

INFORMAL INPUT FOR DISCUSSION

Concept for implementation of the CACM and FCA Regulations in the Energy Community

1. Background

The electricity market in the Contracting Parties of the Energy Community (hereinafter 'Contracting Parties' or CPs) is governed by the Third Energy Package (TEP), consisting of Electricity Directive 2009/72/EC and Electricity Regulation 714/2009.¹

Regulation 714/2009 (in the EU replaced by the Regulation 2019/943) sets the basic principles for integrated cross-border market and triggers the development of so-called network codes and guidelines that take the form of legally binding Regulations and govern (cross-border) electricity market functioning and system operation.

Single day-ahead and intraday market coupling are governed by Regulation 2015/1222 establishing a guideline on the capacity allocation and congestion management (hereinafter 'the CACM Regulation'), whereas the forward timeframe is governed by the Regulation 2016/1719 establishing a guideline on forward capacity allocation (hereinafter 'the FCA Regulation').² These guidelines, in essence, provide a framework for harmonisation of provisions concerning capacity calculation, forward capacity allocation, single day-ahead and intraday market coupling. Their purpose is to ensure an efficient capacity allocation and congestion management, increasing the competitiveness and maximisation and utilisation of cross-zonal capacity, in particular in day-ahead and intraday market.

Out of all electricity network codes and guidelines adopted on EU level, only the so-called connection network codes are so far part of the legal framework of the Energy Community.³

2. Earlier discussions on implementation of the CACM and FCA Regulations in the Energy Community

Discussions initiated by the Energy Community Secretariat (hereinafter 'the Secretariat') in 2016 on adoption of the electricity market and system operation guidelines (hereinafter 'the guidelines') carved out two **challenges**:

- First, adaptation and adoption of the guidelines has been made contingent by EU and Contracting Parties stakeholders on the introduction of a mechanism which would allow for extending the implementation duties under the guidelines incorporated in the Energy Community *acquis*

¹ Adopted and adapted for the Energy Community Contracting Parties by Decision of the Energy Community Ministerial Council 2011/08/MC-EnC.

² CACM Regulation <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1222> and FCA Regulation https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2016.259.01.0042.01.ENG.

³ Commission Regulation (EU) 2016/631 of 14.04.2016 establishing a Network Code on requirements for grid connection of generators incorporated in the Energy Community *acquis* by Decision 2018/03/PHLG-EnC; Commission Regulation (EU) 2016/1447 of 26.08.2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules incorporated by Decision 2018/04/PHLG-EnC; Commission Regulation (EU) 2016/1388 of 17.08.2016 establishing a Network Code on Demand Connection incorporated by Decision 2018/05/PHLG-EnC.

communautaire (hereinafter 'acquis') to the European Union Member States (hereinafter 'Treaty reciprocity mechanism').

- Secondly, stakeholders of both EU and Contracting Parties identified the need to empower the Agency for Cooperation of Energy Regulators (ACER) to take decisions for Contracting Parties national regulatory authorities (NRAs) in case of disagreement on methodologies, terms or conditions that have to be developed and approved by all NRAs pursuant to the guidelines.

Both requirements have to be seen in context of the regional or even pan-European character of the guidelines: whereas electricity connection codes are of purely national nature and their implementation does not require coordinated governance between neighbouring (EU or Contracting Party) stakeholders, the guidelines establish complex procedures for development of methodologies, terms or conditions that have to be applied on regional or pan-European level in a unified manner and therefore require intensive cross-border coordination.

At the same time, it is important to understand that the need to integrate the Contracting Parties in the process of implementing the guidelines is not only in the interest of the Contracting Parties for the benefit of their integration with the EU electricity markets. An inclusive approach is also either directly required by the guidelines or a result of the fact that most Contracting Parties are part of the synchronous area Continental Europe and therefore have to operate on the same rules. For instance, the CACM Regulation foresees a common regional approach for South East Europe including Western Balkan EU Members States and Contracting Parties.⁴ As an example of factual cooperation that is already practised, Bosnia and Herzegovina forms a load frequency control block (LFC block) together with Slovenia and Croatia.⁵ Another example is the joint or fully coordinated cross-border capacity on forward basis between Contracting Parties from WB6 and surrounding EU Member States.

