



**REGULATORY FRAMEWORK FOR NEMO FROM
OCTOBER 2022**

SEM-22-037

15 JULY 2022

EXECUTIVE SUMMARY

The purpose of this joint UR-CRU Consultation Paper is to outline options for a framework for future regulation of NEMOs in Ireland and Northern Ireland during the next phase of regulation from 3 October 2022.

The first part of this paper looks at the background to the initial NEMO designation for the Single Electricity Market (SEM) and the legal and regulatory context under the EU Guideline on Capacity Allocation and Congestion Management 2015/1222. The regulatory framework applied to the current designated NEMO in the SEM, SEMOpx, between the periods 2015-2019 and 2019-2022 is then discussed. This includes the licensing of the NEMO through modified Market Operator licences, NEMO regulation through the Trading and Settlement Code and the application of revenue regulation to SEMOpx.

Section 2 of this paper sets out proposals for the process following SEMOpx's application in January 2022 for redesignation. The proposed regulatory framework for the next phase of designation, along with the rationale for replacing the existing three-year period with an enduring one, is then set out. Section 3 discusses the future revenue control mechanism for SEMOpx, while Section 4 concludes.

Responses to the proposals outlined in this paper are invited from interested stakeholders until 12 August 2022 and can be submitted to afitzpatrick@cru.ie and leigh.greer@uregni.gov.uk.

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Glossary of Terms and Abbreviations

Abbreviation or Term	Definition or Meaning
CACM	Commission Regulation (EU) 2015/1222 establishing a Guideline on Capacity Allocation and Congestion Management
CRU	Commission for Regulation of Utilities
DA	Day Ahead
ECC	European Commodity Clearing AG
EPEX	EPEX Spot
ETS	Energy Trading System
ID	Intra-Day
MCO	Market Coupling Operator
NEMO	Nominated Electricity Market Operator (SEMOpX)
RAs	Regulatory Authorities (CRU and UR)
SEMO	Single Electricity Market Operator
SONI	System Operator for Northern Ireland
TSO	Transmission System Operator (EirGrid and SONI)

UR	Utility Regulator
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1. Introduction

1.1 Background

1.1.1 Introduction

The Commission Regulation (EU) 2015/1222 establishing a Guideline on Capacity Allocation and Congestion Management (CACM) entered into force on 14 August 2015. The CACM Network Code requires that a Nominated Electricity Market Operator (NEMO) is designated as responsible for Day Ahead (DA) and Intra-Day (ID) Market Coupling in each national or regional bidding zone.

The core NEMO functions are receiving orders from market participants, having overall responsibility for matching and allocating orders in accordance with the single DA coupling and single ID coupling results, publishing prices and settling and clearing the contracts resulting from the trades according to relevant participant agreements and regulations. The detailed roles and responsibilities of NEMOs are set out in Article 7 of the CACM Regulation.

Article 4(2) of CACM required that NEMOs were designated for an initial period of four years, expiring on 3 October 2019. Both EirGrid and SONI were each designated as NEMO for Ireland and Northern Ireland respectively, and were tasked, through the contractual joint venture of SEMOpx, to deliver NEMO services across the all-island bidding zone. Although there is no guidance in CACM for designation periods beyond the initial four years, the RAs, following Consultation Paper SEM-19-003, selected a period of three years for redesignation in Decision Paper SEM-19-019. SEMOpx was redesignated at that point, and has operated as a NEMO in the intervening period.

The current revenue model under which SEMOpx operates as NEMO was determined by the RAs in the Final Determination Paper SEM-17-096. The initial price control which was based on an allowed revenue approach, where efficient costs associated with SEMOpx are underwritten, was replaced by a system where any over or under recovery of costs will be corrected through a k-factor mechanism, which is described in detail in Section 2.7 of SEM-17-096.

Relevant Legislation

Market coupling is the key element of the European target model, which aims to create an integrated EU electricity market. DA market coupling determines prices simultaneously in all relevant bidding zones. This is based on marginal pricing and optimises the use of transmission capacity by implicitly allocating it within this process. ID market coupling is in contrast based on continuous trading (possibly completed by ID auctions) but also implicitly allocates transmission capacity and therefore coupling all relevant markets. NEMOs are in the process of establishing ID implicit auctions also.

NEMOs are defined under the CACM Regulation as entities ‘designated by the competent authority to perform tasks related to single DA or single ID coupling’. The CACM Regulation requires designated NEMOs to establish and operate single day ahead and ID coupling in coordination with TSOs and other NEMOs. It also sets out a governance framework for NEMOs.

In addition, CACM requires that designating authorities must determine whether candidates meet the criteria set out in Article 6 of the Regulation. Designating authorities must apply these criteria regardless of whether one or more NEMOs are appointed and avoid discrimination between applicants. Article 6 of CACM states that an applicant shall only be designated as a NEMO if it complies with all ten listed requirements. These criteria are outlined in Annex 1 of this paper along with the RAs’ interpretation of these criteria as they were applied for the initial designation assessment.

Initial Designation Process

As part of the initial designation process in 2015, an application was submitted by SONI Ltd in Northern Ireland and EirGrid plc. in Ireland to their respective Regulators, seeking designation as a NEMO in Northern Ireland and Ireland respectively. The NEMO Designation process for Ireland and Northern Ireland was carried out with close cooperation between the RAs.

The RAs conducted a joint assessment of whether SONI and EirGrid’s applications met the designation criteria set out in Article 6 of the CACM Regulation (outlined in Section 2 of this paper). This was based on analysis of the applications, additional information requests and assessment meetings. The RAs also considered how the interests of consumers in Ireland and Northern Ireland could be best served by

applications for the NEMO role and the synergies and conflicts of interest associated with the Market Operator and TSO roles in the Single Electricity Market.

