

DÉCISION ILR/E17/5 DU 8 FÉVRIER 2017

**PORTANT DEMANDE DE MODIFICATION DE LA MÉTHODOLOGIE POUR LA RÉPARTITION DU REVENU DE
CONGESTION**

SECTEUR ÉLECTRICITÉ

La Direction de l'Institut Luxembourgeois de Régulation,

Vu le règlement (UE) 2015/1222 de la Commission du 24 juillet 2015 établissant une ligne directrice relative à l'allocation de la capacité et à la gestion de la congestion, et notamment ses articles 9 et 73 ;

Vu la demande d'approbation de Creos Luxembourg S.A. du 22 juillet 2016 introduisant une proposition concernant la méthodologie pour la répartition du revenu de congestion portant l'intitulé « *All TSOs' Proposal for a Congestion Income Distribution (CID) methodology in accordance with Article 73 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management* », dans sa version du 29 juin 2016, qui a été élaborée conjointement par tous les gestionnaires de réseau de transport européens par le biais de l'ENTSO-E ;

Considérant l'opinion émise par toutes les autorités de régulation nationales lors de la réunion de l'Energy Regulators' Forum du 24 janvier 2017, demandant aux gestionnaires de réseau de transport de soumettre pour approbation une proposition de version modifiée de la méthodologie pour la répartition du revenu de congestion en vertu de l'article 9, paragraphe 12 du règlement (UE) 2015/1222 précité ;

Décide :

Art. 1^{er}. La méthodologie pour la répartition du revenu de congestion, telle que proposée dans sa version du 29 juin 2016, est à modifier conformément aux indications données par toutes les autorités de régulation nationales dans leur opinion conjointe annexée à la présente.

Art. 2. La présente décision sera notifiée à Creos Luxembourg S.A. et publiée sur le site internet de l'Institut, ensemble avec le document mentionné à l'article 1^{er}.

L'Institut informe Creos Luxembourg S.A. qu'un recours en annulation est ouvert contre la présente décision, à introduire devant le Tribunal Administratif de Luxembourg par ministère d'avocat à la Cour, au plus tard dans les trois mois qui suivent la notification de la présente décision.

Pour l'Institut Luxembourgeois de Régulation
La Direction

(s.) Michèle Bram
Directrice adjointe

(s.) Camille Hierzig
Directeur adjoint

(s.) Luc Tapella
Directeur

Annexe : *Request for amendment by all regulatory authorities agreed at the Energy Regulators' Forum on all TSO's Proposal for Congestion Income Distribution Methodology – 24/01/2017*

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

**ALL TSO's PROPOSAL FOR
CONGESTION INCOME DISTRIBUTION
METHODOLOGY**

24.01.2017

I. Introduction and legal context

This document elaborates an agreement of All Regulatory Authorities, agreed at the Energy Regulators' Forum on 24 January 2017, on the **All TSOs' proposal for a Congestion Income Distribution Methodology (CID M) in accordance with Article 73 of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management** (Regulation 2015/1222).

This agreement of All Regulatory Authorities shall provide evidence that a decision does not, at this stage, need to be adopted by the Agency for Cooperation of Energy Regulators (ACER) pursuant to Article 9(11) of the Regulation 2015/1222. This agreement is intended to constitute the basis on which All Regulatory Authorities will each subsequently request an amendment to the CID M proposal pursuant to Article 9(12) of Regulation 2015/1222.

The legal provisions relevant to the submission and approval of the CID M proposal and this All Regulatory Authority agreement on the CID M proposal, can be found in Articles 3, 9, and 73 of the Regulation 2015/1222. They are set out here for reference.