The introduction of the two above requirements for adoption of the guidelines is subject to **ongoing negotiations on the Energy Community Treaty reforms**. In addition to the introduction of a reciprocity mechanism, the reformed Treaty, once signed and ratified by all Parties, should also grant powers to the ACER with regard to regulatory approval under the guidelines. More specifically, the reformed Treaty should give a mandate to ACER to, first, take decisions for a third country⁶ as foreseen in Article 43(2) of Regulation 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (recast)⁷ and, secondly, clarify that in the case of electricity market and system operation guidelines this competence would entail not only decisions on borders to a single Contracting Party but can develop also a regional dimension as characteristic for the electricity market and system operation guidelines.

⁴ The so-called 10th Shadow Region. Paragraph 84 of the decision of ACER no 06/2016 of 17.11.2016 on the determination of capacity calculation regions (CCR) supports the interest of TSOs expressed in the explanatory document to the TSOs' proposal for CCRs ('the TSOs' proposal') to extend CCRs to non EU countries subject to implementation of the CACM Regulation in a third country (ref. pages 33 and 44 of the TSOs' proposal).

⁵ According to Article 3(18) of Regulation 2017/1485 establishing a guideline on electricity transmission system operation a LFC block means 'a part of a synchronous area or an entire synchronous area, physically demarcated by points of measurement at interconnectors to other LFC blocks, consisting of one or more LFC areas, operated by one or more TSOs fulfilling the obligations of load-frequency control'.

⁶ I.e. a non EU Member State.

⁷ Article 43(2) leg cit reads: '*Subject to the conclusion of an agreement to that effect between the Union and third countries as referred to in paragraph 1, ACER may also exercise its tasks [...] with regard to third countries, provided that those third countries [...] have mandated ACER to coordinate the activities of their regulatory authorities with those of the regulatory authorities of Member States. Only in such cases the references to issues of cross-border character shall relate to borders between the Union and third countries, and not to borders between two Member States.*' The Energy Community Treaty is to be considered '*an agreement to that effect between the Union and third countries*'.

3. Scope

3.1. A bridging solution and a roadmap for staged implementation of the CACM Regulation

Integration of individual Contracting Parties' electricity markets in the Single Day Ahead Coupling (SDAC)⁸ is in the focus of two initiatives, namely the Western Balkans 6 process⁹ and the Central and South Eastern Europe energy connectivity (CESEC)¹⁰. Both initiatives foresee the realisation of market coupling pilot projects between Contracting Parties and neighbouring EU Member States.¹¹ Within the WB6 process, key stakeholders (TSOs, Market Operators, regulators and the relevant Ministries) established a list of pilot projects for market coupling between CPs and CPs and Member States. None of the pilot projects has been implemented so far which essentially is due to the pending reform of the Energy Community Treaty to introduce legally binding reciprocity and competences of ACER for Contracting Parties in context with the guidelines.

In the light of this, a concept should be put in place that is able and solid enough to promote the realisation of market coupling pilot projects between Contracting Parties and neighbouring EU Member States *until* the necessary Energy Community Treaty reforms are in place. The present concept paper aims at proposing a flexible **bridging solution and a roadmap for staged implementation of the CACM Regulation**.

Once all EU Member States will have be integrated in the SDAC,¹² the process of coupling with Contracting Parties may be gradually triggered, however the Contracting Parties in the process of integration into SDAC will have to obligatorily follow the SDAC requirements. The primary intention of the proposal therefore is to put in place the minimum requirements that are necessary for allowing Contracting Parties to join the SDAC. These are for individual Contracting Parties to prove:

- Implementation of the Third Energy Package;
- Transposition of the requirements from CACM Regulation, such as, but not limited to:
 - o Designation of a Nominated Energy Market Operator (NEMO)¹³ and role of such entities in the market coupling process;
 - o Role of TSO in the coordinated capacity calculation and coupling process;
 - o Role of NRAs in enforcing and monitoring implementation.

