Clarification of the RAs' Interpretation of the NEMO Designation Criteria outlined in CACM Article 6

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2 PURPOSE OF THIS PAPER

The purpose of this paper is to:

- provide a summary of stakeholder responses to our interpretation of the NEMO designation criteria (as per Article 6 of CACM) which was outlined in the Roles and Responsibilities Consultation Paper published on 6 March 2015;
- clarify any modifications to our original interpretation of the NEMO designation criteria. The revised interpretation of the NEMO designation criteria is what should be referred to when completing applications for the NEMO role.

3 SUMMARY OF RESPONSES AND DECISION ON OUR INTERPRETATION OF CACM ARTICLE 6 NEMO DESIGNATION CRITERIA

Article 6 of CACM states that an applicant shall only be designated as a NEMO if it complies with all of ten listed requirements. These include:

(a) it has contracted or contracts adequate resources for common, coordinated and compliant operation of single day-ahead coupling and/or single intraday 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;

(b) it shall be able to ensure that market participants have open access to information regarding the NEMO tasks in accordance with Article 7;

(c) it shall be cost-efficient with respect to single day-ahead and intraday coupling;

(d) it shall have an adequate level of business separation from other market participants;

(e) if designated as a national legal monopoly for day-ahead and intraday trading services in a Member State, it shall not use the fees in Article 5(1) to finance its day-ahead or intraday activities in a Member State other than the one where these fees are collected;

(f) it shall be able to treat all market participants in a non-discriminatory way;

(g) it shall be subject appropriate market surveillance arrangements;

(h) it shall have in place appropriate transparency and confidentiality agreements with market participants and the TSOs;

(i) it shall be able to provide the necessary clearing and settlement services.

(j) it shall be able to put in place the necessary communication systems and routines for coordinating with the TSOs of the Member State.

The RAs consulted on their interpretation of the NEMO designation criteria in the Roles & Responsibilities consultation, and asked for stakeholder views. We received thirteen responses to the Roles & Responsibilities consultation, a number of which provided explicit views on our interpretation of the criteria. In general, the majority of respondents agreed with the approach we are taking to interpretation of the NEMO designation criteria and to the NEMO designation process.

When developing our original views on how we interpreted each of the criteria outlined within CACM Article 6 we were informed by the actual wording in the CACM regarding NEMO functions. The RAs' interpretation of the NEMO designation criteria was not drafted in respect of an assumption of any particular organisation being designated a NEMO.

The RAs have considered responses to each of the designation criteria in order to determine whether their original interpretations published in March need to be modified in advance of each RA issuing NEMO invitations for Ireland and Northern Ireland respectively.

When suggesting modifications, we have borne in mind that until a decision is made by both RAs regarding both the NEMO designation and the assignment of I-SEM operational roles, any interpretation of the NEMO designation criteria must only apply to the fact that the NEMO(s) will carry out the day ahead and intraday trading and settlement roles in the first instance, as per the current version of CACM. Our decision on I-SEM Roles and Responsibilities including NEMO designation is due by October 2015, at which point we will also set out the RAs' next steps on issues of synergies and conflicts of interest relating to I-SEM operational (TSO and market Operator) roles.

Section 5 below provides a summary of any amendments to our interpretation of

the CACM Article 6 designation criteria; changes are highlighted in red. We set out below the thinking behind any amendments.

4 RESPONDENTS' COMMENTS AND RAS' RESPONSES

4.1 General Comments on NEMO Designation Process

Some respondents requested more detail on the NEMO designation process and questioned why it was being considered in isolation of other I-SEM roles. Bord Gais Energy stated that it would not be considered conducive from a cost or certainty perspective for market participants to have to consider changing systems/ interfaces regularly in line with changing MOs.