Article 3 of Regulation 2015/1222:

This Regulation aims at:

- (a) Promoting effective competition in the generation, trading and supply of electricity;*
- (b) Ensuring optimal use of the transmission infrastructure;*
- (c) Ensuring operational security;*
- (d) Optimising the calculation and allocation of cross-zonal capacity;*
- (e) Ensuring fair and non-discriminatory treatment of TSOs, NEMOs, the Agency, regulatory authorities and market participants;*
- (f) Ensuring and enhancing the transparency and reliability of information;*
- (g) Contributing to the efficient long-term operation and development of the electricity transmission system and electricity sector in the Union;*
- (h) Respecting the need for a fair and orderly market and fair and orderly price formation;*
- (i) Creating a level playing field for NEMOs;*
- (j) Providing non-discriminatory access to cross-zonal capacity*

Article 9 of Regulation 2015/1222

- 1. TSOs and NEMOs shall develop the terms and conditions or methodologies required by this Regulation and submit them for approval to the competent regulatory authorities within the respective deadlines set out in this Regulation. Where a proposal for terms and conditions or methodologies pursuant to this Regulation needs to be developed and agreed by more than one TSO or NEMO, the participating TSOs and NEMOs shall closely cooperate. TSOs, with the assistance of ENTSO for Electricity, and all NEMOs shall regularly inform the competent regulatory authorities and the Agency about the progress of developing these terms and conditions or methodologies.*
- 2. (...)*
- 3. (...)*
- 4. (...)*

5. *Each regulatory authority shall approve the terms and conditions or methodologies used to calculate or set out the single day-ahead and intraday coupling developed by TSOs and NEMOs. They shall be responsible for approving the terms and conditions or methodologies referred to in paragraphs 6, 7 and 8.*
6. *The proposals for the following terms and conditions or methodologies shall be subject to approval by all regulatory authorities:*
 - (a) (...)
 - (..) (...)
 - (m) *the congestion income distribution methodology in accordance with Article 73(1);*
7. (...)
8. (...)
9. *The proposal for terms and conditions or methodologies shall include a proposed timescale for their implementation and a description of their expected impact on the objectives of this Regulation. Proposals on terms and conditions or methodologies subject to the approval by several or all regulatory authorities shall be submitted to the Agency at the same time that they are submitted to regulatory authorities. Upon request by the competent regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.*
10. *Where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order reach an agreement. Where applicable, the competent regulatory authorities shall take into account the opinion of the Agency. Regulatory authorities shall take decisions concerning the submitted terms and conditions or methodologies in accordance with paragraphs 6, 7 and 8, within six months following the receipt of the terms and conditions or methodologies by the regulatory authority or, where applicable, by the last regulatory authority concerned.*
11. (...)
12. *In the event that one or several regulatory authorities request an amendment to approve the terms and conditions or methodologies submitted in accordance with paragraphs 6, 7 and 8, the relevant TSOs or NEMOs shall submit a proposal for amended terms and conditions or methodologies for approval within two months following the requirement from the regulatory authorities. The competent regulatory authorities shall decide on the amended terms and conditions or methodologies within two months following their submission. Where the competent regulatory authorities have not been able to reach an agreement on terms and conditions or methodologies pursuant to paragraphs (6) and (7) within the two-month deadline, or upon their joint request, the Agency shall adopt a decision concerning the amended terms and conditions or methodologies within six months, in accordance with Article 8(1) of Regulation (EC) No 719/2009. If the relevant TSOs or NEMOs fail to submit a proposal for amended terms and conditions or methodologies, the procedure provided for in paragraph 4 of this Article shall apply.*

Article 73 of Regulation 2015/1222:

1. *By 12 months after the entry into force of this Regulation, all TSOs shall develop a proposal for a methodology for sharing congestion income.*
2. *The methodology developed in accordance with paragraph 1 shall:*

- (a) facilitate the efficient long-term operation and development of the electricity transmission system and the efficient operation of the electricity market of the Union;
- (b) comply with the general principles of congestion management provided for in Article 16 of Regulation (EC) No 714/2009;
- (c) allow for reasonable financial planning;
- (d) be compatible across time-frames;
- (e) establish arrangements to share congestion income deriving from transmission assets owned by parties other than TSOs.