The CACM Regulation provides that a NEMO that is designated in one Member State shall have the right to offer day ahead and ID trading services in another Member State. On 2 October 2015 the CRU designated EirGrid as the Designated NEMO for Ireland under Article 4 of CACM and the UR designated SONI as the Designated NEMO for Northern Ireland.

This designation was conditional upon continued compliance with the NEMO designation criteria; however, it was noted that any designated NEMO was responsible for ensuring continued compliance with the designation criteria and wider obligations and requirements set out in CACM and under EU, Irish and Northern Irish law.

In Consultation Paper SEM-19-003, the RAs proposed setting a time-limited designation of three years to be applied to any NEMO designated in Ireland or Northern Ireland providing DA and ID trading services in the SEM from October 2019 (expiry date of initial designation under CACM), an option which was supported by all responses and subsequently adopted in SEM-19-019. SEMOpx successfully applied to be redesignated as NEMO in Ireland and Northern Ireland for the period October 2019 – 2022.

In 2021, ACER consulted on changes to be made to CACM following an extensive engagement with NRAs, TSOs and NEMOs. These changes, expected to be finalised later in 2022 will considerably change the operation of elements of ID and DA market coupling. Based on the amendments that are understood to be made, no major changes to the process around designation are expected.

Responsibilities of SEMOpx

As the designated NEMO, SEMOpx is responsible for registration of market participants, market systems operation (excluding running EUPHEMIA), settlement, credit risk management, managing currency risk, and providing access to market data.

The Interim ID market arrangements is also operated by SEMOpx, with the same responsibilities for registration, market operation, settlement and credit risk management as in the DA Market.

These responsibilities are provided under specific conditions of the SONI Market

Operator and EirGrid Market Operator licences and SEMOpx operates as a joint venture of SONI Ltd. and EirGrid plc.

Initial regulatory framework

As part of the initial NEMO designation process, the RAs considered the changes required to the regulatory and licence framework to ensure adequate governance of NEMOs in the Single Electricity Market. These can be divided into three main areas;

a) Licence Modifications

In the absence of legislation providing for NEMO activities as a specific licensable activity, the licensing of NEMOs (designated in Ireland and Northern Ireland) through modified Market Operator (MO) licences was considered a robust approach to allow for the most effective regulatory oversight of the designated NEMOs. As stated in SEM-16-053, if NEMO regulation was based exclusively on compliance with CACM, it would mean that the only route for the RAs to take in the case of non-compliance would be a revocation of a designation. The RAs did not view this option as reasonable, proportionate or transparent, especially with only one NEMO operating in each jurisdiction.

Modifications to the MO licences were consulted on in 2017. Several conditions of the MO licences have now come into effect which include provisions for the RAs to approve the SEMOpx Market Rules and any modifications to these. The content of these licence conditions was drafted so that the 'NEMO Exchange Rules' were submitted to the RAs for approval. The reason for the requirement to approve NEMO Exchange Rules was to ensure that SEM-specific requirements were dealt within the Rules and to ensure regulatory oversight of the NEMOs' interaction with the Trading and Settlement Code.

The licence condition also made provision for an overall revenue control being placed on SEMOpx during the time in which the designation is in effect and approval of SEMOpx's statement of charges, with the possibility of this requirement being removed under a direction from each respective RA.

b) Revenue Principles applied to SEMOpx

The revenue principles to apply to SEMOpx for the initial designation period were consulted on in the context of SEMOpx being the only NEMO in the SEM. While the RAs confirmed that a National Legal Monopoly does not exist in Ireland or Northern

Ireland and followed the NEMO designation process outlined in Article 6 of CACM, the consultation (SEM-17-018) considered the fact that SEMOpx was a de-facto monopoly business, with no certainty that another NEMO would enter the market and the importance of the day ahead and ID markets to market participants. On this basis, it was decided that revenue regulation would apply to SEMOpx for the initial designation period, with the framework to apply after this period to be further consulted on. This is an element of this paper.

A price control was applied to SEMOpx from May 2018 until October 2019, i.e., until the end of the initial designation period. The principles to apply to this price control were outlined in SEM-17-044. These decisions pertained only to the period of designation, without prejudice to any regulatory decisions that may need to be considered after the initial period of designation.

SEMOpx has an allowed revenue with efficiently incurred costs being approved by the SEM Committee, to be recovered via customers of SEMOpx. A mechanism applies for any over or under recovery of costs between forecast and actual costs, and options for its treatment at the end of the initial designation period were discussed in SEM-17-096.

As part of the licence conditions and revenue regulation, the RAs also had a role in approving the tariffs for SEMOpx to apply for the initial designation period. This involved ensuring that SEMOpx tariffs were equitable and enable participation from a broad range of stakeholders.

Currently, SEMOpx tariffs involve three elements:

- Once off Entry Fee: A once off joining fee payable by each Exchange Member;
- Annual Fee: An annual fee for participation in the day ahead and ID markets for each Exchange Member; and
- Per/MWh fee: The fee per MWh is the same in the DA and ID Markets.

c) NEMO Regulation through the Trading and Settlement Code

The third part of the current regulatory framework concerns the Trading and Settlement Code. This Code provides the rules by which the market and its participants can operate, setting out the detailed rules and procedures concerning the sale and purchase of wholesale electricity in the balancing market timeframe.

Under Section B.8 of this Code, there is an obligation on all NEMOs operating in the SEM to be party to the Trading and Settlement Code. This means that NEMOs party to the Code must comply with the requirements of the Code. This applies to both NEMOs designated in Northern Ireland and Ireland and NEMOs designated in other Member States wishing to offer trading services in the SEM.

