

**DECISION No 16/2021**  
**OF THE EUROPEAN UNION AGENCY**  
**FOR THE COOPERATION OF ENERGY REGULATORS**

**of 17 December 2021**

**on the TSOs' proposal for amendment of 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 Regulators ('ACER')<sup>1</sup>, and, in particular, Article 5(2)(b) and Article 5(6) thereof,

Having regard to Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management<sup>2</sup>, and, in particular, Article 9(5), Article 9(6)(m) and Article 9(13) thereof,

Having regard to the outcome of the consultation with the concerned regulatory authorities and transmission system operators ('TSOs') and the European Network of Transmission System Operators for Electricity ('ENTSO-E'),

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 15 December 2021, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

Whereas:

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<sup>1</sup> OJ L158, 14.6.2019, p. 22.

<sup>2</sup> [OJ L 197, 25.7.2015, p. 24](#), as amended by Commission Implementing Regulation (EU) 2021/280 of 22 February 2021, [OJ L 62, 23.2.2021, p. 24](#).

## 1. INTRODUCTION

- (1) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (the ‘CACM Regulation’) laid down a range of requirements for cross-zonal capacity allocation and congestion management in the day-ahead and intraday markets in electricity. In particular, pursuant to Article 73(1) of the CACM Regulation, all transmission system operators (‘all TSOs’) must jointly develop a methodology for distributing among them the congestion income, i.e. revenues received from the capacity allocation within the single day-ahead and intraday coupling. The congestion income distribution methodology (the CID methodology) has been developed in 2017, and submitted to all the regulatory authorities, who, due to a lack of agreement between them, ultimately referred it to ACER for decision. On 14 December 2017, ACER approved the CID methodology.<sup>3</sup>
- (2) Since the entry into force of Regulation (EU) 2019/943, in order to streamline the regulatory approval process, Union-wide terms and conditions or methodologies that are developed under the network codes and guidelines (such as the CID methodology), and any amendments thereof, are now directly submitted to ACER for approval.<sup>4</sup>
- (3) The go-live of the Core flow-based capacity calculation methodology planned for early 2022, the advancement of intraday coupling, in particular the implementation of the intraday auctions, require a number of amendments to the existing CID methodology. In particular, a multi slack hub approach is introduced for regions applying flow-based capacity calculation and the congestion income sharing is extended to the future intraday auctions. Furthermore, where necessary, the CID methodology is aligned with principles as defined by the congestion income distribution methodology according to Article 57 of Commission Regulation (EU) 2016/1719 to ensure consistency across timeframes.
- (4) Accordingly, on 9 July 2021, all TSOs submitted to ACER a proposal for amendment of the CID methodology, which incorporates all the necessary changes given the developments described in paragraph (3) (‘the Proposal’).
- (5) This Decision is issued following ACER’s review and amendment of the Proposal, and includes the following annexes:

Annex I sets out the methodology for the distribution of congestion income, as amended and approved by ACER.

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<sup>3</sup> Decision No 07/2017 of 14 December 2017:  
[https://documents.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Individual%20decisions/ACER%20Decision%2007-2017%20on%20CIDM.pdf](https://documents.acer.europa.eu/Official_documents/Acts_of_the_Agency/Individual%20decisions/ACER%20Decision%2007-2017%20on%20CIDM.pdf)

<sup>4</sup> See Article 5(2)(b) of Regulation (EU) 2019/942.

Annex Ia provides a track-changed version of the Proposal, reflecting ACER's amendments, for information.

## **2. PROCEDURE**

- (6) On 9 July 2021, ENTSO-E submitted the Proposal on behalf of all TSOs to ACER for approval. Additionally, the TSO Baltic Cable AB submitted the same Proposal, thereby joining all TSOs' request for approval, and also expressed its support for the Proposal.<sup>5</sup>
- (7) Between 9 July 2021 and 30 September 2021, ACER engaged in discussions with the TSOs, ENTSO-E and the regulatory authorities. These discussions involved numerous conference calls and electronic exchange of documents, allowing ACER to gather information and form its preliminary position on the Proposal. In particular, these discussions focused on:
  - (i) ACER's assessment framework as described in section 6;
  - (ii) the current developments regarding the existing CID methodology, thereby examining whether the Proposal is practical and would not impede ongoing processes;
  - (iii) reaching a common understanding or exchanging views on certain aspects of the Proposal.
- (8) Between 1 October and 15 October 2021, ACER consulted all TSOs, ENTSO-E and all regulatory authorities on its preliminary position, by sharing an updated version of the Proposal setting out its suggested amendments and the reasoning for these amendments. The consulted parties provided their views by 15 October 2021. These views are summarised in section 5.1.
- (9) ACER considered all the written comments received on its preliminary position, and further discussed them with the individual parties, where necessary. No oral hearings were requested by the consulted parties. Following this process, ACER introduced further amendments to the Proposal to take into account some issues raised by the consulted parties.
- (10) The AEWG was consulted between 9 November 2021 and 17 November 2021, and provided its advice on 19 November 2021 (see section 5.2).

