

**DECISION No 12/2021
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 4 October 2021

**on sharing costs incurred to ensure firmness and remuneration of
long-term transmission rights**

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 establishing a guideline on forward capacity allocation², and, in particular, Article 4(5) and (6)(g) and Article 61 thereof,

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

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

Having regard to the favourable opinion of the Board of Regulators of 22 September 2021, delivered pursuant to Article 22(5)(a) of Regulation (EU) 2019/942,

¹ OJ L158, 14.6.2019, p. 22.

² OJ L 259, 27.9.2016, p. 42

Whereas:

1. INTRODUCTION

- (1) Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (the ‘FCA Regulation’) laid down a range of requirements, including costs and cost recovery of establishing capacity calculation mechanisms, the single allocation platform and particularly rules for ensuring firmness and remuneration of long-term transmission rights (‘LTTRs’).
- (2) Pursuant to Article 4(1) and (6)(g) and Article 61(3) of the FCA Regulation, all transmission system operators (‘TSOs’) are required to jointly develop a methodology for sharing costs incurred to ensure firmness and remuneration of LTTRs (‘FRC methodology’) and, pursuant to Article 5(2) of Regulation (EU) 2019/942 and Article 4(5) and (6)(g) of the FCA Regulation, submit a proposal for the FRC methodology to ACER for revision and approval.
- (3) By Decision No 25/2020 of 23 October 2020 on sharing costs incurred to ensure firmness and remuneration of long-term transmission rights (‘Decision 25/2020’), ACER approved the ‘All TSOs’ Proposal of 23 April 2020 for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights (FRC) methodology in accordance with Article 61 of the Commission Regulation (EU) 2016/1719 of 26 September 2016’ (‘Proposal’), however with amendments. Following an appeal by Polish TSO Polskie Sieci Elektroenergetyczne S.A. (‘PSE’) against Decision 25/2020, ACER’s Board of Appeal remitted the case to ACER’s Director by Decision A-009-2020 of 19 April 2021 (‘BoA Decision’).
- (4) The present Decision replaces Decision 25/2020. Annex I to this Decision sets out the FRC methodology as decided by ACER.

2. PROCEDURE

2.1. Proceedings before ACER

- (5) On 23 April 2020, ENTSO-E, on behalf of all TSOs, submitted the Proposal to ACER for decision. The Proposal was submitted together with an explanatory document, which is not part of the Proposal and was submitted only for information.
- (6) On 22 June 2020, ACER launched a public consultation on the Proposal inviting all market participants to submit their comments by 12 July 2020. In particular, ACER asked stakeholders to provide comments on the structure of the sharing key used for remuneration of LTTRs and the use of long-term congestion income in that sharing key. The summary and evaluation of the responses received are presented in Annex II to this Decision.
- (7) On 31 August 2020, ACER started the hearing phase as described in ACER’s rules of procedure and invited the regulatory authorities and TSOs to submit their input by 12 September 2020.

- (8) ACER cooperated closely with all regulatory authorities and TSOs and further consulted them on various amendments suggested by ACER during teleconferences and through exchanges of textual amendments via email communication. In particular, the following procedural steps were taken in 2020:
- 6 May: teleconference with the regulatory authorities;
 - 8 May: teleconference with the TSOs;
 - 12 May: teleconference with the regulatory authorities and TSOs;
 - 13 May: discussion with the regulatory authorities during the FCA Task Force meeting³;
 - 20 May: teleconference with the regulatory authorities;
 - 28 May: teleconference with the regulatory authorities and TSOs;
 - 13 June: discussion with the regulatory authorities during the FCA Task Force meeting;
 - 15 June: teleconference with the TSOs;
 - 19 June: teleconference with German regulatory authority upon request;
 - 1 July: discussion during the Trilateral Coordination Group meeting with the NEMOs, TSOs, regulatory authorities and the representatives of the European Commission;
 - 8 July: teleconference with the TSOs;
 - 15 July: teleconference with the regulatory authorities and TSOs;
 - 27 August: teleconference with German and Luxemburgish regulatory authorities upon request;
 - 2 September: teleconference with French regulatory authority upon request;
 - 3 September: discussion with the regulatory authorities during the AEWG⁴;
 - 15 September: teleconference with the TSOs;
 - 16 September: teleconference with the regulatory authorities and TSOs;
 - 24 September: discussion with the regulatory authorities during the AEWG;
 - 25 September: teleconference with the regulatory authorities and TSOs; and
 - 13 October: discussion with the regulatory authorities during the Board of Regulators' meeting.