The reasons for requiring a NEMO to be a party to the Trading and Settlement Code include the management of contract notification to the SEMO for the purpose of imbalance settlement in the first instance, but also issues such as data sharing and publication and the management of adequate collateralisation in the balancing market.

1.1.2 Related Documents

SEM-19-019 – [Framework for NEMO Regulation from October 2019 Decision Paper](#)

SEM-20-007 – [SEMOpX Price Control Decision Paper](#)

SEM-17-096 - [SEMOpX Price Control Final Determination Paper](#)

1.1.3 Structure of Paper

Section 2 outlines the joint RA proposal for the next NEMO regulatory framework from October 2022. Section 3 discusses the price control aspects of NEMO Regulation. Finally, Section 4 provides next steps, including contact information to send consultation responses to and the deadline by which to do so. A detailed review of SEMOpX's submission for re-designation as NEMO can be found in the Annex of this paper.

2. Proposed process for redesignation

Under Article 4(2) of CACM, NEMOs are designated for an initial term of four years and Member States should allow applications for designation at least annually. As per Article 4(4) of CACM, there should be no discrimination by the RAs between non-domestic and domestic applicants for designation.

Under the initial regulatory framework, EirGrid and SONI as the designated NEMOs were required to confirm before the expiry of the initial designation term of four years if they wished to continue to be designated in Ireland and in Northern Ireland and submit evidence demonstrating how EirGrid and SONI continued to comply with the designation criteria. If submitted, this evidence would be assessed by the RAs to ensure compliance with CACM who will then publish a decision to extend the NEMO designation in both Ireland and Northern Ireland before the expiry date on 3 October 2019. Any subsequent designation will be conditional on the NEMO being compliant with the criteria of Article 6.

CACM does not set out how long any term of designation should endure beyond the first four-year period, although the RAs' initial paper setting out the regulatory framework for NEMO regulation (SEM-16-053) envisaged any designation beyond this date being for an ongoing or enduring basis. Designation could therefore be applied on an ongoing basis from 2019, but at that time, it was considered necessary that a process would need to be put in place for a designated NEMO to exit the market should it wish to do so.

Following engagement with SEMOpx, the RAs now understand that SEMOpx are comfortable to receive an enduring designation, subject to ongoing monitoring of their compliance with the CACM criteria, and therefore there is no need to consider the circumstances where SEMOpx might decide to no longer offer services in the event that another NEMO enters the market and makes SEMOpx no longer viable.

Details of SEMOpx submission

On 18 January 2022, SONI Ltd. and EirGrid Plc. submitted an application to the RAs seeking approval to continue their designation as NEMO from 3 October 2022, for a further period of three years. The application details how SEMOpx judges its compliance with the NEMO designation criteria of Article 6 of CACM, listed in Annex 1

of this Consultation Paper alongside the RAs' initial review.

The RAs are of the view that the report substantiates SEMOpx's request for redesignation but invite industry views on this.

Consultation Question 1:

Based on the information provided, the RAs propose to redesignate SEMOpx and to monitor their continued compliance with the requirements of Article 6 of CACM through annual reporting.

The RAs propose the next term of designation (from October 2022) will apply on an enduring basis.

The RAs will continue to welcome requests for designation from interested parties at any time.

3. Revenue control of SEMOpx

Application of a price control

As set out in SEM-19-019, the RAs remain of the view that there is still a clear rationale for licence conditions and an associated revenue control being applied to SEMOpx in the absence of competition for NEMO services.

The RAs note that the incumbent price control ends in September 2022. At this point, the RAs consider that to do a thorough review of the revenue requirement of SEMOpx would already need to have started. The RAs have not been in a position to initiate that process due to other priorities.

In the immediate term, the RAs propose to rollover the final year of the current price control for a further year. SEMOpx has now made tariff submissions on this basis which are being reviewed by the relevant teams within the RAs.

Notwithstanding the outcome of this consultation on the next stage of designation for SEMOpx as a NEMO, there will be a requirement to consult separately on the future revenue recovery approach for SEMOpx.

4. Next Steps

Responses to these proposals are invited from interested stakeholders until COB on 12 August 2022 and can be submitted to afitzpatrick@cru.ie and leigh.greer@uregni.gov.uk.

The RAs intend to make decisions on the redesignation of SEMOpx under the respective market operator licences as soon as possible following closure of this Consultation. The RAs are due to approve SEMOpx's statement of charges by 9 August 2022. The RAs will commence work on the next price control for SEMOpx in due course.

Annex 1 – Designation criteria

Article 6.1(a)

“It has contracted or contracts adequate resources for common, coordinated and compliant operation of single DA coupling and/or single ID 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.”

Evidence has been provided in order to demonstrate that EirGrid and SONI, through the SEMOpX contractual joint venture, together with SEMOpX’s service providers, have adequate resources for operation of the NEMO function, including adequate financial resources, information technology, technical infrastructure and operational procedures.

Evidence of adequate resources

SEMOpX has been set up as a business unit within EirGrid and SONI and it is stated in the application that adequate personnel have been in place since the enactment of the SEM arrangements. An overview of SEMOpX’s organisational structure has been provided and is shown in Figure 1.



Figure 1

The submission states that EirGrid and SONI are currently providing compliant trading and clearing services in a number of market timeframes as part of the revised SEM arrangements, including market coupling to Europe and regional auctions with GB. Resources have been put in place to fulfil the NEMO functions required to meet the needs of initial operation of the DA and ID market timeframes.

SEMOpX have also procured service providers in order to provide a subset of the NEMO tasks set out in Article 7. EPEX Spot¹ (EPEX) provides Trading Operations and Trading Systems while European Commodity Clearing AG² (ECC) provides settlement and clearing services. EPEX and ECC have the required personnel in place to perform trading operations and settlement and clearing activities, as demonstrated through the efficient and effective operation of the trading, settlement and clearing process of SEMOpX since go-live of the new market in October 2018. EPEX's team includes resources to manage the four SEM auctions over extended business day operations and to manage the SEM continuous market on a 24/7 basis. ECC's team includes resources for clearing and settlement of the DA and ID auctions and the continuous market during normal business hours and contract notification on a 24/7 basis.