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<sup>5</sup> Letter of 13 September 2021. ENTSO-E has not submitted the Proposal on behalf of Baltic Cable AB, since, at the time of the submission (9 July 2021), Baltic Cable AB had not yet been allocated formal voting powers among the German TSOs under Article 9 of the CACM Regulation.

- (11) On 15 December 2021, ACER's BoR issued a favourable opinion pursuant to Article 22(5)(a) of Regulation (EU) 2019/942.

### **3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL**

- (12) Pursuant to point (b) of Article 5(2) of Regulation (EU) 2019/942, ACER shall approve proposals for common terms and conditions or methodologies for the implementation of those network codes and guidelines adopted before 4 July 2019 and which require the approval of all regulatory authorities.
- (13) Pursuant to Article 9(6)(m) of the CACM Regulation, which has been adopted as a guideline before 4 July 2019, the proposal for the congestion income distribution methodology in accordance with Article 73(1) of the CACM Regulation, and any amendments thereof, shall be subject to approval by ACER.
- (14) Pursuant to the second sentence of Article 9(13) in joint reading with Article 9(6)(m) and Article 73(1) of the CACM Regulation, TSOs responsible for developing the proposal for the congestion income distribution methodology (i.e. all TSOs) may propose amendments to the methodology. The proposals for amendments must be submitted to ACER for approval.
- (15) Pursuant to Article 5(6) of Regulation (EU) 2019/942 and Article 9(5) of the CACM Regulation, ACER, before approving the terms and conditions or methodologies, shall revise them where necessary, after consulting the respective TSOs and ENTSO-E, in order to ensure that they are in line with the purpose of the network code or guideline and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market. ACER shall take a decision on the approval within the period specified in the relevant network codes and guidelines.
- (16) On 9 July 2021, ENTSO-E, on behalf of all TSOs, submitted the Proposal to ACER for approval. ACER is competent to decide on the Proposal based on Article 5(2)(b) of Regulation (EU) 2019/942, Article 9(6)(m) and Article 9(13) of the CACM Regulation.

### **4. SUMMARY OF THE PROPOSAL**

- (17) The Proposal of 9 July 2021 includes a submission letter from ENTSO-E, the proposed congestion income distribution methodology (Annex 1) with applicable sharing keys (Annex 2), a supporting document summarizing further explanations of the contents (Annex 3) and a list of TSOs on which behalf the Proposal is submitted (Annex 4).
- (18) The proposed CID methodology described in Annex I of the Proposal includes a 'whereas' section and the following titles setting out the named content:

Title 1 General provisions

Title 2 Calculation of congestion income and distribution to the bidding zone borders