The NEMO designation process and timeline for designation is outlined in our separate 'Invitation for NEMO applications for I-SEM (Ireland and Northern Ireland)'. Any decision regarding the NEMO designation will be published at the same time as our decision on assignment of other I-SEM operational roles and responsibilities. With regard to BGE's concern, it is the RAs' view that interfaces may need to be modified in line with the market participant's chosen NEMO; it will be a decision for each market participant as to who to trade with in the event that more than one NEMO exists.

Some Respondents raised the issue of what regulatory arrangement around cost recovery would in place for the NEMO(s) and EirGrid queried whether there would be a regulated 'NEMO of last resort' in order to ensure there was a NEMO operating in I-SEM at all times.

EirGrid also requested that a degree of flexibility be built into the designation process and that standard provisions of assignment are provided for following application in order to allow for 'the overall structure which best meets customer needs can ultimately be delivered to meet the designation criteria in a cost effective manner'.

The RAs, as designating authorities, are obliged to consider NEMO designation under the terms of the CACM Regulation and solely in respect of the designation criteria set out in Article 6 of CACM. Our process reflects this.

Regarding the model for regulation of NEMOs and associated cost recovery, the RAs intend to address this as part of our final decision on Roles and Responsibilities. In terms of flexibility around the designation process and assignment provisions, the RAs agree that a practical approach in this regard would best serve consumers and the timely delivery of I-SEM. We have attempted to reflect this in our designation process and in the updated designation criteria.

ESB Networks commented that any changes to licences should be rolled out well in advance; any required changes to licences to align with operational and NEMO functions in the I-SEM will be drafted in a timely manner.

4.2 Comments on our original interpretation of the NEMO designation criteria

This section of the paper provides a summary of responses given to our interpretation of the NEMO designation criteria which we outlined in our consultation paper of 6 March, along with an explanation from the RAs as to whether any revisions to our interpretation will be made.

CACM Article 6.1(a) requires that the NEMO has adequate resources (both tangible and intangible) available.

Bord Gáis Energy commented that application of criteria 6.1(a) should extend beyond day-ahead and intraday functions into all other potential NEMO roles, and additionally that the ability to provide resources should be proven at a specified date rather than "sufficiently in advance" of I-SEM go-live.

The RAs' original interpretation included wording to the effect that applications must prove that adequate resources are in place for NEMO functions. The RAs agree that evidence of adequate resourcing should be provided across all functions that the NEMO(s) will be responsible for, in line with the decision made on operational roles within our October paper but this is separate to application of the NEMO criteria.

Regarding the time period within which the designated NEMO(s) need to prove their ability to provide resources, we noted CACM's wording of "within a reasonable preparatory period before taking up its tasks in accordance with Article 7". The RAs will continue develop their thinking on what a 'reasonable preparatory period' is and will inform applicants during the engagement stage of the application process.

CACM Article 6.1 (b), relates to access to information.

Bord Gáis Energy again commented that the ability to publish relevant information should be applied to all markets which the NEMO might operate, rather than being limited to the day ahead and intraday markets.

In addition, a number of responses raised a concern that the designated NEMO should have the ability to represent I-SEM at EU level. Energia, EAI, AES, SSE and Power NI emphasised the importance of I-SEM representatives retaining influence

at EU level and SSE went further to state that the designated NEMO should ensure that market rules and code development is coordinated. The RAs have taken on board these points and have modified our interpretation of Article 6.1(b) accordingly.

As with CACM Article 6.1(a), the designation process for NEMOs relates only to NEMO functions which only pertain to the Day Ahead and Intra Day timeframes. Should it become apparent via our review of synergies that the designated NEMO will operate more than the day ahead and intraday markets, the RAs will ensure that equivalent transparency provisions are put in place for those functions as appropriate.

EirGrid commented that the RAs' interpretation of CACM Article 6.1(b) criteria should be worded similarly to Article 6.1(a) regarding a time period within which provision of the required information should be available. The wording in our original interpretation will be amended to align with that of Article 6.1(a).

CACM Article 6.1(c) reads that each NEMO applicant must show that 'it shall be cost-efficient with respect to single day-ahead and intraday coupling'.