³ ACER's platform for discussing all issues connected to the FCA Regulation with the regulatory authorities.

⁴ ACER's high level platform for discussing all issues connected to all network codes and guidelines

- (9) On 23 October 2020, ACER published its Decision 25/2020.
- (10) On 22 December 2020, PSE brought an appeal against Decision 25/2020.
- (11) On 19 April 2021, by Decision A-009-2020, the Board of Appeal declared part of PSE's appeal as founded and remitted the case to ACER's Director. The Board of Appeal found that Decision 25/2020 did not guarantee consistency, as required by Article 61(3) of the FCA Regulation, of the FRC methodology with the methodology for sharing congestion income from forward capacity allocation under Article 57 of the FCA Regulation ('FCA CIDM'), following the integration of the flow-based approach. Such consistency would have been attained by the insertion of a contingency, ensuring that a new decision on the FRC methodology is taken pursuant to the amendment of the FCA CIDM to adapt to the flow-based approach.
- (12) On 22 June 2021, ACER informed the regulatory authorities and TSOs about the initiation of the procedure to adopt a decision in the case remitted to ACER's Director by the BoA Decision.
- (13) On 28 June 2021, ACER informed the regulatory authorities and TSOs about its preliminary position on the intended decision and invited them to provide their views by 9 July 2021.
- (14) By email of 9 July 2021, PSE provided its views and, by email of 22 July 2021, clarified those views upon ACER's request.
- (15) On 2 August 2021, ACER shared a revised preliminary position on the intended decision with PSE, on 5 August 2021 also with the regulatory authorities and all TSOs, and invited them to provide their views by 4 and 25 August respectively. ACER received no comments.
- (16) On 7 September 2021, the AEWG discussed ACER's intended revisions to the present Decision and intended amendments to the Proposal, as well as the views put forward by the TSOs.
- (17) On 22 September 2021, the Board of Regulators discussed ACER's intended revisions to the present Decision and the clarifications introduced after the AEWG.

3. ACER'S COMPETENCE TO DECIDE ON THE PROPOSAL

- (18) 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.
- (19) Pursuant to Article 4(1) of the FCA Regulation in its initial version, the TSOs should develop terms and conditions or methodologies and submit them for approval to the competent regulatory authorities.

- (20) According to Article 4(6)(g) of the FCA Regulation in its initial version, the FRC methodology, pursuant to Article 61 of the FCA Regulation, should be subject to approval by all regulatory authorities.
- (21) Commission Implementing Regulation (EU) 2021/280⁵ amended the FCA Regulation to the effect that as of 15 March 2021, according to Article 4(1), (5) and (6)(g) of the FCA Regulation as amended, the TSOs shall submit the proposal for the FRC methodology for approval to ACER, which shall be responsible for approving that proposal and shall revise that proposal where necessary, after consulting the respective TSOs, in order to ensure that it 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.
- (22) Therefore, on the basis of those legal provisions, ACER is competent to adopt a decision on the Proposal submitted on 23 April 2020 to ACER for revision and approval.

4. SUMMARY OF THE PROPOSAL

- (23) The Proposal consists of the following elements:

- (a) the ‘Whereas’ section and Title 1 containing Articles 1 and 2, which include the subject matter and scope as well as definitions and interpretation;
- (b) Title 2, covering the specification of the cost sharing remuneration of LTTRs among TSOs, which includes Articles 3 and 4 that specify the sharing keys for the flow-based approach and for the coordinated net transmission capacity (‘CNTC’) approach;
- (c) Title 3, covering the distribution of costs on bidding zone borders (‘BZBs’), which includes Articles 5 and 6 that determine the split of costs for remuneration and rules for compensation of cost due to curtailment of LTTRs; and
- (d) Title 4, covering final provisions in Articles 7 and 9 (Article 8 is missing) on the publication and implementation of the FRC methodology and the language.

5. SUMMARY OF THE OBSERVATIONS RECEIVED BY ACER

5.1. Public consultation

- (24) On 22 June 2020, ACER launched a public consultation on the Proposal inviting all market participants to submit their comments by 12 July 2020. The consultation document asked stakeholders to provide views on a topic, which was deemed as the most

⁵ Commission Implementing Regulation (EU) 2021/280 of 22 February 2021 amending Regulations (EU) 2015/1222, (EU) 2016/1719, (EU) 2017/2195 and (EU) 2017/1485 in order to align them with Regulation (EU) 2019/943 (OJ L 62, 23.2.2021, p. 24).

relevant, i.e. the principles that should be used for sharing the costs ensuring remuneration of LTTRs by TSOs.