Title 3 Congestion income distribution on the bidding zone border

Title 4 Transparency of information

## Title 5 Final provisions

- (19) In order for the CID methodology to be compatible across timeframes as required by Article 73(d) of the CACM Regulation, the Proposal introduces provisions for its applicability to the intraday timeframe. The intraday timeframe combines a continuous market with implicit auctions. The continuous trading does not create congestion income and therefore does not need to be considered in the CID methodology. Therefore, the CID methodology only covers the distribution of congestion income created by the intraday auctions ('IDA').
- (20) The Proposal provides for the following three layers of congestion income distribution. In the first layer, the congestion income is collected from the central counterparties and separated into congestion income generated by electricity exchanges within each capacity calculation region ('CCR'). In the second layer, the congestion income of a CCR is allocated to each bidding zone border of the CCR (or to an external flow where applicable) based on the absolute value of the product of commercial flows and market spread. Third, the congestion income on each bidding zone border is distributed to TSOs on the bidding zone border using the default 50-50 % sharing key or specific keys in case of different investment costs or ownership shares of the interconnector.
- (21) With regard to the calculation of commercial flows, the Proposal describes the calculation in case of the flow-based approach via the application of the multi slack hub approach which, after simulations for the Core CCR, showed to allocate less congestion income to external flows compared to having only one slack hub as provided for in the existing CID methodology.
- (22) The Proposal includes several flexibilities which the TSOs may take into account, where relevant, (i) allocation constraints, (ii) regional specificities for CCRs without the occurrence of unintuitive flows (meaning flows against prices differences) and network losses, (iii) the redistribution of congestion income for flow-based regions such that the sum of congestion income shares allocated to bidding zone borders in a CCR matches the total congestion income generated within a CCR. Furthermore, the Proposal includes rules for the sharing of negative congestion income for specific cases due to specificities of the coupling algorithm.
- (23) With regard to the sharing of congestion income on a bidding zone border, the Proposal is changed to reflect the principles as described in the congestion income distribution methodology according to Article 57 of Commission Regulation (EU) 2016/1719.<sup>6</sup> The default sharing key is defined as 50%-50%. Sharing keys different from 50%-50% may

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<sup>6</sup> Approved by all regulatory authorities pursuant to all regulatory authorities' agreement of 22 May 2019, available at <https://www.ceer.eu/documents/104400/-/-/86f76687-934c-1626-8245-d7efa406545e>. The TSOs proposal as approved is available at <https://eepublicdownloads.entsoe.eu/clean-documents/nc-tasks/TSOs%20nd%20proposal.pdf>.

be based on different ownership or investment cost shares, exemption decisions<sup>7</sup> or decisions on cross-border cost allocation<sup>8</sup> by competent regulatory authorities or ACER. The sharing keys for these specific cases are to be published in a common document by ENTSO-E on its web page for information purposes only. This document is to list all these specific cases with the name of the interconnector, the bidding zone border, the involved TSOs/Parties, the specific sharing key applied and the motivation/reasons for the deviation from the 50%-50% sharing key. The document is to be updated and published promptly as soon as any changes occur. Each publication is to be announced in an ENTSO-E's newsletter.

- (24) The Proposal provides that all TSOs will implement the CID methodology at the date of implementation of the capacity calculation methodology within their respective CCR in accordance with Article 20 and Article 21 of the CACM Regulation, or at the date of the implementation of the IDA for the intraday timeframe.

## **5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER**

### **5.1. Consultation on ACER's preliminary position**

- (25) The following paragraphs provide a summary of views on ACER's preliminary position received during the hearing phase between 1 and 15 October 2021. ACER only received written comments from ENTSO-E on behalf of all TSOs. No oral hearings were requested by the consulted parties. Section 6.2 further describes the concerns raised and explains how ACER has taken them into account of them.
- (26) In their written response, ENTSO-E stated that with regards to the overall planning and work load of TSOs in the next year, it seems challenging to achieve sufficiently mature solutions for a new amendment of the present CID methodology within 12 months as requested by ACER in its preliminary position. TSOs expect four amendments for FCA methodologies for which the sets of experts overlap. Furthermore, the issue of advanced hybrid coupling has not yet been assessed which could lead to more complex discussions among TSOs. In addition, the main data source (Core flow-based) might be insufficient. ENTSO-E also explained that TSOs suggest to modify the wording of the paragraph requesting the future amendment of the CID methodology by including only a general reference without explicit specification on the content of the amendment.
- (27) With regards to ACER's preliminary position on Article 5 on the distribution of negative congestion income in specific cases, ENTSO-E provided some additional explanations

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<sup>7</sup> Exemption decision granted to these entities by relevant competent Authorities in accordance with article 63 of Regulation (EU) 2019/943.

<sup>8</sup> Decisions on cross-border cost allocation granted to these entities by relevant competent Authorities or ACER in accordance with article 12(4) or 12(6) of Regulation (EC) 347/2013.

including exemplary calculations and suggested to change the distribution key (TSOs or bidding zones, instead of bidding zone borders).

