

**REQUEST FOR AMENDMENT BY ALL REGULATORY
AUTHORITIES AGREED AT THE ENERGY
REGULATORS' FORUM**

ON

**THE ALL TSOs' PROPOSAL FOR A CONGESTION
INCOME DISTRIBUTION METHODOLOGY IN
ACCORDANCE WITH ARTICLE 57 OF COMMISSION
REGULATION (EU) 2016/1719 OF 26 SEPTEMBER
2016 ESTABLISHING A GUIDELINE ON FORWARD
CAPACITY ALLOCATION**

29 November 2018

I. Introduction and legal context

This document elaborates an agreement of all regulatory authorities on the “All TSOs’ Proposal for a Congestion Income Distribution Methodology (CIDM) in accordance with Article 57 of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (FCA / Regulation 2016/1719)”.

This agreement shall provide evidence that a decision on the FCA CIDM does not, at this stage, need to be adopted by ACER pursuant to Article 4(10) of Regulation 2016/1719. This agreement is intended to constitute the basis upon which all regulatory authorities will subsequently – and each individually – request their respective TSO(s) to amend the proposal as described in this document and in accordance with Article 4(11) of Regulation 2016/1719.

The legal provisions relevant to the submission and approval of the proposal and this regulatory authorities’ agreement on requesting an amendment to the proposal can be found in Articles 3, 4 and 57 of Regulation 2016/1719. They are quoted here for reference.

Article 3 of Regulation 2016/1719:

“This Regulation aims at:

- (a) promoting effective long-term cross-zonal trade with long-term cross-zonal hedging opportunities for market participants;*
- (b) optimising the calculation and allocation of long-term cross-zonal capacity;*
- (c) providing non-discriminatory access to long-term cross-zonal capacity;*
- (d) ensuring fair and non-discriminatory treatment of TSOs, the Agency, regulatory authorities and market participants;*
- (e) respecting the need for a fair and orderly forward capacity allocation and orderly price formation;*
- (f) ensuring and enhancing the transparency and reliability of information on forward capacity allocation;*
- (g) contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union.”*

Article 4 of Regulation 2016/1719:

- 1. „TSOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO, the participating TSOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, shall regularly inform the competent regulatory authorities and the Agency about the progress of developing these terms and conditions or methodologies.*
- 2. to 7. (...)*
- 8. The proposal for terms and conditions or methodologies shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of this Regulation. Proposals on terms and conditions or methodologies subject to the approval by several or all regulatory authorities shall be submitted to the Agency at the same time that they are submitted to regulatory authorities. Upon request by the competent regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.*

9. *Where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order reach an agreement. Where applicable, the competent regulatory authorities shall take into account the opinion of the Agency. Regulatory authorities shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6 and 7, within six months following the receipt of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.*
10. *Where the regulatory authorities have not been able to reach an agreement within the period referred to in paragraph 9, or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009.*
11. *In the event that one or several regulatory authorities request an amendment to approve the terms and conditions or methodologies submitted in accordance with paragraphs 6 and 7, the relevant TSOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the regulatory authorities. The competent regulatory authorities shall decide on the amended terms and conditions or methodologies within two months following their submission. Where the competent regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies pursuant to paragraphs 6 and 7 within the two-month deadline, or upon their joint request, the Agency shall adopt a decision concerning the amended terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 713/2009. If the relevant TSOs fail to submit a proposal for amended terms and conditions or methodologies, the procedure provided for in paragraph 4 shall apply.*
12. (...)
13. *TSOs responsible for establishing the terms and conditions or methodologies in accordance with this Regulation shall publish them on the internet after approval by the competent regulatory authorities or, if no such approval is required, after their establishment, except where such information is considered as confidential in accordance with Article 7.”*

Article 57 of Regulation 2016/1719 on the congestion income distribution methodology:

- “1. *Within six months after the approval of the methodology for sharing congestion income referred to in Article 9(6) of Regulation (EU) 2015/1222, all TSOs shall jointly develop a proposal for a methodology for sharing congestion income from forward capacity allocation.*
2. *When developing the methodology referred to in paragraph 1, TSOs shall take into account the methodology for sharing congestion income developed in accordance with Article 73 of Regulation (EU) 2015/1222.*
3. *When developing the methodology for sharing congestion income from forward capacity allocation, the requirements set in Article 73 of Regulation (EU) 2015/1222 shall apply.”*

II. Process

The draft FCA CIDM proposal was not publicly consulted by ENTSO-E, as Article 6(1) of Regulation 2016/1719 does not require TSOs to do so for this specific methodology. However, a draft version was shared with regulatory authorities on 8 May 2018 for their (informal) comments. On 18 May 2018, regulatory authorities provided coordinated informal feedback (i.e. some comments, questions and wording suggestions, both in the proposal as well as in its annex) to ENTSO-E.

