
Annex II

Evaluation of responses to the consultation on the Congestion income distribution methodology with all regulatory authorities and TSOs

1 Introduction

Pursuant to Article 9(6)(m) and 73(1) of the CACM Regulation, all TSOs submitted the proposal for Congestion income distribution methodology (CIDM) to their respective regulatory authorities for approval. The proposal was received by the last of the concerned regulatory authorities on 18 August 2016. On 17 February 2017, all regulatory authorities submitted to all TSOs a request for amendment to the proposal. Subsequently, all TSOs submitted to all regulatory authorities the amended proposal ("Proposal"), which was received by the last of the concerned regulatory authorities on 27 April 2017. On 14 June 2017, all regulatory authorities informed the Agency that they have agreed to request the Agency to adopt a decision on the Proposal, pursuant to Article 9(12) of the CACM Regulation, and indicated that the regulatory authorities were able to agree on the key elements of the Proposal to be addressed by the Agency's decision.

From July to September 2017, the Agency organised several web-conferences with all TSOs to discuss the issues raised by all regulatory authorities and subsequently by the Agency. This period of informal consultation continued with the formal consultation involving all TSOs and regulatory authorities lasting from 6 October until 20 October 2017. In the consultation document, the Agency proposed amendments to the Proposal.

This annex contains the summary and the evaluation of the responses received from TSOs and regulatory authorities.

2 Responses

The Agency received the following nine responses to the consultation:

1. AEEGSI
2. CRE
3. CREG
4. E-CONTROL
5. EI
6. ENTSO-E on behalf of all TSOs
7. ILR
8. SEPS
9. URE

The table below is organised according to the proposed amendments in the consultation and provides the respective views from the respondents, as well as the response from the Agency how their comments were taken into account.

Respondent's views	ACER views
General	
1. EI considers that the scope of CIDM should be only to border between EU Member States in order to be compliant with the definition of "Interconnector" and "Congestion" established by Regulation EC 714/2009.	1. Disagree. In the Agency's view, the CIDM should apply to all bidding zone borders defined in the definition of CCRs. A different approach would lead to inconsistencies.
2. ILR considers that CIDM should also include the rules for SIDC. If the CIDM is kept as proposed, then ILR proposed to clarify that, once the clarity about the congestion income generated in SIDC is obtained, TSOs should make a proposal for amendments of CIDM in accordance with Article 9(13) of CACM Regulation.	2. Partly agree. The Agency clarified in the decision that it does not find it reasonable to define the rules for distribution of congestion income from SIDC since currently no congestion income is generated by SIDC and it is not yet known how it will be generated. Nevertheless, the Agency clarified in the recitals of the CIDM that once sufficient clarity is obtained, the CIDM should be amended to include also provisions for distribution of congestion income from SIDC.
3. ILR propose to extend the scope of CIDM to all TSOs and not just to certified TSOs. CREOS should be considered by this methodology, but it is not a certified TSO as Article 9 of Directive EC/72/2009 does not apply to Luxembourg.	3. Agree. The Agency has removed the reference to certified TSOs.
External flows in FB CCRs	
1. ENTSO-E propose to amend the definition of external flow to reflect the main purpose to balance the regional net position of the bidding zones in case these net positions are not equal to the sum of AAFs. ENTSO-E also proposes to add a definition on the external flow value.	1. Partly agree. The Agency agrees with the amendment of the definition of external flow. The Agency considers that the proposal for a definition of external flow value is not needed since the external flow should not be considered as something deviating from the general principles of congestion income distribution. Instead, the external flow should be considered commercial flow for which the