## **5.2. Consultation of the AEWG**

- (28) The AEWG provided its advice on 19 November 2021, broadly endorsing ACER's draft Decision on the Proposal.
- (29) One regulatory authority expressed concerns about potential inconsistency of Article 1(a) of the Proposal with the definition of 'interconnector' provided in Article 2(1) of Regulation (EU) 2019/943. Article 1(a) of the Proposal states that the CID methodology shall cover the congestion income distribution for '*all existing and future bidding zone borders and interconnectors within and between Member States, to which the CACM Regulation applies and where congestion income is collected.*' Pursuant to Article 2(1) of Regulation (EU) 2019/943, 'interconnector' means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States. The regulatory authority proposed to remove '*within and*' from Article 1(a) of the Proposal in order to reflect the definition in Article 2(1) of Regulation (EU) 2019/943. This proposal, however, met with disagreement by another regulatory authority. In view of the discussion at the AEWG meeting, AEWG asked ACER to outline in the Decision its legal position regarding the internal bidding zone borders.
- (30) In ACER's view, the application of the CID methodology to '*all bidding zone borders and interconnectors within and between the Member States*', is indeed consistent with the applicable legal framework, considering the following definitions and their contextual interpretation:
- (31) The CID methodology governs the distribution of congestion income among the TSOs. Pursuant to Article 2(16) of the CACM Regulation, 'congestion income' means the revenues received as a result of capacity allocation. 'Capacity allocation' is defined in Article 2(66) of Regulation (EU) 2019/943 as the attribution of cross-zonal capacity, and, according to Article 2(70) of this Regulation, 'cross-zonal capacity' means the capability of the interconnected system to accommodate energy transfers between bidding zones. For the definition of 'interconnected system', Article 2(57) of Regulation (EU) 2019/943 refers to Article 2(40) of Directive (EU) 2019/944, which defines 'interconnected system' as a number of transmission and distribution systems linked together by means of one or more interconnectors. Article 2(39) of the Directive defines 'interconnector' broadly, as equipment used to link electricity systems.
- (32) Considering the above, if 'cross-zonal capacity' is defined by reference to Article 2(40) of Directive (EU) 2019/944, it is consistent to interpret the terms of that Article 2(40), absent any explicit cross-references, also in the light of the definitions of Directive (EU) 2019/944, and not merely of those of Regulation (EU) 2019/943. Accordingly, Article 1(a) of the Proposal should be understood as referring to interconnectors in the meaning of 'equipment used to link electricity systems', regardless of whether the 'link' is within or between Member States.

- (33) Moreover, according to Article 2(65) of Regulation (EU) 2019/943, ‘bidding zone’ is the largest geographical area within which market participants are able to exchange energy without capacity allocation.
- (34) Thus, where the bidding zones are within one Member State, the allocation of cross-zonal capacity for energy transfers between such bidding zones naturally concerns the interconnected system within the relevant Member State.
- (35) For all those reasons, ACER considers Article 1(a) of the Proposal as correctly defining the scope of the CID methodology, comprising all bidding zone borders and interconnectors where capacity allocation takes place and congestion income is collected, including cases where such allocation and collection takes place within the Member States. In ACER’s view, the wording of the Proposal does not require amendments in this respect.

## **6. ASSESSMENT OF THE PROPOSAL**

### **6.1. Legal framework**

- (36) According to the second sentence of Article 9(13), in joint reading with Article 9(6)(m) of the CACM Regulation, TSOs responsible for developing a proposal for the CID methodology may propose amendments to the methodology to ACER. Pursuant to Article 73(1) of the CACM Regulation, the TSOs responsible for developing the CID methodology are all TSOs.
- (37) According to Article 73(2) of the CACM Regulation, the CID methodology shall:
- (i) facilitate the efficient long-term operation and development of the electricity transmission system and the efficient operation of the electricity market of the Union;
  - (ii) comply with the general principles of congestion management provided for in Article 16 of Regulation (EC) 714/2009;<sup>9</sup>
  - (iii) allow for reasonable financial planning;
  - (iv) be compatible across timeframes; and
  - (v) establish arrangements to share congestion income deriving from transmission assets owned by parties other than TSOs.

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<sup>9</sup> ACER notes that Regulation (EC) 714/2009 has been repealed by Regulation (EU) 2019/943. The general principles of congestion management are retained under Article 16 and Article 19 of Regulation (EU) 2019/943 (see correlation table in Annex III to Regulation (EU) 2019/943).



