsoe.eu)

## Capacity Allocation and Congestion Management (Commission Regulation (EU) 2015/1222)<sup>4</sup>

CACM sets as its objective a “*clear legal framework for an efficient and modern capacity allocation and congestion management system*”. EirGrid TSO notes reference to CACM in the Consultation Paper, in particular with reference to “NTC Reduction Compensation” and we raise a number of key points regarding the application of CACM for compensation principles:

- 1 Supplementing SOGL, CACM sets out how TSOs’ remedial actions can apply to Capacity Calculation and the role of TSOs in the validation of CZC in advance of its allocation in the Ex-ante Markets. Article 26(1) of CACM provides that “*Each TSO shall validate and have the right to correct cross-zonal capacity relevant to the TSO’s bidding zone borders or critical network elements ...*” [Emphasis Added]. Article 26(3) further provides that “*Each TSO may reduce cross-zonal capacity during the validation of cross-zonal capacity referred to in paragraph 1 for reasons of operational security*” [Emphasis Added]. This right to correct and reduce CZC is clearly with reference to the fact that SOGL includes this type of reduction as a category of necessary TSO Remedial Action which may be used by a TSO to ensure that its transmission system remains in the normal state and to manage operational security violations.
- 2 EirGrid TSO notes that the Consultation Paper refers to Article 16(2)<sup>5</sup> of the 2009 Electricity Regulation<sup>6</sup> and Article 72(3) and 76 of CACM regarding compensatory obligations for reduction in **allocated** capacity. EirGrid TSO believes that these are relevant references, but the context for these compensatory provisions needs to be clearly understood. This is set out under Chapter 8 of CACM (“*Firmness of allocated cross-zonal capacity*”):
  - a. Article 70(1) of CACM begins by stating “*Prior to the day-ahead firmness deadline, each coordinated capacity calculator may adjust cross-zonal capacity and allocation constraints provided to relevant NEMOs*” [Emphasis Added]. This is an important provision and, as per Article 26 of CACM, TSO Remedial Actions such as capacity reduction clearly form part of the coordinated capacity calculation process.
  - b. Article 71 of CACM then states “*Cross-zonal intraday capacity shall be firm as soon as it is allocated.*”

EirGrid TSO would like to emphasise that the purpose of this initial legislative sequence in Chapter 8 of CACM is (a) to explicitly set out how and when capacity is firm (i.e. “*Cross-zonal intraday capacity shall be firm as soon as it is allocated*”) and (b) to subsequently consider (in accordance with Article 16(2) of the 2009 Electricity

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<sup>4</sup> Available [here](#)

<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0714&from=EN>

<sup>6</sup> Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

Regulation) compensation against any emergency TSO remedial actions that arise against any such allocated (firm) capacity.

As per Article 26 of CACM, any calculated reduction of CZC by a TSO in advance of the firmness deadline does not constitute an emergency situation. SOGL clearly defines categories of TSO remedial actions in Article 22 and CACM incorporates these TSO remedial actions and allows for their incorporation against CZC calculation in advance of the firmness deadline. No compensation provisions are set out within the EU regulatory or legislative framework for this capacity calculation process which includes TSO remedial actions including reduction of CZC.

In line with any obligations under CACM which are applicable to EirGrid TSO, EirGrid TSO acknowledges that a compensatory obligation arises within the CACM legislation. However, this compensation applies in respect of allocated capacity after the firmness deadline and in the event of an emergency situation or force majeure event. In SEM, this is an exceptional event which has only arisen a very limited number of times since the adoption of the revised SEM arrangements. In the event of any operational security concern in SEM arising, EirGrid TSO applies the principles of SOGL (in addition to its other obligations under the applicable EU legal and regulatory framework) to ensure that its assessment of operational security is performed in advance of firmness deadlines.

#### **Forward Capacity Allocation Guideline (Commission Regulation (EU) 2016/1719)<sup>7</sup> (FCA)**

The FCA provides rules on CZC calculation and allocation in the forward timeframe. EirGrid TSO emphasises that the compensatory principles as set out under the FCA are entirely distinct from, and separate to, compensation obligations for TSOs as set out under CACM. A key issue with the existing ICZA is that compensation obligations that arise in favour of Long Term Transmission Right (LTTR) holders in accordance with the FCA are incorrectly mixed with the obligations for TSOs for capacity calculation and reduction in the intraday and day ahead timeframes in accordance with Article 3 of CACM. It is critical for the SEM-C to be aware that any amendments to the ICZA need to clearly decouple compensatory obligations from the intraday and day ahead timeframes under CACM.

