

REGULATION IMPLEMENTING CONDITIONS FOR CROSS-ZONAL CAPACITY
ALLOCATION AND OTHER NECESSARY MECHANISMS TO SUPPORT
OPERATION OF MORE THAN ONE NEMO IN POLAND
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PREAMBLE

Whereas:

1. According to Article 45 and Article 57 of CACM, TSOs in bidding zones where more than one NEMO is designated and/or offers trading services, or where interconnectors which are not operated by TSOs certified according to Article 3 of Regulation (EC) No 714/2009 exist, shall develop a proposal for cross-zonal capacity allocation and other necessary arrangements for such bidding zones in cooperation with concerned TSOs, NEMOs and operators of interconnectors who are not certified as TSOs to ensure that the relevant NEMOs and operators of interconnectors provide the necessary data and financial coverage for such arrangements. These arrangements must allow additional TSOs and NEMOs to join these arrangements.
2. PSE prepared MNA which was approved by URE's decision of June 5th 2017 with the changes approved by URE's decision of May 29th 2018 and of May 14th 2019.
3. PSE in cooperation with concerned NEMOs developed the concept of implementation of MNA according to which the contractual framework implementing MNA at the Polish bidding zone local level will constitute a bilateral operational agreement implementing MNA concluded by PSE (on the one side) and by each NEMO separately (on the other side) under the terms and conditions of the Regulation prepared by PSE in cooperation with the NEMOs.

IN CONSIDERATION OF THE ABOVE, THIS REGULATION IS SET UP TO IMPLEMENT THE CONDITIONS FOR CROSS-ZONAL CAPACITY ALLOCATION AND OTHER NECESSARY MECHANISMS TO SUPPORT OPERATION OF MORE THAN ONE NEMO IN POLAND.

ARTICLE 1 PURPOSE AND SCOPE OF THE REGULATION

1.1 Purpose of the Regulation

The purpose of the Regulation is to establish contractual framework, same for each NEMO, to implement MNA and perform PSE's and NEMOs' responsibilities related to Single Day-Ahead Coupling and Single Intraday Coupling set forth in CACM. The Regulation constitutes a part of local arrangements as indicated in Article 8.2 of MNA.

1.2 Scope of the Regulation:

The Regulation:

- sets forth the rights and obligations of the Parties in connection with the cross-zonal capacity allocation and other necessary mechanisms supporting operation of more than one NEMO in Poland within the scope of Single Day-Ahead Coupling and Single Intraday Coupling, including the common operation of SDAC and SIDC and
- defines the rules for the cooperation of PSE on the one side and each NEMO participating in Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone on the other side in the operation of Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone, to ensure the allocation of cross-border transmission capacities calculated by PSE in a coordinated manner and through non-discriminatory market solutions.

1.3 Legal basis of the Regulation

The Regulation constitutes general terms and conditions of a contract within the meaning of Article 384 of Polish Civil Code, which means that any change thereto is made in accordance with Article 19.1 and is binding to each Party of MNA OA (subject to right to terminate the MNA OA as defined in Article 12.2.2.8).

ARTICLE 2 DEFINITIONS

The definitions used in this Regulation are set forth in Appendix 1.

ARTICLE 3 CONTRACTUAL FRAMEWORK AND HIERARCHY

3.1 Contractual framework

3.1.1. The contractual framework for Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone is composed of the following documents:

- 3.1.1.1. This Regulation with its Appendixes;
- 3.1.1.2. The MNA;
- 3.1.1.3. The IRiESP Balancing subject to Article 3.1.3;
- 3.1.1.4. Accession Form signed by a NEMO and PSE.

3.1.2. Upon completing the accession process as set forth in Article 9, on the Accession Day, PSE and a NEMO enter into a bilateral contract for an indefinite period of time under the terms and conditions specified in the documents enumerated in Articles 3.1.1.1 to 3.1.1.4. ("**MNA Operational Agreement**" or "**MNA OA**"). Each MNA OA between PSE and relevant NEMO is to be treated separately.

3.1.3. Taking into consideration that PSE has initiated a procedure of approval of Terms and Conditions related to Balancing, a document prepared on basis of Article 18 of Commission Regulation 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, this document shall substitute the IRiESP Balancing in the scope included therein automatically, i.e. without necessity to sign any amendment to the Regulation or to the MNA OA, on the day of its entry into force. Any reference in this Regulation to IRiESP Balancing shall be treated as reference to the Terms and Conditions related to Balancing from the date of its entry into force.

3.1.4. Documents indicated in Article 3.1.1.2, Article 3.1.1.3 and in Article 3.1.3 are public documents available on PSE's site www.pse.pl and will be amended according to relevant provisions of Polish Law (with effect on the MNA OA).

3.1.5. The Parties shall ensure that all necessary Local Arrangements to further implement and elaborate the general framework set forth by the Regulation are in place, including arrangements with third parties as foreseen in Article 4.6 and agreements foreseen in Article 6.3.1, with the aim to have an efficient Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone.

3.1.6. The Regulation is composed of its main body and its Appendixes listed below (which may be subdivided):

- Appendix 1: Definition list
- Appendix 2: Single Day-Ahead Coupling Operational Procedures
- Appendix 2a: Single Intraday Coupling Operational Procedures
- Appendix 3: Application - template
- Appendix 4: Accession Form - template

- Appendix 5: Rules for designating a NEMO coordinator
- Appendix 6: Liability of PSE in the SIDC
- Appendix 7: Change control procedure
- Appendix 8: Shipping configuration in the Polish bidding zone

3.2 Hierarchy

- 3.2.1 The Regulation, including its Appendixes, shall at all times be in compliance with CACM, with IRIESP Balancing and with MNA, that shall all prevail over the Regulation. In case of non-compliance, Article 19.2 [Amendment due to Legal Provisions] shall apply.
- 3.2.2 Should differences or contradictions exist between the main body and any of the Appendixes, the terms and conditions of the main body shall prevail.

ARTICLE 4 PRINCIPLES OF COOPERATION

4.1 General

- 4.1.1 The Parties shall cooperate in accordance with the terms and conditions of this Regulation, with the overall aim to facilitate the integration of the European electricity markets and the implementation of the purpose of the Regulation as set forth in Article 1 [Purpose and scope of the Regulation].
- 4.1.2 Obligations of the Parties under MNA Operational Agreement shall be best efforts obligations, unless explicitly otherwise specified in the Regulation.
- 4.1.3 Notwithstanding the above, each NEMO within the purpose of this Regulation as determined in Article 1 [Purpose and scope of the Regulation], shall comply with:
- rights and obligations set up in MNA;
 - rights and obligations set up in IRIESP Balancing.
- 4.1.4 The Parties shall exercise their rights and obligations in good faith and shall adopt a fair and loyal treatment towards each other, giving due consideration to any applicable Legal Provision and bearing in mind the multilateral spirit of Single Day-Ahead Coupling and Single Intraday Coupling, according to which all Parties shall be treated in a non-discriminatory manner.
- 4.1.5 A NEMO is entitled to become a Party to the MNA Operational Agreement as:
- an operational NEMO (i.e. NEMO performing SDAC or SIDC obligations as set forth in Article 6) to which all the rights and obligations resulting from the MNA OA shall apply;
 - as a non-operational NEMO (i.e. NEMO non performing SDAC or SIDC obligations as set forth in Article 6) to which all the rights and obligations resulting from the MNA OA shall apply with exception to Article 6 which shall not be applicable until becoming an operational NEMO in accordance with Article 19.4.3.2.
- 4.1.6 The operational or non-operational status of NEMO shall be indicated in the Application submitted in accession process as set forth in Article 9.

4.2 Performance of the Parties

Each Party shall:

- perform its obligations under this Regulation according to the requirements of this Regulation, to all applicable laws and regulations (including MNA and IRIESP Balancing), good practice and current professional standards, applicable for these type of obligations;

- use, where appropriate, suitable technology, materials or equipment including necessary backups and contingency plans and trained and competent staff for the execution of its obligations under this Regulation;
- perform its obligations under this Regulation in the best interest of all Parties to achieve a well-functioning Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone;
- have the necessary license and authorisations to enter into MNA Operational Agreement; and
- have the knowledge, experience and human and technical competence necessary for the satisfactory performance of its obligations under this Regulation.