While the Third Energy Package is largely implemented in the Contracting Parties,¹⁴ the CACM Regulation is not yet part of the Energy Community acquis. The only functional power exchanges that

⁸ The aim of SDAC is to create a single pan European cross zonal day-ahead electricity market. The process aims to increase the overall efficiency of trading by promoting effective competition, increasing liquidity and enabling a more efficient utilisation of the generation resources across Europe. SDAC allocates scarce cross-border transmission capacity in the most efficient way by coupling wholesale electricity markets from different regions through a common algorithm, simultaneously taking into account cross-border transmission constraints thereby maximising social welfare. See: <http://www.nemo-committee.eu/sdac>.

⁹ <https://www.energy-community.org/regionalinitiatives/WB6.html>.

¹⁰ https://ec.europa.eu/energy/topics/infrastructure/high-level-groups/central-and-south-eastern-europe-energy-connectivity_en.

¹¹ For the market coupling targets under the Western Balkans 6 process see: <https://www.energy-community.org/regionalinitiatives/WB6.html>; for the CESEC market coupling pilot projects see e.g. https://ec.europa.eu/energy/sites/ener/files/documents/cesec_electricity_action_plan_updated.pdf.

¹² Foreseen until end of 2020 – see the roadmap at: <http://www.nemo-committee.eu/sdac>.

¹³ According to Article 2(23) CACM Regulation a NEMO is 'an entity designated by the competent authority to perform tasks related to single day-ahead or single intraday coupling'. NEMOs have to be designated on national basis pursuant to Article 4 *et seq* CACM Regulation.

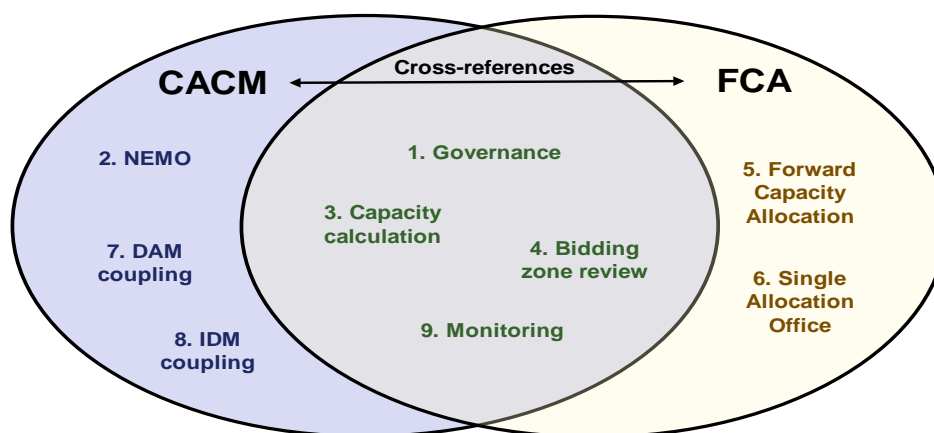
¹⁴ For details see: www.energy-community.org – implementation: country specific implementation status for electricity.

operate day-ahead markets in Contracting Parties are; SEEPEX for Serbian market and OREE for the Ukrainian market, however without being assessed and designated as NEMO due to the lack of transposition of the CACM Regulation in Serbian and Ukrainian legislation.¹⁵

3.2. Implementation of the FCA Regulation

The present document also discusses the **approach for implementing the FCA Regulation**. This approach is less complex as it does not require a Treaty reciprocity mechanism. The FCA and CACM Regulations are, however, closely linked by means of numerous references in the FCA Regulations to methodologies, terms and conditions developed under the CACM Regulation. The present concept paper therefore proposes simultaneous adoption of the CACM and FCA Regulations.