- (25) In the public consultation document, ACER described the legal background of the LTTR's remuneration and provided a summary of the Proposal. Further, ACER proposed an alternative solution for the sharing of the LTTR remuneration costs. The Proposal included a sequence of sharing steps where firstly (i) day-ahead congestion income on the border and for a specific MTU is used, then (ii) the long term congestion income on the border and for the same MTU is used, and then (iii) the day-ahead congestion income from all borders in a CCR remaining from the step (i) is used. ACER proposed an alternative that is reversing the second and third step of the cost sharing sequence and provided an explanation as to why such a solution would be more efficient and non-discriminatory.
- (26) The summary and evaluation of the responses received are presented in Annex II to this Decision. It presents the summary of stakeholders' concerns regarding some of the above mentioned issues and in particular on the questions raised by ACER.

5.2. Consultation of all regulatory authorities and TSOs

- (27) All issues described in this decision were consulted with all regulatory authorities and all submitting TSOs as stated in Recital (8) above.
- (28) In addition, during the hearing phase, ACER received four inputs on a near final draft of Annex I to Decision 25/2020, as well as the reasoning for the introduced changes – three from the regulatory authorities and one from all TSOs represented by ENTSO-E.
- (29) The Danish regulatory authority (DUR), although supporting ACER's amendments to the FRC methodology, raised in their submission a specific concern about the possibility that the TSOs might sell more LTTRs than what is physically realistic, if the socialisation process of the day-ahead congestion income is used earlier in the sharing key for remuneration of LTTRs. The argument states that the TSOs would receive higher revenues from the LTTRs, while their costs for remuneration would be socialised.
- (30) The Polish regulatory authority (URE) supported the originally proposed FRC methodology because, in their view, the approach proposed by ACER would incentivise TSOs to oversell LTTRs. Moreover, URE would like to introduce a paragraph, which would trigger a re-evaluation of the FRC methodology, once all related methodologies are approved.
- (31) The Polish regulatory authority and all TSOs are not in favour of mentioning the transmission tariffs as an example of using 'other financial resources' for remunerating the LTTR holders.
- (32) The French regulatory authority (CRE) proposed to clarify the scope of the sharing of compensation costs in case of curtailment prior to day-ahead firmness deadline by adding explicitly that it concerns only the BZB level.

- (33) All TSOs reiterated their common position to use the originally proposed sharing key for the remuneration of LTTRs. All TSOs did not provide any new arguments besides those presented in the explanatory document accompanying the original submission of the Proposal.
- (34) All TSOs proposed to add a reference for the implementation of the FRC methodology to be subject to the revised version of the harmonised allocation rules ('HAR'), because the discussions on the costs sharing in extraordinary cases should happen together with the revision of the HAR and should be implemented at the same time.
- (35) Following the BoA Decision, a draft revised decision was disseminated to ENTSO-E, all submitting TSOs and all regulatory authorities.
- (36) PSE responded that the wording of the contingency to be included in the FRC methodology must ensure 'that a new FRCM Decision will be taken (i.e. the new decision must not stipulate only introduced amendments but a new decision in its entirety must be adopted) because – as the BoA explained – “the requirement of consistency with the amended FCA CIDM to integrate a FB approach, imposed by Article 61(3) of the FCA Regulation, can only be attained by the adoption of a new FRCM Decision, which would guarantee a right of appeal of its addressees in case any of inconsistency of any of its clauses” (para. 99 of Decision A-009-2020)'. According to PSE, such right of appeal is guaranteed if amendments to the FRC methodology are made by way of a new decision on the adoption of the FRC methodology in its entirety, because this would guarantee that amended as well as non-amended provisions are appealable so that any inconsistency of any of clauses may be eliminated. PSE proposed to state in the FRC methodology that 'Any amendments to the FRC methodology shall be made by way of a new decision on the adoption of the FRC methodology in its entirety.'
- (37) On 7 September 2021, the AEWG endorsed the draft ACER Decision on sharing costs incurred to ensure firmness and remuneration of long-term transmission rights.

6. ASSESSMENT OF THE PROPOSAL

6.1. Legal framework

- (38) Pursuant to Articles 4(6)(g) and 61(3) of the FCA Regulation, all TSOs are required to jointly develop the FRC methodology and submit it to ACER for revision and approval within six months after the approval of the methodology for sharing congestion income referred to in Article 57 of the FCA Regulation, i.e. by 24 April 2020.
- (39) According to Article 61(1) of the FCA Regulation, the cost of ensuring firmness (including the cost of re-dispatching, countertrading and imbalance associated with compensating market participants) shall be borne by TSOs.
- (40) Article 61(2) of the FCA Regulation provides a guidance for the competent regulatory authorities that they should consider the compensation payments as eligible costs, while fixing or approving transmission tariffs or other mechanisms. Nevertheless, this Article does not constitute any legal base for the content of the FCR methodology.