In this regard, EirGrid TSO notes the reference to Article 53(2) of the FCA made by the SEM-C in the Consultation Paper. The FCA sets out the obligations to compensate the holders of LTTRs under a range of scenarios with reference to firmness deadlines. EirGrid TSO emphasises that these legislative provisions are directed at compensation for the holders of LTTRs and the relevant TSOs who have issued these rights. The objective of the FCA and the Harmonised Access Rules (HAR)<sup>8</sup> is to ensure the efficient operation and functioning of energy markets and provides certainty to market participants who have purchased these rights in terms of re-imbusement across different

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<sup>7</sup> Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation, which is available [here](#)

<sup>8</sup> <https://eepublicdownloads.entsoe.eu/clean-documents/nc-tasks/HAR%20ACERs%20decision%20final%20approval%202021%20-%20Annex%201.pdf>

timeframes. This is a fundamentally different regime to that applied in CACM where compensation only arises after the firmness deadline.

In this regard, EirGrid TSO draws the SEM-C's attention to the application of FCA principles as set out in the HAR, in particular with reference to Title 9 (Curtailment), Article 56(3) of HAR which states *“Long Term Transmission Rights may be curtailed after the Day-Ahead Firmness Deadline in the case of Force Majeure or emergency situation in accordance with Article 72 of Commission Regulation (EU) 2015/1222. For the avoidance of doubt, Long Term Transmission Rights when curtailed after the Day-Ahead Firmness Deadlines shall be curtailed in the same way as day ahead capacity and compensated in accordance with the applicable legislation”*. However, curtailment of LTTRs prior to the firmness deadline is necessarily different to CACM and introduces different compensatory obligations. This is because the LTTRs are already allocated by the relevant TSOs across longer term timeframes and in advance of the day ahead and intraday timeframes. The HAR then sets out how *“Long Term Transmission Rights held by the Registered Participant”* will be compensated in advance of the firmness deadline (Articles 59 and 60) and after the day ahead firmness deadline (Article 61).

In EirGrid TSO's view, it is clearly the case that these compensatory principles as set out in the FCA and HAR are fundamentally different to the compensatory principles set out in CACM (as referenced above). However, Article 3 of the ICZA does not distinguish between or clarify separately (a) how FCA should apply against curtailment of transmission rights, and (b) how CACM should apply against capacity calculation. EirGrid TSO believes that this incorrect lack of distinction generates confusion in terms of the correct application of compensatory principles in accordance with the requirements of FCA and CACM.

**Question 1: Please set out your view on the appropriate arrangements for NTC reduction compensation going forward in the SEM, given the current arrangements for cross-border trading. Would this be impacted if cross-border forward hedging instruments were introduced in advance of MRLVC and, if so, in what way?**

EirGrid TSO considers that the reference to “NTC reduction compensation” in the ICZA should be recast and set out in a supplementary new Annex which is compliant with the relevant applicable EU legal and regulatory framework (as noted above). In this regard, EirGrid TSO has summarised the key points as follows:

- 1 In order for the compensation arrangements to be clear and compliant with the relevant applicable EU legal and regulatory framework, EirGrid TSO believes that firstly the proposed supplementary new Annex to the ICZA should include a revised Capacity Calculation Methodology that replaces Articles 3 and 4 of the ICZA as well as the associated Appendix 1 and 2 of the document. This is because the existing ICZA does not include any reference as to how TSO remedial actions (as categorised under Article 22 of SOGL and referred to under Article 25 of CACM) apply to capacity calculation by the relevant TSO. This is a fundamental gap in the ICZA as only long-term capacity allocation and then subsequent NTC Reduction across all timeframes is addressed. There is a need for the ICZA to set out the separate compensation obligations

applicable to both long term *and* intraday / day ahead capacity calculation mechanisms, which is required under the applicable EU legal and regulatory framework.