Figure 1: Links between the CACM and FCA Regulations



4. The proposed concept

The CACM and FCA Regulations establish a general framework for the governance of single day ahead market coupling and forward capacity allocation in the EU. They delegate operational details to the development of methodologies, terms and conditions based on the procedures, responsibilities and deadlines of the Regulations.¹⁶ Some of these are of pan-European nature,¹⁷ others of regional (i.e. limited to an individual Capacity Calculation Region (CCR)) character.¹⁸

¹⁵ The Energy Community Regulatory Board developed a recommendation for voluntary NEMO designation by NRAs based on their existing competences on licensing of market operators and approval of capacity allocation and congestion management rules (see: https://www.energy-community.org/dam/jcr:444c8aae-d606-4e13-a64f-ccc04914d92f/ECRB_042019_Recommendation_NEMO.pdf). The recommendations has been translated into the legislation of North Macedonia and is in process of being transposed in Albania, Montenegro and Kosovo*, while no progress in other Contracting Parties.

¹⁶ E.g. such as the development of a common grid model, the definition of capacity calculation regions, the setup of a common capacity calculation algorithm, methodologies for operational security limits *et al.*

¹⁷ Such as, e.g., the common grid model (Article 17 CACM Regulation), the harmonised capacity calculation (Article 21 CACM Regulation), products for day ahead and intraday markets (Articles 40 and 53 CACM Regulation, the congestion income distribution methodology (Article 73 CACM Regulation, Article 57 FCA Regulation) or harmonised allocation rules (Article 51 FCA Regulation).

¹⁸ Such as, e.g., the methodology for coordinated re-dispatch and countertrading (Article 35 CACM Regulation, the methodology for calculation of scheduled exchanges (Articles 43 and 56 CACM Regulation) or regional annexes to the harmonised auction rules (Articles 52 and 55 FCA Regulation).

In order to adapt the CACM and FCA Regulations for implementation by Contracting Parties, the following areas require a solution:

1. Methodologies: Adoption of terms and conditions or methodologies (relevant for CACM and FCA Regulations).
2. NEMO designation: process and requirements for designation of market operators in charge for market coupling, including the roles of NEMOs and TSOs in implicit capacity allocation processes (process defined under the CACM).
3. Capacity calculation: process related to establishing CCRs, capacity calculation methodologies, agreement on capacity calculators for forward and spot timeframe (many cross-references between CACM and FCA Regulations, but the process is mainly defined in the CACM Regulation).
4. Bidding zone review: the process related to frequent review of bidding zones involving ENTSO-E and ACER's comprehensive assessment (defined in the CACM Regulation which is also referred to in the FCA Regulation).
5. Forward capacity allocation: the process outlining the principles for Harmonised Allocation Rules (defined in the FCA Regulation).
6. Single Allocation Office: the process for establishing the allocation through single auction office (defined in the FCA Regulation).
7. Day-ahead market coupling: the process defining the algorithm development, roles and other terms and conditions to implement market coupling on day-ahead timeframe (defined in the CACM Regulation).
8. Intra-day market coupling: the process defining the algorithm development, roles and other terms and conditions to implement market coupling on intraday timeframe (defined in the CACM Regulation).
9. Monitoring: the process defining the role for monitoring the forward capacity allocation and day-ahead and intraday market coupling (defined in the FCA and CACM Regulations).

4.1. [Concept for implementation of the CACM Regulation](#)

As explained above, incorporation of the CACM Regulation into the Energy Community acquis and its transposition into national legislation of the Contracting Parties is a precondition for Contracting Parties to join the SDAC.

Therefore, and lacking related Treaty reforms so far, **as a first step**, the CACM should be adapted and adopted under the Title II regime of the Energy Community Treaty: in practical terms, this means that until the entry into force of a Treaty reciprocity mechanism the CACM Regulation would be **applicable only for and between Contracting Parties**. For this transitional period Contracting Parties would **couple under a separate process** (Energy Community **day ahead** coupling) and algorithm, including a gate-closure time different from the 12:00 CET SDAC gate closure time. The suggested gate closure time for the CP-only day-ahead market coupling would be 10:15 CET, following the practise of SEEPEX. This would enable efficient implicit allocation between Contracting Parties. A separate process would be designed by NEMOs and TSOs from Contracting Parties based on the terms and conditions defined and implemented in the EU. Potential exemptions from EU process may be applied only until full integration into the SDAC.