Fulfilment of the NEMO functions

The applicant has provided evidence to show how the combination of SEMOpX and its service providers allows SEMOpX to ensure the NEMO functions required under CACM are met, including registration, customer care, operation of the DA and ID markets, operation of the market coupling operator, clearing and settlement of internal and cross-border trades and market surveillance. The separation of these functions between SEMOpX and its service providers is shown in Figure 2.

¹ EPEX Spot provides power exchange trading for day-ahead and intraday markets for its own power exchange and to other power exchanges such as SEMOpX.

² EEC provides clearing and settlement services to a number of power exchanges in Europe.

NEMO Function	Description	Provider
Registration	Provide support for the registration of new Exchange Members wishing to participate in the day-ahead and intraday markets	SEMOpX
Customer Care	First level support for queries related to the operation and participation in the day-ahead and intraday markets	SEMOpX
Operation of the Day-Ahead and Intraday Markets	Provide trading systems and trading operations for intraday coupling as well as the local single day-ahead and continuous markets. With functions including: <ul style="list-style-type: none"> • receiving orders from market participants, • matching and allocating orders in accordance with the intraday coupling results, • publishing prices • informing participants on the results of their orders • executing with relevant NEMOs and TSOs back-up procedures for national or regional market operation 	EPEX
Operation of Market Coupling Operator (MCO)	<ul style="list-style-type: none"> • Performing market coupling services on behalf of SEMOpX in co-ordination with other NEMOs. Including: <ul style="list-style-type: none"> • Reception of Available Transfer Capacities from the TSOs and transfer to Coupling System • Operating Coupling System (in rotation with other co-ordinators) • Submission of preliminary results to TSOs • Reception of TSOs results validation • Triggering of any necessary Backup or Fallback procedures 	EPEX
Clearing and Settlement of Internal and Cross-border trades	<ul style="list-style-type: none"> • Acting as central counterparty for clearing and settlement of the exchange of energy resulting from intraday coupling and local markets • Acting as a shipping agent for cross-border physical and financial shipping 	ECC
Market Surveillance	<ul style="list-style-type: none"> • Market Surveillance and REMIT reporting obligations 	SEMOpX

Figure 2

Financial resources

In the application it is stated that EirGrid and SONI have a turnover in excess of €500m across all licenced activities and have been able to deploy the necessary financial resources to successfully implement NEMO functions. The central counterparty role that is required of NEMOs under CACM is being fulfilled by ECC as a third-party service provider to SEMOpX as ECC has the necessary financial capabilities, experience and track record for this role.

Information Technology, Technical Infrastructure and Operational Procedures

NEMO applications and infrastructure have been developed in order to provide NEMO services, which have been operational since October 2019 and have successfully operated the DA and ID markets. A list of the key NEMO systems has also been provided which includes an energy trading system for submission of Exchange

Member bids and offers for DA and ID auctions and a continuous trading system which is used for bids and offers in the ID continuous market. This also includes a website for publishing guidance, information and market data, a settlement system to provide settlement, clearing and collateral reports and an application for sending required REMIT and transparency information to ACER and ENTSO-E.

Operational procedures

The application states that SEMOpx and its service providers have developed or provided input into over 50 operational procedures to allow the efficient and coordinated operation of the NEMO functions. These include, for example, SEMOpx Operating Procedures, Multi-Regional Coupling procedures, Price Coupling of Regions procedures, SEM-GB Local and Regional Procedures, SEMOpx Operations Internal Procedures, Trading Operations Internal Procedures and Imbalance Settlement Procedures.

Article 7 of the CACM Regulation sets out the NEMO tasks which must be adhered to in order to perform single DA and ID coupling in cooperation with TSOs. These tasks include receiving orders from market participants, having overall responsibility for matching and allocating orders in accordance with the single DA and ID coupling results, publishing prices and settling and clearing the contracts resulting from trades according to relevant participant agreements and regulations.

The evidence provided in the submission concerning procurement of outsourced Market Coupling Operator (MCO) functions and NEMO functions and the internal resources allowed for under the SEMOpx price control demonstrates CACM compliance in terms of adequate resources and the ability to carry out the NEMO functions as set out under Article 7 of CACM.

In terms of financial resources, under Article 7(g) of CACM the NEMO is responsible for acting as central counterparty for clearing and settlement of the exchange of energy resulting from single DA and ID coupling. The central counterparty turns each matched trade into two separate trades and is responsible for financial delivery of each trade. SEMOpx has procured a third-party service provider, ECC, to carry out this role.

Evidence of the necessary information technology, technical infrastructure and operational procedures being in place has also been provided and the RAs are of the

view that this meets the requirements for compliance under Article 6.1(a) Adherence to these criteria will continue to be monitored by the RAs.

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 has provided detailed information concerning the market data which Exchange Members and interested parties have access to in order to demonstrate that SEMOpx satisfies the reporting requirements for the DA and ID market under CACM Article 7.

Open Access to Information

The application states that SEMOpx have established communication systems and supporting business processes to publish timely, accurate information for participants in relation to the NEMO functions. Information is published under the requirements of CACM which relates to DA and ID input data for operation of the MCO, initiation of fallback procedures, publication of market information from the MCO and delivery of results to individual market participants.

It is also stated that the SEMOpx Rules and Operating Procedures require SEMOpx to publish member private and public information on the inputs and results from the DA and ID auctions and the ID continuous market. The SEMOpx Data Publication Guide provides further information on each of the available NEMO reports.