- (41) According to Article 61(3) of the FCA Regulation, within six months after the approval of the methodology for sharing congestion income referred to in Article 57 of the FCA Regulation, all TSOs shall jointly develop the FRC methodology. This methodology shall be consistent with the methodology for sharing congestion income from forward capacity allocation as referred to in Article 57 of the FCA Regulation.
- (42) As a general requirement, Article 4(8) of the FCA Regulation requires that the proposal includes a proposed timescale for its implementation and a description of its impact on the objectives of the same Regulation.

6.2. Assessment of the legal requirements

6.2.1. Assessment of the requirements for the development

6.2.1.1. Development of the proposal

- (43) The Proposal fulfils the requirements of Articles 4(1) and 4(6)(g) of the FCA Regulation, as all TSOs jointly developed the Proposal and submitted it to ACER for revision and approval, as described in Chapter 3 above.
- (44) The procedure for the development of the Proposal followed the requirements of the first sentence of Article 61(3), because all TSOs submitted the Proposal within six months after the approval of the methodology for sharing congestion income referred to in Article 57 of the FCA Regulation.

6.2.1.2. Proposed timescale for implementation

- (45) The Proposal fulfils the requirements of Article 4(8) of the FCA Regulation concerning the implementation timescale, because it contains, in its Article 7(2), a timeline for its implementation.

6.2.1.3. Description of the expected impact on the objectives of the FCA Regulation

- (46) The Proposal fulfils the requirement of Article 4(8) of the FCA Regulation on describing the expected impact of the objectives from Article 3(a) to (f) of the FCA Regulation, but it fails to provide the expected impact on the objective pursuant to Article 3(g). Therefore, to fulfil the requirement of Article 4(8) of the FCA Regulation, ACER amended Recital (15) of the Proposal to provide an explanation why it contributes to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union. Moreover, ACER deemed it necessary to amend the reasoning describing the impact of objectives under Recitals (12) and (13), i.e. objectives stemming from Articles 3(c) to 3(e) of the FCA Regulation.

6.2.2. Assessment of the specific legal requirements for sharing costs incurred to ensure firmness and remuneration of LTTRs

- (47) Article 61(1) of the FCA Regulation requires that the Proposal covers cost of ensuring firmness that include costs incurred from compensation mechanisms associated with ensuring firmness of cross-zonal capacities as well as the cost of re-dispatching, countertrading and imbalance associated with compensating market participants.
- (48) In its Articles 3 and 4, the Proposal provides for the costs of remuneration of eligible LTTRs attributed to the implicit daily allocation process based on flow-based capacity calculation and coordinated net transmission capacity calculation.
- (49) Article 1(3) of the Proposal implicitly includes the provisions covering re-dispatching and countertrading; in particular it refers to ‘costly remedial actions’.
- (50) Article 2(4) of the Proposal provides for the provision covering costs for imbalance associated with compensating market participants.
- (51) Therefore, the Proposal complies with the provisions of Article 61(1) of the FCA Regulation, because it covers all requirements described in paragraphs (47) to (50) above.
- (52) Article 61(3) of the FCA Regulation requires that the Proposal is consistent with the methodology for sharing congestion income from forward capacity allocation referred to in Article 57 of the FCA Regulation (FCA CIDM), whereby the latter methodology needs to take into account the methodology for sharing congestion income developed in accordance with Article 73 of Commission Regulation (EU) 2015/1222⁶.
- (53) Currently, the FCA CIDM applies only to the congestion income distribution under the CNTC approach, whereas the flow-based approach is not yet covered in the FCA CIDM.⁷ The FCA CIDM provides for a sharing of long-term congestion income on the basis of regional sharing and socialisation, which for the CNTC approach means implicit sharing of long term congestion income, due to fully coordinated and consensually agreed long-term cross-zonal capacities.
- (54) The Proposal applies the same sharing principles among TSOs of a CCR as the FCA CIDM, i.e. regional sharing and socialisation. Moreover, Article 7(2) of the Proposal provides that ‘the TSOs of each capacity calculation region shall implement the methodology at the date of implementation of the long-term capacity calculation

⁶ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24)