4.3 Performance of NEMO's CCP obligations

The Regulation provides for two ways of performance of NEMO's CCP obligations under MNA OA:

- 4.3.1 First model – in which NEMO personally performs all of the CCP obligations under MNA OA.
- 4.3.2 Second model – in which NEMO indicates a third party (its CCP) which shall perform specific obligations under MNA OA, consisting in sending to PSE nominations resulting from Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone, settlement of imbalance costs and collection and transfer of Congestion Income. In such case the third party acts, within the scope indicated above, in its own name on conditions described in Article 4.4 below.

NEMO has the right to choose any of the models above in the accession process by submitting appropriately filled Accession Form as set forth in Article 4.4.2 below and Article 9 [Accession Process]. The second model as described above shall be treated as delegation of NEMO's tasks as allowed under Article 81 of CACM, in particular the delegating party (the NEMO) shall remain responsible for ensuring compliance with the tasks listed in Art. 7 of the CACM, including ensuring access to information necessary for monitoring by the regulatory authority.

4.4 Second model of performance of NEMO's CCP obligations

- 4.4.1 Taking into consideration models of performance of NEMO's obligations as described in Article 4.3 above, each NEMO shall be entitled to indicate, in the Accession Form, its CCP as the entity that shall perform NEMO's obligations resulting from MNA OA consisting in:
- 4.4.1.1 sending to PSE nominations resulting from Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone; in such case the CCP shall be allocated with its own scheduling unit and shall perform its obligations in accordance with IRiESP;
- 4.4.1.2 settlement of imbalance costs resulting from the relevant NEMO's operations; and
- 4.4.1.3 collection and transfer of Congestion Income.
- 4.4.2 In case referred to in Article 4.4.1, such CCP shall be financially liable for any imbalance and transfer of Congestion Income that may occur, in particular the CCP shall be invoiced by PSE for any imbalance and Congestion Income incurred by the relevant NEMO. The abovementioned case of liability of CCP shall not be applicable when PSE shall bear liability in accordance with Article 17.2.4. The NEMO shall submit to PSE the CCP's written statement, consistent with a template attached to the template of the Application as in Appendix 3, by which such CCP shall undertake the obligations referred to in Articles 4.4.1 and 4.4.2 and shall perform them in its own name.

- 4.4.3 Each NEMO is entitled to indicate only one CCP to perform the obligations referred to in Articles 4.4.1 and 4.4.2.
- 4.4.4 The CCP indicated by NEMO on terms specified herein shall be considered a third party in relation to Parties to MNA OA responsible for performance of the obligations referred to in Articles 4.4.1 and 4.4.2.
- 4.4.5 The NEMO indicating its CCP as the entity performing the obligations referred to in Articles 4.4.1 and 4.4.2, shall be liable for any damage suffered by PSE by the fact that CCP refuses to perform or fails to perform said obligations (contract on third party performance in meaning of Article 391 of Polish Civil Code).
- 4.4.6 In case mentioned in Article 4.4.1.2, the relevant NEMO shall be invoiced by PSE for the damage equal to the amount of the invoice unpaid by the CCP.
- 4.4.7 Article 17.3 regarding third party claims shall not apply in relation to liability of CCP acting in second model, within the scope indicated in Article 4.4.2.
- 4.4.8 In case NEMO intends to change a CCP performing the obligations referred to in Articles 4.4.1 and 4.4.2, Article 19.4.3 and Article 9 [Accession Process] shall be applicable accordingly.

4.5 Performance of NEMO's shipping obligations

The Regulation provides for two ways of performance of NEMO's shipping obligations under MNA OA:

- 4.5.1 First model – in which NEMO personally performs shipping obligations under MNA OA as an operational NEMO (for itself or additionally for other NEMO which designates it as its Shipping Agent in the Accession Form) or as a non-operational NEMO (only if acting for other NEMO which designates it as its Shipping Agent in the Accession Form).
- 4.5.2 Second model – in which NEMO indicates a third party (its Shipping Agent) which shall perform specific obligations under MNA OA, consisting in shipping functions for its NEMO.

4.6 Relation to third parties

- 4.6.1 Each NEMO is responsible for performing CCP role or contracting CCP service. Information about a third party performing CCP service shall be included in Accession Form and in case of any changes new information concerning CCP must be communicated at least one (1) month before its effective date. Article 19.4.3 is respectively applicable, if needed.
- 4.6.2 Each NEMO is responsible for ensuring shipping service enabling execution of cross-border energy exchange resulting from Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone. Information about a third party performing shipping service shall be included in Accession Form and in case of any changes new information concerning shipping service must be communicated at least one (1) month before its effective date. Article 19.4.3 is respectively applicable, if needed.

ARTICLE 5 RESPONSIBILITIES

- 5.1 Roles and responsibilities of PSE on the one hand and each NEMO on the other hand, shall be compliant with those set forth in CACM and in MNA OA.
- 5.2 PSE is responsible for its own systems and business processes concerned by or involved in Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone.

5.3 Each NEMO is responsible for its own systems, business processes and mechanisms needed for settlement and clearing concerned by or involved in Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone.

ARTICLE 6 DAILY OPERATIONS

6.1 General Principles

- 6.1.1 Parties shall operate Single Day-Ahead Coupling in accordance with Appendix 2.
- 6.1.2 Parties shall operate Single Intraday Coupling in accordance with Appendix 2a. For the purposes of Single Intraday Coupling procedures included in the Exhibit 6 – Joint XBID Procedures of IDOA shall be used.
- 6.1.3 The NEMOs shall designate a NEMO coordinator performing obligations set forth in IRIESP according to conditions specified in Appendix 5.
- 6.1.4 Performance of the obligations under this Article 6 by NEMOs is subject to their respective operational or non-operational status in accordance with Articles 4.1.5 and 4.1.6 and to the kind of coupling (i.e. Single Day-Ahead Coupling or Single Intraday Coupling) indicated in the Application in accordance with Article 9.2.

6.2 Decoupling

- 6.2.1 In case of Decoupling impacting Single Day-Ahead Coupling or Single Intraday Coupling in the Polish bidding zone Appendix 2 or Appendix 2a, respectively, is applicable.
- 6.2.2 For the avoidance of doubt, Decoupling undertaken in compliance with Appendix 2 or Appendix 2a shall not constitute a breach of the MNA OA by the Parties.

6.3 Congestion Income

- 6.3.1 The terms of payment of the Congestion Income shall be regulated in separate market operations agreements concluded between the NEMOs or their CCPs (respectively), PSE and other TSOs.
- 6.3.2 An operational NEMO shall adhere to the market operations agreements mentioned in Article 6.3.1 above not later than on the Accession Day.

ARTICLE 7 INTELLECTUAL PROPERTY RIGHTS AND DATA OWNERSHIP

7.1 General

- 7.1.1 Each Party shall remain the exclusive owner of its own Intellectual Property Rights.
- 7.1.2 Unless otherwise specified under the Regulation, the disclosure, access or use of developments, data or Confidential Information pursuant to the Regulation shall not affect the ownership of any Intellectual Property Rights nor is to be construed as granting any right (such as license), express or implied, on or in connection with any Intellectual Property Rights on such development, data or Confidential Information, between the Parties or towards any third party.
- 7.1.3 Except for the purpose of publishing data as allowed under this Article 7, Article 14 [Confidentiality] shall apply to the developments made and data used or exchanged pursuant to this Article 7.

7.2 Developments

- 7.2.1 Developed operational procedures made within the scope of MNA Operational Agreement as set up under this Regulation and the Intellectual Property Rights to such developments, shall be jointly owned by the Parties that jointly developed them, unless decided otherwise by the Parties.
- 7.2.2 Each Party has the right to use Appendix 2 and Appendix 2a in the context of Single Day-Ahead Coupling or Single Intraday Coupling in the Polish bidding zone without further prior consent of the Parties.