3. TSOs shall distribute congestion incomes in accordance with the methodology in paragraph 1 as soon as reasonably practicable and no later than one week after the congestion incomes have been transferred in accordance with Article 68(8).

II. The All TSO Proposal

The All TSO CID M proposal, dated 29 June 2016, was received by the last Regulatory Authority on 18th August 2016. The proposal includes proposed timescales for its implementation and a description of its expected impact on the objectives of Regulation 2015/1222, in line with Article 9(9) of Regulation 2015/1222.

Article 9(10) of the Regulation 2015/1222 requires All Regulatory Authorities to consult and closely cooperate and coordinate with each other to reach agreement, and make decisions within six months following receipt of submissions by the last Regulatory Authority concerned. A decision is therefore required by each Regulatory Authority by 18th February 2017.

The main elements of the CID M as understood by All Regulatory Authorities are summarised here for reference.

- The CID M proposal contains the process by which the Congestion Income is calculated as the product of the commercial flow and market spread for each bidding zone border for the day ahead timeframe, and the sum of all revenues from the Capacity Allocation per Market Time Unit for the intraday timeframe. Any remunerations for Long Term Transmission Rights (LTTRs) are to be paid by the relevant TSOs before splitting to Bidding Zone Borders (BZBs).
- These calculated incomes will then be distributed to TSOs on each BZB based on the respective share of installed capacity of the concerned interconnectors, or in the case of HVDC interconnectors, based on allocated capacity. It is then shared between TSOs on either side of the BZB. The default sharing key is a 50%:50% split, or 100% where the Interconnector is owned by a single TSO, or a single legal entity.
- The proposal sets out a number of specific sharing keys and additional rules that allow for relevant TSOs to propose and agree alternative means of distributing income between TSOs.
- The specific sharing keys allow for TSOs to alter the share of congestion income from the default sharing key in order to reflect:
 - o different investment costs and asset ownership;
 - o socio-economic benefits of interconnectors;
 - o capacity allocation constraints affecting bidding zone borders; and / or
 - o other future principles related to cross-zonal capacity allocation, affecting interdependencies within and between CCRs.
- The additional rules allow for TSOs to adjust the sharing of congestion income to reflect:

- external flows outside of their region;
 - occurrences of non-intuitive flows against market spread; and / or
 - insufficient income on a bidding zone border to remunerate LTTRs.
- The TSOs shall implement this methodology six months after approval by Regulatory Authorities, or where applicable after a decision is adopted by ACER.

III. All Regulatory Authorities' position

All Regulatory Authorities request All TSOs amend a number of areas of the proposal pursuant Article 9(12) of the Regulation 2015/1222. The details of the request for amendment is explained in this section, followed by the requested actions.

All Regulatory Authorities do not see the need for the inclusion of the specific sharing keys or additional rules to distribute congestion income amongst TSOs. All Regulatory Authorities therefore request TSOs remove the process set out in Article 5 of the proposal: 'General Provisions for specific sharing keys and additional rules'.

In relation to the specific sharing keys set out in Article 6 of the Proposal, All Regulatory Authorities do not consider specific arrangements for socio-economic benefits, capacity allocation constraints or potential future principles related to capacity allocation to be legitimate reasons to share congestion income and therefore request these elements are removed from the CID M. In particular All Regulatory Authorities consider the socio-economic benefits of a new interconnector to be addressed through wider EU infrastructure policy and allocation constraints to be an input into capacity calculation. The Regulation 2015/1222 also provides the possibility for TSOs responsible for developing CID M or Regulatory Authorities responsible for its adoption to request amendments to the methodology if required under Article 9(13).

