

MODIFICATION PROPOSAL FORM			
Proposer (Company)	Date of receipt (assigned by Secretariat)	Type of Proposal (delete as appropriate)	Modification Proposal ID (assigned by Secretariat)
SEMO	13 th September 2024	Urgent	Mod_06_24
Contact Details for Modification Proposal Originator			
Name	Telephone number	Email address	
Katia Compagnoni		balancingmodifications@semo.com	
Modification Proposal Title			
SEMO preparatory actions for Art13.7 CEP judicial orders			
Documents affected (delete as appropriate)	Section(s) Affected	Version number of T&SC or AP used in Drafting	
T&SC Part B	Section H	V28	
Explanation of Proposed Change (mandatory by originator)			
<p>The SEMC Decision SEM 22-009, which related in part to Article 13 of Regulation (EU) 2019/943, was challenged by way of judicial review in the Irish High Court, which Court delivered its judgment on 10 November 2023 (the “High Court judgment”). The High Court delivered a subsequent judgment on the Orders on 1 July 2024 and granted a stay on the judgment and the Orders until the return date of 11 October 2024. The CRU, as the Respondent in the judicial review proceedings, is appealing the High Court ruling and Orders.</p> <p>If the High Court judgment and Orders come into effect, the Transmission System Operators (TSOs) (i.e., EirGrid and SONI) will be required to pay compensation under Article 13(7) of Regulation (EU) 2019/943. To ensure that the requisite monies are collected for this purpose, the TSOs have calculated the cost of paying such compensation. The amount calculated includes €158 million from 1 January 2020 to 30 September 2025, to be paid as compensation up to market price level, based on various assumptions. It is proposed that this money (and potentially monies from 1st October 2025) be collected through Imperfections Charges to help meet any future obligations which may arise, without prejudice to the facts that the High Court judgment and Orders are being appealed and that there is currently a stay on the judgment and Orders. No payments would be made until the proceedings have concluded unless a further stay is not granted until the conclusion of the proceedings. Also, a regulatory approved calculation methodology and payment mechanism is required to be in place.</p> <p>The SEMC consulted on the Imperfections Charges for Tariff Year 2024/2025 (i.e., 01/10/2024 to 30/9/2025). The SEMC decision on Imperfections Charges was published on 10 September 2024. The TSOs’ ‘Imperfections Charges Forecast Tariff Year 2024/2025’ includes a provision for potential payments to market participants under Article 13(7) of Regulation (EU) 2019/943, in the context of the High Court judgment and the ongoing legal proceedings (the “Clean Energy Package Provision”).</p> <p>The Clean Energy Package Provision that has been requested for the Tariff Year 2024/2025 includes the funds for the potential historical compensation for the period 01/01/2020 until 30/09/2024 (subject to the outcome of the appeal of the High Court judgment) and the funds for the potential future compensation for the Tariff Year 2024/2025.</p> <p>Under this modification proposal, it is proposed that, as the approved Imperfections Charges for Tariff Year 2024/2025 includes a Clean Energy Package Provision, that the funds collected should be ring-fenced and held on trust for potential beneficiaries to ensure that they are available to meet any future obligations if and when they arise, without prejudice and subject to the appeal of the High Court judgment.</p>			

To ensure the funds collected for the Clean Energy Package Provision through Imperfections Charges are ring-fenced for this purpose and to facilitate the transparent management of the funds, the MO proposes the following changes to the Trading and Settlement Code (T&SC):

- Create a new MO bank account type in € and £ and outline how funds would be held in that account.
- Outline how the funds to be ring-fenced will be calculated.
- Outline how the funds will be paid into and released from the new MO bank account.
- Provide that the Available Working Capital Amount and the Working Capital Account under F.22 will not include funds collected for the Clean Energy Package Provision.
- Arrangements are proposed to be included in Section H, as they are interim arrangements pending the final conclusion of the legal process.

The MO is requesting the RAs and the Committee to treat this as an urgent Modification to allow it be effective before the Clean Energy Package Provision starts to be collected from the 1st Oct 2024. Payments for Settlement Documents pertaining to the 1st of October will be received by October 17th.

