

DECISION No 10/2022
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS

of 18 July 2022

**on the TSOs' proposal for amendment to the congestion income
distribution methodology**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 5(2) thereof,

Having regard to Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation², and, in particular, Articles 4(5), 4(6)(e), 4(12) and Article 57 thereof,

Having regard to the outcome of the consultation with the concerned regulatory authorities and transmission system operators,

Having regard to the outcome of the consultation with ACER's Electricity Working Group ('AEWG'),

Having regard to the favourable opinion of the Board of Regulators of 13 July 2022, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

¹ OJ L 158, 14.6.2019, p. 22.

² OJ L 259, 27.9.2016, p. 42.

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (the ‘FCA Regulation’) laid down rules on cross-zonal capacity allocation in the forward markets. These rules include specific requirements for the congestion income distribution methodology.
- (2) The all TSOs’ proposal of 15 March 2019 for a Congestion Income Distribution (CID) methodology in accordance with Article 57 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation Regulation was approved by the national regulatory authorities 23 October 2019 (‘CID-FCA methodology 2019’).
- (3) The present Decision follows from the TSOs’ proposal to amend the CID-FCA methodology 2019 as approved by the national regulatory authorities. Annex I to this Decision sets out the amended CID-FCA methodology 2019, pursuant to Article 57 of the FCA Regulation, as approved by ACER.

2. PROCEDURE

- (4) By email and letter of 26 April 2021, ENTSO-E submitted, on behalf of all TSOs, an ‘*All TSOs proposal for a Congestion Income Distribution (CID) methodology in accordance with Article 57 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation Regulation*’ (the ‘Proposal for amendments’), together with a list of the submitting TSOs, to ACER for approval, pursuant to Article 4(6) of the FCA Regulation. According to this letter, the submission aims to facilitate the applicability of the terms and conditions or methodologies under Article 57 of the FCA Regulation to Finish TSO Fingrid Oyj (‘Fingrid’) as Fingrid’s exemption under Article 30(7) of the FCA Regulation ceased to apply and Fingrid was requested by its national regulatory authority to issue long term transmission rights on one of its bidding zone borders.
- (5) On 19 and 25 May 2022, ACER held virtual meetings with ENTSO-E and representatives of TSOs to discuss the scope and purpose of the submission.
- (6) By email of 1 June 2022, ACER explained to all TSOs that it understood from the submission, including the lists of submitting TSOs, and from the TSOs’ explanations during the meetings on 19 and 25 May 2022 that the submitted all TSOs’ proposal aims to have this proposal, previously already approved by the competent national regulatory authorities, also approved for additional TSOs, in particular Fingrid. In ACER’s view, the all TSOs’ proposal was meant to only amend the scope of application of the concerned approved terms, conditions and methodologies to the effect that they apply also to Fingrid, Kraftnät Åland AB, Svenska Kraftnät AB (‘Svenska Kraftnät’) and Litgrid AB. ACER therefore suggested to concentrate the approval proceedings for the submitted proposal so as to cover only the amendment of the concerned terms, conditions and methodologies with regard to their personal scope of application and the TSOs for which they are approved, reflecting such amendment transparently in the text of the concerned terms, conditions and

methodologies, and asked the TSOs whether they agreed to ACER's understanding and suggested approach to the approval proceedings.

- (7) By email of 3 June 2022, ENTSO-E confirmed that ACER's understanding of the submission of the 26 April 2022 was correct, and that they agreed with the suggested approach to the approval proceedings
- (8) By emails of 3 June 2022, ACER informed all TSOs and all regulatory authorities about its preliminary position and invited them to submit their written input and requests for oral hearings by 10 June 2022.
- (9) By email of 7 June 2022, Svenska Kraftnät informed ACER about its observations on ACER's preliminary position.
- (10) By email of 10 June 2022, ENTSO-E notified to ACER the TSOs' observations on ACER's preliminary position.
- (11) In a virtual meeting on 15 June 2022, ACER and Svenska Kraftnät discussed the scope and purpose of the Proposal for amendment with regard to Svenska Kraftnät.
- (12) On 21 June 2022, ACER submitted a proposal for the draft of this Decision to the AEWG for consultation, and on 27 June 2022 the AEWG responded with its advice.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL FOR AMENDMENT

- (13) According to Article 5(2)(b) of Regulation (EU) 2019/942, proposals for terms and conditions or methodologies, based on network codes and guidelines adopted before 4 July 2019, such as the FCA Regulation, which require the approval of all regulatory authorities, shall be submitted to ACER for revision and approval.
- (14) According to Articles 4(5), 4(6)(e) of the FCA Regulation, the congestion income distribution methodology, pursuant to Article 57 of the same Regulation, shall be subject to approval by ACER.
- (15) According to Article 4(12) of the FCA Regulation, the TSOs responsible for developing a proposal for the congestion income distribution methodology may propose amendments to this methodology to ACER; those proposals for amendments are to be approved in accordance with the procedure set out in Article 4 of the FCA Regulation.
- (16) According to Article 4(5) of the FCA Regulation, ACER, before approving terms and conditions or methodologies, shall revise the proposals where necessary, after consulting the respective TSOs, in order to ensure that they are in line with the purpose of the FCA Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (17) On 26 April 2022, ENTSO-E, on behalf of all TSOs, submitted a proposal concerning the methodology under Article 57 of the FCA Regulation, to ACER for approval.