Respondent's views	ACER views
	general rules (i.e. commercial flow multiplied with the market spread) still apply.
2. ENTSO-E and AEEGSI propose to clarify that in FB CCRs the net positions used for calculation of AAFs and external flows are not global net positions but instead the net positions resulting from exchanges within a CCR.	2. Agree. The Agency agrees and introduces the term “regional net position” to indicate the net position resulting from exchanges within a CCR.
3. ENTSO-E propose to introduce a flexibility by which the bidding zone borders having external flows may decide to share part of the congestion income generated by external flows with other bidding zones in the CCR. These bidding zones would define the percentage that is shared with other bidding zones in the CCR and with which bidding zones the value is to be shared.	3. Disagree. The proposal is not acceptable because: - it does not specify such deviations (i.e. which bidding zones will deviate from the general rule); - it does not provide adequate justification for such deviations. The fact that such deviation would mimic existing agreement cannot be considered as a sufficient justification. Justification would need to be based on more substantial grounds. - it imposes the obligations on bidding zones rather than on entities (i.e. TSOs)
4. CRE asked for concrete example for calculation of external flows in order to be able to better comprehend the proposal at hand.	4. Partly agree. The Agency would also welcome concrete examples from TSOs, however, it considers that such examples are not a prerequisite for making a decision on this issue.
5. CREG raised objections to the proposal that congestion income generated by external flows are to be allocated to the TSOs of bidding zones having external flows. Their reasons for objections were the following:	5. Disagree. The Agency has evaluated these comments and concluded that they are not sufficiently strong to justify defining the CWE rule as a default rule or as a deviation from the general rule. In particular:

Respondent's views	ACER views
(a) existing CWE CID rules agreed by all CWE parties specify that 50% of external flows are distributed proportionally among all bidding zone borders of the CWE region; (b) The CWE CID rules are more fair, since the congestion income is generated by external flows, which to a certain extent use the interconnectors on other, internal bidding zone borders as well. Exchanges between FR and DE partly flow through CH, but also through BE and NL; (c) Proposed 50/50 sharing key for congestion income generated by external flows results, for those TSOs on the external borders, in the same congestion income as would be the case if CH would be part of the CCR. As the CH part of congestion income cannot be attributed to CH it is fair to share it among all TSOs; and (d) The rule proposed by ACER would reduce the congestion income for Belgian TSO in overall for 17.9 % in 2016.	a) Existing sub-regional arrangements are not necessary a solid justification for the application of an EU-wide methodology. CWE FB needs to be replaced with new arrangements compliant with the CACM Regulation. b) In the Agency's understanding, external flows do not use BE and NL interconnectors. In FB approach, the market coupling algorithm calculates net positions of bidding zones, but not exchanges between bidding zones or on bidding zone borders. These are identified only when converting the net positions into commercial flows on the borders (i.e. AAFs and external flows). This means that AAF on BE and NL borders already accounts for the flows from all exchanges between all bidding zones in a CCR (including the trade between DE and FR bidding zones). c) Under the assumption that CH would be part of SDAC, the flows on FR-CH and DE-CH borders would be considered as commercial flows between FR and CH and between DE and FR. However, in case CH is not participating in SDAC, there are no commercial flows between FR and CH and between DE- and CH. Instead, external flows represent commercial flows between FR and DE, since the underlying trade is only between CWE bidding zones. d) The Agency took into account this concern.

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6. ILR proposed some amendments to better clarify the definitions and the procedure to calculate external flows.	6. Agree. The Agency took those suggestions into account.
7. SEPS provided some clarifications on the procedure to calculate external flows. They relate to the clarity of calculating the PTDF (i.e. PTDF should specify whether it is calculated as zone-to-zone, zone-to-hub or zone-to-reference zone) and the clarity in calculating the price of the virtual hub.	7. Partly agree. The Agency considers the CACM definition of a PTDF sufficiently clear to enable its unambiguous application (the CACM definition of a PTDF requires a reference node or zone for the calculation of PTDF). With regard to the calculation of the price of virtual hub, the Agency made amendments, which clarify that the price of virtual hub is the price that minimises the value of the formula specified in Article 3(4) of the CIDM.
Remuneration of LTTRs	
1. ENTSO-E proposed an additional Article to include the sharing of costs of remuneration of LTTRs. According to ENTSO-E, this is needed to ensure that no TSO will be faced with negative congestion income once the costs of remuneration have been paid.	1. Disagree. Sharing of the costs of remuneration of LTTRs is outside the scope of the CIDM and should be covered by the methodology pursuant to FCA Regulation. Nevertheless, the Agency acknowledges the concerns of TSOs with this respect and has introduced a specific recital, which emphasises the importance of maintaining the revenue adequacy of each TSO when remunerating LTTRs. Thus, the TSOs that receive the congestion income from LTTRs that have been reallocated at the SDAC should also bear a proportional part of the costs for remuneration of those LTTRs. This principle should be reflected in the methodology for sharing costs incurred to ensure firmness and remuneration of long-term