Information is published via the SEMOpx website, the Auction Trading System, Continuous Trading System and via the ECC Member Area. The applicant has provided information on the types of information and reports accessible to interested parties and Exchange Members. Information on reports which Exchange Members can access from the NEMO trading and clearing systems has also been provided, which is also detailed in the SEMOpx Data Publication Guide.

Evidence has been provided in the application and separately verified through a review of the information published on the SEMOpx website and the requirements under the SEMOpx Rules and Operating Procedures, showing compliance with the requirement to publish information related to DA and ID market outcomes. This includes for example delivery of results to market participants as per Article 7(f), the delivery of single day ahead coupling results and continuous trading results as per

Articles 48 and 52 of the Regulation and notification of where fallback procedures may be applied as per Article 50.

The SEMOpx Procedures provide detail on the data SEMOpx publishes in relation to DA auctions, ID auctions and the ID continuous market, separated between data that is made available to Exchange Members and published on the SEMOpx website. For the DA and ID auctions and ID continuous market, it is stated that outcomes will be made available to Exchange Members including the price and total quantity for each Contract to which the Exchange Member is a party and the relevant purchase and sale quantities in total and by Unit.

Data that is made publicly available after each DA and ID Auction on the SEMOpx website includes;

- a) Energy Trading System (ETS) market results: de-anonymised Auction results, by Unit;
- b) ETS bid file: de-anonymised Orders submitted (and executed) in the Auction, by Unit;
- c) Buy and sell curves: cleared volumes at each price increment, by jurisdiction; and
- d) Exchange transparency: number of Exchange Members with Orders submitted and/or Matched, per jurisdiction.

Data that is made publicly available in relation to the ID continuous market includes;

- a) ID continuous market results trade: de-anonymised Matched Orders submitted and modified during the previous Trading Day, by Unit;
- b) ID continuous market results order: de-anonymised Orders executed during the previous Trading Day, by Unit; and
- c) ID continuous market results statistics: market trade summary information.

While the application has demonstrated compliance with the requirement of 6.1 (b) and this has been separately verified through a review of the SEMOpx Rules and Procedures, the CRU and UR intend to continue to monitor publications in this area and may introduce KPIs in relation to timely publication of market information as part of the next SEMOpx price control.

Article 6.1(c)

“It shall be cost-efficient with respect to single DA and ID coupling and shall in their internal accounting keep separate accounts for MCO functions and other activities in order to prevent cross-subsidisation.”

Evidence that applicants can ensure cost effective solutions for the implementation of the day ahead and ID market operation functions. A breakdown of costs between NEMO activities, MCO activities and other costs should be available.

Under Article 6.1 (c), as the competent authorities for the designation of NEMOs in Ireland and Northern Ireland, this suggests that at a minimum the RAs hold a responsibility to review the costs associated with the establishment of NEMO functions for the I-SEM bidding zone.

The applicant has provided a summary of the cost efficiencies it has achieved through partnering with an established European power exchange for delivery of key services related to the NEMO function rather than building all systems required for the NEMO function in-house. EPEX and ECC were selected to provide these services through a competitive tender process.

The application also notes that SEMOpx is subject to a revenue control process and is required to submit detailed information on the basis and forecasts of efficient costs for the operation of the NEMO. As part of this process, the SEM Committee approves the allowable revenues for SEMOpx based on assessment of efficient costs for provision of NEMO services.

In terms of cost separation, the applicant states that internal accounting records are kept separately and in accordance with CACM with required agreements, processes and financial accounting systems in place to ensure separation of costs. SEMOpx also have a recharge policy which is in place across the EirGrid Group in order to ensure costs are properly allocated.

The RAs completed a review of the cost efficiency of SEMOpx as part of the price control from October 2019 until October 2022 in SEM-20-007, in order to ensure that only efficient costs are incurred by SEMOpx.

The cost efficiency that has been achieved through utilising the services of an established Power Exchange and Clearing House rather than building and maintaining

a trading platform for the SEMO DA and ID markets was noted as part of the original designation process and was also reviewed as part of the current price control.

The evidence provided in the submission and the license conditions under the respective TSO and Market Operator licences which require separate accounts for separate businesses (Conditions 22 and 13 respectively) demonstrate that costs between the SEMOpx business and the EirGrid Group are accounted for separately with separate accounts for the MCO function. In June 2017, the CRU approved the plan for the implementation of the MCO function as required under Article 7.3 of CACM, which sets out how NEMOs will set up and perform the Market Coupling Operator Functions.

Article 6.1(d)

“It shall have an adequate level of business separation from other market participants.”

The application states that SEMOpx is independent of all market participants and that SEMOpx has worked with the RAs since the initial NEMO designation to ensure that both industry and the RAs are comfortable that adequate business separation exists.

Currently, SONI Ltd and EirGrid Plc work together to jointly deliver NEMO services for the SEM bidding zone through separate CRU and UR NEMO designations. It was noted during the original designation application that the applicant had managed various separate legal and licence responsibilities including requirements for separate accounts for each licensed activity and obligations to be independent of interests in generation and/or supply of electricity.

As part of the implementation of the I-SEM project, the RAs carried out a review of the TSO and MO licences (granted to SONI and EirGrid respectively) to facilitate the new wholesale market arrangements and to address any conflicts of interest, actual or perceived, to exist between the NEMO and the TSOs. Conditions 13 (Separate Accounts for Separate Businesses) and 14 (Prohibition of Subsidies and Cross-subsidies) of the EirGrid MO licence and Conditions 2 (Preparation of Accounts) and 5 (Prohibition of Cross Subsidies) of the SONI MO licence were modified to reflect the role of SONI and EirGrid as designated NEMOs for Northern Ireland and Ireland respectively. These modifications provided for the provision of accounts with respect to the NEMO Activity separately from those of the Market Operation Activity and to include prohibition of subsidies or cross subsidies between the Market Operation

Activity and NEMO Activity. Condition 13 of the EirGrid TSO licence (Separate Accounts for Separate Businesses) was also modified to reflect this.

