

APPENDIX D – RESPONSE TEMPLATE

SUMMARY INFORMATION

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Type of Stakeholder	Generator
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Bord na Móna has many considerations. Some **high-level** comments first.

1. This is an important consultation with significant implications in relation new capacity, existing capacity and the fair treatment between, and within, these two broad categories, across the competing technologies.
2. The principles of fairness, transparency and non-discrimination are well imbued across EU 2019 943, ACER Guidance and the CRM itself.
-EU 2019 943
Chapter 2, Article 3 'Principles regarding the operation of electricity markets'
'(g) market rules shall deliver appropriate investment incentives for generation, in particular for long-term investments in a decarbonised and sustainable electricity system, energy storage, energy efficiency and demand response to meet market needs, and shall facilitate fair competition thus ensuring security of supply;'
'(q) market participants shall have a right to obtain access to the transmission networks and distribution networks on objective, transparent and non-discriminatory terms'.
-ACER Opinion 22-19
'In order to ensure a fair application of the emission limits across Europe and to discourage fraudulent behaviour, the calculation of the Specific Emissions and of the Annual Emissions of the generation capacity together with their modifications should be verified, e.g. be certified by a third-party verifier accredited for scope 1(a) and/or scope 1(b) of Annex I of Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council.'

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-CMC A 1.2 Capacity Market Code Objectives

‘A 1.2.1 This Code is designed to facilitate achievement of the following objectives (the “Capacity Market Code Objectives”): ‘

(e) ‘to provide transparency in the operation of the SEM; ‘

(f) ‘to ensure no undue discrimination between persons who are or may seek to become parties to the Capacity Market Code; and’

3. It is important therefore that due consideration is afforded to industry, and to the RAs, so as to properly facilitate the correct informed and considered decisions.
4. The consultation period provided for within this modification has been very short, due to it being marked urgent. However, the requirement for it to be urgent is due to it being submitted so close to the next capacity auction, when the emission limits (and supporting guidance) have been available since 2019.
5. This makes it all the more important to avoid rushed decisions particularly in relation to capacity that started commercial production before 4 July 2019 – and most particularly in relation to verification of Annual Emissions on a ‘live’ basis.
We recognise that provisions relating to requirements for generation capacity starting commercial production from 4 July 2019 are more straightforward to put in place. There would therefore appear to be good reason to adopt a two phased approach, as outlined below, which would allow space and time to determine full delivery of mechanisms to validate compliance with the ‘Annual Emissions’, run-hour limit for plant pre 4 July, 2019 in time for the CY2024/25 auction, when this provision is first required.

Specifically, we wish to highlight the following concerns:

Qualification and Operation

1. In relation to EU 973 Article 22 4(a) and (b), there is a disconnect within the existing Mod. The Modification seeks to implement amendments as required by the Clean Energy Package which is to ensure compliance with both Qualification criteria *as well as Operational criteria*. We do not believe that the operational piece has been covered.

Section 2.1.14 of the Urgent Modification Consultation Paper indicates that:

‘Some attendees expressed concerns about how CO2 Limits would be applied or enforced in real time. Such application or enforcement lies outside of the scope of the CMC as its role ends when a unit commences delivery against its awarded capacity is or terminated under Chapter J for failure to achieve Substantial Financial Completion, or at least Minimum Completion by the Long Stop Date’.

We believe that A 1.2.1 (f), cited above, which refers to the avoidance of discrimination between parties to the CMC, upholds the view that CO2 limits need to be enforced in real time, and that the CMC holds responsibility to ensure effective delivery.

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The mechanism for delivery of carbon compliance within the proposed provisions within ‘I. Obligations Associated with Awarded Capacity’ and within ‘J. Delivery on New Capacity’, is not evident in this regard. This is cause for concern.

While ‘D.4 Compliance with CO2 Limits’ holds a promising title, neither it nor any of the proposed provisions in Section I or Section J goes beyond stating that there is a need to comply with carbon limits.

BnM believes that there is a clear requirement on the CMC to ensure the effective application and enforcement of carbon limits for capacity generators.