- (38) Pursuant to Article 9(9) of the CACM Regulation, all proposals for terms and conditions or methodologies, i.e. including the proposal referred to in Article 73(1) of that Regulation, shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of the CACM Regulation. These objectives are listed in Article 3 of the CACM Regulation.
- (39) Pursuant to Article 5(6) of Regulation (EU) 2019/942 and Article 9(5) of the CACM Regulation, before approving the proposal regarding congestion income distribution methodology, ACER shall revise it where necessary, after consulting the respective TSOs and ENTSO-E, in order to ensure that it is in line with the purpose of the CACM Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.

## **6.2. ACER's assessment and amendments**

- (40) This section outlines ACER's amendments to the Proposal, taking into account the legal requirements (see section 6.1) and comments on ACER's preliminary position (see section 5.1) and AEWG's advice (see section 5.2).

### **6.2.1. Assessment of the Proposal in view of legal requirements**

- (41) The Proposal fulfils the requirements of Article 9(13), second sentence, Article 9(6)(m) and Article 73(1) of the CACM Regulation, as all TSOs jointly developed the Proposal and submitted it to ACER for revision and approval.

#### *6.2.1.1. Assessment against the requirements of Article 73(2) of the CACM Regulation*

- (42) The recitals of the Proposal contain a partial assessment against the requirements established in Article 73(2) of the CACM Regulation.
- (43) ACER notes that the requirement of Article 73(2)(a) of the CACM Regulation to facilitate the efficient long-term operation and development of the electricity transmission system and the efficient operation of the electricity market of the Union, is in essence very similar to the objective set out in Article 3(g) of the CACM Regulation, against which the Proposal is assessed in its Recital 9. ACER agrees with the TSOs' assessment which is further discussed in section 6.2.1.2.
- (44) The Proposal only addresses the distribution of congestion income but not its use. Therefore, in ACER's view, the Proposal alone does not have any negative impact on the general principles of congestion management provided for in Article 16 and Article 19 of Regulation (EU) 2019/943.<sup>10</sup> Therefore, the Proposal complies with the requirement of Article 73(2)(b) of the CACM Regulation.

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<sup>10</sup> Former Article 16 of Regulation (EC) 714/2009 (see footnote **Error! Bookmark not defined.**).

- (45) The Proposal does not provide a fully predictable framework for congestion income distribution and therefore does not enable a reasonable financial planning for TSOs and national regulatory authorities as required by Article 73(2)(c) of the CACM Regulation. This is because the Proposal suggests a discretionary application of unclear rules by TSOs for (i) regional implementations in Article 3(4) and (ii) the sharing of negative congestion income for specific cases due to the set-up of the coupling algorithm in Article 5(5). The Proposal thus needs to be amended with clearer rules, which ensure legal certainty at any point in time. The specific amendments related to this concern are presented in sections 6.2.2 and 6.2.4.
- (46) The Proposal establishes the congestion income distribution methodology for the day-ahead and intraday timeframes. Its compatibility with the congestion income distribution methodology for the forward timeframe has been assessed in the supporting documents. The Proposal reflects the wording, principles and rules of sharing as used in the corresponding methodology in accordance with Article 57 of Regulation (EU) 2016/1719. Its compatibility with the methodologies relevant for the balancing timeframe cannot be evaluated at this stage as they are not fully developed until now. Nevertheless, ACER does not see specific concerns, which would call into question the general compatibility of the Proposal with the future methodologies, in line with Article 73(2)(d).
- (47) With regard to the arrangements to share congestion income deriving from transmission assets owned by parties other than the TSOs, the Proposal clearly identifies the cases where interconnectors may be owned by other parties and establishes that, in such cases, those parties shall be entitled to receive all or a part of the congestion income. The Proposal is therefore in line with the requirement set out in Article 73(2)(e) of the CACM Regulation.