⁷ Recital 3 of the FCA CIDM: ‘The present CID-FCA methodology Proposal addresses congestion income distribution under a NTC and coordinated NTC approach as the flowbased approach is currently not applied for long-term capacity calculation by the capacity calculation regions (“CCR”). When a FB approach would be applied for long-term capacity calculation by a CCR, or if the implementation of a CCM based on the CNTC approach requires this, this CID-FCA methodology shall be amended and submitted on time for regulatory approval according to Article 4(12) of the FCA Regulation.’

methodology within their respective capacity calculation region in accordance with Article 10 of the FCA Regulation and the Congestion income distribution methodology in accordance with Article 57 of the FCA Regulation'. Thus, the proposed FRC methodology would only apply when the CCR-specific long-term capacity calculation methodology and the FCA CIDM apply, which is currently only the case for the CNTC approach.

- (55) Since the proposed FRC methodology applies the same sharing principles as the FCA CIDM for the CNTC approach and those methodologies are implemented concurrently, the FRC methodology as adopted is consistent with the FCA CIDM as far as the CNTC approach is concerned.
- (56) With regard to the flow-based approach, it is currently not certain which sharing factors will be applied in the FCA CIDM after the FCA CIDM has been amended to introduce the flow-based approach. Thus, the final content and implied outcome of such amended FCA CIDM is not yet known. Under those circumstances, it cannot be guaranteed at the moment that the Proposal will be consistent with the FCA CIDM after such future amendment.
- (57) In that regard, Article 7(3) of the Proposal helps to mitigate the risk of potential inconsistency by stating that the methodology shall be revised and amended if needed when the FCA CIDM is changed. Nevertheless, in view of the BoA Decision and to clarify that the introduction of the flow-based approach in the FCA CIDM necessitates a revision of the FRC methodology as adopted here, ACER added a contingency to ensure consistency with the FCA CIDM (Article 6(3) of Annex I to this Decision). The contingency provides that when all TSOs submit to ACER a proposal for an amendment of the FCA CIDM to introduce the flow-based approach, the TSOs shall submit to ACER also a proposal including the entire FRC methodology and ensuring consistency of the FRC methodology with the amended FCA CIDM. When assessing and deciding on such FRC methodology proposal, ACER will adopt a *'new FRCM Decision [...] pursuant to the amendment of the FCA CIDM to adapt to the FB approach [...], which would guarantee a right of appeal of its addressees in case any of inconsistency of any of its clauses'*, in accordance with paragraphs 98 and 99 of the BoA Decision. It is neither necessary nor appropriate to state in the FRC methodology itself, as proposed by PSE, that any amendments to the FRC methodology shall be made by way of a new decision on the adoption of the FRC methodology in its entirety.
- (58) Therefore, the FRC methodology, as adopted by ACER, fulfils the requirement of the second sentence of Article 61(3), i.e. to be consistent with the FCA CIDM.

6.2.3. Assessment of the requirements for consultation, transparency and stakeholder involvement

- (59) The FCA Regulation does not contain any provisions on the necessity to consult the FRC methodology and does not place any such obligation on the TSOs. Particularly, Article 6(1) of the FCA Regulation obliges the TSOs to run the consultation process only if the relevant articles explicitly request so.

(60) Therefore, the TSOs were not obliged to consult on the proposed FRC methodology, because Article 61 of the FCA Regulation does not explicitly require a consultation.

6.2.4. Assessment of the compliance with other relevant provisions of the FCA Regulation and Electricity Regulation

(61) All TSOs proposed the following structure for sharing the costs of remuneration of eligible LTTRs:

(a) **First:** The remuneration costs are covered by the day-ahead congestion income of the relevant BZB and MTU, according to the day-ahead congestion income distribution methodology, and the remaining day-ahead congestion income is calculated (i.e. the assigned day-ahead congestion income minus remuneration costs) for each border within a CCR.

(b) **Second:** If there are remaining costs, they are covered by the long-term congestion income allocated to the same BZB and MTU.⁸

(c) **Third:** If there are still remaining costs on some bidding zone borders of a CCR, they are shared proportionally (weighted by the positive day-ahead congestion income) among bidding zone borders with positive remaining day-ahead congestion income calculated in the first step (in case of a CNTC approach this step includes only borders which are declared as interdependent).

(62) In order to promote effective long-term cross-zonal trade for market participants, to optimise the allocation of long-term cross-zonal capacity, to ensure fair and non-discriminatory treatment of TSOs and to contribute to the efficient long-term operation of the electricity transmission system in the Union, i.e. to comply with the objectives of the FCA Regulation, ACER amended the rules that apply for remuneration of the eligible LTTRs by switching the Second and the Third step from the Proposal, i.e. the long-term congestion income is to be used later in the process of sharing costs for remuneration of LTTRs.