A number of respondents provided feedback on our interpretation as outlined in our March consultation.

Bord Gáis Energy suggest that separate internal accounts should be kept for MCO functions and other activities to prevent cross subsidisation; the RAs agree with this and have extended their interpretation of the criteria to request evidence of a breakdown of costs per activity on an annual basis.

In order to show how a NEMO applicant can implement the "most cost effective solution", ESB query how this will be determined given that it has not been clarified how a NEMO will charge and recover its costs.

In response, the RAs will expect to see a comparison of expected costs if all functions were kept in-house or if MCO functions were outsourced.

The cost recovery model for NEMOs operating in the I-SEM will depend upon the designation process and will be a function of:

1. Whether one or more NEMOs operate and therefore whether competition or regulation is the driver for cost efficiencies;

2. Whether we require at least one NEMO to be licenced and regulated to ensure that there is always a NEMO operating in the market.

IWEA commented that the question also arises as to whether the NEMO would be a member of the PCR if the market coupling function is outsourced, and whether it might be more beneficial to be a member of this.

Regarding representation at EU level, a distinction should be made between membership of the PCR group, NEMO representation and the role of the Market Coupling Operator. The arrangements, terms and conditions for carrying out the Market Coupling Operator function is one of the first tasks for NEMOs to carry out under the CACM. Designation as a NEMO ensures representation at EU level through the formal processes to be established under CACM and this is without prejudice to whether the role of MCO is outsourced to another entity (another NEMO) or membership of the PCR group.

Considerations around cost efficiency in terms of outsourcing functions that can be performed at lower cost elsewhere using existing systems (economies of scope) need to be balanced with ensuring that the interests of I-SEM market participants (and consumers) are represented at EU level by the designated NEMO. We therefore will consider the balance between these two considerations as part of the designation process and the regulatory model for licenced entities who may perform the NEMO role.

CACM Article 6.1(d) requires business separation between NEMOs and other market participants.

BGE suggest that stricter separation could be imposed at a later date if the original arrangements do not prove effective.

EirGrid suggest that business separation from other market participants does not apply to TSOs and point out that they have received legal advice which suggests that the TSOs are not market participants for the purposes of Article 6 of CACM.

Bord na Móna, EAI, Energia, AES, ESB, IWEA, PPB, SSE and Power NI all stress the importance of legal and functional separation between SEMO (if designated a NEMO) and the TSOs/ EWIC, and indeed that any perception of a conflict of interest (whether exercised or not) is sufficient to distort competition and deter investment. The RAs will consider further potential synergies and conflicts of interest regarding I-SEM operational as part of the decision on I-SEM Roles & Responsibilities but are mindful of ensuring that no conflicts of interest exist when assessing NEMO applications.

The RAs agree with BGE's suggestion that stricter separation could be considered at a later date if the initial arrangements do not prove to be effective and have amended the wording of their interpretation of the criteria to clarify that any monitoring of the separation arrangements will be done on an ongoing basis.

Regarding the scope of the term 'market participants' in Article 6.1(d), the RAs are of the understanding that the term 'market participants' as used in Article 6.1(d) was intended to include TSOs. Regardless, the RAs do not consider this point significant to the TSOs applying for NEMO designation as it leaves significant discretion to the designating authority to determine what level of business separation is 'adequate'.

In respect of fees for CACM Article 6.1(e), BGE comment that separate accounts to prevent cross subsidisation should apply for all market roles the MO is capable of carrying out, not just day ahead and intraday.

As with (a) and (b) the CACM criteria can only apply to NEMO functions which only relate to day ahead and intra day.

For article 6.1(f) **which requires non-discriminatory treatment of market participants**, the RAs do not propose amending their interpretation of the criteria regarding the arrangements to be in place. BGE propose that a description of internal processes for making sure operational arrangements, contractual arrangements, and services to market participants are not discriminatory should be required and that information and consultation on market developments should extend to all markets the MO could manage.