Due to its higher complexity, the **intraday market** would continue to operate under explicit continuous regime as an alternation option, however such operation should be combined with complementary auctions in the coupled mode. Establishing intraday market coupling based on a continuous algorithm requires significant preparatory work due to complexity. Until the Treaty amendments are agreed and ratified, the intraday market coupling should function based on, at least, two complementary auctions, while capacity may also be allocated explicitly on continuous basis. For implementation of intraday auctions, the processes utilised in the day-ahead market shall apply also for intraday market coupling.

In the second step, and until the entry into force of a Treaty reciprocity mechanism, integration of Contracting Parties into SDAC would be achieved through **bilateral and regional contractual arrangements**. In practise, this would mean that TSOs and NEMOs of (a) Contracting Party (-ies), eligible to join SDAC, would enter into a contractual agreement with ‘all TSOs’ and ‘all-NEMOs’ of the SDAC.¹⁹ This may happen either individually through bilateral agreements or as a package; in the latter case, coupling of the *Energy Community day ahead coupling area(s)* into the SDAC can however only take place once all Contracting Parties have transposed and implemented the SDAC requirements which entails a significant risk of delay for more progressive Contracting Parties and is therefore not recommended.

In the light of the fact that all TSOs and NEMOs of the SDAC have to follow the CACM Regulation as applicable in the EU, the content of such arrangements will essentially require the Contracting Party’s partners to also obey to the CACM Regulation as applicable in the EU with few potential deviations, e.g. as regarding voting rights.

Consequently and having in mind the ultimate goal of the present concept paper to enable Contracting Parties to join SDAC via market coupling projects with EU Member States, the **guiding principle** of the present concept paper is to not create a new CACM Regulation for the Contracting Parties ‘only’ but to stick as close as possible to the version and the thereof derived methodologies, terms and conditions as well as procedures as applicable and practised on EU level.

Once a contractual arrangement has been established TSOs and NEMOs of an individual Contracting Party and ‘all TSOs’ and ‘all-NEMOs’ of the SDAC, the relevant Contracting Party would join SDAC, the same leave the *Energy Community day ahead coupling area(s)* and fully operate under the requirements of the CACM Regulation as applied in the EU (SDAC) (**‘Contracting Party coupling out’**).

At the same time, the option should be offered for a Member State neighbouring a Contracting Party to couple in to the Energy Community day ahead coupling (**‘Member State coupling in’**). Based on bilateral arrangements with Member States, market coupling may be implemented also on the borders between Contracting Parties and Member States. In such case, the relevant Member State would establish another day-ahead auction which will be coupled with Contracting Party(ies) on the respective borders. In practical terms this would mean

- (1) Contracting Party joining EU market coupling for the border(s) with Member State(s) through an auction which closes at 12:00 CET, while keeping the earlier auction through which it is coupled with Contracting Parties, and
- (2) Member State joining Energy Community market coupling for the border(s) with Contracting Parties through an auction which closes earlier (suggested 10:15 CET), while keeping the noon auction through which it is coupled with Member States.

¹⁹ On regulatory level the conclusion of a Memorandum of Understanding may be considered.

With the entry into force of a Treaty reciprocity mechanism, contractual reciprocity will be replaced by legally binding reciprocity.

4.1.1. Capacity calculation

Implementation of coordinated capacity calculation as outlined in the CACM Regulation, is a complex area that requires close cooperation of all the TSOs of the interconnected system.