Legal Drafting Change

*(Clearly show proposed code change using **tracked** changes, if proposer fails to identify changes, please indicate best estimate of potential changes)*

Insert new section H.19 in the Part B of the Trading & Settlement Code, as below:

H.19 TEMPORARY ARRANGEMENTS IN RESPECT OF PROVISION FOR CLEAN ENERGY PACKAGE (the “CEP”)

H.19.1 Application

H.19.1.1 This section H.19 shall apply [from 1 October 2024] until the Mod XX Deployment Date (as defined in H.19.2).

H.19.2 Definitions

H.19.2.1 The following definitions will apply for the purposes of this section H.19:

- (a) **Annual CEP Amount** means the provision for potential payments of CEP Compensation for a Year as determined by the Regulatory Authorities.
- (b) **CEP Account** means the account or accounts in the name of the Market Operator (holding as trustee on the trusts set out in section H.19.4) with the SEM Bank to which CEP Amounts are to be paid in accordance with section H.19.6 and from which the Market Operator shall release funds in accordance with section H.19.7.
- (c) **CEP Amount** means, in respect of a Billing Period, the Annual CEP Amount divided by the total number of Billing Periods in the Year.
- (d) **CEP Compensation** means the financial compensation under Article 13(7) of Regulation (EU) 2019/943 as determined by the Regulatory Authorities subject to the ongoing appeal(s) of the High Court Judgement for the period from 01/01/2020 until an enduring solution has been implemented in the Code
- (e) **CEP Compensation Recipients** means those persons that may be entitled to CEP Compensation.

(f) **High Court Judgment** means the Irish High Court's judgment of 10 November 2023 (No. 2022/507JR and No. 2022/501JR).

(g) **Mod XX Deployment Date** means the date approved by the Regulatory Authorities for the purpose of H.19.1, such date to be published on the Market Operator web site at least three Working Days in advance of the date concerned.

H.19.3 Banking Arrangements

H.19.3.1 The Market Operator shall establish and operate in accordance with the Code:

(a) a euro CEP Account at a branch of the SEM Bank in Ireland; and

(b) a pounds sterling CEP Account at a branch of the SEM Bank in the United Kingdom,

to which all CEP Amounts calculated in accordance with this Code are to be paid and from which the Market Operator shall release funds in accordance with Section H.19.7. Each CEP Account shall be an interest bearing account. Interest can be negative or positive.

H.19.3.2 Any interest credited and or debited on amounts held in the CEP Accounts shall accrue and shall be part of the amounts held in those accounts for the purposes of payment of CEP Compensation as established in the trust under H.19.4.

H.19.3.3 For the avoidance of doubt, the Market Operator will not have any responsibility or liability for any loss or shortfall arising as a result of negative interest rates applying to any of the CEP Accounts.

H.19.3.4 Subject to the provisions of this Section H.19 and unless authorised by a decision of the Regulatory Authorities, the Market Operator shall not commingle or transfer any funds standing to the CEP Accounts with its own personal or any other funds or accounts, including the Available Working Capital under Section F.22. This is without prejudice to the Market Operator's rights to transfer funds between the euro and pounds sterling CEP Accounts for the purpose of CEP Compensation.

H.19.3.5 The Market Operator shall maintain detailed ledger accounts of all funds held in the CEP Accounts showing all monies paid in and paid out and shall keep all such information in respect of any CEP Compensation Recipient confidential to the extent required. Notwithstanding the foregoing, the Market Operator shall be entitled to disclose any information or data in relation to CEP Accounts to the Market Auditor or a Revenue Authority where required or where otherwise required by Applicable Law.

H.19.4 Establishment of Trusts in the CEP Accounts

H.19.4.1 The Market Operator shall hold all monies from time to time standing to the credit of each CEP Account and such rights (including, all rights of action within the limits authorised by the Code) as shall from time to time be vested in it on trust for CEP Compensation Recipients in accordance with their individual respective proportionate entitlements as they arise in accordance with the CEP Compensation.