7.3 Data

- 7.3.1 Data generated by NEMO(s) (or on behalf of relevant NEMO or NEMOs) in the context of Single Day-Ahead Coupling or Single Intraday Coupling in the Polish bidding zone shall remain the exclusive property of the NEMO(s) concerned.
- 7.3.2 Data generated by PSE (or on behalf of PSE) in the context of Single Day-Ahead Coupling or Single Intraday Coupling in the Polish bidding zone shall remain the exclusive property of PSE.
- 7.3.3 The NEMOs grant PSE an unrestricted, unlimited in time free right to use and exploit, publish and provide, for non-commercial purposes, NEMOs' data relating to the results of Single Day-Ahead Coupling and Single Intraday Coupling to the third persons to whom PSE is legally obliged to provide the data and to the extent necessary to perform the role of the TSO by PSE (for performance of market coupling as part of SDAC and SIDC, imbalance settlement and EU regulatory transparency obligations under Regulation (EU) No 543/2013), e.g. (but not limited to):
- flows between bidding zones and between NEMOs;
 - net positions of bidding zones and NEMOs;
 - day ahead prices, at least for polish bidding zone and neighbouring bidding zones;
 - min and max intraday transaction price and total trade volume per hour;
 - derivative data from input data and output data such as related indices.
- 7.3.4 PSE grants to each NEMO an unrestricted, unlimited in time free right to use and exploit, publish and provide PSE's data relating to the results of Single Day-Ahead Coupling and Single Intraday Coupling to the third persons to whom a NEMO is legally obliged to provide the data and to the extent necessary to perform the role of the NEMO by each NEMO.

ARTICLE 8 COOPERATION STRUCTURE

- 8.1 Within the scope of performance of Single Day-Ahead Coupling or Single Intraday Coupling in the Polish bidding zone determined by this Regulation and MNA OA each Party shall appoint authorised representatives in Accession Form, signed in accordance with Articles 9.2 – 9.5.
- 8.2 Changes of NEMOs' or PSE's representatives and contact details in Accession Form are performed in accordance with Article 19.4.3.1.

ARTICLE 9 ACCESSION PROCESS

- 9.1 Any NEMO is entitled to become a Party to the MNA Operational Agreement through accession by signing the Accession Form prepared on the table included in Appendix 4 without any further condition, except for the obligation for the acceding Party to:
- 9.1.1 be a designated NEMO in the Polish bidding zone or have the right to offer day-ahead and intraday trading services in the Polish bidding zone;
 - 9.1.2 adhere to DAOA and IDOA or put in place all other agreements or arrangements, in particular agreements mentioned in Article 4.6 and Article 6.3.1, required for a NEMO to be able to perform its obligations under the Regulation;
 - 9.1.3 in case of entering the MNA OA as an operational NEMO, successfully pass WIRE tests according to PSE's procedure titled: „Procedura przyłączenia i akceptacji systemów informatycznych Operatora Rynku do systemów informatycznych OSP dla WIRE/UR i WIRE”, available on PSE's site www.pse.pl.
- 9.2 In order to receive Accession Form, NEMO must send to PSE the Application prepared on the template constituting Appendix 3. The Application must be delivered to PSE in a written form by registered letter or by courier. Application should include a declaration of adhering NEMO indicating whether it enters the MNA OA as an operational or as a non-operational NEMO. If the adhering NEMO enters the MNA OA as an operational NEMO, this NEMO indicates kind of coupling this adhering NEMO intends to participate in after Accession Day, i.e. Single Day-Ahead Coupling or Single Intraday Coupling and model of performance of CCP and shipping obligations.
- 9.3 Receipt of the Application by PSE starts a process of adherence during which PSE validates requirements listed in Article 9.1, WIRE tests are performed (if necessary) and PSE and adhering NEMO agree on the Accession Day.
- 9.4 Based on the Application and results of a process of adherence (referred to in Article 9.3), PSE prepares the Accession Form, signs it and sends to NEMO by registered letter or courier. The Accession Form shall be executed in Polish or English language version. In case the Accession Form is executed in two language versions, should differences or contradictions exist between the Polish version and English version of the Accession Form, the terms and conditions of the Polish version shall prevail.
- 9.5 Accession Form signed by NEMO must be delivered to PSE in a written form by registered letter or courier. Accession Form signed and delivered in accordance with this Article 9 becomes an integral part of MNA Operational Agreement between PSE and adhering NEMO.
- 9.6 On a day agreed between PSE and adhering NEMO and indicated in Accession Form in accordance with Articles 9.2 - 9.5, NEMO becomes a Party to the MNA Operational Agreement and a subject of rights and obligations deriving from this Regulation (the “**Accession Day**”), with reservation to

Article 4.1.5. Single Day-Ahead Coupling and Single Intraday Coupling are performed according to this Regulation by an operational NEMO starting from the Accession Day.

9.7 In case NEMO intends to change kind of coupling declared in accordance with Article 9.2., this Article 9 [Accession Process] shall be applicable accordingly.

ARTICLE 10 COSTS

Each Party will bear its own costs arising from becoming Party to the MNA Operational Agreement under the Regulation and carrying out rights and obligations in accordance with the Regulation.

ARTICLE 11 EXTERNAL COMMUNICATION

11.1 Scope

11.1.1 Without prejudice to (i) Article 14 [Confidentiality], (ii) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, and (iii) Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets, the principles under this Article 11 shall apply to external communication in all forms relating to any subject in relation to the MNA OA or related to Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone.

11.1.2 The Parties may deviate from this Article 11 only if necessary to comply with applicable mandatory laws and regulations.

11.2 General Principles

11.2.1 The Parties shall be free to express written or oral positions or opinions about all Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone related matters in their own name, provided that they do not prejudice or negatively affect the collective or individual interests or the reputation of the other Parties.

11.2.2 The Parties shall not express positions or opinions in the name of the other Party or other NEMOs unless they have been explicitly mandated to do so in writing.

11.2.3 The Parties shall communicate at all times correct and accurate information.

11.2.4 In the event a communication by a Party does not comply with this Article, the other Party is entitled to request such Party to publicly correct its communication, without prejudice to any other rights or remedies under this Regulation or by law (such as but not limited to its right to claim compensation in accordance with Article 17 [Liability]). Upon receipt of such valid request, such Party shall forthwith correct its communication publicly in accordance with the request.

11.2.5 In case a communication in reference to the matters falling within the scope determined in Article 11.1, requires a joint communication of the Parties, Parties shall cooperate to prepare a joint statement. If Parties fail to agree on a joint statement, art. 11.2 is applicable.

11.2.6 In case a communication in reference to the matters falling within the scope determined in Article 11.1, requires a joint communication under DAOA or IDOA, Parties will escalate these matters to be handled in accordance with DAOA or IDOA respectively.

ARTICLE 12 EXIT / SUSPENSION

12.1 In the Regulation, the term **“Exit”** shall mean the event in which a NEMO terminates on its own initiative the MNA Operational Agreement in accordance with Article 12.2 or the event in which the concerned NEMO is excluded from the MNA Operational Agreement in accordance with Article 12.3, and the verb **“to Exit”** is to be construed accordingly.

12.2 Voluntary Exit

12.2.1 A NEMO may Exit from the MNA Operational Agreement (the **“Exiting NEMO”**) at any time, whatever the reasons for its Exit, whether legal, regulatory or any others without any court intervention and without any compensation being due for the Exit.

12.2.2 The Exiting NEMO shall notify PSE of its wish to Exit the MNA Operational Agreement in writing. PSE cannot refuse the Exit of the Exiting NEMO. PSE shall meet with or contact the remaining NEMOs within two weeks from receiving the notification from the Exiting NEMO in order to assess the Exit Plan of the Exiting NEMO according to Article 12.4. In particular, PSE shall assess the timescales within which the Exit shall occur. Except if decided otherwise by PSE with the consent of the Exiting Party, the following timescales shall apply by default:

12.2.2.1 in the event of Force Majeure, subject to Article 18.6;

12.2.2.2 in the event of change due to regulatory reasons, in case of failure to reach an agreement with regard to the modification of the Regulation according to Article 19.2 – upon three (3) months as from the notification of the Exiting NEMO;

12.2.2.3 in the event of a Dispute as set forth in Article 20.1 of this Regulation, where such Dispute is not related to Article 19.2 – upon three (3) months as from the notification of the Exiting NEMO;

12.2.2.4 to the extent compatible with applicable law, in the event of threat of bankruptcy or any other insolvency proceeding, dissolution or liquidation of such Exiting NEMO – upon one (1) month as from the notification of the Exiting NEMO;

12.2.2.5 in the event of an order of competent regulatory, administrative or judicial authorities to end the participation of a Party to Single Day-Ahead Coupling or Single Intraday Coupling – upon one (1) month from the notification of the Exiting NEMO;

12.2.2.6 in the event of termination of any relevant Local Arrangements - upon three (3) months from the notification of the Exiting NEMO;

12.2.2.7 in the event of exit of the Exiting Party from DAOA and IDOA – upon three (3) months from the notification of the Exiting NEMO;

12.2.2.8 in the event of an amendment of this Regulation performed in accordance with Article 19.1 or Article 19.2 – upon a notice effective as of the day preceding the entry into force of the amendment of this Regulation in accordance with Article 19.1.2;

12.2.2.9 in the event of an amendment of the Accession Form performed in case indicated in Article 19.4.2 – upon a notice effective as of the day preceding the entry into force of the relevant amendment to the MNA or the IRiESP Balancing;

12.2.2.10 in all other cases – upon twelve (12) months as from the notification of the Exiting NEMO.