2. Secondary Trading

One would expect that the authorities would want to prevent the possibility of plant emitting in excess of limits described in Article 22(4)(b) of EU 2019 943 being able to trade on the secondary trading market – which would surely be outside the spirit of the same regulation.

BnM contends that participants to the CMC which are in breach of the provisions of Article 22 (4) a) or b) should NOT be able to avail of secondary capacity trading and the CMC needs to be modified to this effect.

3. Debate and Exploration regarding Proper, Fair and Transparent Implementation of the Annual Emissions limit specified in EU 973 Article 22 4(b)

There has been insufficient consultation and debate regarding the many undefined and unexplored potential implications relating to the Annual Emissions limit, despite there having been opportunity to do so.

Following acceptance that the CMC has a role in scoping the delivery of the enforcement of CO2 limits in real time gives rise to the following issues which need to be addressed:

- i) What happens when generation capacity falling under Article 22 (4) a) exceeds the relevant ‘Specific Emission’ CO2 limits? The article states that such generation capacity ‘shall not be committed or receive capacity payments for future payments under a capacity mechanism’. What does this mean in practice?
- ii) The need for a clear position on this is required in relation to breach of the 350kg CO2 per installed kWe Annual Emissions limit
There is a lack of clarity around how to achieve compliance with regard to the ‘Annual Emissions’, or ‘run-hour’ limits. Having given this some consideration, Bord na Móna would raise some fundamental questions:

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- a) Any plant that exceeds the ‘Annual Emissions’ limit in Article 22(4)b) ‘shall not be committed or receive payments or commitments for future payments under a capacity mechanism – what does this mean in practice?
- b) If such a plant reaches the 350 kg CO₂ per year per installed kWe for the year(s), do the RA’s expect such a plant (where run-hours have been exceeded) to effectively come off the bars until the next capacity year? Or does the unit continue to generate (and emit CO₂) after its 350kgCO₂/kWe ceiling is exceeded, and receive capacity payments for the remainder of the Capacity Year, or do the payments stop during the capacity year?
- c) What happens if a unit is constrained on more than anticipated, and thereby breaches its run-hours limit? Other units which DO comply with their run-hours limits must not be discriminated against or treated unfairly.
- d) If the generation capacity is approaching the Annual Emissions limit, but has not yet reached it, can the unit be taken off the bars so that the unit will not be prevented from receiving future capacity payments?
- e) Is the unit suspended from the CMC? If so, does this suspension really effect participation in future Primary and Secondary auctions, thereby not facilitating the Clean Energy Package apparent requirement whereby the unit ‘shall not be committed or receive payments or commitments for future payments under a capacity mechanism’, with immediate effect (as would appear to be the requirement of the Clean Energy Package)?
- f) Does suspension mean that the unit is suspended from the T&SC and can no longer participate in BM and DA markets?
- g) Any mod of the CMC must take *cognisance of the Grid Code and there is a need ideally aligned and not in conflict Need to avoid Grid Code vs CMC, where Grid code takes precedence over the CMC.* Such a withdrawal/exit of capacity would of course be outside the Grid Code 3 year requirements or is it the case that, now that there is an EPS qualification criteria that the mandatory participation in the Capacity Mechanism is to be reviewed?
- h) Perhaps the high carbon plant exceeding the Annual Emissions limit should have the right to not participate in the capacity market and simply trade energy without being classified as CRM capacity per se?

4. Technical Guidance Document

There is precedence for a Technical Guidance Document, however the draft provisions presented should have been discussed and debated on a wide platform, rather than being held within an appendix to an Urgent Modification which may be seen by few.

BnM broadly supports the provisions contained therein which largely support the ACER Opinion, and we welcome the following initiative: ‘When making a determination of CO₂ emissions to compare with the 350kg of CO₂ per installed kWe limit, only the most recent calendar year of historic data should be used.’

We believe that this focus on the most recent performance information is in keeping with the intent of EU 2019 943.

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5. Two Phased Approach

To properly facilitate the correct informed and considered decisions, most particularly in relation to provisions around Annual Emissions, Article 22 (4)b), BnM recognises that there is good logic for a two phased approach, focusing initially on amendments to the CMC that are strictly necessary for ‘New’ Capacity, post 4 July 2019, in the T-4 CY23/24 capacity auction, Article 22(4)a), followed later by amendments necessary for Capacity, pre 4 July 2019, Article 22(4)b) in the T-4 CY24/25 capacity auction.

