

**The Cross-Border Clearing and Settlement
Arrangements for the Danish Bidding Zones
pursuant to Article 77(2) of Commission
Regulation (EU) 2015/1222 of 24 July 2015
establishing a guideline on capacity allocation
and congestion management**

13 September 2019

The Nominated Electricity Market Operators (“NEMOs”) designated and having the right to offer day-ahead and intraday trading services in the Danish bidding zones, taking into account the following:

Whereas

- (1) Articles 3, 7(1)(g), 68, 77(2) and 81(1) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the “CACM Regulation”) constitute the legal context of this proposal. In particular, article 77(2) of the CACM Regulation states:

“The central counter parties and shipping agents shall seek efficient clearing and settlement arrangements avoiding unnecessary costs and reflecting the risk incurred. The cross-border clearing and settlement arrangements shall be subject to approval by the relevant national regulatory authorities.”

- (2) Pursuant to article 68(3) of the CACM Regulation, the central counterparties (for the purposes of this document referred to as “CCPs”) act as counterparties for the exchange of energy or with regard to the financial rights and obligations arising from the energy exchanges.
- (3) In the spring of 2017, Forsyningstilsynet as the National Regulatory Authority (the “NRA”) in Denmark approved “Energinet’s proposal for arrangements concerning more than one NEMO in a bidding zone in accordance with Article 45 and 57 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management” (the “MNA”).

Pursuant to articles 7(3) and 13(3) of the MNA, the CCPs acting in the Danish bidding zones shall agree on clearing and settlement arrangements between them.

- (4) In October 2017, the Danish NRA published its decision on “CLEARING OG AFVIKLING I FORBINDELSE MED DEN FÆLLES DAY-AHEAD- OG IN-TRADAY-KOBLING – AFGØRELSE OM SHIPPINGORDNINGEN FOR DE DANSKE BUDZONEGRÆNSER” (the “Shipping Decision”)¹. According to article 5(1) of this decision the CCPs are responsible for their own physical and financial shipping resulting from the single day-ahead coupling and/or the single intraday coupling. The financial shipping shall be organized through financial arrangements established amongst the CCPs (inter-CCP clearing and settlement). According to article 5(2) of this decision the CCPs are obliged to cooperate with Energinet (the Transmission System Operator, the “TSO”) in the Danish bidding zones when setting up relevant arrangements for the physical shipping.
- (5) According to article 6(2) of the Shipping Decision, the CCPs must submit cross-border clearing and settlement arrangements for approval to the NRA well before they enter into force. Based on the Shipping Decision intra-zonal clearing and settlement takes place between CCPs in each of the relevant Danish bidding zones and is an integral part of the cross-border clearing and settlement arrangements contained in this document.

¹ [http://forsyningstilsynet.dk/fileadmin/Filer/0 - Nyt_site/EL/Sekretariatsafgoerelser/2017/Bilag_2 - Shippingarrangements_EN .pdf](http://forsyningstilsynet.dk/fileadmin/Filer/0_-_Nyt_site/EL/Sekretariatsafgoerelser/2017/Bilag_2_-_Shippingarrangements_EN_.pdf)

- (6) The cross-border clearing and settlement arrangements contained in this document comply with the objectives stated in article 3 of the CACM Regulation.
- (7) The cross-border clearing and settlement arrangements allow for efficient clearing and settlement between different CCPs to facilitate cross-border trade between the Danish bidding zones and between the Danish and other relevant bidding zones. As Denmark will have several NEMOs offering services in its bidding zones, the cross-border clearing and settlement arrangements must allow for intra-zonal clearing and settlement of trades between several NEMOs. Thus, market participants will not be restricted in their choice of power exchange and effective competition between NEMOs in the Danish bidding zones can be assured in accordance with article 3(a) of the CACM Regulation.
- (8) The arrangements in this proposal put obligations on the CCPs to organise the cross-border clearing and settlement according to common principles. This respects the need for a fair and orderly market in accordance with article 3(h) of the CACM Regulation.

SUBMIT THE FOLLOWING PROPOSAL TO FORSYNINGSTILSYNET AS THE NATIONAL REGULATORY AUTHORITY IN DENMARK:

Article 1
Scope & Interpretation

1. This document contains arrangements applicable to the exchange of energy within and between the bidding zones of Denmark and between the bidding zones of Denmark and other relevant bidding zones to be performed by the CCPs pursuant to article 68 of the CACM Regulation. These arrangements are to be applied by the NEMOs active in these bidding zones.

These arrangements shall apply to both the day-ahead and intraday timeframes.

2. In addition to these arrangements, the rights and obligations applicable to the CCPs shall be governed by private agreements concluded between them (hereafter referred to as the "Agreements"). The Agreements entered into by the CCPs shall respect the rules laid down in these arrangements.

Article 2
General provisions

1. The Agreements shall clearly identify the rights and the obligations that the CCPs must fulfil as well as the tasks to be performed by such CCPs. These obligations and tasks may be performed by a CCP which also performs the other functions of a NEMO for the bidding zones/trading hubs being cleared and settled or by a CCP which performs the tasks of providing clearing and settlement services with respect to such bidding zones/trading hubs delegated to it by a NEMO, in accordance with Article 81 (1) of the CACM Regulation.