Although most of all regulatory authorities' informal wording & typo corrections were taken up by ENTSO-E, the few all regulatory authorities' comments and questions on substance were not completely followed up by ENTSO-E (i.e. comments on Articles 4 & 5 and in particular on Annex I).

The all TSOs' FCA CIDM proposal, including an Annex 1 indicating the non-standard sharing keys applied among TSOs at specific bidding zone borders, was received by the last competent regulatory authority on 4 July 2018. As the proposal is currently structured, this Annex 1 is also subject to all regulatory authority approval, since it currently forms an integral part of the proposal.

Article 4(9) of Regulation 2016/1719 requires the competent regulatory authorities to consult and closely cooperate and coordinate with each other in order to reach an agreement, and subsequently take national decisions within six months following the receipt of the proposal by the last concerned regulatory authority. In this case, a national request for amendment based on the agreement reached between the concerned regulatory authorities is therefore formally required by each regulatory authority at the latest by 4 January 2019.

According to Article 4(11) of Regulation 2016/1719 all TSOs addressed in the request for amendment then have two months to submit an amended proposal, which shall be decided upon by all regulatory authorities within a period of another two months.

III. Agreed all regulatory authorities' position

For the reasons outlined further below, all regulatory authorities cannot approve the current FCA CIDM proposal and therefore request the following amendments to the proposal to be incorporated pursuant to Article 4(11) of Regulation 2016/1719:

General comment:

The link with the congestion income distribution methodology developed pursuant to Article 73 of the Commission Regulation (EU) No 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (hereafter "Regulation 2015/1222") should be made clearer in the proposal (e.g. highlighting in the whereas section or in each relevant article where the FCA CIDM follows and/or complements the CACM CIDM specifically, as the current simple reference in the whereas section stating that the requirements of the CACM CIDM apply is not enough.

Whereas section:

The last part of **paragraph (2)** "*[...] and the general principles of congestion income use in Article 16 (6) of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity (hereafter referred to as "Regulation (EC) No 714/2009")*" should be deleted.

This reference does not seem very relevant, because the methodology is not about the use of the congestion rent, but only about the congestion income distribution among the concerned TSOs.

The last sentence of **paragraph (3)** "*[...] The present CID-FCA Methodology Proposal addresses congesting income distribution under a coordinated NTC approach as it is currently the only approach applied by the capacity calculation regions.*" shall be reformulated to "*The present CID-FCA Methodology Proposal addresses congestion income distribution under a*

NTC or coordinated NTC approach as the flow-based approach is currently not applied for long-term capacity calculation by the capacity calculation regions.”

For the sake of clarity, a paragraph should be added stating that in case where in one of the capacity calculation regions (CCRs) the flow-based approach for long-term capacity calculation is implemented, the congestion income distribution methodology shall be - evaluated and, if needed, updated and submitted for regulatory approval according to Article 4(12) of Regulation 2016/1719. This has to be exercised sufficiently in advance of the go-live date of the new capacity calculation method, to ensure that the necessary measures are in place on time.

The second sentence of **paragraph (4)** should be completed in the following way: “The remuneration of LTTRs [please add: *“and the costs to ensure firmness of LTTRs are”*] outside the scope of the CID-FCA methodology...”.

In addition, the first occurrence of the abbreviation “LTTRs” should be spelled out here (i.e. long-term transmission rights (“LTTRs”)).

Furthermore, the meaning and grammar of the last part of the sentence is not fully clear and the sentence should therefore be reformulated.

It would be helpful to also add a clarification in the proposal on what is exactly meant by “revenue adequacy”.