Should any of the above terms be shortened due to an applicable Legal Provision, this shortened term shall apply.

12.3 Forced Exit / Suspension

12.3.1 Without prejudice to Article 20 [Dispute resolution], NEMO's rights and obligations under the MNA Operational Agreement may be suspended or a NEMO may be forced to Exit the MNA Operational Agreement, without any court intervention, if decided so by PSE in consultation with URE (subject to URE's right to deny such consultation) and with an effective date and duration as decided by PSE (it being understood that the concerned NEMO will be able to defend its case but not take part to the decision making process concerning its Exit or suspension) in the following circumstances:

12.3.1.1 loss of NEMO's designation in Poland or loss of the right to offer day-ahead and intraday trading services in the Polish bidding zone;

12.3.1.2 in the event of threat of bankruptcy or any other insolvency proceeding, dissolution or liquidation of a NEMO;

12.3.1.3 in case of material breach of the Regulation, IRIESP Balancing or CACM by a NEMO, should such material breach not be remedied within fifteen (15) Working Days (or another period, as decided by PSE, not shorter than 15 Working Days) of a written notice thereof.

12.3.2 Without prejudice to Article 20 [Dispute resolution], the consequences of suspension and any forced Exit shall be decided by PSE, in consultation with URE (subject to URE's right to deny such consultation). The consequences will be laid down in the Exit Plan.

12.3.3 In any case when PSE requests URE for consultation, lack of URE's response to PSE's request within twenty (20) Working Days from submission of such request shall be deemed as a denial of consultation.

12.3.4 For the avoidance of doubt dispute settlement does not affect the effectiveness of PSE's decision. However PSE (it being understood that the concerned NEMO will not take part to the decision making process concerning its Exit or suspension) may decide, at its own discretion, to suspend the decision under this Article 12.3 in case of dispute settlement (as in Article 20).

12.4 Exit Plan and consequences of Exit

12.4.1 In case of an Exit, PSE and the remaining NEMOs shall ensure as reasonably as possible the continuity of Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone.

12.4.2 In such case, PSE shall define and deliver to NEMOs an exit plan, setting forth the actions and measures to be taken to ensure the continuity of Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone (the "**Exit Plan**"). The Exit Plan shall take into account the consequences of the Exit, including, but not limited to, the following:

- assessment of the changes to be taken, for pursuing Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone without the Exiting NEMO;
- continuity of Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone shall be ensured as reasonably as possible;
- Exit shall be as smooth as possible, with the aim of reducing the risk of possible disruptions for PSE and remaining NEMOs;
- the concrete date on which the Exit shall become effective, according to the abovementioned timescales.

- 12.4.3 The Exiting NEMO shall, in accordance with this Exit Plan, assist PSE and the remaining NEMOs to enable continuity of Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone and to enable migration of the services it performs or the documentation or information it provides, if needed.
- 12.4.4 The Exiting NEMO shall in no event object to the solutions implemented in the Exit Plan to ensure the continuity of Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone.
- 12.4.5 As of the date on which the Exit has become effective as determined in the Exit Plan in accordance with Article 12.4.2, any co-owned Intellectual Property Rights, as defined in Article 7.2.1., of the Exiting NEMO pertaining to joint developments, shall automatically terminate for such Exiting NEMO, it being understood that any share in co-ownership rights shall automatically be transferred to PSE and subsequently retransferred among PSE and other NEMOs in equal parts, without any compensation being due.
- 12.4.6 In case of Exit, the Parties are authorized to communicate about this Exit with their NRA (and ACER as the case may be) without this constituting a breach of confidentiality as defined in Article 14 [Confidentiality].

ARTICLE 13 REGULATORY ASPECTS

- 13.1 In cases where a request from competent authority concerning or falling in the scope of the MNA OA and affecting Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone, is received by PSE or a NEMO, the Party shall inform the other Party of the content of such request.
- 13.2 A Party shall cooperate to respond adequately, consistently and promptly to a request for information another Party receives from any competent authority (administrative, judicial or other) in relation to the MNA OA or to Single Day-Ahead Coupling or Single Intraday Coupling in the Polish bidding zone including when such request for information relates to several Parties. In such event the relevant Party shall provide the other Party upon its request with the relevant information it detains subject to the application of the relevant provisions of Article 14 [Confidentiality]. A Party may object to providing information or narrow down the information to be provided to the extent the authority requesting the information has no competence over such Party.
- 13.3 Should a request from competent authority lead to the need to amend the Regulation, Article 19 [Amendment of the Regulation / Amendment of the Accession Form] shall be applicable.
- 13.4 In case a request referring to the matters falling within the scope determined in Article 13.1, affects DAOA or IDOA, Parties will escalate this request to be handled in accordance with DAOA or IDOA.

ARTICLE 14 CONFIDENTIALITY

14.1 Confidential Information

For the purpose of this Article, the term “**Confidential Information**” means any information whether or not marked as confidential exchanged between the Parties in relation to the MNA OA or in execution of the MNA OA (in particular an Application and an Accession Form) in any

form whatsoever (verbal, written, electronic or other), such as, but not limited to, technical, financial, commercial, testing or operating data.

14.2 Non-Disclosure of Confidential Information

14.2.1 The Receiving Party shall not:

14.2.1.1 disclose, convey or transfer to any third party Confidential Information in any form whatsoever without the express, prior written consent (including by email) of the Disclosing Party;

14.2.1.2 use the Confidential Information in any way or for any purpose other than related to performance of the MNA OA (the "**Permitted Purpose**") unless such other use is previously and specifically authorised in writing (including by email) by the Disclosing Party;

14.2.1.3 incorporate Confidential Information into data, documents, databases, or any other medium save to the extent necessary for the Permitted Purpose unless the Disclosing Party gives its prior written explicit consent (including by email) to this incorporation;

14.2.1.4 copy nor reproduce Confidential Information in any form whatsoever except as may be strictly necessary for the Permitted Purpose.

14.2.2 By derogation to Article 14.2.1, the Receiving Party is entitled to disclose Confidential Information in the following limited exceptional situations:

14.2.2.1 if it demonstrates to the satisfaction of each Disclosing Party by written evidence that the information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards each Disclosing Party. The concerned Disclosing Party shall, within seven (7) Working Days, inform the Receiving Party that it may disclose the Confidential Information on the basis of this Article 14.2.2.1. Upon expiry of this time limit, the consent of the concerned Disclosing Party to the disclosure shall be deemed as granted;

14.2.2.2 if it demonstrates to the satisfaction of each Disclosing Party by written evidence that the Confidential Information has come into the public domain through no fault or negligence of the Receiving Party. The concerned Disclosing Party shall, within seven (7) Working Days, inform the Receiving Party that it may disclose the Confidential Information on the basis of this Article 14.2.2.2 Upon expiry of this time limit, the consent of the concerned Disclosing Party to the disclosure shall be deemed as granted;

14.2.2.3 in the event the disclosure is required by law or by a competent authority provided that the conditions of Article 14.4 are fulfilled;

14.2.2.4 in the event of disclosure to its Internal Representative or to its External Representative provided that the following conditions are jointly met:

- i. the Internal Representative or External Representative has a definite need to know such information for the execution of its assignment which must be related to the Permitted Purpose;
- ii. the Internal Representative or an External Representative is informed by the Receiving Party of the confidential nature of the Confidential Information;
- iii. the Internal Representative or an External Representative is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Regulation;

- iv. the Receiving Party has sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorized use or disclosure of such Confidential Information by its Internal or External Representatives to whom Confidential Information is disclosed; and
- v. the Receiving Party shall remain fully liable (subject to the liability rules further set forth in Article 17 of this Regulation) in case of breach of confidentiality obligation by its Internal or External Representatives.