ACER understands this proposal as one for amending that methodology ('Proposal for amendments').

- (18) Therefore, under the provisions of Article 5(2)(b) of Regulation (EU) 2019/942, in conjunction with Articles 4(5), 4(6)(e) and 4(12) of the FCA Regulation, ACER is competent to adopt a decision on the Proposal for amendment.

4. SUMMARY OF THE PROPOSAL FOR AMENDMENT

- (19) The submitted '*All TSOs proposal for a Congestion Income Distribution (CID) methodology in accordance with Article 57 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation Regulation*' corresponds to the proposal for the congestion income distribution methodology under Article 57 of the FCA Regulation which was approved by the national regulatory authorities by 15 March 2019 ('CID-FCA methodology 2019'). According to the TSOs, this submission aims at making the CID-FCA methodology 2019 applicable to Fingrid. In effect, as confirmed by the TSOs, the submission of the '*All TSOs proposal for a Congestion Income Distribution (CID) methodology in accordance with Article 57 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation Regulation*' is meant to amend the scope of application of the CID-FCA methodology 2019 so that it is extended to Fingrid, while otherwise not modifying the content of the CID-FCA methodology 2019.
- (20) This Proposal for amendments does not suggest a particular wording for amending the CID-FCA methodology 2019. However, the TSOs agreed to ACER's view that this amendment of the scope of application of the CID-FCA methodology 2019 should be reflected by an amendment in the text of the CID-FCA methodology 2019.

5. OBSERVATIONS RECEIVED BY ACER

5.1. Consultation on ACER's preliminary position

- (21) Svenska Kraftnät did not agree with an amendment of the scope of application of the the CID-FCA methodology 2019 to the effect that they apply also to Svenska Kraftnät as according to the decision by the Swedish regulatory authority Svenska Kraftnät should not issue long-term transmission rights and, according to Article 30(7) of the FCA Regulation, the methodologies under Article 57 of the same Regulation do not apply to Svenska kraftnät.
- (22) On behalf of the TSOs, ENTSO-E stated that TSOs did not understand the addition of Kraftnät Åland AB, Svenska Kraftnät and Litgrid AB to the scope of the methodologies as the '*intention, as stated in the recommendation from ACER, is to apply it to Fingrid*', and that TSOs not issuing long term transmission rights due to a decision of the national regulatory authorities according to Article 30(7) of the FCA Regulation were not encompassed by the methodologies exempted under Article 30(7) of the FCA Regulation. ENTSO-E asked to '*extend the scope of the methodology only to Fingrid*'.

- a) In addition, ENTSO-E mentioned that TSOs not issuing LTTRs due to a decision from national regulatory authorities are not encompassed by the Congestion Income Distribution methodology pursuant to Article 57 of the FCA Regulation or the methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights pursuant to Article 61 of the FCA Regulation according to the Article 30(7) of the FCA Regulation.

5.2. Consultation of the AEWG

- (23) The AEWG provided its advice on 27 June 2022, endorsing the draft ACER decision with Annex.
- (24) Following discussions in the AEWG meeting of 21 June 2022, ACER amended the Decision by clarifying the specific bidding zone border on which Fingrid was requested to issue LTTRs by Energiavirasto (see Recital 30). No further amendments were made to the decision following AEWG's advice.

6. ASSESSMENT OF THE PROPOSAL FOR AMENDMENT

6.1. Legal framework

- (25) Articles 4(5) and 4(6)(e) in conjunction with Article 4(12) of the FCA Regulation provide that amendments to the approved congestion income distribution methodology, in accordance with Article 57 of the same Regulation, are subject to approval by ACER.
- (26) Article 57 of the FCA Regulation set out specific requirements for the congestion income distribution methodology. They do not require a consultation of stakeholders on the draft proposals concerning those terms, conditions and methodology.
- (27) Article 30(7) of the FCA Regulation provides that Article 57 of the same Regulation shall not apply to the TSOs of the bidding zone borders in the event that regulatory authorities decide that long-term transmission rights shall not be issued by the respective TSOs or that other long-term cross-zonal hedging products shall be made available by the respective TSOs.