The RAs do not think that it is necessary to be so prescriptive as to describe the internal processes that any applicant should have to ensure no discrimination; this is subjective dependant on the applicant. The RAs have added extra wording to expand application of the criteria in article 6.1(f) to cover all functions which the NEMO may carry out.

For article 6.1(g) regarding market surveillance, only one comment suggesting a change to our interpretation of the criteria was received from EirGrid as follows: "Applications must include evidence *that it will have the capability to deploy the necessary market surveillance arrangements sufficiently in advance of the Q4 2017 when the operational aspects of day ahead and intraday market coupling shall apply in Ireland and Northern Ireland and the I-SEM is due to go live, where relevant this should include evidence* of training..." To align with the amendments that we have made to our interpretation of articles 6.1(a) and 6.1(b), our new proposed wording takes EirGrid's suggestion into consideration, but we are explicit in specifying when the necessary market surveillance arrangements should be in place by.

Both BGE and SSE suggested changes to our interpretation of **CACM Article 6.1(h) which deals with transparency and confidentiality.** The RAs' original interpretation was literal in terms of the requirement for 'agreements' noted

within the criteria. However, SSE made a valid point that controls need to be in place in addition to just agreements to ensure that potential conflicts of interest are managed effectively. We have added wording to this effect, and have removed working to say that the evidence should be "related to market information" since this is not exactly in line with the wording in CACM.

For CACM article 6.1(i), the RAs have modified the wording of their interpretation to incorporate a timeline as to when evidence of clearing and settlement services should be available.

Regarding article 6.(j), the RAs' will make one amendment to their original interpretation of the CACM criteria to align with the wording inserted in our interpretation of other elements of Article 6.1 regarding the timeline in which evidence or evidence of capability must be shown.

5 RAS' MODIFIED INTERPRETATION OF CACM CRITERIA

Article	Criteria	RAs' modified interpretation (May 2015)
6.1(a)	it has contracted or contracts adequate resources for common, coordinated and compliant operation of single day-ahead coupling and/or single intraday 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	Applications must provide evidence of capability to deploy necessary resources for NEMO functions, including financial resources, the necessary information technology, technical infrastructure and operational procedures sufficiently in advance of ~~the Q4~~ October 2017 when the operational aspects of day ahead and intraday market coupling shall apply in Ireland and Northern Ireland and the I-SEM is due to go live. Applications should provide evidence of how it intends to operate single day ahead and intraday coupling and in particular whether functions will be delivered internally or outsourced. Furthermore, evidence must be provided of the applicant's ability to provide resources for the development of the terms and conditions or methodologies by NEMOs set out in Article 7 and other preparatory arrangements required in Ireland and Northern Ireland prior to Q4 2017.
6.1(b)	it shall be able to ensure that market participants have open access to information regarding the NEMO tasks in accordance	Applications must provide evidence that they have the capability to publish and make available to market participants in Ireland

Article	Criteria	RAs' modified interpretation (May 2015)
	with Article 7	and Northern Ireland all relevant information for the day ahead intraday market set out in CACM Article 7 sufficiently in advance of ~~the Q4~~ October 2017 when the operational aspects of day ahead and intraday market coupling shall apply in Ireland and Northern Ireland and the I-SEM is due to go live Access to such information should be available to all market participants on an equal and non-discriminatory basis. Applications shall provide evidence that they have the ability and will represent market participants at EU level and provide adequate information etc.
6.1(c)	it shall be cost-efficient with respect to single day-ahead and intraday coupling	Applications will be expected to provide evidence that they can ensure the implementation of the most cost efficient solutions for performing the day ahead and intraday market operation functions in the I-SEM. Examples of evidence could include research or benchmarking on various options available, comparing standardised and bespoke systems. Given the economies of scope arising from performing market operator tasks across a number of markets, we expect that ~~applications should~~ applicants could outsource the MCO functions