For the avoidance of doubt, the Parties confirm that the Disclosure of Confidential Information in the circumstances foreseen under this Article 14.2.2 does not affect the confidential character of the Confidential Information so exchanged.

In the event of doubt as to the fulfilment of the conditions under which Confidential Information may be disclosed pursuant to this Article 14.2.2, Confidential Information shall not be disclosed.

14.2.3 The Receiving Party shall:

14.2.3.1 immediately notify the Disclosing Party in writing (including by e-mail) in the event of any unauthorised use or disclosure of the Confidential Information and take all reasonable steps to mitigate any harmful effects the Disclosing Party may sustain or incur as a result of such a breach of the MNA OA;

14.2.3.2 at the first written request of a Disclosing Party, immediately, and in any case no later than ten (10) Working Days after receipt of the written request (including by e-mail) return or destroy at the choice of the Receiving Party all Confidential Information received in relation to the MNA OA except in cases of Article 14.2.2.1 and Article 14.2.2.2, and in case of PSE except for allowed use foreseen in Article 7.3.3 and except that a copy may be kept only:

- i. in the event of a national mandatory statutory law obligation incumbent on the Receiving Party to transfer its archives, including Confidential Information, to the state archives, from which it cannot deviate;
- ii. if necessary to comply with mandatory record-keeping obligations (i.e. obligations set up by national law or EU law) incumbent on the Receiving Party from which it cannot deviate; or
- iii. if the destruction of automatically generated back-up files would involve a disproportionate effort provided that the content of these back-up files is not disclosed to any person and the Receiving Party undertakes to destroy all back-up files in the routine deletion of back-up files.

Furthermore, the Receiving Party shall inform the Disclosing Party in writing if it intends to invoke any of the exceptions listed above under (i) to (iii) and demonstrate to the satisfaction of each Disclosing Party that the conditions of the relevant exception are met.

14.2.3.3 indemnify the Disclosing Party against any third party claim in case of proven breach of obligations set forth in this Article 14, subject to liability principles and limitations set forth in Article 17 of this Regulation.

14.2.4 The Receiving Party shall take all necessary and appropriate measures and procedures to enforce and maintain the protection of Confidential Information and to prevent any disclosure of it.

14.3 Return or destruction of Confidential Information

- 14.3.1 In case determined in Article 16 [Revocation of the Regulation] or in case a NEMO is exiting the MNA Operational Agreement, the Party or respectively the Exiting NEMO being the Receiving Party, shall return, upon PSE's request, the Confidential Information to the Disclosing Party or destroy it. Exceptions foreseen in Article 14.2.3.2 are respectively applicable.
- 14.3.2 In case of destruction mentioned in Article 14.2.3.2 and Article 14.3.1, the Receiving Party shall confirm the destruction of the Confidential Information (by emails or in writing). Furthermore, the Receiving Party shall inform the Disclosing Party in writing if it intends to invoke any of the exceptions listed in Article 14.3.1 and demonstrate to the satisfaction of each Disclosing Party that the conditions of the relevant exception are met.

14.4 Disclosing to authorities under applicable laws and regulations

- 14.4.1 Subject to Article 14.4.2 and Article 14.4.3, if the Receiving Party is requested to disclose all or any part of the Confidential Information pursuant to an applicable law or regulation or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or if the Receiving Party considers itself (themselves) to be under a legal obligation to disclose all or part of the Confidential Information it may disclose Confidential Information provided that in such case the Receiving Party shall, to the extent possible:
- 14.4.1.1 immediately and in any case prior to proceeding with any disclosure, notify the Disclosing Party of the existence, terms and circumstances surrounding such request or legal obligation;
- 14.4.1.2 consult with the Disclosing Party on the advisability of taking available legal steps to resist or narrow such request or legal obligation or permit the Disclosing Party to take such legal steps itself and exercise its best efforts to agree with them on the content and form of the Confidential Information to be disclosed; and
- 14.4.1.3 if disclosure of such Confidential Information is required, use its best efforts to obtain an order or other reliable assurance, if such order or reliable assurance can be obtained, that confidential treatment shall be accorded to such portion of the Confidential Information to be disclosed.
- 14.4.2 The Parties are aware of the fact that Poland is subject to acts relating to the right of access by the public, under certain conditions, to documents held by public authorities and public undertakings (so-called "freedom of information acts") and may therefore be forced to disclose some information pertaining to such Party. The same shall apply in case similar legal regimes exist in other jurisdictions applicable to NEMOs. Without prejudice to the foregoing provisions of this Article 14, any Party subject to such a disclosure obligation shall use its best efforts to ensure that no Confidential Information is disclosed during the course of complying with such obligation, including by (in consultation with the Disclosing Parties where it is reasonable for it to do so) redacting all such Confidential Information from any materials or documents (in whatever form) prior to such disclosure, so that sharing of Confidential Information is avoided.
- 14.4.3 Each Receiving Party is entitled to disclose Confidential Information to its NRA provided that such NRA is informed by the Receiving Party of the confidential nature of the Confidential Information and the Disclosing Parties shall be informed by the Receiving Party about such

disclosure. In such case conditions of disclosure set forth in Article 14.4.1 shall not be applicable.

ARTICLE 15 ENTRY INTO FORCE

- 15.1 This Regulation shall enter into force as of 12th November 2019
- 15.2 The contractual relationship under MNA OA between PSE and each NEMO is effective upon the Accession Day in accordance with Article 9.6.

ARTICLE 16 REVOCATION OF THE REGULATION

- 16.1 The Regulation may be revoked by PSE, with effect on the MNA Operational Agreements between PSE and each NEMO, in the following circumstances:
 - 16.1.1 If PSE loses its TSO certification, license or authorisation;
 - 16.1.2 In case of bankruptcy of PSE;
 - 16.1.3 In case of loss of binding force of the MNA;
 - 16.1.4 In case no NEMO is a Party to a MNA Operational Agreement ;
 - 16.1.5 In case when Single Day-Ahead Coupling and Single Intraday Coupling may not be performed in the Polish bidding zone in accordance with this Regulation, due to external reasons including Legal Provisions.
- 16.2 In case PSE revokes the Regulation, PSE shall duly inform the NEMOs, the market participants and the competent regulatory authorities on the revocation as well as actions and measures to be taken thereon.
- 16.3 On the day the Regulation loses its binding force, all MNA OAs expire with immediate effect.

ARTICLE 17 LIABILITY

17.1 Generalities

Except otherwise stipulated in this Regulation, each Party is liable for its own commitments only.

17.2 Liability between the Parties

- 17.2.1 Each Party to the MNA Operational Agreement shall be liable for the damages caused by the Party unless stated otherwise in this Regulation.
- 17.2.2 Irrespective of the legal basis, the liability of each Party shall be limited as follows:
 - i. Claims for damages arising out of or related to MNA Operational Agreement are limited to normal consequences of the actions or omissions from which the damage arised (PL - *normalne następstwa działania lub zaniechania, z którego szkoda wynikła*);
 - ii. Each Party's liability is limited to the losses incurred by the injured Party. Accordingly, no Party is liable for any loss of profit, loss of business or any other indirect incidental, special or consequential damages of any kind. However, this does not apply to damages resulting from a violation of confidentiality obligation under Article 14.

17.2.3 Irrespective of the legal basis and contrary to Article 17.2.2, the liability of each Party shall not be limited or excluded if:

- i. the damages were caused by gross negligence or willful misconduct;
- ii. a Party is liable for injuries to or death of employees of another Party.

17.2.4 PSE shall perform nominations of XBID results on behalf of a NEMO or on behalf of its CCP in SIDC. In case of incorrect, incomplete or late XBID cross border nomination performed by PSE due to its own fault, PSE shall bear liability for all imbalance costs caused by such incorrect, incomplete or late XBID cross border nomination performed by PSE in SIDC, in accordance with Appendix 6.