6. I. Obligations Associated with Awarded Capacity & D.4 Compliance with CO2 Limits – need for Transparent Implementation Mechanism

The proposed provision within I 1.2.1 ‘to use reasonable endeavours to comply with CO2 limits’ would need to be completely transparent to all participants to fair and non-discriminatory.

So too would the application of the proposals within D.4 given the multiple apparent compliance routes when determining CO2 their compliance with CO2 limits:

- D.4.1.1.....Parties shall take account of *the latest technical guidance published from time-to-time by the Regulatory Authorities*.

- D.4.1.2 If any determination of CO2 emissions and their compliance with the CO2 Limits is not covered by the technical guidance published by the Regulatory Authorities, Parties shall take account of *the technical guidance published by ACER pursuant to Article 22(4) of EU Regulation 2019/943 or any other applicable technical guidance issued by ACER*.

-D.4.1.3 If a determination of CO2 emissions and their compliance with the CO2 Limits is not covered by either D.4.1.1 or D.4.1.2, then Parties *shall make their own determination* taking account of the principles underlying the technical guidance from the Regulatory Authorities and ACER.

7. Bord na Móna Response to Consultation SEM-20-006

We refer to the BnM response to earlier consultation: CRM 2024/25 T-4 Capacity Auction Parameters and Compliance with Clean Energy Package SEM-20-006, and the points made therein.

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CAPACITY MARKET CODE MODIFICATIONS CONSULTATION COMMENTS:

ID	Proposed Modification and its Consistency with the Code Objectives	Impacts Not Identified in the Modification Proposal Form	Detailed CMC Drafting Proposed to Deliver the Modification
CMC_05_20 - Modification to Implement amendments as required by the Clean Energy Package Regulation EU 2019/943			

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<p>E.7.5.1 The System Operators shall reject an Application for Qualification for a Capacity Year in respect of New Capacity for a Generator Unit or Interconnector comprising a Candidate Unit unless they consider that:</p> <p>(a) where New Capacity is under development, the information provided reflects an accurate view of the state of that development;</p> <p>(b) the Implementation Plan dates are achievable;</p> <p>(c) Substantial Completion of the Generator Unit or Interconnector can be achieved prior to the start of the relevant Capacity Year; and</p> <p>(d) all Qualification Data required to be provided in the Application for Qualification is provided and is accurate.; and</p> <p>(e) the New Capacity will comply with the CO₂ Limits.</p>		<p>E. Qualification</p> <p>For a T-4 Auction there will be a need for New Capacity to <u>Qualify and to be Verified</u> at T-0, ie, as a defined milestone within the Project Implementation Plan, checked vs CO₂ projected Specific Emissions at the time of qualification.</p>	

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<p>Excerpt: I.1.2.1 In addition to its other obligations under this Code, a Participant shall, with respect to each of its Capacity Market Units: (c) for each Imbalance Settlement Period within the Capacity Year: (i) for each Capacity Market Unit that is an Interconnector, maintain a level of availability for imports into the SEM for each Imbalance Settlement Period not less than the Obligated Capacity Quantity and be subject to Difference Charges in accordance with the Trading and Settlement Code; (ii) for each Capacity Market Unit comprising one or more Generator Units, through its participation in the day-ahead market, intraday trade and/or Balancing Market, schedule or provide sufficient energy for each Imbalance Settlement Period to satisfy its Obligated Capacity Quantity and be subject to Difference Charges in accordance with the Trading and Settlement Code.; and (d) use reasonable endeavours to comply with the CO₂ Limits.</p>		<p>I. Obligations Associated with Awarded Capacity We believe that A 1.2.1 (f), cited above, which refers to the avoidance of discrimination between parties to the CMC, upholds the view that the provision to ‘use reasonable endeavours to comply with the CO₂ limit’ needs to be transparent to other participants and the consequences of not being compliant need to be transparent to other participants, and need to be clear and unambiguous.</p> <p><u>What happens if a unit is constrained on more than anticipated, and thereby breaches its run-hours limit? Other units which DO comply with their run - hours limits must not be discriminated against or treated unfairly.</u></p>	