#### *6.2.1.2. Assessment of the expected impact on the objectives of the CACM Regulation*

- (48) Recitals (7) to (12) of the Proposal aim to describe the expected impact of the Proposal on the objectives listed in Article 3 of the CACM Regulation. Therefore, the Proposal complies with the requirement in Article 9(9) of the CACM Regulation.
- (49) As regards the substance of the described impact, ACER generally agrees with the assessment of the objectives listed in Article 3 of the CACM Regulation. However, with regard to the objective of fair and non-discriminatory treatment (i.e. Article 3(e) of the CACM Regulation), ACER considers that the Proposal fails to ensure non-discriminatory treatment of all TSOs: the Proposal and the current CID methodology do not address the transfer of congestion income among different CCRs in case of unintuitive flows. As described by TSOs in the supportive documents of the Proposal and discussed during the meetings with TSOs and regulatory authorities, the CID methodology does not sufficiently address and solve the issue of unintuitive flows as the congestion income is calculated as the absolute value of the product of the market spread and the commercial flows on a bidding zone border (and by that converting the negative congestion income from unintuitive flows to positive). Furthermore, it is based on the calculation of congestion income at a CCR level. This approach does not reflect that within the market

coupling - being one market optimisation for all bidding zones – also elements between adjacent CCRs can be influenced. A correct consideration of interdependent bidding zone borders would therefore need to be based on a broader, EU-wide, approach. This is specifically relevant for allocation constraints applied in bidding zones with borders in different CCRs and the application of advanced hybrid coupling (AHC). For both, the social welfare maximisation in the market coupling may create unintuitive flows by increasing the congestion income of a bidding zone border in one CCR and unintuitive flows (meaning flows against prices differences) with negative congestion income on other borders in other CCR(s). According to the current CID methodology, such distorted congestion income is socialised within respective CCRs and not across CCRs. TSOs are currently working and developing more appropriate solutions but were not yet able to propose sufficiently mature solutions within this Proposal, which mainly focuses on the changes necessary for the Core flow-based go-live and the inclusion of IDAs in the CACM CID methodology. Therefore, ACER has amended the Proposal as described in section 6.2.3.

#### *6.2.1.3. Proposed timescale for implementation*

- (50) The Proposal meets the requirements of Article 9(9) of the CACM Regulation on the inclusion of a proposed timescale for implementation, as Article 8 of the Proposal specifies the timeline for its implementation.

#### *6.2.2. Amendment on regional implementation with allocation constraints applicable*

- (51) As described in the assessment of the Proposal in section 6.2.1.1, the TSOs proposed to allow for deviations from the CID methodology at regional level without specifying such deviations in Article 3(4) of the Proposal. These deviations would reflect allocation constraints within a CCR and could adapt the calculation steps of the CID methodology in case of coordinated NTC approach by adopting the scope of the congestion income calculation of the CCR. ACER has amended this provision to prohibit discretionary application leading to legal uncertainty but to allow for voluntary regional agreements for redistribution of congestion income among the TSOs, whose congestion income share is distorted by unintuitive flows due to the application of allocation constraints, until general solutions are found (cf. 6.2.3). In any case, the amendment provides for legal certainty also in the meanwhile since either a regional agreement is found or the CID methodology as adopted applies without changes.
- (52) During the discussions, TSOs also highlighted that with regard to the on-going discussions within the Core CCR and affected neighbouring TSOs, respective agreements might only be concluded after the go-live of the flow-based capacity calculation in early 2022. This would lead to a temporary distortion of congestion income when applying the CID methodology as adopted until the conclusion of the agreements. Therefore, ACER included a provision allowing for flexibility of the concluding TSOs to apply agreements retroactively, but not earlier than the date of issuance of this decision by ACER.

6.2.3. Amendment introducing Article 8(3) on solutions addressing unintuitive flows and cross-CCR transfer

(53) Following the assessment of the Proposal against the objectives of the CACM Regulation (cf. 6.2.1.2), ACER has introduced a new Article 8(3), which requires TSOs to submit a proposal for amendment of the present CID methodology no later than 18 months after the date of issuance of this decision. This proposal should provide solutions addressing unintuitive flows irrespective of their causes and also including the transfer of congestion income between CCRs. In its preliminary position, ACER initially proposed a timeline of 12 months. After receiving ENTSO-E's input to the hearing phase, the timeline was extended to 18 months to reflect TSOs' concerns and reasoning with regard to the necessary time for the development of sufficiently mature solutions as further explained in section 5.1. By this, the implementation for Core flow-based is not put at risk but without undermining future work on the necessary solutions.