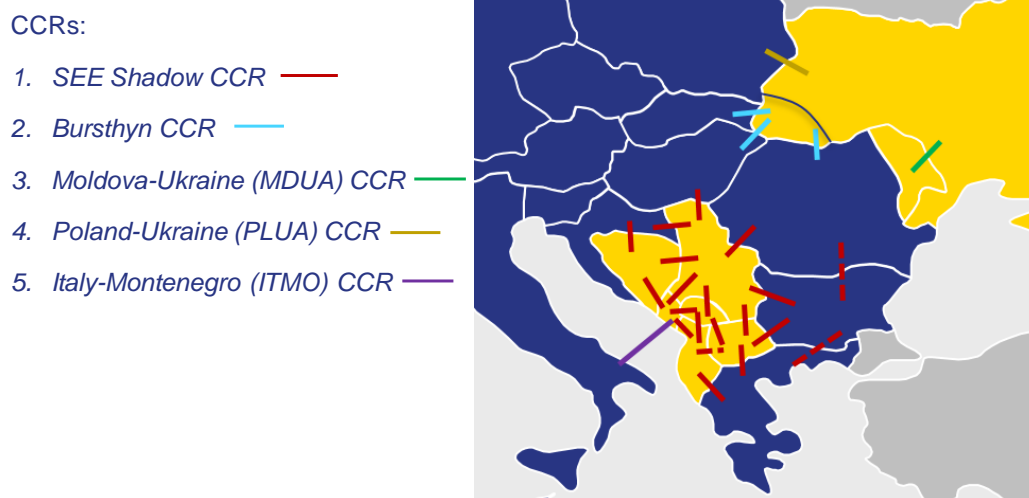
Together with the adoption of the CACM Regulation under Title II, a decision on Energy Community Capacity Calculation Regions (EnC CCRs) should be adopted by the Permanent High level Group. . The EnC CCRs would set the basis for coordinated capacity calculation within the relevant CCR and should include borders between Contracting Parties and their interconnections to the neighbouring Member States. Given the involvement of EU neighbouring Members States, they should be consulted and involved in the design of the CCR in course of the negotiations for adaptations of the CACM Regulation for adoption under Title II for the Contracting Parties, together with the decision on the EnC CCRs.

The incorporation of the CACM Regulation under Title II would establish clear requirements for the TSOs regarding coordination and cooperation in capacity calculation. The framework would ensure coordination under the same principles as in the EU within the TSOs from Contracting Parties and potentially neighbouring Member States at the level of CCRs. However capacity calculation requires coordination and cooperation beyond CCRs. Coordination and cooperation beyond EnC CCR level, in particular related to the process of setting up the common grid model, cooperation between capacity calculators, etc. will have to be established under regional arrangements on the TSO and CCR level.

The following graph illustrates the proposal for CCRs.²⁰ The 'SEE Shadow CCR' mirrors the boundaries of this CCR as already discussed and agreed by EU TSOs and ACER as further explained in footnote 4 of the present concept paper, however it exempts the interconnections between the EU Member States given their inclusion into EU CCRs. The conceptual design of the other suggested CCRs bases on the existing interconnections between Contracting Parties and neighbouring Member States (Burshtyn Island Ukraine – Slovakia/Hungary/Romania; Ukraine – Poland) and between Contracting Parties (Ukraine-Moldova).

²⁰ A draft recommendation on CCRs including borders between Member States and Contracting Parties is currently discussed on ECRB level as part of early implementation of provisions from CACM Regulation.

Figure 2: EnC CCRs to be established under Title II, including Member States



Contracting Parties should be integrated within the pan-European process for capacity calculation, in particular with regards to development of the common grid model and related process. The pan-European capacity calculation should function under the EU CACM while integrating the EnC TSOs and CCRs. In order to ensure this, regional arrangements between the TSOs and capacity calculators of the Member State(s) and Contracting Parti(-es) should be put in place upon incorporation of the CACM. These should also cover provisions related to the fulfilment of 70% requirement for the Member States, a condition arising from Electricity Regulation 2019/943.²¹

4.1.2. Methodologies

Terms, conditions and methodologies drafted by TSOs and NEMOs under the adapted CACM Regulation are required to be in line with those developed and implemented in the EU.

As a principle guideline, it has to be recognised that when implementing the CACM and FCA Regulations in the Energy Community those methodologies, terms and conditions that are of **pan-European nature** will have to be resumed by the Contracting Parties. In other words, e.g., the common grid model that has been already developed for the EU based on Article 17 CACM Regulation will have to be accepted for Contracting Parties that are part of the synchronous area Continental Europe.²² Others will have to be designed as separate processes for Contracting Parties only, with the potential to integrate also neighbouring Member State(s) on a case-by-case basis.