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	transmission rights in accordance with Article 61(3) of the FCA Regulation.
2. E-Control finds it important to preserve a rule establishing a link between the remuneration of LTTRs and CI from day-ahead market coupling either in the CIDM or in another methodology.	2. Agree. See point 1.
3. Ei proposes to delete all provisions on the remuneration of LTTRs including the netting of remuneration costs to determine the final congestion income from SDAC. Ei is against socialisation of LTTR remuneration costs.	3. Partly disagree. The Agency considers that those TSOs which have issued LTTRs in a CCR in a coordinated way, should together guarantee the remuneration of LTTRs.
4. CREG acknowledged that all NRAs have made a position that sharing of the costs of LTTRs is not within the scope of CIDM. However, CREG asks the Agency to clearly uphold the principle of socialisation of costs of remuneration of LTTR within a CCR in order to ensure that no TSO would have negative congestion income after it has paid out the costs for remuneration of LTTRs.	4. Agree. This principle is emphasised in the recitals of the CIDM.
5. AEEGSI commented that perhaps the remuneration of LTTRs should be done before the sharing of the congestion income and the remaining income should then be subject to distribution according to CIDM.	5. Partly agree. While in practice this may be applied as suggested. Legally the construction of this process is such that TSOs share all of the congestion income received at day-ahead timeframe pursuant to the CIDM and in parallel share the costs of remuneration of LTTRs pursuant to a methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights in accordance with Article 61(3) of the FCA Regulation.
Non-intuitive flows	

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1. E-control and CRE support the conversion of negative congestion income due to non-intuitive flows into a positive congestion income and the subsequent readjustment of congestion income in a CCR.	1. Agree. The Agency has evaluated different options and concluded that no better option exists for treating the non-intuitive flows.	
2. AEEGSI does not see any rationale to set negative congestion income to positive since in this case the congestion income is not attributed to the borders with congestions but is instead seen as the distribution of welfare arising from cross-zonal trade.	2. Partly agree. While the TSO proposal indeed lacks proper justification, the Agency could not find a better and more justified proposal. TSOs and NRAs also did not make any proposals for a better solution.	
Allocation constraints		
1. ENTSO-E proposed to add additional rules for sharing congestion income due to allocation constraints. These rules would address the case where import or export limits would cause a negative congestion income on one border and a higher congestion income on the other border. This problem would not be solved with the general rules for the treatment of non-intuitive flows (i.e. setting the negative income on the border to a positive one and redistribute the missing income proportionally between all borders of a CCR), since the problem may be present only in a part of a CCR and across different CCRs.	1. Disagree. The Agency disagrees with the application of allocation constraints across different CCRs, since the need for such allocation constraints imply that the borders in different CCRs are interdependent and should for this very reason be included in the same CCR. Furthermore, the solution proposed by ENTSO-E is considering only one type of allocation constraints (i.e. export or import limits), whereas other types of allocation constraints that may be applied in future are not considered by this proposal.	
2. URE supported the proposal of ENTSO-E to include additional rules on congestion income due to allocation constraints.	2. Disagree. See point 1.	
Distribution of congestion income on bidding zone border		
1. E-Control proposes that the 50-50 sharing of the congestion income on the bidding zone border should be defined as a default key such that if there is no	1. Agree. The Agency made amendments to the Article 5(1) to clarify that the exemptions are limited in scope only to situations reflecting specific investment costs or the	

Respondent's views	ACER views
other specific agreement, the default key is automatically applied. Specific arrangements should be duly justified.	ownership share of the interconnectors and that alternative percentages should match these situations exactly.
2. CRE and ILR raised concerns that TSOs would be able to make an agreement to deviate from the 50-50 sharing key without the involvement and approval of competent NRAs. CRE asks that such deviations should be specified in the annex to CIDM.	2. Partly agree. As indicated in point 1, the Agency provided more clarity in which cases deviations are allowed and fixed the percentages in such cases directly to the already established ratios of investment costs or ownership share. Thus the used percentages cannot deviate from these established ratios. As these previously established ratios were likely already approved by NRAs, these deviations, even if not specified as an Annex to the CIDM, would entail the required level of regulatory scrutiny.
Transparency	
1. ENTSO-E proposed some amendments to the transparency provisions proposed by the Agency. ENTSO-E proposed different requirements for FB and CNTC regions and a publication on a monthly basis.	1. Agree. The Agency finds the publication on a monthly basis reasonable. The Agency also took into account other suggestions from ENTSO-E.