Based on the evidence reviewed and the modification applied to the respective licences as part of the implementation of the new market, the RAs are satisfied that SEMOpx is compliant with the requirement under Article 6.1(d).

Article 6.1(e)

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

Where applicable, applications must include evidence that they have separate accounts for any services provided as a national legal monopoly for day ahead and ID to prevent cross-subsidisation.

Member States have discretion regarding the determination of whether the functions of the NEMO are in a competitive market or in a monopoly environment. Article 6.1 (e) is not relevant here, as in the invitation for NEMO applications for I-SEM (SEM-15-033n) published on 13 May 2015, the Regulatory Authorities indicated that Ireland and Northern Ireland did not intend to invoke Article 5 of the Regulation, meaning that a national legal monopoly has not been declared in either Ireland or Northern Ireland.

Article 6.1(f)

“It shall be able to treat all market participants in a non-discriminatory way.”

All market participants should be treated in a non-discriminatory way, with market participants being informed and consulted on the management of day ahead and ID market coupling.

The application states that under the SEMOpx Rules, SEMOpx is obliged not to ‘unduly discriminate between any Exchange Members in exercising its rights and powers and performing its functions and obligations’. SEMOpx has provided several examples to illustrate how this obligation is met, including;

- Issuing of publicly available messages in relation to the operation of the DA and ID markets. Market information is published to the SEMOpx website for access by Exchange Members and interested parties.
- Provision of information on relevant market developments through a distribution list which all participants can sign up to.

- Meetings, including training sessions and workshops, are open to all interested parties and the content and minutes of each meeting is provided publicly on the SEMOpx Events Calendar Training pages on the SEMOpx website are open to all interested parties. Provision of a market helpdesk for participant queries which are routed through the same query management process.
- The Exchange Committee modifications process allows for Exchange Members and interested parties to take part in the process for modifications to the SEMOpx Rules and Procedures. The Exchange Committee is comprised of representatives from several Exchange Members and considers modifications to the SEMOpx Rules, Operating Procedures and NEMO systems.

The application also states that the Board and Executive of SONI and EirGrid are committed to ensuring that SEMOpx operates under appropriate and effective procedures to ensure that it meets all its non-discriminatory obligations.

The RAs have reviewed the submission and the SEMOpx Rules which contain a number of references to non-discrimination between Exchange Members. Under Section A.1.2.2 which sets out the principles for the SEMOpx Rules, part (d) states that the SEMOpx Rules should be ‘transparent, not unduly discriminatory, and promote market integrity and confidence’. As highlighted in the submission, section B.4.3 states that SEMOpx shall not unduly discriminate between any Exchange Members in exercising its rights and powers and performing its functions and obligations.

In the application, evidence has been provided of how SEMOpx meets this obligation through transparency of market information and reporting, open access to all meetings and industry forums to date for market participants and through the Exchange Committee modifications process. On this basis, the RAs are satisfied that these criteria have been met by SEMOpx to date.

Article 6.1(g)

“It shall be subject to appropriate market surveillance arrangements.”

Evidence of training and monitoring procedures or capability to put such procedures in place to identify and report on any potential market abuse consistent with Regulation (EC) 1227(2011) on REMIT is required.

In the application, evidence has been provided by SEMOpx to demonstrate that it has

the necessary resources to perform its market surveillance obligations as a NEMO. This is shown through requirements in the SEMOpx Rules and associated agreements and availability of systems to capture and analyse information.

A specific section of the SEMOpx Rules defines the measures and obligations applied to SEMOpx and Exchange Members for the operation of the DA and ID markets. This includes a requirement for rules on market conduct and behaviour to be complied with by Exchange Members and obligations on SEMOpx to carry out its market surveillance function to prevent, detect and report on any breaches of the SEMOpx Rules.

Under the SEMOpx rules, a SEMOpx Monitor is also required to perform market monitoring, surveillance and reporting in relation to the DA and ID markets. A full-time equivalent role for the SEMOpx Monitoring function has been allocated within SEMOpx's organisational structure. Systems and tools have also been developed in order to monitor market activities and market results.

SEMOpx has also implemented systems and processes to allow the requirements under the Regulation for Energy Market Integrity and Transparency (REMIT) to be met by SEMOpx.

Section D.3 of the SEMOpx Rules outlines the monitoring and surveillance powers of the SEMOpx Monitor. An allowance was included in the SEMOpx Price Control for a full-time equivalent to carry out market monitoring activities and for systems to facilitate SEMOpx's market monitoring function.

Under Article 81 of CACM, whereby a NEMO may delegate all or part of any task assigned to it under the Regulation to one or more third parties, the delegating entity is responsible for ensuring compliance with the obligations under the Regulation, including ensuring access to information necessary for monitoring by the regulatory authority. This is relevant for SEMOpx's third party service providers.

The RAs are of the view that the current market surveillance arrangements put in place by SEMOpx meet the minimum requirements of Article 6.1(g). but may benefit from more real-time, routine-based analysis. The RAs are open to further engagement on this area.

Article 6.1(h)

"It shall have in place appropriate transparency and confidentiality agreements with

market participants and the TSOs.”

Evidence of implementation of appropriate transparency and confidentiality agreements relation to market information with market participants and TSOs is required.

In the application, it is stated that the main instrument for ensuring appropriate transparency and confidentiality agreements are in place is the SEMOpx Rules, which all Exchange Members and SEMOpx are bound by. SEMOpx receives a large volume of commercially sensitive and confidential information and the obligations with regard to treatment of this information are detailed in section B 4.7.1 and section H.6 of the SEMOpx Rules.