H.19.4.2 The respective rights of the CEP Compensation Recipients to the assets held by the Market Operator on trust in the CEP Accounts as provided for in paragraph H.19.4.1 shall be determined in accordance with the Code and in accordance with the following principles:

- (a) the extent of each CEP Compensation Recipient's individual rights shall be deemed to consist of the aggregate of the claims (to the extent not paid or otherwise settled) of such CEP Compensation Recipient, as determined in accordance with a regulatory approved calculation methodology; and
- (b) the assets referred to in paragraph H.19.4.1 above may be deemed to consist of such series of funds as may be determined in accordance with a regulatory approved calculation methodology.

The Market Operator shall not be obliged to segregate monies within the CEP Accounts into separate funds.

H.19.4.3 Except as expressly provided for in the Code, each CEP Compensation Recipient waives any right it might otherwise have to set off against any obligation owed to the Market Operator, the SEM Bank or any other CEP Compensation Recipients, any claims such CEP Compensation Recipient may have to or in respect of any monies standing to the credit of the relevant CEP Account.

H.19.4.4 Except as expressly provided for in this Code, no CEP Compensation Recipient shall enter into any arrangements which assign or charge or purport to assign or charge any interest any CEP Compensation Recipient may have in the CEP Account.

H.19.4.5 The trusts shall terminate when all monies have been paid out of the CEP Account in accordance with section H.19.7 and the Mod XX Deployment Date has occurred.

H.19.4.6 The provisions of section 10(2)(c) of the Trustee Act, 1893 shall not apply to any change in the identity of the Market Operator.

H.19.4.7 No CEP Compensation Recipient shall have any claim against the Market Operator for breach of trust or fiduciary duty by the Market Operator under the Code except in the case of reckless or wilful misconduct.

H.19.5 Calculation of CEP Amount

H.19.5.1 The Market Operator shall calculate the CEP Amount for each Billing Period.

H.19.6 Payments to CEP Account

H.19.6.1 The Market Operator shall, subject to the provisions of this section H.19, pay the CEP Amount (as calculated by the Market Operator in accordance with H.19.5) from the SEM Account to the CEP Account after each Billing Period.

H.19.7 Payments from CEP Account

H.19.7.1 The Market Operator shall pay monies from the CEP Account for the purpose of CEP Compensation (to the extent applicable) in accordance with any decision of the Regulatory Authorities and this section H.19.

H.19.8 Payment Deferral

H.19.8.1 The Market Operator shall not be required to make payments from the CEP Account until a regulatory calculation methodology and payment mechanism have been determined and approved.

H.19.8.2 The Market Operator shall not be required to make payments from the CEP Account in respect of any period to the extent that doing so would result in the monies standing to the credit of the CEP Account for that period being negative and, so far as practicable and mutatis mutandis, the provisions of section F.22.3 shall apply.

H.19.9 Available Working Capital Amount

H.19.9.1 For the purposes of calculating the Available Working Capital Amount for each Billing Period under F.22.2.2, the Market Operator shall deduct the CEP Amount for the relevant Billing Period.

H.19.10 Working Capital Account

H.19.9.1 For the purposes of calculating the Working Capital Account for each Billing Period under F.22.2.1, the Market Operator shall deduct the CEP Amount for the relevant Billing Period from the total amount of Settlement Charges.

Modification Proposal Justification

(Clearly state the reason for the Modification)

To ensure that funds collected through the Imperfection Charges for potential payments under Article 13(7) of Regulation (EU)2019 / 943, in the context of the ongoing judicial review proceedings in Ireland of SEMC decision SEM/22/009, are ring-fenced and available to meet any potential liability. The creation of new MO accounts also gives certainty in respect of the financial impact to the market and allows the funds to be held in trust in a transparent way.

Code Objectives Furthered

(State the Code Objectives the Proposal furthers, see Section 1.3 of Part A and/or Section A.2.1.4 of Part B of the T&SC for Code Objectives)

The code objectives furthered by this Modification are the following:

- to facilitate the efficient discharge by the Market Operator of the obligations imposed upon it by its Market Operator Licences;
- to facilitate the efficient, economic and coordinated operation, administration and development of the Single Electricity Market in a financially secure manner;
-
- (e) to provide transparency in the operation of the Single Electricity Market;

Implication of not implementing the Modification Proposal
(State the possible outcomes should the Modification Proposal not be implemented)

If not properly ring-fenced, funds collected through Imperfection Charges for potential payments under Article 13(7) of Regulation (EU) 2019/943, in the context of the ongoing judicial review proceedings in Ireland of SEMC decision SEM/22/009, may not in fact be available to meet any potential liability if and when such liability crystallises.