17.3 Third party claims

In the event a third party puts forward a claim against a Party, this Party may - deviating from Article 17.2.1 - only have recourse against another Party as set forth in this Paragraph:

17.3.1 If a third party is entitled to claim damages from a Party (the **"Defending Party"**) pursuant to a final and effective court decision, even if the respective damages were caused due to another Party's fault (the **"Breaching Party"**), the Breaching Party shall only be obliged to compensate the Defending Party as follows:

17.3.1.1 The Breaching Party shall compensate the Defending Party only to the extent the Defending Party is required to compensate the third party for damages being normal consequences of the actions or omissions from which the damage arised (PL - *normalne następstwa działania lub zaniechania, z którego szkoda wynikła*).

17.3.1.2 The Breaching Party shall be required to compensate the Defending Party for the necessary statutory court costs.

17.3.1.3 If, however, the Breaching Party caused the damages of the third party by gross negligence or willful misconduct, the limitation of the right to internal recourse as set forth in this Article 17.3.1. is not applicable. The Defending Party shall then have the right to full internal recourse against the Breaching Party.

17.3.2 In the situations set forth in Article 17.3.1 to the extent relating to damages being normal consequences of the actions or omissions from which the damage arised, the Defending Party may acknowledge or settle such third party claim only with prior written consent of the Breaching Party. In case of such approved acknowledgment or settlement, a final and effective court decision is not required to determine the liability of the Breaching Party according to Article 17.3.1.

17.4 Total Cap

17.4.1 In no circumstances will any Party's liability, irrespective whether between the Parties or following third party claims exceed three hundred thousand (300.000) Euros per calendar year.

17.4.2 The abovementioned limitation of liability shall not be applicable in the following cases:

- i. In the event of fraud or intentional breach;
- ii. In case of financial liability for imbalance, whether caused by PSE or a NEMO or its CCP;
- iii. In case of financial liability for settlement of Congestion Income, whether caused by PSE or a NEMO or its CCP;
- iv. In case when Legal Provision in force forbids limiting or excluding liability arising under performance of MNA OA.

17.5 Mitigation Obligation

The Breaching Party and the Party suffering damage shall mitigate damage occurring, in particular, but not limited to, damage towards market participants.

17.6 Subrogation

Any Party shall be entitled to subrogate its insurance company to its rights and obligations under this Regulation against the Breaching Party, who, by adhering to the MNA Operational Agreement, is deemed to agree with this subrogation.

17.7 Conflict of liability

In case of a conflict of liability arising under the MNA Operational Agreement and liability under DAOA or IDOA, Parties agree to settle the liability of the Party respectively under DAOA or IDOA (it being understood that the liability provisions of DAOA or IDOA, when applicable, prevail over this Article 17).

ARTICLE 18 FORCE MAJEURE

18.1 Without prejudice to article 72 of CACM, no Party shall be liable for delay or failure in fulfilling its obligations under this Regulation or non-compliance with this Regulation if the delay, failure or non-compliance results from Force Majeure.

18.2 Upon occurrence of Force Majeure, the Party seeking protection under this clause shall notify the other Party in writing as soon as possible. The notice shall contain a description of the event constituting Force Majeure, of the obligations that the notifying party can no longer perform, of the steps it is taking to overcome the effects of the Force Majeure event and of the probable duration of this event of Force Majeure.

18.3 The obligations of the Party affected by Force Majeure shall be suspended for the period during which the Force Majeure lasts.

18.4 The Party invoking Force Majeure shall take all measures which may reasonably be required to resume the performance of its obligations under this Regulation as quickly as practicably possible.

18.5 The Parties shall, if necessary, jointly examine the measures to be taken to limit the effect of Force Majeure.

18.6 If Force Majeure continues for two (2) consecutive months following the notice under Article 18.2, the NEMO that has invoked Force Majeure shall be entitled to Exit from the MNA Operational Agreement (under the terms and conditions of Article 12 [Exit / Suspension]) immediately upon notice to be notified in writing and provided that it demonstrates that:

18.6.1 the event of Force Majeure invoked in the notice under Article 18.2 prevents the performance by it of its obligations under this Regulation which are to be considered as essential obligations under this Regulation; and

18.6.2 it has taken all reasonable measures to remedy such Force Majeure but it is impossible to remedy it by such reasonable measures.

ARTICLE 19 AMENDMENT OF THE REGULATION / AMENDMENT OF THE ACCESSION FORM

19.1 General principles

- 19.1.1 Subject to Articles 19.2 to 19.4, an amendment or modification of the Regulation is subject to the process as follows:
- 19.1.1.1 PSE proposes a draft revision of the Regulation at any time at its own initiative or upon justified request of a NEMO, particularly in case when such revision is necessary due to modification of the MNA or the IRIESP.
 - 19.1.1.2 In case a NEMO proposes revision of the Regulation, it shall submit a draft of the revision together with its appropriate justification.
 - 19.1.1.3 PSE shall submit a draft of the revision of the Regulation to the NEMOs with relevant justification. Each NEMO shall be entitled to present its position on the draft revision within thirty (30) days from the day of receiving of the draft, unless PSE and the NEMOs unanimously decide otherwise.
 - 19.1.1.4 PSE shall assess the NEMOs' remarks and shall notify the NEMOs on the acceptance or refusal of acceptance (if justified) thereof.
 - 19.1.1.5 If decided by PSE as justified to reaching a compromise, an additional exchange of Parties positions may be triggered.
 - 19.1.1.6 PSE shall deliver to the NEMOs a final draft revision of the Regulation (with relevant justification) with a written notice of change by registered letter with acknowledgement of receipt.
- 19.1.2 Amendments and modifications of this Regulation determined in final revision of the Regulation mentioned in Article 19.1.1 enter into force on the date indicated in the notice of change sent by PSE to the NEMOs, not earlier than upon lapse of one (1) month from the date of sending of the notice of change to the NEMOs, unless PSE and the NEMOs unanimously decide otherwise. Consolidated version of Regulation (including respective Appendixes) taking into account that amendment and modifications is made available in accordance with Article 21.5.1.
- 19.1.3 NEMO objecting to the final proposal of the revision of the Regulation and a notice of change has a right to Exit or initiate dispute resolution procedure in accordance with Article 20 [Dispute resolution]. For the avoidance of doubt dispute settlement does not affect the effectiveness of the amendments and modifications of this Regulation. However PSE may, at its own discretion, decide to suspend the entry into force in case of dispute settlement is initiated.
- 19.1.4 In the event that potential liability issues among NEMOs deriving from their cooperation in Polish bidding zone within the scope of SDAC or SIDC, are identified, such issues will be resolved with adequate means, in particular by a dedicated side letter agreement to the MNA OA concluded among PSE and relevant NEMOs.
- 19.2 Amendment due to Legal Provisions
- 19.2.1 In the event an amendment of this Regulation is required pursuant to a Legal Provision (including changes thereof), the Party to which such Legal Provision apply, shall assess and identify the impact of such Legal Provision on this Regulation and notify the other Party to the MNA Operational Agreement as soon as reasonably possible. In this notification, it shall be set forth which Article of this Regulation is or will be affected by such Legal Provision and the reasons and background as to why an amendment of this Regulation is required.
 - 19.2.2 The Party performing the impact assessment as referred to in Article 19.2.1 shall make a proposal for an amendment with alternative wording in order to comply with such Legal

Provision, which alternative wording shall, as far as reasonably possible, preserve the initial contractual equilibrium and economic effect of the Regulation.

19.2.3 Notwithstanding the obligations of the Parties under this Article, all Parties shall take all steps reasonably required to mitigate the effect of such Legal Provision.

19.2.4 The proposal for an amendment as referred to in Article 19.2.1 of this Regulation, is proceeded in accordance with Article 19.1.1.

19.3 Amendment of the Appendices

19.3.1 Amendment of Appendix 2 and Appendix 5

Notwithstanding rules of amendments set forth above, amendment of Appendix 2 and Appendix 5 is subject to procedure set forth in Appendix 7 (Change control procedure). The consultation process referred to in Article 19.1.1 is substituted by the procedure specified in Appendix 7, save that, in the event that the Parties cannot agree on the proposed amendment of Appendix 2 or Appendix 5, the amendment process set forth in Article 19.1 applies.