To reflect different ownership arrangements for interconnectors, and to avoid creating barriers to potential investment in interconnectors, All Regulatory Authorities request that the specific sharing key for investment costs or ownership share is removed. Instead such arrangements should be included within Article 4 of the proposal. All Regulatory Authorities therefore request that the default sharing key is amended to also provide for the sharing of congestion income according to the investment costs or ownership share of the interconnector where an ownership arrangement exists on any particular BZB in line with Article 6.3 of Annex I of Regulation 714/2009, and has been previously agreed with the respective Regulatory Authorities separately to the CID M process. This amended provision in Article 4(2) should only be used if the ownership arrangement is different to the default 50%-50% split or 100% sharing key as set out in the proposal.

In respect of the additional rules proposed in Article 7 of the proposal, All Regulatory Authorities consider that in the case of external flows or non-intuitive commercial flows in flow based market coupling regions, these additional rules should only be included as part of the default sharing arrangements, providing they are sufficiently justified. The rules for external flows and non-intuitive commercial flows in Coordinated Net Transfer Capacity (CNTC) regions should be removed.

In addition All Regulatory Authorities consider the additional rule relating to addressing non-negative Net Border Income in the case that the remuneration for LTTRs exceeds the Congestion Income assigned to a side of the BZB to be beyond the scope of the CID M under CACM. This is because the methodology for sharing costs incurred to ensure firmness and remuneration of long- term transmission rights will be developed under Article 61 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (Regulation 2016/1719).

Therefore Regulatory Authorities request that the rule for non-negative net border is removed from Article 7 and that Article 3 is amended to clarify that non-negative Net Border Income will be addressed separately to this methodology, within the Regulation 2016/1719.¹ Regulatory Authorities also request greater clarity that the income from, and remuneration of LTTRs is not in scope of this methodology and will be addressed within the relevant articles within Regulation 2016/1719.

All Regulatory Authorities consider that the term proposed for Commercial Flow under the CNTC approach (scheduled exchange), and the basis for which Congestion Income is shared for HVDC interconnectors (allocated capacity) should be consistent. The term used in the CID M should be compatible with the Methodology for calculated scheduled exchanges as proposed under Article 49 of Regulation 2015/1222.

Finally, Regulatory Authorities deem that TSOs should not redefine definitions already set out in the Regulation 2015/1222 and associated legislation and thus request TSOs make reference to existing definitions for consistency.

¹ Inter alia: Common capacity calculation methodologies for long-term time frames within the respective regions, pursuant to Article 10 of Commission Regulation (EU) 2016/1719; Methodologies for splitting long-term cross-zonal capacity in a coordinated manner between different long-term time frames within the respective regions, pursuant to Article 16 of Commission Regulation (EU) 2016/1719; Methodology for sharing costs incurred to ensure firmness and remuneration of long- term transmission rights, pursuant to Article 61 of Commission Regulation (EU) 2016/1719.

IV. Actions

Based on the above rationale, all Regulatory Authorities agree to request an amendment to the CID M Proposal. This amendment should contain the following elements:

1. To remove the process established in Article 5 of the proposal: 'General Provisions for specific sharing keys and additional rules'.
2. To remove the specific sharing keys in Article 6: 'Specific sharing keys'
3. To amend the default arrangements in Article 4 of the proposal: 'Sharing keys' in order to allow the sharing of congestion income according to the investment costs of the interconnector where an ownership arrangement exists on any particular BZB in line with Article 6.3 of Annex I of Regulation 714/2009, and has been previously agreed with the respective Regulatory Authorities. This provision for sharing on the basis of an ownership arrangement should only be used if the ownership agreement is different to the default 50%-50% split or 100% sharing key as set out in the proposal.
4. To remove the additional rules set out in Article 7 of the proposal: 'Additional rules for Congestion Income'. In the case of flow based market coupling regions, rules for flows or non-intuitive commercial flows should only be included in default sharing arrangements if fully justified. The rule relating to non-negative net border income should be removed from the proposed methodology.
5. To remove the definitions that are repeated from the Regulation 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation and Regulation (EC) No 714/2009 of the European Parliament and of the council of 13 July 2009.