- 2 Secondly, and as summarised above, compensation arrangements should then be set out separately against different timeframes so that the relevant compensatory obligations with reference to the relevant applicable EU legal and regulatory framework (i.e. FCA and CACM) can be applied.

EirGrid TSO considers that any amendment to the ICZA around compensation that does not provide more specific detail on how TSO remedial actions can be applied against capacity calculation in accordance with the legal requirements of SOGL and CACM risks introducing a discriminatory regime that will be divergent from TSO obligations that will arise when the Celtic Interconnector is commissioned in 2026.

EirGrid TSO also considers that Article 21(1)(a)(iv) of CACM requires that a capacity calculation methodology should include “*the methodology for determining remedial actions to be considered in capacity calculation in accordance with Article 25*”. The inclusion of such a methodology within the proposed supplementary new Annex to the ICZA (which is in EirGrid TSO’s view legally required) would provide transparency to market participants around the timing and scope of remedial actions undertaken by TSOs in advance of the firmness deadline. Relevant reporting to the Regulatory Authorities around the application of remedial actions (where necessary) undertaken by the TSOs could be made (which reporting is contemplated under the provisions of Article 22(2) of SOGL).

EirGrid TSO suggests that the above approach coupled with the separation of compensatory obligations with reference to the requirements under CACM on the one hand and the FCA on the other would also ensure a legally compliant compensatory framework for the re-introduction of cross-border forward hedging instruments in advance of MRLVC as referenced in the Consultation Paper. This is because the proposed supplementary new Annex would provide certainty regarding how LTTRs should be treated in accordance with the FCA. Any local HAR developed for SEM-GB in this context for hedging instruments should also align with the FCA to ensure non-discriminatory rules across all SEM borders.

**Question 2 - This paper references various principles that underpin different approaches to compensation arrangements for NTC reduction (i.e. ‘causer pays’, ‘cost neutrality’, ‘different compensation arrangements for allocated and unallocated capacity’). In your view, what principles should underpin compensation arrangements for NTC reduction going forward in the SEM?**

EirGrid TSO recommends that the principles as set out under the applicable EU legal and regulatory framework should be clearly applied against capacity calculation, allocation and compensation within SEM. EirGrid TSO notes that the term “*NTC Reduction*” is not used within CACM or the FCA. EirGrid TSO believes that the correct legal and regulatory principles and legislative wording around “*Curtailment*” of transmission rights and “*Firmness*” of allocated CZC should be properly introduced with definitions within the ICZA so that the ICZA align with the requirements of the applicable EU legal and regulatory framework. This is best achieved by replacing relevant abbreviated articles with a new supplementary Annex that provides more clarity on CACM including



TSO remedial actions and compensatory obligations arising independently across different timeframes.

**Question 3 - Are there any other factors, not covered in this paper, which should be considered by the RAs ahead of a decision? If providing, please explain relevance.**

In response to this consultation, EirGrid TSO has emphasised the role of the existing EU regulatory framework to seek to ensure that an updated non-discriminatory, legally compliant and transparent ruleset for compensation is included within the ICZA. EirGrid TSO suggests that emerging proposals associated with electricity market reform in the EU (including CACM 2.0) and updated proposals in relation to forwards market developments requires careful scrutiny. However, as the approval of these proposals is still indeterminate and implementation at a regional level in terms of specific methodologies is not yet scheduled, EirGrid TSO considers the adoption of legally compliant principles derived from the pre-existing EU legal and regulatory framework to be appropriate and will ensure alignment between SEM with other EU bidding zones.

#### **Conclusion**

In conclusion, EirGrid TSO would urge the SEM-C to carefully re-consider and scrutinise the correct applicable EU legal and regulatory framework for compensation principles relating to capacity calculation and allocation as well as the remedial actions which EirGrid TSO is required to take to ensure operational security limits are met (each as summarised above) in order to ensure that an updated non-discriminatory, legally compliant and transparent ruleset for compensation is included within the ICZA.

EirGrid TSO is open to discussing the above with the SEM-C in due course should such discussion be considered helpful. EirGrid TSO looks forward to such engagement in due course.

Yours sincerely,

*[Sent via email and accordingly bears no signature]*

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