19.3.2 Amendment of Appendix 3 and Appendix 4

Notwithstanding rules of amendments set forth above, PSE shall have a right to revise Appendix 3 (template of the Application) and Appendix 4 (template of the Accession Form) at any time at its own discretion. In such case Article 19.1 and Article 19.2 are not applicable and relevant amendment enters into force on the date indicated in the notice of change sent by PSE to the NEMOs, not earlier than upon lapse of two (2) weeks from the date of sending of the notice of change to the NEMOs. Amended versions of Appendix 3 or Appendix 4 are sent by PSE to NEMOs by registered letter with acknowledgement of receipt.

19.3.3 Amendment of Appendix 8

Appendix 8 (Shipping configuration in the Polish bidding zone) shall be amended by PSE every time when the configuration is changed due to the information indicated in a NEMO's Application Form. In such case Article 19.1 and Article 19.2 are not applicable and relevant amendment applies from the date of entry into force of the relevant Accession Form or an amendment to an Accession Form. Amended version of Appendix 8 is sent by PSE to NEMOs by registered letter with acknowledgement of receipt.

19.4 Amendment of the Accession Form

19.4.1 Amendments to this Regulation made after respective Accession Day shall be binding on the Parties to the MNA Operational Agreement without the necessity to sign any annex to the Accession Form. This does not exclude the obligation of the Parties to conclude an annex to the Accession Form in cases referred to in Article 19.4.3.

19.4.2 Amendments to the MNA or the IRiESP Balancing shall be binding on the Parties to the MNA Operational Agreement without the necessity to sign any annex to the Accession Form upon its entry into force according to relevant decision of URE. This does not exclude the obligation of the Parties to conclude an annex to the Accession Form in case referred to in Article 19.4.3.7.

19.4.3 Amendment of the Accession Form is done in following circumstances:

19.4.3.1 change of NEMO's or PSE's contact details indicated in Accession Form signed in accordance with Article 9, which must be communicated to the other Party,

19.4.3.2 in case a non-operational NEMO intends to become an operational NEMO,

- 19.4.3.3 in case NEMO intends to change a model of performance of NEMO's obligations as described in Article 4.3 or in Article 4.5,
 - 19.4.3.4 in case NEMO intends to change a NEMO's CCP or a party performing shipping service (Shipping Agent) as described in Article 4.6,
 - 19.4.3.5 in case NEMO intends to change kind of coupling declared in accordance with Article 9.2,
 - 19.4.3.6 in case this Regulation is amended in accordance with art. 19.1 or Article 19.2 which will cause the necessity to adjust the provisions of the Accession Form to the above amendment, if NEMO will not exercise the right to Exit in accordance with Article 12.2.2.8 and Article 19.1.3,
 - 19.4.3.7 in case the MNA or the IRiESP Balancing are amended (as foreseen in Article 19.4.2) which will cause the necessity to adjust the provisions of the Accession Form to the above amendment, if NEMO will not exercise the right to Exit in accordance with Article 12.2.2.9,
 - 19.4.3.8 any other cases when amendment of the Accession Form is necessary for proper implementation of the purpose of the Regulation as set forth in Article 1 [Purpose and scope of the Regulation].
- 19.4.4 In case an amendment of the Accession Form is justified in accordance with Article 19.4.3 PSE prepares and submits to NEMO an annex to Accession Form amending its relevant provisions. NEMO undertakes to sign and deliver to PSE an annex to the Accession Form no later than ten (10) Working Days from the date of its receipt, unless otherwise agreed between PSE and respective NEMO.
- 19.4.5 Irrespective of the date of signing and delivery of an annex to the Accession Form, the relevant annex enters into force:
- 19.4.5.1 on the date of entry into force of the amendment of this Regulation in accordance with Article 19.1.2, unless otherwise agreed between PSE and respective NEMO;
 - 19.4.5.2 on the date of entry into force of the amendment of the MNA or the IRiESP Balancing in accordance with relevant decision of URE;
 - 19.4.5.3 in all other cases – upon last signature of an annex to Accession Form, unless otherwise agreed between PSE and respective NEMO.

ARTICLE 20 DISPUTE RESOLUTION

20.1 Amicable settlement

- 20.1.1 Any dispute arising under, in connection to or in the scope of the MNA Operational Agreement (including, for the avoidance of doubt, a dispute related to the validity of the MNA Operational Agreement) between PSE and a NEMO (hereafter the **"Dispute"**) shall be subject to the provisions hereafter. Disputes between NEMOs in connection to or in the scope of the MNA Operational Agreement are out of the scope of this Regulation.
- 20.1.2 In the event of a Dispute arising between PSE and a NEMO, the Parties (the **"Disputing Parties"**) shall attempt to settle such Disputes in the first instance by mutual discussions conducted over a period of not less than fifteen (15) Working Days and of no more than forty (40) Working Days (the **"Amicable Settlement Period"**), such a period starting from the first notification in writing thereto by one of the Parties to the other Party.

- 20.1.3 In the course of Amicable Settlement Period Disputing Party may submit its Dispute to URE to seek a guidance, especially in case the Dispute directly concerns a regulatory issue such as the implementation of a regulatory Legal Provisions. In this case, Amicable Settlement Period is suspended. To the extent the Parties would receive a non-binding opinion from URE (the “**URE Opinion**”), the Disputing Parties shall endeavor to achieve an amicable settlement based on such URE Opinion. In case Disputing Parties do not receive the URE Opinion within a timeframe of one (1) month from submitting relevant request to URE, the Amicable Settlement Period is resumed.
- 20.1.4 Any amicable settlement reached shall only be effective and binding for the Disputing Parties to it, provided it is laid down into a binding written settlement contract, signed by the Disputing Parties participating in the concerned amicable settlement.
- 20.1.5 During the Amicable Settlement Period, the Parties are entitled to apply injunctive relief in summary proceedings (“*wniosek o udzielenie zabezpieczenia*”) before the common court competent for Śródmieście district in Warsaw, Poland.

20.2 Court settlement

In case the Dispute cannot be settled amicably between the Disputing Parties in accordance with Article 20.1. the Dispute shall be submitted to the exclusive competence of the common court competent for Śródmieście district in Warsaw, Poland.

20.3 Conflict of disputes

In case of a Dispute arising under the MNA Operational Agreement which is at the same time a dispute under DAOA or IDOA, Parties agree to settle the dispute respectively under DAOA or IDOA.

ARTICLE 21 MISCELLANEOUS

21.1 Notices

- 21.1.1 Unless otherwise stated in the Regulation, notices required under the main text of this Regulation shall be served in writing (either by registered letter, courier, regular mail, email, fax) and in English or Polish to the persons indicated in the Accession Form signed by a relevant NEMO. The use of the English language is however without prejudice to the fact that legal concepts in this Regulation are to be understood as civil law concepts of Polish Law (and not as common law concepts or any other).
- 21.1.2 Communication required under the Appendix 2 and Appendix 2a shall be served in accordance with these Annexes and Accession Form signed by a respective NEMO (in accordance with Article 9).
- 21.1.3 Service of notices mentioned in Article 21.1.1 shall be deemed effective:
- 21.1.3.1 by fax: at the date the transmission is received by (legible) receipt. The burden of proving the receipt shall be on the sender (regular fax transmission report issued by the dispatching fax machine);
 - 21.1.3.2 by email: at the date when the email sent by the sender is indicated as delivered to the recipient or when the recipient acknowledges the receipt of it;
 - 21.1.3.3 by registered letter or courier: at the date when the mail sent by the sender is delivered as evidenced by the receipt.

21.1.4 In case notice mentioned in Article 21.1.1 is received via means as indicated in Article 21.1.3.1 and 21.1.3.2 on a Working Day after 5 PM CET or on a day which is not a Working Day, the notice is deemed given and effective at 9 AM CET on the first following Working Day.

21.2 Severability

Without prejudice to Article 20.2, in case one or more provisions of this Regulation are declared invalid, illegal or unenforceable under any applicable law or public policy, the validity, legality and enforceability of the remaining provisions of this Regulation shall not be affected and they shall remain in full force and effect as long as the economic or legal substance of this Regulation is not affected.

The Parties shall as soon as possible negotiate a legally valid replacement provision with the same economic effect as the invalid/illegal/unenforceable provision.

21.3 Non waiver

The failure or delay of any Party to exercise any right or remedy under this Agreement shall not be considered as a final waiver of it.