Please also correct the spelling typos for “long-term” in this section and in the articles.

Article 2 – Definitions and interpretation:

Paragraph (1) mentions that terms used in the proposal shall have the same meaning as in various regulations and other methodologies, including the proposal on the Single Allocation Platform (SAP). Since the proposal was already approved by regulatory authorities, it should now be referred to as “the SAP method according to Article 49 (1) of the FCA Regulation” (instead of “SAP proposal”).

Article 3 – Process and calculation of long-term congestion income

The last sentence of **paragraph (1)** indicates that “*The collection of the congestion income shall follow the rules stipulated in the HAR*”. However, such rules cannot be found in the HAR. Thus, all regulatory authorities ask all TSOs to further elaborate on this in the proposal.

Paragraph (3) refers to the “costs for return of long-term transmission rights to be paid in accordance with Article 43 of the FCA Regulation”. However, in Article 43 of Regulation 2016/1719 the term “remuneration” is used instead of costs. For consistency and clarity, the second part of the sentence of paragraph (3) should be revised to read: “[...] *reduced by the remunerations to be paid to the long-term transmission rights holders in accordance with Article 43 of the FCA Regulation.*”

Further in relation to **paragraph (3)**, cases where remuneration of LTTRs exceeds the congestion income assigned to a side of a bidding zone border are not handled in the current proposal. All regulatory authorities request all TSOs to clearly state in the Whereas section that this is not handled in this proposal, but in the one related to Article 61 of the FCA Regulation, as all regulatory authorities requested in their request for amendment regarding the congestion income distribution methodology developed on the framework of Regulation 2015/1222 and as ACER requested it in its decision n°07/2017 of 14 December 2017 (paragraph 5.2.1).

Article 4 – Sharing keys:

The first sentence of **paragraph (1)** currently reads: *“For the bidding zone borders where congestion income was calculated based on allocated long-term capacities...”*. Please clarify the purpose and meaning of this specific mention / limitation (or reformulate the sentence), as it is not clear on what else the long-term congestion income could be based on.

The third sentence of **paragraph (1)** states that *“Such cases may involve, but are not limited to, different ownership shares or different investment costs”*. The open formulation “but are not limited to” shall be deleted and it shall be clearly and exhaustively specified which cases apart from the different ownership shares or investment costs underlie and justify sharing principles. All TSOs should thereby consider the cases deemed acceptable in recital (70) of ACER’s decision 07/2017 on the congestion income distribution methodology developed on the framework of Regulation 2015/1222. In any case the methodology shall qualitatively describe how precisely the deviating sharing keys are determined. The current Annex I with the detailed sharing keys per border should then be omitted from the actual CIDM (i.e. not form an integral part of the methodology to be approved by all regulatory authorities anymore) and the references (e.g. in Article 4) to the Annex I be removed. The table of the current Annex I could then be moved to the explanatory document and published centrally (e.g. on the ENTSO-E website) and reviewed regularly. This way, any changes in the bidding zone borders (e.g. a new interconnector) or ownership structures would not require an all TSO proposal and all regulatory authorities’ approval of the CIDMs anymore. However, TSOs should then ensure that the table listing any deviations from the default sharing key is published centrally (e.g. in the explanatory document or separately on ENTSO’s website) and updated promptly as soon as any changes occur. The publication of this table shall be for information purposes only. The deviating sharing keys within this table must reflect the arrangements contained within an approved FCA CIDM.

To enhance readability and to follow a logical sequence, **paragraph (2)** could be switched with **paragraph (3)**. In any case, the link “subject to paragraph 3” in the beginning of paragraph (2) does not seem to be necessary or logical and should be deleted.

Paragraph (2) specifies that in case of several interconnectors at a bidding zone border, the congestion income shall be assigned first to the respective interconnectors *“based on each interconnector’s contribution to the allocated long-term capacity”*, and that *“the parameters defining the contribution of each interconnector will be agreed by the TSOs on the bidding zone border”*. This formulation is too vague (for example, how is the difference in loss factors handled?) and leaves the decision on this point up to the TSOs, without approval of regulatory authorities, although it is an integral part of the congestion income distribution. Please include in paragraph 2 a precise description of the principles and criteria that will be used to decide on the assignment of the congestion income to the respective interconnectors in case of several interconnectors at a bidding zone border. Please ensure that the parameters defining the contribution of each interconnector are not in contradiction with the principles stated in paragraph (1) of Article 4.