²¹ Not applicable in the Contracting Parties yet. Article 16(8) of Regulation 2019/943 prohibits transmission system operators (TSOs) to limit the volume of interconnection capacity to be made available to market participants as a means of solving congestion inside their own bidding zone or as a means of managing flows resulting from transactions internal to bidding zones. This requirement is considered to be complied with where the following minimum levels of available capacity for cross-zonal trade are reached: (a) for borders using a coordinated net transmission capacity approach, the minimum capacity shall be 70 % of the transmission capacity; (b) for borders using a flow-based approach, the minimum capacity shall be a margin set in the capacity calculation process as available for flows induced by cross-zonal exchange. The margin shall be 70 % of the capacity. In both cases operational security limits after deduction of contingencies as determined in accordance with the capacity allocation and congestion management guideline adopted on the basis of Article 18(5) of Regulation 714/2009 have to be respected.

²² Already today TSOs that are member of ENTSO-E obey to these rules based on the Synchronous Area Framework Agreement.

Regional methodologies, terms and conditions should be submitted to ‘all NRAs’ for approval based on the agreement of a qualified majority (2/3) of TSOs/NEMOs from all Contracting Parties on that methodology. To the extent this includes TSOs/NEMOs from Member States involved based on bilateral and regional arrangements would have voting powers and count towards the qualified majority. In practise, this would grant the EU TSOs/NEMOs the right to vote for a methodology that which will apply on interconnection between Contracting Parties and Member States, which anyway has to be aligned with the equivalent methodology already adopted for the Member States of the relevant CCR under the CACM Regulation applicable on EU level for interconnections between Member States. An example would be the coordinated capacity calculation methodology for the SEE Shadow CCR, which is likely to be fully compliant with the adopted methodology for the SEE CCR for the interconnection capacities between Greece, Bulgaria and Romania. While, at first glance, this may give the impression of a double-duty for EU TSOs, NEMOs and NRAs of the relevant EU Member States, the suggested approach provides these EU bodies additional decision making rights for the interconnections which are not in the scope of EU CACM, allowing them also solid basis in relation to the treatment of the third countries flows for the 70% requirement under CEP.

On the **regulatory** side and following the EU practise ‘all NRA’ decisions should be taken by a dedicated ‘all NRA’ platform. Such would have to be established and can borrow from procedural and establishment experience already in place on EU level.²³

Further, on EU level according to the CACM and FCA Regulations and pursuant to the amended ACER Regulation 2019/942, ACER approves terms, conditions and methodologies under the network codes and guidelines, directly or in case consensus is not reached by all national regulatory authorities. Once individual Contracting Parties are integrated into the EU processes through bilateral or regional agreements and join the SDCA, related regulatory decision powers can be transferred to ACER. To the extent only Energy Community processes are concerned, the Energy Community Regulatory Board (ECRB) should be empowered to take related decisions. This would also include the monitoring competences allocated to ACER on EU level.²⁴

Competences of ACER for market and system operation guidelines related decisions for the Contracting Parties would be established following successful negotiations of Treaty reforms related to competences of ACER, as described in chapter 2.

4.1.3. NEMO designation

NEMO designation and the associated processes are based on national requirements, hence approval of the CACM Regulation under Title II itself is enough to ensure a level playing field with regard to NEMO requirements. The obligation for designating at least one NEMO shall apply to all Contracting Parties interconnected with Member States and/or Contracting Parties.

²³ The EU ‘all NRA’ platform is not part of ACER. Accordingly it is recommended to be also established separately from ECRB.