There is a risk that the funds could be paid out to participants in the usual course during the current tariff year or in a subsequent tariff year. This could result in an onerous burden on consumers if funds were required to be collected in a subsequent tariff year and uncertainty in respect of the ability of the MO to make the necessary funds available to the beneficiaries.

Working Group <i>(State if Working Group considered necessary to develop proposal)</i>	Impacts <i>(Indicate the impacts on systems, resources, processes and/or procedures; also indicate impacts on any other Market Code such as Capacity Market Code, Grid Code, Exchange Rules etc.)</i>
	No system impact, however resources in Finance will have to manage the set up and maintain the new accounts and [potentially] update the SEM Bank contract [to include the new accounts].

Please return this form to Secretariat by email to balancingmodifications@sem-o.com

Notes on completing Modification Proposal Form:

1. If a person submits a Modification Proposal on behalf of another person, that person who proposes the material of the change should be identified on the Modification Proposal Form as the Modification Proposal Originator.
2. Any person raising a Modification Proposal shall ensure that their proposal is clear and substantiated with the appropriate detail including the way in which it furthers the Code Objectives to enable it to be fully considered by the Modifications Committee.
3. Each Modification Proposal will include a draft text of the proposed Modification to the Code unless, if raising a Provisional Modification Proposal whereby legal drafting text is not imperative.
4. For the purposes of this Modification Proposal Form, the following terms shall have the following meanings:

Agreed Procedure(s):	means the detailed procedures to be followed by Parties in performing their obligations and functions under the Code as listed in either Part A or Part B Appendix D "List of Agreed Procedures". The Proposer will need to specify whether the Agreed Procedure to modify refers to Part A, Part B or both.
T&SC / Code:	means the Trading and Settlement Code for the Single Electricity Market. The Proposer will also need to specify whether all Part A, Part B, Part C of the Code or a subset of these, are affected by the proposed Modification;
Modification Proposal:	means the proposal to modify the Code as set out in the attached form
Derivative Work:	means any text or work which incorporates or contains all or part of the Modification Proposal or any adaptation, abridgement, expansion or other modification of the Modification Proposal

The terms "Market Operator", "Modifications Committee" and "Regulatory Authorities" shall have the meanings assigned to those terms in the Code.

In consideration for the right to submit, and have the Modification Proposal assessed in accordance with the terms of Section 2 of Part A or Chapter B of Part B of the Code (and Part A Agreed Procedure 12 or Part B Agreed Procedure 12) , which I have read and understand, I agree as follows:

1. I hereby grant a worldwide, perpetual, royalty-free, non-exclusive licence:
 - 1.1 to the Market Operator and the Regulatory Authorities to publish and/or distribute the Modification Proposal for free and unrestricted access;
 - 1.2 to the Regulatory Authorities, the Modifications Committee and each member of the Modifications Committee to amend, adapt, combine, abridge, expand or otherwise modify the Modification Proposal at their sole discretion for the purpose of developing the Modification Proposal in accordance with the Code;
 - 1.3 to the Market Operator and the Regulatory Authorities to incorporate the Modification Proposal into the Code;
 - 1.4 to all Parties to the Code and the Regulatory Authorities to use, reproduce and distribute the Modification Proposal, whether as part of the Code or otherwise, for any purpose arising out of or in connection with the Code.
2. The licences set out in clause 1 shall equally apply to any Derivative Works.
3. I hereby waive in favour of the Parties to the Code and the Regulatory Authorities any and all moral rights I may have arising out of or in connection with the Modification Proposal or any Derivative Works.
4. I hereby warrant that, except where expressly indicated otherwise, I am the owner of the copyright and any other intellectual property and proprietary rights in the Modification Proposal and, where not the owner, I have the requisite permissions to grant the rights set out in this form.
5. I hereby acknowledge that the Modification Proposal may be rejected by the Modifications Committee and/or the Regulatory Authorities and that there is no guarantee that my Modification Proposal will be incorporated into the Code.