21.4 Language of the Regulation

This Regulation is executed in English. The Regulation can be executed also in Polish language version. In case the Regulation is executed in two language versions, should differences or contradictions exist between the Polish version and English version of Regulation (main body and any of the Appendixes), the terms and conditions of the Polish version shall prevail.

21.5 Availability of the Regulation

21.5.1 The Regulation and each amendment of the Regulation (with consolidated version) hereof, with exception to Appendix 2, Appendix 2a, Appendix 5, Appendix 7 and Appendix 8 is available in English or in Polish (if the Regulation is executed in Polish language version) on PSE internet site www.pse.pl.

21.5.2 Appendix 2, Appendix 2a, Appendix 5, Appendix 7 and Appendix 8 are confidential documents subject to provisions of Article 14 [Confidentiality].

21.6 Governing law

This Regulation is governed by and construed in all its aspects in accordance with the laws of Poland, without regard to the conflict of law principles of it.

21.7 Assignment of NEMO's rights and obligations

21.7.1 NEMO's rights and obligations under this Regulation shall be transferable only upon prior written consent of PSE, which consent shall not be unreasonably withheld, conditioned or delayed. Article 9 [Accession Process] shall be applicable accordingly.

21.7.2 The MNA Operational Agreement shall be binding upon and inure to the benefit of the Parties and their permitted assignees or their legal successors upon fulfilment of conditions set forth in Article 21.7.1.

21.7.3 In the event a change of control of a NEMO occurs, this Party shall, as soon as reasonably possible (taking into account the confidential and sensitive nature of such transactions), notify in writing the other Parties of it.

21.8 Interpretation

- 21.8.1 No provision of this Regulation shall be interpreted adversely against PSE solely because PSE was responsible for drafting the Regulation. Words denoting the singular may where the context requires include the plural and vice versa. Words denoting one gender shall include another gender.
- 21.8.2 The headings of Articles, paragraphs, subparagraphs or Appendixes are inserted for convenience only and do not affect their interpretation.
- 21.8.3 Any reference to any agreement, rule, enactment, statutory provision, regulation or code or any subdivision or provision of it shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced.
- 21.8.4 All references to Articles or Appendixes refer to the corresponding Articles or Appendixes of this Regulation as amended, supplemented or modified from time to time, in accordance with Article 19 [Amendment of the Regulation] unless otherwise specified.
- 21.8.5 All references to the term "person" shall refer to any individual, company, entity, business, trust, partnership, joint venture or other person whatsoever, in the broadest meaning of the word.

21.9 General Data Protection Regulation (GDPR)

Any personal data exchange between Parties in relation to the MNA OA is processed in accordance with Legal Provisions (including GDPR) and only for the purpose of this Regulation, including managing the contractual relationship amongst PSE and NEMOs.

APPENDIX 1 DEFINITIONS

Accession Day	as defined in Article 9.6
Accession Form	an accession form to the MNA Operational Agreement under the Regulation filled by a NEMO in accordance with model form included in Appendix 4 and signed by NEMO and PSE in accordance with Article 9
ACER	Agency for Cooperation of Energy Regulators
Amicable Settlement Period	as defined in Article 20.1.2
Application	application for accession to the Regulation filled by a NEMO in accordance with model form included in Appendix 3
Breaching Party	as defined in Article 17.3.1
CACM	Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management
CCP	Central Counter Party; the entity or entities with the task of entering into contracts with market participants, by novation of the contracts resulting from the matching process, and of organising the transfer of net positions resulting from capacity allocation with other central counter parties or shipping agents
Confidential Information	as defined in Article 14.1

Congestion Income	the revenues received as a result of capacity allocation
DAOA	Single Day-Ahead Coupling Operations Agreement entered into between the Transmission System Operators and the NEMOs on 28 th March 2019, as amended afterwards
Decoupling	as defined in Article 5 of MNA
Defending Party	as defined in Article 17.3.1
Dispute	as defined in Article 20.1.1
Disputing Parties	as defined in Article 20.1.2
Energy Law	Act of 10 April 1997 The Energy Law (Journal of Laws of 2018 Item 755)
Exit	as defined in Article 12.1
Exit Plan	as defined in Article 12.4.2
Exiting NEMO	as defined in Article 12.2.1
External Representative	means the subcontractors, agents, lawyers, professional advisors, external consultants, insurers, financiers or any other entity designated by a Party in relation to the Single Day-Ahead Coupling or Single Intraday Coupling on the territory of the Republic of Poland;

<p>Force Majeure</p>	<p>any unforeseeable or unusual event or situation beyond the reasonable control of a Party, and not due to a fault of the Party, which cannot be avoided or overcome with reasonable foresight and diligence, which cannot be solved by measures which are from a technical, financial or economic point of view reasonably possible for the Party, which has actually happened and is objectively verifiable, and which makes it impossible for the Party to fulfil, temporarily or permanently, its obligations in accordance with this Regulation</p>
<p>IDOA</p>	<p>Intraday Operations Agreement entered into between the Transmission System Operators and the NEMOs on June 12th 2018, as amended afterwards</p>
<p>Intellectual Property Rights</p>	<p>any and all manifestation of creative activity of individual nature, established in any form, irrespective of its value, designation or manner of expression as defined in Law on Copyright and Related Acts (Journal of Laws of 2018, Item 1191)</p>
<p>Internal Representative</p>	<p>means the directors, members of management, officers, legal representatives and employees of a Party including of the companies under the Party's control or of the company(ies) which control (solely or jointly) such Party</p>
<p>IRiESP Balancing</p>	<p>Instruction of Transmission System Operation and Maintenance – System Balancing and Congestion Management; Any reference in this Regulation to IRiESP Balancing shall be treated as reference to the Terms and Conditions related to Balancing from the date of its entry into force, as foreseen in Article 3.1.3</p>

Legal Provision	Any applicable mandatory (including public policy) legislation or regulation or any mandatory decision of a competent authority, including the terms, conditions and methodologies as required under such legislation or regulation related to the subject matter of the Regulation deriving from Polish Law or European Law
Local Arrangements	means: (a) any agreement or consensus of opinion, whether in writing or orally; or (b) any Legal Provision or decision, which applies to a subset of the Parties (as well as third parties as the case may be)
MNA	Conditions for cross-zonal capacity allocation and other necessary mechanisms to support operation of more than one NEMO in Poland
MNA Operational Agreement or MNA OA	A contractual bilateral relationship between PSE and each NEMO separately concluded upon completing the accession process as set forth in Article 9, on the Accession Day, for an indefinite period of time under terms and conditions specified in the Regulation with its Appendixes, the MNA, the IRIESP Balancing and the Accession Form.
NEMO	nominated electricity market operators participating in Single Day-Ahead Coupling and Single Intraday Coupling in the Polish bidding zone
NRA	a relevant national regulatory authority
Parties	PSE and a NEMOs which entered into the MNA OA under terms and conditions specified in the

	Regulation with its Appendixes, the MNA, the IRiESP Balancing and the Accession Form
Permitted Purpose	as defined in Article 14.2.1.2
PSE	a company under the business name Polskie Sieci Elektroenergetyczne S.A. having its registered office at Warszawska 165, 05-520 Konstancin-Jeziorna registered in the National Court Register held by District Court for the Capital City of Warsaw, 14th Commercial Department of the National Court Register under number KRS 0000197596 and the share capital of 9.605.473.000,00 PLN paid in full amount
Regulation	the Regulation implementing Conditions for cross-zonal capacity allocation and other necessary mechanisms to support operation of more than one NEMO in Poland including Appendixes thereto
Single Day-Ahead Coupling (SDAC)	the auctioning process where collected orders are matched and cross-zonal capacity is allocated simultaneously for different bidding zones in the day-ahead market
Single Intraday Coupling (SIDC)	the continuous process where collected orders are matched and cross-zonal capacity is allocated simultaneously for different bidding zones in the intraday market
Shipping Agent	the entity or entities with the task of transferring net positions between different central counter parties
TSO	Transmission System Operator

URE	Urząd Regulacji Energetyki (Energy Regulatory Office in Poland)
URE Opinion	as defined in Article 20.1.3
Working Day	A day between Monday through Friday with exception to statutory holidays in Poland and August 14th