For the current **paragraphs (2) and (3)** a further clarification / explanation is desirable (which could also be provided in the explanatory document): when there are several interconnectors owned by different TSOs on the same border, it would be useful to understand whether LTRs are auctioned separately for each of them or jointly. It seems that both options exist (since Article 4(2) seems to refer to the joint auctions, while Article 4(3) refers to the separate auctioning), but what is the choice criterion for auctioning interconnectors separately or jointly?

The relation of the statements in **paragraph (2)** *“the parameters defining the contribution of each interconnector will be agreed by the TSOs on the bidding zone border”* and **paragraph (4)** *“In case specific interconnectors are owned by entities other than TSOs, the reference to*

TSOs in this article shall be understood as referring to those entities.” is not fully clear. For example, in case where on one border a combination of x TSO-owned and y investor-owned interconnectors exists, who determines the contribution of the interconnectors and the sharing keys applied and how? If this is not the case on any of the borders, please add a respective remark in the Whereas section.

Article 5 – Publication and Implementation:

Paragraph (2) specifies the implementation date to be the same as the one for the capacity calculation methodology in each capacity calculation region or at the implementation date for the cost sharing methodology of Article 61 of the Regulation 2016/1719. Please justify these implementation deadlines and the link to Article 61 further in the explanatory document, as the current explanations (coherency reasons) are not obvious / clear enough.

Further on, a new Article, “Amendment of the Congestion Income (CID) methodology”, shall be added stating that *“Any change of the rules or methodologies related to the CID methodology for a bidding zone border between related TSOs shall lead to an amendment of the present CID methodology in accordance with Article 4(9) of Regulation 2016/1719.”*

Annex 1 – Sharing Keys:

The Annex 1 to the CID-FCA methodology (“Sharing Keys - Annex 1”), which currently forms an integral part of the proposal (cf. references in Article 4 therein), contains a table listing the applied sharing keys among involved TSOs/parties at specific bidding zone borders, if deviating from the standard congestion income distribution (50:50). Article 4(1) of the proposal (as well as chapter IV of the Explanatory Note) state that the Annex 1 also includes the underlying reasons for those specific cases with deviating sharing keys. However, the current Annex 1 does not contain these reasons.

All regulatory authorities therefore request that a further column in the table listing the deviating sharing keys is added, which explains for each sharing key the motivation / reasons for the deviation from the default sharing key (as it was also done in the annex to the CACM CIDM¹ decision).

Further, regulatory authorities request that the second sentence above the table of the deviating sharing keys is removed: *“The information on this table is subject to change and should be considered as an indication of the current arrangements”*. As mentioned above (under Article 4), the criteria and method for the non-default sharing keys (deviating from the 50%-50% principle) shall be described precisely and qualitatively in the methodology, so that the table listing the deviating sharing keys can be separated from the actual CIDM and only the latter requiring an all regulatory authority approval. This table should then be updated by ENTSO-E whenever a change in the non-standard sharing keys occurs (following the CIDM principles to be developed for the non-standard sharing keys in the CIDM for the existing or potential new interconnectors).

In addition, there are several differences in the current Annex 1 compared to an earlier draft version of the proposal and compared to the annex of the CACM CIDM. Please explain (in the explanatory document and per interconnector in a further column in the table listing the deviating sharing keys) the reasons for those changes and differences and justify why the CACM CIDM (annex) was not (yet) amended accordingly.

¹ https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Pages/Annexes-to-the-CIDM-Decision.aspx

IV. Conclusions

For the reasons described above, all regulatory authorities request an amendment of the all TSOs' proposal on the FCA CIDM based on their agreement reached on this document on 29 November 2018 and according to Article 4(11) of Regulation 2016/1719. On this basis, all regulatory authorities need to send their individual national decisions for requesting the amendment to the FCA CIDM to their respective TSO(s) by 4 January 2019. The amended all TSOs' proposal shall take into account the agreed position as stated above in chapter III and shall be submitted by all TSOs to their respective regulatory authorities no later than two months following the request from all regulatory authorities.