6.2. Assessment of the legal requirements

- (28) The Proposal for amendments only amends the scope of application of the CID-FCA methodology 2019, but otherwise does not amend their content as approved by the national regulatory authorities. Therefore, only this amendment of the scope of application needs to be assessed for approval.
- (29) According to Article 30(7) of the FCA Regulation, Article 57 of the same Regulation apply to all TSOs except those for which regulatory authorities decide that long-term transmission rights shall not be issued by the respective TSOs or that other long-term cross-zonal hedging products shall be made available. Thus, they apply to TSOs which issue long-term transmission rights.

- (30) Since the Finish regulatory authority, Energiavirasto, decided that Fingrid should issue long-term transmission rights on the Finish-Estonian bidding zone border, Article 57 of the FCA Regulation apply also to Fingrid, entailing that the congestion income distribution methodology needs to be approved for and to apply to Fingrid.
- (31) Accordingly, in principle, all TSOs to which Article 57 of the FCA Regulation apply, including Fingrid, should develop and submit a proposal for the congestion income distribution methodology to ACER for approval, in accordance with Article 4 of the FCA Regulation. Where such proposal would only replicate the approved terms, conditions and methodology, ACER considers a proposal with a mere amendment of the scope of application of the terms, conditions and methodology, specifying that they apply also to Fingrid, equally effective to achieve the approval of existing terms, conditions and methodology also for Fingrid.
- (32) Here, the CID-FCA methodology 2019 has been approved, though not for Fingrid. The Proposal for amendments has been submitted by all relevant TSOs and amends the scope of application of the CID-FCA methodology 2019 by extending it to Fingrid, in order to give effect to Article 30(7) of the FCA Regulation with regard to Fingrid. As such, the Proposal for amendments is legally justified under Articles 4, 30(7) and 57 of the FCA Regulation.
- (33) In order to reflect this change in the scope of application transparently in the text of the CID-FCA methodology 2019, ACER found it necessary, after consulting the TSOs and ENTSO-E, to add in the CID-FCA methodology 2019 a new paragraph 6 in Article 1, referring to a new Annex 1, which describes the scope of application and lists the TSOs covered.

7. CONCLUSION

- (34) For all the above reasons, ACER considers the Proposal for amendments as being in line with the requirements of the FCA Regulation, provided that the amendments described in this Decision are integrated in the Proposal for amendments, as presented in Annex I to this Decision. The amendments, which have been consulted with TSOs and ENTSO-E, are necessary to ensure that the Proposal is in line with the purpose of the FCA Regulation and contributes to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (35) Therefore, ACER approves the Proposal for amendments subject to the necessary amendments. To provide clarity, Annex I to this Decision sets out the Proposal for amendments as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The congestion income distribution methodology pursuant to Article 57 of Regulation (EU) 2016/1719 is amended and approved as set out in Annex I to this Decision. .

Article 2

This Decision is addressed to:

50Hertz - 50Hertz Transmission GmbH
Amprion - Amprion GmbH
Augstsprieguma tīkls - AS "Augstsprieguma tīkls"
APG - Austrian Power Grid AG
CNTEE Transelectrica SA – Compania Nationala de Transport al Energiei Electrice
ČEPS - ČEPS a.s.
CREOS Luxembourg - Creos Luxembourg S.A.
Croatian Transmission System Operator Ltd. (HOPS d.o.o.)
EirGrid - EirGrid plc
ESO - Electroenergien Sistemien Operator EAD
Elering - Elering AS
ELES - ELES, d.o.o.
Elia - Elia Transmission Belgium SA/NV
Energinet - Energinet
Fingrid – Fingrid Oyj
IPTO - Independent Power Transmission Operator S.A.
Kraftnät Åland - Kraftnät Åland Ab
LITGRID - Litgrid AB
MAVIR ZRt. - MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság ZRt.
PSE - Polskie Sieci Elektroenergetyczne S.A.
REE - Red Eléctrica de España S.A.
REN - Rede Eléctrica Nacional, S.A.
RTE - Réseau de Transport d'Electricité, S.A.
SEPS - Slovenská elektrizačná prenosová sústava, a.s.
Svenska Kraftnät - Affärsverket svenska kraftnät
SONI - System Operator for Northern Ireland Ltd
TenneT TSO - TenneT TSO B.V.
TenneT GER - TenneT TSO GmbH
Terna S.p.A.
TransnetBW - TransnetBW GmbH
VÜEN - Vorarlberger Übertragungsnetz GmbH

Done at Ljubljana, on 18 July 2022.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I Amendment to the congestion income distribution methodology according to Article 57 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on Forward Capacity Allocation Regulation

In accordance with Article 28 of Regulation (EU) 2019/942, the addressees may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of ACER within two months of the day of notification of this Decision.

In accordance with Article 29 of Regulation (EU) 2019/942, the addressees may bring an action for the annulment before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28 of that Regulation.