A number of transparency arrangements are also in place through the SEMOpx Rules and through publication of information on the DA and ID markets through the SEMOpx website and NEMO Trading and Clearing Systems.

A number of provisions of the Market Operator licences held by SONI and EirGrid respectively relate to the designated NEMO, requiring SEMOpx to preserve the confidentiality of commercially sensitive information held or obtained in carrying out the NEMO Business, prevent information about its own activities which may be commercially advantageous being disclosed in a discriminatory manner and to implement measures and procedures for the purpose of securing compliance with these obligations. Under these conditions, SEMOpx must ensure that confidential information is only disclosed to authorised recipients, classes of authorised recipients or authorised advisors.

In the submission, SEMOpx has provided the following examples of information technology and procedural controls to ensure that confidentiality of information is maintained;

- Only authorised users are able to access information in the NEMO systems and procedures are in place which include regular audits of user access. Under the SEMOpx Rules, only authorised persons for an Exchange Member are able to view or request actions related to the commercially sensitive information of an Exchange Member.

- Market data is categorised as either private or public data and only relevant recipients have access to private data.
- All information received and sent to the market systems is encrypted and information received is subject to authentication. NEMO systems are isolated from the wider internet to mitigate the risk of unauthorized access.
- SEMOpx internal training includes training on confidentiality.
- Pre-set publication timings of information from the DA and ID markets ensure that information such as trades per member and unit is not published until it is allowed to become public under the SEMOpx Rules.

SEMOpx has provided a high-level illustration of the agreements between SEMOpx, service providers, Exchange Members, TSOs and other NEMOs.

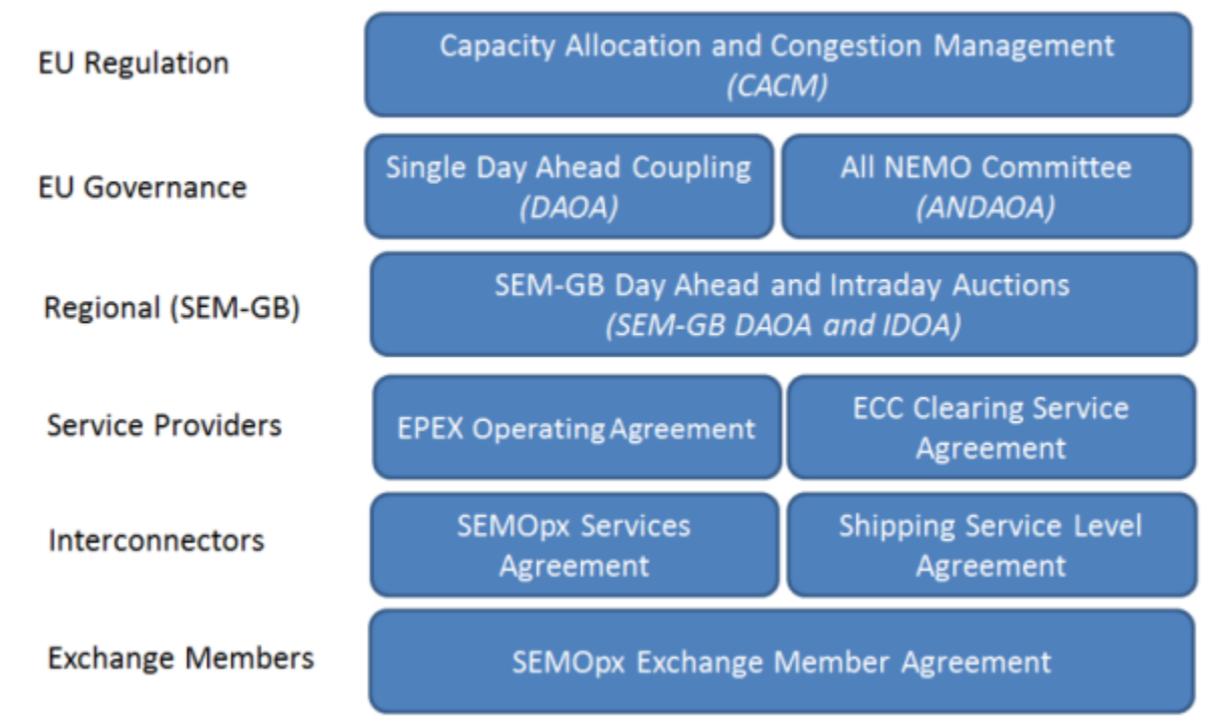


Figure 3

As part of the initial designation decision, it was expected that appropriate transparency and confidentiality agreements would be in place for go-live of the new market. The requirements for treatment of confidential information received, exchanged or transmitted pursuant to the CACM Regulation are detailed under Article 13 of CACM. As part of the application, information on the transparency and confidentiality agreements currently in place has been provided by SEMOpx.

Under section H.6.2 of the SEMOpx Rules, the obligations on each recipient party in relation to confidential information relating to any disclosing party are set out and require the recipient party to;

- a) use the Confidential Information only for the purpose of performing its obligations under these SEMOpx Rules and for no other purpose whatsoever;
- b) not at any time disclose, reveal, or otherwise disseminate the Confidential Information to any person or Party whatsoever or permit any person or Party any form of access to the Confidential Information without the prior written consent of the Disclosing Party;
- c) treat and safeguard as private and confidential all Confidential Information received at any time keeping it and treating it with the same care as any Prudent Industry Operator would be expected to exercise;
- d) not use the Confidential Information, or permit or assist a third party to use the Confidential Information, to procure a commercial advantage over, or an advantage which is in any way likely to be prejudicial, whether directly or indirectly to, the Disclosing Party or to its business, goodwill or reputation; and
- e) not use the Confidential Information or permit or assist a third party to use the Confidential Information to attract management, employees, advisors, agents, representatives, consultants, contractors, sub-contractors or customers away from the Disclosing Party.