(63) ACER is of the opinion that the Proposal, which uses the long-term congestion income before the day-ahead congestion income in a whole CCR is exhausted, is not an appropriate solution, as it does not comply with the remuneration rules specified in Article 35 of the FCA Regulation. Paragraph 1 of this Article specifies the right of the holders of LTTRs to be remunerated. Paragraph 3 of this Article specifies the rules of such remuneration, namely the principle that the LTTR holders shall receive a remuneration that is equal to the congestion income obtained by TSOs from the reallocation of LTTRs at day-ahead capacity allocation:

⁸ The TSOs' proposal submitted to ACER does not mention the same MTU, but the intention and the meaning has been clarified and agreed with the TSOs during the consultation process.

- (a) In case of implicit allocation, the remuneration for each MW of returned LTTRs is equal to the price spread resulting from the day-ahead coupling (which is exactly the congestion income that TSOs receive from such reallocation) (Article 35(3)(a) of the FCA Regulation);
 - (b) In case of explicit day-ahead capacity allocation, this remuneration is equal to the auction price of the reallocated capacity at the day-ahead explicit auction (Article 35(3)(b) of the FCA Regulation).
- (64) It is important to emphasise two important specific cases for remuneration rules defined in Article 35(3) and (4) of the FCA Regulation:
 - (a) First, where the bidding zone border applies implicit auctions, but for the periods where implicit auctions fail for some reason and some fallback mechanism is applied, the remuneration still needs to be based on market spread. In this case, the remuneration costs will not be equal to the congestion income obtained from returned LTTRs.
 - (b) Second, when allocation constraints are applied in day-ahead capacity allocation, this may cause a situation where the obtained congestion income is lower than the market spread and Article 35(4) of the FCA Regulation allows TSOs to reduce the remuneration price of those LTTRs. In fact, in such a case, Article 48 of the Harmonised Allocation Rules established pursuant to Article 51 of the FCA Regulation⁹ allows the adjustment of the remuneration costs of LTTRs, such that these costs are exactly equal to the obtained day-ahead congestion income from returned LTTRs.
- (65) Therefore, with the exception of the fallback mechanism, the regulatory framework established by Article 35 of the FCA Regulation establishes a principle that the remuneration costs of LTTRs are equal to the day-ahead congestion income obtained from the returned LTTRs. For this reason, the day-ahead congestion income should be the primary financial source to cover the LTTR remuneration costs.
- (66) Long-term congestion income, on the other hand, is not correlated with the LTTR remuneration costs since the LTTRs are considered as hedging tools and the long-term congestion income received by the TSOs is a hedging premium that represents the expected average positive market spread, but not the realised market spread in each MTU obtained in the day-ahead capacity allocation. In other words, the long term congestion income represents only the expected day-ahead congestion income, but the real day-ahead congestion income is almost always different from long-term congestion income.

9

https://acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXESTOTHEDECISIONOFTHEAGENCYFORTHECOOPERATION4/Annex%20I_HAR%20amendment%20decision.pdf

It is for this reason not appropriate to cover the remuneration costs with long term congestion income, which is almost never equal to the remuneration costs.