(54) The second suggestion to the content of Article 8(3) expressed by ENTSO-E in the hearing phase was to delete the requirement and reasoning of the request for amendment after 18 months (to address intuitive flows irrespective of their causes). This would, however, lead to a request for amendment without any specific reasoning and justification, undermining the very purpose of this provision. Pursuant to Article 9(13) of the CACM Regulation, ACER may request proposals for amendments to the CID methodology at any time, so including such a request in the CID methodology, without specifying the content of the requested amendment, would be redundant. Therefore, ACER has decided to keep the reasons and requirements for this future amendment.

6.2.4. Amendment on the distribution of negative congestion income for specific cases due to specificities of the single day-ahead market coupling algorithm

(55) As set out in section 6.2.1, Article 5(5) of the Proposal introduces unclear and vague rules for the distribution of negative congestion income for specific cases due to specificities of the single day-ahead market coupling algorithm. First, ACER has amended the wording and inserted further details to better and more clearly define those cases. Second, as the initial Proposal of TSOs only defined the sharing at bidding zone level and thereby lacking clarity for bidding zones with more than one TSO, ACER has clarified the sharing key to provide for legal certainty. In its preliminary position, ACER has proposed a sharing based on bidding zone borders of the relevant CCR. ENTSO-E's input to the hearing phase further clarified the impact of such sharing leading to unequal treatment of TSOs (e.g. for the Core CCR). As the distribution of negative congestion income for such specific cases should be equally distributed among all TSOs, ACER has reassessed and changed the initially proposed sharing key to an equal sharing among all TSOs whose bidding zone borders are assigned to the relevant CCR.

6.2.5. Editorial amendments

(56) ACER has introduced a number of editorial amendments to improve clarity, conciseness, consistency and readability of the Proposal, while preserving the intended meaning of

the content. These editorial amendments generally relate to amendments of wording and improvements of structure.

- (57) This includes the amendment of the definition of (i) slack hub by deleting the specific requirements and principles for their application and usage in the definition and inserting them in the respective Article 4 dealing with the calculation of commercial flows for the flow-based approach (new paragraph 5) and (ii) virtual hub to better reflect its application in the modelling where it represents a connecting node of an interconnector that is included in the flow based approach and the cross-zonal exchange over such interconnector is represented as net position of such virtual bidding zone.

## **7. CONCLUSION**

- (58) For the above reasons, ACER considers that the amendments detailed in section 6.2 are necessary in order to ensure that the Proposal is in line with the purpose of the CACM Regulation and contribute to market integration, non-discrimination, effective competition and the proper functioning of the market.
- (59) Therefore, ACER approves the Proposal subject to the necessary substantive and editorial amendments. Annex I to this Decision sets out the congestion income distribution methodology, as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

### *Article 1*

The congestion income distribution methodology pursuant to Article 73(1) of the CACM Regulation is approved as set out in Annex I to this Decision.

### *Article 2*

This Decision is addressed to the following TSOs:

50Hertz - 50Hertz Transmission GmbH  
Amprion - Amprion GmbH  
APG - Austrian Power Grid AG  
Augstsprieguma tīkls - AS Augstsprieguma tīkls  
Baltic Cable - Baltic Cable AB  
ČEPS - ČEPS a.s.  
CREOS Luxembourg - Creos Luxembourg S.A.  
EirGrid - EirGrid plc  
Elering - Elering AS  
ELES - ELES, d.o.o.

Elia - Elia Transmission Belgium SA/NV  
Energinet - Energinet  
ESO - Electroenergien Systemen Operator EAD  
Fingrid - Fingrid Oyj  
HOPS - Croatian Transmission System Operator Ltd  
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.  
SONI - System Operator for Northern Ireland Ltd  
Svenska Kraftnät - Affärsverket svenska kraftnät  
TenneT GER - TenneT TSO GmbH  
TenneT TSO - TenneT TSO B.V.  
Terna - Terna Rete Elettrica Nazionale S.p.A.  
Transelectrica - National Power Grid Company Transelectrica S.A.  
TransnetBW - TransnetBW GmbH  
VÜEN - Vorarlberger Übertragungsnetz GmbH

Done at Ljubljana, on 17 December 2021.

**- SIGNED -**

*For the Agency  
The Director*

C. ZINGLERSEN

Annexes:

- Annex I Congestion income distribution methodology
- Annex Ia Congestion income distribution methodology (track-change version, for information only)

*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 the Agency 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.*