



An Coimisiún  
um Rialáil Fóntas  
**Commission for  
Regulation of Utilities**



SEMOpX  
% Michael Kelly  
The Oval  
160 Shelbourne Rd  
Dublin 4

19 July 2018

Our Ref: D/18/11865

**SEM Committee Decision for the Regulatory Authorities in relation to SEMOpX MCF\_06\_18  
(Modification Change Form MCF\_06\_18)**

Dear Michael,

On 26 March 2018, SEMOpX submitted its Modification Change Form with regard to SEMOpX rules Modification Change Form (MCF) 06\_18: Liability Terms in accordance with Paragraph J.4.1.1 of the SEMOpX Rules. MCF\_06\_18 was submitted to the Interim Committee by the SEMOpX on 13 February 2018.

The proposed modification has been raised by SEMOpX to request that an additional liability term is included in the SEMOpX Rules, section G.3.2.

The Regulatory Authorities (RAs) understand that the aim of this proposal is to provide further limitations on the SEMOpX liability to the Exchange Members and sets two financial caps:

- the first applies on a per "Operational Incident" basis and is equal to the greater of: (i) €2,000<sup>1</sup>; and (ii) the Relevant Charges paid by the Exchange Member to SEMOpX in respect of the 40 days preceding the occurrence of the root cause or first event in respect of such Operational Incident;
- the second applies on an annual basis and is equal to the greater of: (i) €6,500; and (ii) one third (1/3) of the Relevant Charges paid by the Exchange Member to SEMOpX in the year that the liability arises.

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<sup>1</sup> In previous drafts of MCF\_06\_18 €1,000 was featured, as the number of days preceding the occurrence was initially 20. As the number of days was changed to 40, due to request by the market participants, the cap was adapted to €2,000.

The modification proposes incorporating these amendments under clauses G.3.2.5 of the SEMOpX Rules to cater for this requirement. The modification also provides definitions for "Operational Incident" and "Relevant Charges".

### **Recommendation of the SEMOpX**

SEMOpX rules MCF\_06\_18 was recommended for approval by the SEMOpX. The Regulatory Authorities (RAs) note that a presentation was made at the Interim SEMOpX Consultative Committee on 13 February 2018 where the provisions of, and supporting rationale for, the proposed modification were discussed. Following the presentation a consultation process was undertaken, giving market participants the opportunity to comment on the proposals. Five participants provided feedback on the proposed change to the Rules. Participants' feedback, and resulting changes to the proposal, were discussed at the Interim Consultative Committee on 14 March 2018.

The RAs note that some of the responses to the consultation are of the view that the clauses included within the current SEMOpX Rules in relation to exclusion of implied warranties and limitations on liability already provide enough protection to SEMOpX and there is no need for further protection in the form of a liability cap. The RAs also note that several respondents suggested the liability risk on SEMOpX should, in principle, be higher.


Following engagement with SEMOpX, further clarification on the following points was received:

- necessity for more than one cap;
- why the proposed caps are appropriate;
- rational behind the link between fees paid and the caps.

On the basis of the further information provided the RAs reached the conclusion that the proposed modification is appropriate. The RAs require SEMOpX to publish the clarification letter sent to the RAs and update appropriately the comments and responses log on their website.

Considering the above, and in accordance with Paragraph J.4.1.1 of the SEMOpX Rules, the SEMC direct that a Modification, as set out in MCF\_06\_18, be made on a Trading Day basis with effect from two Working Days after the date of this letter.

Yours sincerely,



**Barry Hussey,**  
Manager, Wholesale Electricity Markets