²⁴ Cf Article 82 CACM Regulation. In detail, and replacing by standard adaptation under Title II ACER by ECR, this would mean that the entity or entities performing the market coupling operator (MCO) functions shall be monitored by the regulatory authorities or relevant authorities of the territory where they are located. Other regulatory authorities or relevant authorities, and the Energy Community Regulatory Board, shall contribute to the monitoring where adequate. The regulatory authorities or relevant authorities primarily responsible for monitoring a NEMO and the MCO functions shall fully cooperate and shall provide access to information for other regulatory authorities and the Energy Community Regulatory Board in order to ensure proper monitoring of single day-ahead and intraday coupling in accordance with Article 38 of Directive 2009/72/EC.

The reciprocal application with regards to recognition of NEMO designation among Contracting Parties applies under the Title II, while mutual recognition of NEMO designation with Member States can potentially be achieved individually through bilateral agreements.

NEMOs designated in Contracting Parties will have tasks related to market coupling operation between the Contracting Parties. In this process also TSOs have certain tasks defined under CACM Regulation. In line with standard adaptations, i.e. replacement of ACER competences on EU level by ECRB competences for Contracting Parties 'only',²⁵ the ECRB would have monitoring powers and will report the progress on market coupling to the Energy Community Secretariat.

4.1.4. Bidding zone review

Under the existing legal framework applied under the CACM Regulation on EU level, it is not possible to establish any meaningful process of bidding zone review.

Pan-European bidding zone review that would include also Contracting Parties may be performed once the EU and Contracting Parties' markets are integrated and reciprocal application, as well as regulatory governance are ensured, either by the entry into force of a Treaty reciprocity mechanism in Title II or Title IV of the Energy Community Treaty.

In the transitional phase, a consistent review cannot be applied.

4.2. Implementation concept for the FCA Regulation

The present concept paper suggests implementing the FCA Regulation based on Title II, meaning that joining of a single allocation platform would be only obligatory for cross-border capacity allocation between Contracting Parties. Adoption of the FCA Regulation under Title II will set basis and requirements for implementation of the key provisions for forward capacity allocation. Forward allocation of capacity is coordinated regionally, however the allocated product is the capacity between the two zones, i.e. source-sync. At the same time the single capacity allocation platform to be established in the Contracting Parties based on Title II of the Treaty should be optionally open to third countries, be them EU Member States or, e.g., Turkey that is already now part of the coordinated capacity allocation process performed by SEE CAO.

As outlined for the implementation of the CACM Regulation above, also the implementation of the FCA Regulation should follow as close as possible to the rules applicable on EU level. To this extent, the selection of the single allocation platform under the FCA Regulation adopted under Title II must clearly comply with the criteria enshrined in the FCA Regulation and also apply the Harmonised Auction Rules (HAR) applicable on EU level which, still, allow specific rules (i.e. regional annexes) for individual borders. HAR should be approved by the 'all NRAs' platform from Contracting Parties, and also Member States for the border between Contracting Parties and Member States to the extent an earlier discussed bilateral agreements between a Contracting Party and a Member State is in place and this country's cross border transmission capacities are allocated by the single capacity allocation platform established under Title II for the Contracting Parties.

The Secretariat further notes that the existence of a single capacity allocation platform for the Contracting Parties and – if – third countries may remain of transitional nature, e.g. until a Contracting Party joins the EU and is therefore obliged to participate in the single EU wide allocation platform JAO.

²⁵ On details see chapter 4.1.3.

At the same time, the Secretariat is of the opinion that a transitional phase of establishing a single allocation platform for the Contracting Parties has already proven merits acknowledged by trader due to its ability to better reflect the needs of the still developing electricity markets and trading activities in the (Western Balkan 6) Contracting Parties as well as the option for participation of third countries, such as, e.g. Turkey.

Other than that, the above discussed proposals for adoption of methodologies, regulatory powers, monitoring and capacity calculation should apply equally for adaption and adoption of the FCA Regulation.

5. Timeline

The Secretariat suggest the following timeline and roadmap for implementation of the measures proposed by the present concept paper:

- PHLG Adoption of the CAMC and FCA Regulation under Title II by November 2020
- Transposition deadline of the CACM and FCA Regulation by June 2021
- Implementation deadline of the CACM and FCA Regulation by August 2021.