- (67) Furthermore, the early use of the long-term congestion income in the cost sharing process could also create a ‘discrimination’ between PTRs and FTRs. Some TSOs might start preferring PTRs, because the nominated PTRs would not represent a risk of depleting the long-term congestion income the TSOs collect in the long-term auctions (unlike the non-nominated PTRs and FTRs, which might require the long-term congestion income to cover the remuneration costs).
- (68) Therefore, in ACER’s view, for the reasons presented above, the day-ahead congestion income should be given priority in LTTR remuneration cost sharing process and the day-ahead congestion income of the whole CCR (of a particular MTU) should be spent completely before any long-term congestion income is used for remuneration of LTTRs. ACER, therefore, amended the priorities for sharing of remuneration costs by switching the second and third priority as explained in paragraph (62) above.
- (69) The Proposal also does not clarify the cost sharing principles in case there are still remaining costs to be remunerated after the last step of the sharing key was applied.
- (70) Therefore, in order to comply with the objective of the FCA Regulation to promote effective hedging opportunities for market participants, ACER introduced one more paragraph (Article 3(5) of Annex I to this Decision), which follows after the last step of the cost sharing principles described above. This last step ensures that the holders of LTTRs are remunerated fully, because the FCA Regulation does not allow any application of caps. For that purpose, the TSOs should use any congestion income, which was not yet used in any previous steps of the cost sharing principles and if insufficient, any other income. ACER recognizes that the chance that this step will be applied is very low, nevertheless it deems it appropriate to introduce it for the sake of the completeness of the cost sharing principles.
- (71) For the reasons described by this chapter above, ACER deemed necessary to amend Article 4(4) of the Proposal, in order to apply analogous principles used for sharing of costs for remuneration on the cases of decoupling. If triggering the fallback procedures results in decoupling of some BZBs, these decoupled borders should not be part of the cost sharing mechanism, because they are not any longer part of the global welfare optimisation and capacity re-allocation during the single day-ahead coupling. Those borders that remain coupled constitute a CCR with reduced number of BZBs for the purpose of sharing the remuneration costs.
- (72) In its appeal against Decision 25/2020, PSE claimed that the reversed order of sharing of remuneration costs as described in paragraph 59 above would not comply with Article 3(g) of the FCA Regulation as well as Article 19(1) of the Electricity Regulation. The concern regarding these two provisions was that the FRC methodology adopted by Decision 25/2020 would impose that the bidding zone borders that are issuing LTTRs retain all the long term congestion income from these LTTRs, whereas the remuneration costs from these LTTRs will be shared among all TSOs of the CCR. According to PSE, TSOs of such bidding zone borders would have no incentive to reduce the congestion

that these LTTRs could create on bidding zone borders of other TSOs (Article 19(1) of the Electricity Regulation) and this would not contribute to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union (Article 3(g) of the FCA Regulation).

- (73) In ACER's view the defined order in sharing of remuneration costs as described in paragraph 59 above is fully compliant with Article 3(g) of the FCA Regulation as well as with Article 19(1) of the Electricity Regulation because of the following two reasons.
- (74) First, Article 6(2) of Annex I to this Decision applies only after the coordinated long-term capacity calculation in accordance with Article 10 of the FCA Regulation has been implemented. Article 10 of the FCA Regulation requires fully coordinated long-term capacity calculation where all cross-zonal capacities and therefore all allocated LTTRs are fully coordinated and are therefore consensual among all TSOs of a CCR. This requirement, by itself, guarantees by default that any physical impact from any LTTRs on any border of a CCR is fully taken into account by all TSOs and in case of the risk of congestion, each TSO has the right to mitigate this risk by readjusting all cross-zonal capacities in the CCR. Therefore, in this fully coordinated framework, a unilateral disincentive to reduce congestion cannot occur anymore.
- (75) Second, the long term congestion income resulting from coordinated capacity calculation and allocation should generally be distributed in a coordinated and consensual way. However, in case of flow-based approach, the FCA CIDM does not yet define the sharing of long term congestion income for this approach. The contingency added in Article 6(3) of Annex I to this Decision with regard to the introduction of the flow-based approach ensures that compliance with Article 3(g) of the FCA Regulation as well as Article 19(1) of the Electricity Regulation will be guaranteed when the FCA CIDM and the FRC methodology under Annex I to this Decision are adjusted to the flow-based approach.

6.3. Assessment of other relevant aspects

- (76) To improve the structure of the Proposal, ACER moved the content of Recital (5) to Article 1, because it determines the scope of the methodology, rather than interpretation of the content.
- (77) Article 30(7) of the FCA Regulation determines the scope of application of Article 61 of the FCA Regulation. Therefore, ACER amended Article 1(1) to better describe the scope of the FRC methodology and to clarify the application of its provisions, i.e. to exclude those BZBs to which Article 61 of the FCA Regulation does not apply.
- (78) To improve the structure of the Proposal, ACER moved the content of Article 2(4) to Article 1(3) that determines the application of costly remedial actions, because it determines the scope of application of the methodology.
- (79) To enhance clarity of the Proposal, ACER redrafted the definition of the 'bidding zone border' in Article 2(3), nevertheless the meaning remains the same.

- (80) To enhance readability and to improve the structure of the document, ACER merged Articles 3 and 4 and applied a common structure of the cost sharing principles, i.e. ACER structured the cost sharing principles in a sequence of steps to be followed during the process of sharing the cost. The amended structure applies the same sequence of steps to both capacity calculation approaches, i.e. to the flow-based approach and the CNTC approach.
- (81) ACER deleted Article 7(3)(a) and (b), because those provisions may result in limiting the circumstances relevant for an amendment of the FRC methodology in accordance with the amendment procedure for terms and conditions or methodologies under Article 4(12) of the FCA Regulation.