SEMOpx is required to comply with the provisions of these Exchange Rules under Condition 3A of the SONI and EirGrid Market Operator licences. Under Article 81 of the CACM Regulation, 'Delegation of tasks', in the event that all or part of any task is delegated to a third party, the delegating party is required to ensure that suitable confidentiality agreements have been put in place prior to delegation. In the application, evidence has been provided that such agreements are in place with EPEX and ECC.

Article 6.1(i)

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

Under this requirement, evidence is required of the ability to provide (or contract an entity to provide) adequate capitalisation and financial security and satisfactory guarantees for settlements necessary to clear and settle exchange of energy resulting

from single day ahead and/or ID coupling. Evidence of technical, operational and contractual arrangements to clear and settle exchange of energy resulting from single day ahead and ID coupling is required.

The application states that SEMOpx has partnered with ECC to provide clearing and settlement services as required under CACM and that ECC has significant experience in the operation of clearing and settlement functions for a number of power exchanges and commodity markets in Europe, with adequate financial risk measures, systems and procedures in place to clear and settle DA and ID markets.

An overview of the mechanisms and tools used by ECC to facilitate the clearing and settlement of the DA and ID markets has been provided, along with an overview of the key activities and flows of information and money between SEMOpx, ECC and Exchange Members. The applicant states that through partnering with an established European clearing house and successful operation of these services since October 2018, SEMOpx has evidenced compliance with this requirement.

Sufficient evidence has been provided to demonstrate the capability of SEMOpx's clearing partner, ECC, to provide clearing and settlement services as required under CACM, with a record of providing such services to a number of power exchanges in Europe and the provision of clearing and settlement services to the SEM since go-live of the new market.

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."

Under this requirement, evidence of communication and technical systems and agreements is required for coordination with the TSOs and the Moyle and East-West interconnectors.

As part of the application, SEMOpx has provided information concerning its communication systems with the TSOs, which it states are underpinned by defined rules, codes, procedures and technical system interfaces. It has also provided evidence of the communication systems in place and routines for coordinating with the TSOs.

The formal obligations regarding communications between NEMOs and the TSOs are set out in the SEMOpx Rules, Trading and Settlement Code and Agreed Procedures

and at a working level more detailed agreements, technical linkages and procedures have been put in place. Examples of key interfaces between the TSOs and NEMO have been provided as per Figure 4 below.

Interface	Function
Cross-zonal Capacities	<ul style="list-style-type: none"> Submission of the available interconnector capacities from the TSOs for the use in the market coupling process.
Preliminary/Final Market Coupling Results	<ul style="list-style-type: none"> Communication of the preliminary/final SEM-GB market coupling (interconnector flows) to the TSOs based on the day-ahead and intraday auctions.
Validation of Market Coupling Results	<ul style="list-style-type: none"> Interfaces to allow the TSOs to confirm/reject the preliminary and final market coupling flows based on the technical abilities of the interconnectors prior to final confirmation of the market coupling results.
Cross-border Nominations	<ul style="list-style-type: none"> Submission of cross-border nominations related to market coupling to the GB TSO and GB Market Operator.
Local Nominations	<ul style="list-style-type: none"> Submission of the contacted quantities to the TSO/MO, determined from the day-ahead and intraday auctions and the continuous market. For use in imbalance settlement.

Figure 4

Examples of key agreements and procedures have also been provided and are set out Figure 5 below.

Agreement Relevance	Parties	Description	Governed by
Registration Data	NEMO, TSO	NEMO and TSO will exchange participant registration data for the purpose of validating market participation criteria (for Imbalance Settlement)	Trading and Settlement Code
Contracted Quantities	NEMO, TSO	SEMOpX will provide the TSOs with participant traded position for the purpose of Imbalance Settlement i.e. Contracted Quantities	Trading and Settlement Code
Cross Zonal Capacity	TSOs, MCO	TSO supplies cross-zonal capacity for use by the MCO in market coupling	Day Ahead Operating Agreement SEM-GB Regional Operating Agreements
Day-Ahead Fall-back	TSOs, NEMO, Other NEMOs	Agreement on the fall-back procedures in the case that the SEM is not able to couple with the rest of Europe for a given day-ahead auction.	Day Ahead Operating Agreement
Intra-Day Fall back	TSO, NEMO, GB TSO, GB NEMO	Agreement on the fall-back procedures in the case that the SEM is not able to couple with the GB for the intraday regional auction.	SEM-GB Regional Operating Agreements
REMIT	NEMO, MP, TSO, European Entities	SEMOpX provide data to the ENTSO-E transparency and ACER REMIT platforms based on requests from Exchange Members. There are also transparency and market monitoring requirements of the revised SEM arrangements.	REMIT Reporting Agreement with Exchange Members
Market Surveillance	NEMO, TSO, European Entities	SEMOpX are required to provide information to the RAs to allow for Market Monitoring activities.	SEMOpX Rules

Figure 5

At the time of the original designation, the applicant had demonstrated the capability to put in place the necessary communication systems and routines for coordinating with the TSOs, based on experience of the market operator and TSOs putting in place systems and routines through the Trading and Settlement Code, Agreed Procedures and Operating Procedures.

The current application has provided detail on the communication systems and procedures which have been put in place between the NEMO and TSOs and which have now been in operation for a number of years. At this stage, the RAs are of the view that this demonstrates compliance with this CACM requirement but will monitor compliance with Article 6.1 (j) on an ongoing basis in conjunction with UR.