2. The CCPs shall cooperate to implement and operate cross-border and intra-zonal clearing and settlement, which as a minimum shall require the CCPs to:
 - a. contribute actively with a view to realising the scope of the agreement as well as their respective individual obligations in compliance at all times with applicable European and national competition laws; and
 - b. exercise their rights and obligations under the agreement in good faith and adopt a fair and loyal treatment towards each other.
3. The CCPs shall accept towards each other obligations to set up and maintain the required technical and operational infrastructure and procedures for the performance of inter-CCP clearing and settlement in the following areas:
 - a. Physical settlement;
 - b. Financial settlement;
 - c. Invoicing;
 - d. Management of the bilateral counterparty risk, including posting of collaterals to each other, and
 - e. Appropriate back-up procedures.
4. Under the terms of the Agreements, the CCPs shall undertake to maintain such Balance Responsible Party Agreements (BRPA) as may be required for them to perform their physical settlement (i.e. delivery) obligations. The CCPs shall be in compliance with the applicable Balance Responsible Party license system, recognitions and processes.
5. The CCPs shall exchange the necessary information, both initially and periodically throughout the duration of the Agreements, on their respective operations to allow for appropriate risk assessments to be undertaken.
6. The communication between the CCPs shall be timely, reliable and secure.
7. A CCP shall indicate to its counterparty CCP the process and persons responsible on its behalf for the monitoring and functioning of its performance of clearing and settlement.
8. A CCP shall inform its counterparty CCP where it makes changes to its operational setup as described in the Agreements.

Article 3 **Clearing Transactions**

1. Each clearing transaction shall commit a pair of CCPs to sell and deliver, or purchase and accept delivery (as the case may be) of cross-border or intra-zonal volumes of electricity at the applicable price plus VAT in accordance with the respective market coupling results.
2. The CCPs' obligations with respect to clearing transactions will not be affected by any interconnector operator or TSO refusing, reducing or cancelling the relevant cross-border nominations.

Article 4

Physical Settlement

1. Physical settlement between CCPs must be consistent with the relevant market coupling results and clearing transactions plus such other specific processes as may be agreed from time to time between the CCPs and the relevant TSOs.
2. To effect physical settlement each CCP must submit the required local and/or cross-border nominations to the relevant TSOs according to Article 5(4) of the Shipping Decision.
3. No curtailment or cancellation of a local or cross-border nomination by the relevant TSOs in accordance with the relevant BRPA due to Force Majeure or a threat to security of supply shall be construed as a breach of the contractual obligations of a CCP with regards to physical settlement.
4. If there is a mismatch between a CCP's physical nominations and the relevant market coupling results, the CCP whose nomination deviates from the market coupling results shall reimburse the other CCP for the costs or losses in the form of imbalance penalties or charges it incurs as a result. If a CCP's nomination is deviating from the relevant market coupling results and such CCP makes a gain, it shall credit the other CCP an amount equivalent to such gain. Such obligations to reimburse any costs, losses or gains shall not be subject to any limitation or cap.

Article 5

Financial Settlement

1. In order to enable financial settlement, the CCPs may decide to:
 - a. adopt a financial settlement arrangement using their respective existing banking/settlement infrastructure; or
 - b. mutually agree on a discrete banking/settlement arrangement.

Whichever financial settlement approach is used, each CCP shall ensure at all times that it has sufficient funding for the purposes of financial settlement.

2. Payments between CCPs shall be netted where possible to minimise transaction costs.
3. Payments between CCPs shall be due in accordance with the settlement cycle of the beneficiary CCP unless otherwise agreed between the parties.
4. To support the accurate calculation and verification of payments, the CCPs shall provide regular settlement reports to each other and, in any case where a discrete banking/settlement arrangement has been established, also to the relevant settlement bank or other payment infrastructure provider, as the case may be.
5. If deemed appropriate, the CCPs can agree that only one party issues invoices and credit notes for the exchanged clearing transactions.

Article 6 **Counterparty Risk**

1. The CCPs will provide each other with collateral as security for the delivery/payment obligations to be performed between them. The collateral will be reasonable and proportionate in relation to the financial exposure between the CCPs.
2. The method of calculation of collateral required by a beneficiary CCP (the “**collateral/margin methodology**”) shall be applied in a transparent and non-discriminatory manner. Each CCP will provide collateral towards its counterparty CCP in accordance with the beneficiary CCP’s collateral/margin methodology. The collateral/margin methodology of each CCP must be applied in accordance with its rule book and made available on its website.
3. Possible forms of collateralisation agreed between the CCPs can include cash on a bank account of the beneficiary CCP, bank guarantee, letter of credit, pledge account to the benefit of the beneficiary CCP or any combination of these.
4. No CCP shall be obliged to make contributions to the default fund of its counterparty CCP or any other fund which is utilised for defaults of third parties.
5. A CCP shall be entitled to utilise the collateral provided to it based on the conditions stipulated in the Agreements.
6. The CCPs shall provide in the Agreements appropriate triggers and procedures for force majeure situations, defaults, suspension and termination.

Article 7 **Costs**

1. The CCPs will not charge each other any fees (including but not limited to membership fees, trading and/or clearing fees) or seek to pass through any other costs or charges (other than the applicable cost with respect to the volumes of energy bought/sold plus VAT) in connection with the cross-border and/or inter-CCP physical and financial clearing and settlement activities.
2. With respect to any joint service providers retained by the CCP parties (e.g. a payment infrastructure provider, credit and/or collateral facilities), such costs shall be shared in proportion to the benefit of such services provided to each CCP.

Article 8 **Timescale for implementation**

1. The arrangements in this proposal shall for the day-ahead timeframe enter into force on the later of the date on which Forsyningstilsynet has approved it and joint implementation of the Multiple NEMO Arrangements with respect to the Danish bidding zones.

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2. The arrangements in this proposal shall for the intra-day timeframe enter into force on the date on which Forsyningstilsynet has approved these arrangements.