7. ASSESSMENT OF INPUTS RECEIVED DURING THE HEARING PHASE

- (82) All arguments concerning the different choice for the cost sharing principles are described in Chapter 6.2.4 above. On the specific issue raised by the Danish and Polish regulatory authorities that the TSOs would tend to over-sell long-term cross-zonal capacity, ACER believes that it should not constitute a critical issue concerning fairness and non-discriminatory principles as well as incentives for TSOs:
- (a) Firstly, because there is no direct linear relation between the amount of auctioned capacity and the total income from the auction.
 - (b) Secondly, because the TSOs cannot predict (e.g. a year or a month ahead of the day-ahead timeframe) that their concerned BZB would not be subject to negative income (day-ahead income lowered by remuneration of LTTRs) after the day-ahead market coupling.
 - (c) Thirdly, in the current European framework, only the Core CCR uses the flow-based approach (Nordic CCR is out of scope of this methodology as it does not issue LTTRs) and includes the long-term capacity in its flow-based domain, which should prevent overselling the long-term capacity, once the forward capacity calculation, in accordance with Article 10 of the FCA Regulation, is implemented (which coincides with the timeline of implementation of the FRC methodology).
- (83) ACER believes that amendment procedure of the FRC methodology is well described in Article 4 of the FCA Regulation, therefore, there is in general no need to include special paragraphs setting out the periodicity of review of the FRC methodology (specifying that it should be connected to the HAR) as requested by the Polish regulatory authority and by all TSOs in their submission and their hearing input.
- (84) ACER agrees with the Polish regulatory authority and all TSOs' input that the 'transmission tariffs' do not need to be part of the description of the cost sharing principles, therefore, ACER deleted it.

- (85) ACER agrees with the French regulatory authority to provide more clarity on the scope, i.e. the BZB level, of the application of the cost sharing of curtailment of cross-zonal capacities, therefore, ACER added the BZB level in the text.

8. CONCLUSION

- (86) For all the above reasons, ACER considers the Proposal in line with the requirements of the FCA Regulation, provided that the amendments described in this Decision are integrated in the Proposal, as presented in Annex I. The amendments, which have been consulted with ENTSO-E and TSOs, 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.
- (87) Therefore, ACER approves the Proposal, subject to the necessary amendments. To provide clarity, Annex I to this Decision sets out the Proposal as amended and approved by ACER,

HAS ADOPTED THIS DECISION:

Article 1

The methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights, in accordance with Article 61 of Regulation (EU) 2016/1719 is adopted as set out in Annex I to this Decision.

Article 2

ACER's Decision No 25/2020 of 23 October 2020 on sharing cost incurred to ensure firmness and remuneration of long-term transmission rights is repealed.

Article 3

This Decision is addressed to the following TSOs:

50Hertz Transmission GmbH
Amprion GmbH
Austrian Power Grid AG
AS Augstsprieguma tīkls
BritNed Development Limited (NL)
C.N. Transelectrica S.A.
ČEPS, a.s.
Creos Luxembourg S.A.
EirGrid Interconnector DAC
EirGrid plc
ElecLink
Electroenergien Sistemen Operator EAD

Elering AS
ELES, d.o.o.
Elia Transmission Belgium SA/NV
Energinet
Fingrid Oyj
HOPS d.o.o. - Croatian Transmission System Operator Ltd
Independent Power Transmission Operator S.A.
Kraftnät Åland Ab
Litgrid AB
MAVIR ZRt.
Nemo Link Limited
Polskie Sieci Elektroenergetyczne S.A.
Red Eléctrica de España S.A.
Rede Eléctrica Nacional, S.A.
Réseau de Transport d'Electricité, S.A
Slovenská elektrizačná prenosová sústava, a.s.
SONI - System Operator for Northern Ireland Ltd;
Svenska Kraftnät
TenneT GER - TenneT TSO GmbH
TenneT TSO - TenneT TSO B.V.
Terna Rete Elettrica Nazionale S.p.A.
TransnetBW -TransnetBW GmbH
VÜEN - Vorarlberger Übertragungsnetz GmbH

Done at Ljubljana, on 4 October 2021.

- SIGNED -

*For the Agency
The Director*

C. ZINGLERSEN

Annexes:

Annex I – Methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights

Annex Ia – (for information only) – Methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights – with track changes

Annex II – (for information only) – Evaluation of responses to the public consultation on the Methodology for sharing costs incurred to ensure firmness and remuneration of long-term transmission rights

In accordance with Article 28 of Regulation (EU) 2019/942, the addressee 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 addressee 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.