Article	Criteria	RAs' modified interpretation (May 2015)
		to third parties if they are not already carrying out such functions and if it is evidenced as cost effective to do so. Applications must also demonstrate that they will be able to provide a breakdown between the costs associated with MCO activities and other NEMO or market operator costs, and that such cost breakdowns will be provided annually for review.
6.1(d)	it shall have an adequate level of business separation from other market participants	Applications should state clearly the legal entity applying for designation and provide detail of its corporate structure. This is without prejudice to standard provisions of assignment. Applications shall be required to provide evidence of an adequate level of business separation between the NEMO functions and other market participants ~~TSO~~ functions (including those of the TSOs) or provide detail of plans to put this in place sufficiently in advance of ~~the Q4~~ October 2017 when the operational aspects of day ahead and intraday market coupling shall apply in Ireland and Northern Ireland and the I-SEM is due to go live. The RAs shall consider the level of 'adequate separation' and monitor this on an ongoing basis in accordance with their duties

Article	Criteria	RAs' modified interpretation (May 2015)
		under Article 4 and 5 of CACM taking into account synergies and conflicts of interest between the market operator and TSO roles in the I-SEM.
6.1(e)	if designated as a national legal monopoly for day-ahead and intraday trading services in a Member State, it shall not use the fees in Article 5(1) to finance its day-ahead or intraday 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 intraday to prevent cross-subsidisation.
6.1(f)	it shall be able to treat all market participants in a non-discriminatory way	Applications shall provide evidence that it shall not unduly discriminate between market participants and that market participants in the I-SEM shall be sufficiently informed and consulted on the day to day management and development of the single day ahead and intraday coupling.
6.1(g)	it shall be subject appropriate market surveillance arrangements	Applications must include evidence that it will have the capability to deploy the necessary market surveillance arrangements sufficiently in advance of October 2017 when the operational aspects of day ahead and intraday market coupling shall apply in

Article	Criteria	RAs' modified interpretation (May 2015)
		Ireland and Northern Ireland and the I-SEM is due to go live, where relevant this should include evidence of training and monitoring procedures to identify and report on any potential market abuse consistent with Regulation (EC) 1227 (2011) on REMIT
6.1(h)	it shall have in place appropriate transparency and confidentiality agreements with market participants and the TSOs	Applications shall provide evidence of appropriate transparency and confidentiality agreements and controls/ proposed transparency and confidentiality agreements and controls which the applicant intends to implement ~~related to market information~~ with market participants and TSOs.
6.1(i)	it shall be able to provide the necessary clearing services	Applications must include evidence that they have, or can contract an entity which is able to provide: - adequate capitalisation and financial security, together with procedures in place to ensure satisfactory guarantees for settlements, necessary to clear and settle exchange of energy resulting from single day ahead and/or intraday coupling. - the technical, operational and contractual arrangements to clear

Article	Criteria	RAs' modified interpretation (May 2015)
		and settle exchange of energy resulting from single day ahead and/or intraday coupling. This evidence must be available sufficiently in advance of October 2017 when the operational aspects of day ahead and intraday market coupling shall apply in Ireland and Northern Ireland and the I-SEM is due to go live
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	Applications must include evidence that they have, or sufficiently in advance of October 2017 when the operational aspects of day ahead and intraday market coupling shall apply in Ireland and Northern Ireland and the I-SEM is due to go live are capable of putting in place the necessary communication and technical systems and agreements for coordinating with the TSOs in Ireland and Northern Ireland including the Moyle and East West interconnectors and contingency plans for communicating with the TSOs.

As stated above, the RAs will continue to apply consideration to when evidence of capabilities must be proven by in order to take up tasks assigned to the designated NEMO(s).

6 FORMAL INVITATION FOR APPLICATIONS SEEKING NEMO DESIGNATION IN NORTHERN IRELAND/ IRELAND FOR SINGLE DAY AHEAD AND/ OR INTRADAY COUPLING

Potential applicants for the NEMO role should refer to a separate 'Invitation for NEMO applications for I-SEM (Ireland and Northern Ireland)', published alongside this paper, for instructions.