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<p>Excerpt: <i>Modify J.2.1.1(c) as follows:</i> (c) Substantial Completion: this milestone is achieved when: (iv) each new or refurbished Generator Unit or Interconnector providing the Awarded New Capacity has met all Trading and Settlement Code and Grid Code requirements for participating in the Balancing Market.; and (v) each new or refurbished Generator Unit providing Awarded New Capacity complies with the CO₂ Limits.</p>		<p>J. Delivery of Awarded New Capacity There is no evidence of any mechanism to implement a compliance test. We believe that A 1.2.1 (f), cited above, which refers to the avoidance of discrimination between parties to the CMC, upholds the view that CO₂ limits need to be enforced in real time, and that the CMC is required to ensure ongoing compliance. Furthermore, the consequences of not being compliant need to be transparent to other participants and need to be clear and unambiguous.</p>	

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<p>Excerpt: <i>Modify J.6.1.1(a) as follows:</i> (d) Minimum Completion: Awarded New Capacity achieves Minimum Completion when: (vi) each new or refurbished Generator Unit providing Awarded New Capacity complies with the CO₂ Limits; and</p>		<p>J. Delivery of Awarded New Capacity There is no evidence of any mechanism to implement a compliance test; this is required. We believe that A 1.2.1 (f), cited above, which refers to the avoidance of discrimination between parties to the CMC, upholds the view that CO₂ limits need to be enforced in real time, and that the CMC is required to ensure ongoing compliance. Furthermore, the consequences of not being compliant need to be transparent to other participants and need to be clear and unambiguous.</p>	

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<p>D. 4 Compliance with CO2 Limits</p> <ul style="list-style-type: none"> - D.4.1.1.....Parties shall take account of <i>the latest technical guidance published from time-to-time by the Regulatory Authorities.</i> - D.4.1.2 If any determination of CO2 emissions and their compliance with the CO2 Limits is not covered by the technical guidance published by the Regulatory Authorities, Parties shall take account of <i>the technical guidance published by ACER pursuant to Article 22(4) of EU Regulation 2019/943 or any other applicable technical guidance issued by ACER.</i> -D.4.1.3 If a determination of CO2 emissions and their compliance with the CO2 Limits is not covered by either D.4.1.1 or D.4.1.2, then Parties <i>shall make their own determination</i> taking account of the principles underlying the technical guidance from the Regulatory Authorities and ACER. 	<p>While ‘D.4 Compliance with CO2 Limits’ holds a promising title, neither it nor any of the proposed provisions in Section I or Section J goes beyond stating that there is a need to comply with carbon limits.</p> <p>BnM believes that there is a clear requirement on the CMC to ensure the effective application and enforcement of carbon limits as prescribed under EU law.</p> <p>Additional provisions are required, perhaps in Section ‘I. Obligations Associated with Awarded Capacity’</p>	<p>The draft provisions proposed in D.4 would need to be completely transparent to all participants to be fair and non-discriminatory, given the multiple apparent compliance routes when determining their compliance with CO2 limits.</p>	

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<p>H.6 ELIGIBILITY TO PARTICIPATE IN SECONDARY TRADE AUCTION</p> <p>H. 6.1.1 A Participant may participate in a Secondary Trade Auction for a Product Type in respect of a Capacity Market Unit only:</p> <p>(a) where the Capacity Market Unit is currently Qualified for the Capacity Year, or under section Error! Reference source not found. is to be treated as if it had been Qualified, for the entire forward period over which the Product Type will apply; and</p> <p>(b) to the extent the Capacity Market Unit is providing Existing Capacity.</p>	<p>Plant emitting in excess of limits described in Article 22(4)(b) of EU 2019 943 need to be excluded from trading on the secondary trading market – to comply with the regulation.</p> <p>BnM contends that participants to the CMC which are in breach of the provisions of Article 22 (4) a) or b) should NOT be able to avail of secondary capacity trading and the CMC needs to be modified to this effect.</p>		

NB please add extra rows as needed.