

Mr Laurent Schmitt
Secretary General
ENTSO-E

Cc: Dr Klaus-Dieter Borchardt
Director
Internal Energy Market, DG ENER
European Commission

Cc: Mr Alberto Pototschnig
Director
ACER

By e-mail only

23 May 2019

Subject: all TSOs' amended proposal for a Congestion Income Distribution Methodology (Article 57 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation)

Dear Mr Schmitt,

I write on behalf of All Regulatory Authorities regarding the all TSOs' amended proposal for a Congestion Income Distribution Methodology in accordance with Article 57 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (FCA) (Regulation 2016/1719)" (FCA CIDM proposal).

The attached document sets out the agreement of All Regulatory Authorities reached on 22 May 2019, regarding the all TSOs' amended FCA CIDM proposal in accordance with Article 57 of Regulation 2016/1719.

This agreement of All Regulatory Authorities shall provide evidence that a decision on the FCA CIDM does not need to be adopted by the Agency pursuant to Article 4(11) of Regulation 2016/1719. This agreement is intended to constitute the basis upon which All Regulatory Authorities will each subsequently adopt an approval decision on the abovementioned FCA CIDM pursuant to Article 4(11) of Regulation 2016/1719.

Please find enclosed the position paper of All Regulatory Authorities in which further details are provided.

Yours sincerely,



Clara Poletti
ERF Chair

**APPROVAL BY ALL REGULATORY AUTHORITIES
AGREED AT THE ENERGY REGULATORS' FORUM**

OF THE

**ALL TSOs' PROPOSAL FOR A
CONGESTION INCOME DISTRIBUTION
METHODOLOGY**

**IN ACCORDANCE WITH ARTICLE 57 OF THE
COMMISSION REGULATION (EU) 2016/1719
OF 26 SEPTEMBER 2016
ESTABLISHING A GUIDELINE ON FORWARD
CAPACITY ALLOCATION**

22 May 2019

I. Introduction and legal context

This document elaborates an agreement of all Regulatory Authorities of the European Union (RAs), reached on 22 May 2019, on the “All TSOs’ Proposal for a Congestion Income Distribution Methodology (CIDM) in accordance with Article 57 of the Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (FCA / Regulation 2016/1719)”, as amended on 15 March 2019.

This agreement of all RAs shall provide evidence that a decision on the FCA CIDM does not, at this stage, need to be adopted by ACER pursuant to Article 4(11) of Regulation 2016/1719. This agreement is intended to constitute the basis upon which all RAs¹ will subsequently – and each individually – adopt an approval decision on the above mentioned FCA CIDM pursuant to Article 4(11) of Regulation 2016/1719.

The legal provisions forming the basis for the submission, amendment and approval of the FCA CIDM - and for this all RAs’ agreement - can be found in Articles 3, 4 and 57 of Regulation 2016/1719. They are quoted here for reference.

Article 3 of Regulation 2016/1719:

“This Regulation aims at:

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

Article 4 of Regulation 2016/1719:

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

¹ All regulatory authorities here refers to all regulatory authorities of the Member States, where Transmission System Operators (TSOs) have issued Long-Term Transmission Rights. Some regulatory authorities (the NRAs of Finland, Lithuania, and Sweden) have exempted their TSOs pursuant to Art. 30(1) of Commission Regulation (EU) 2016/1719 (FCA GL) from issuing Long-Term Transmission Rights and therefore, according to Art. 30(7) of the FCA GL, these TSOs do not have to submit the terms, conditions and methodologies (TCMs) foreseen in Art. 57 of the FCA GL. Consequently, the aforementioned regulatory authorities do not have to approve the respective TCMs.

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

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

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

II. The FCA CIDM Proposal History

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

The FCA CIDM proposal (dated 30 May 2018), submitted by all TSOs to their regulatory authorities for approval, was received by the last competent regulatory authority on 4 July 2018. The proposal included – as an integral part – an Annex 1 indicating the non-standard sharing keys applied among TSOs at specific bidding zone borders.

Article 4(9) of Regulation 2016/1719 requires the competent regulatory authorities to consult and closely cooperate and coordinate with each other in order to reach an agreement and subsequently take national decisions within six months following the receipt of the proposal by the last concerned regulatory authority.

Since the few informal comments, suggestions and questions on substance sent by all RAs on 18 May 2018 were not completely followed up by ENTSOE, and as the proposal required further clarification on some issues, all RAs agreed on 29 November 2018 to formally request an amendment to the FCA CIDM by issuing their respective national decision by 4 January 2019. The last national decision for the request for amendment was issued on 1 February 2019.

According to Article 4(11) of Regulation 2016/1719 all TSOs should have submitted to all RAs an amended proposal within two months following the last receipt of the request for amendment by a TSO from its RA (i.e. by 1 April 2019). The amended FCA CIDM proposal, dated 15 March 2019, was received by the last NRA on 15 April 2019.

All RAs shall then decide on the amended proposal within two months following its receipt by the last RA.

III. Agreed position of all regulatory authorities

All RAs acknowledge the efforts made by all TSOs to incorporate in their amended FCA CIDM proposal the suggestions made and clarifications requested by all RAs in their Request for Amendment of 29 November 2018.

The amended proposal appropriately reflects the following main amendment requests agreed by all RAs, i.e. to:

- reduce the flexibility for deviating from the standard sharing key by specifying clearly and exhaustively the allowed reasons for deviation (i.e. different ownership or investment shares, exemptions or cross-border cost allocation decisions);
- remove Annex 1 from the actual CIDM to be approved since all possible reasons for deviation from the standard sharing key are now specified exhaustively in the methodology itself and so as to avoid amendments to the CIDM in case of changes at individual borders;
- specify the content of the list of deviating sharing keys and how, when and where it is to be published and updated;

- add a specific trigger (i.e. the introduction of flow-based long-term capacity calculation in a region) that requires the CIDM to be amended;
- clarify situations where multiple interconnectors are present at a border;
- precise the link between FCA CIDM and CACM CIDM;
- make clear that costs for remuneration of LTTRs along with the impact of potential revenue inadequacy, are dealt with in a separate upcoming methodology pursuant to Article 61 Regulation 2016/1719; and to
- improve and clarify the wording generally.

The amended FCA CIDM sufficiently reflects all the above mentioned amendments and clarifications in its whereas section and in the respective articles (in particular Articles 3, 4 and new 6) and - as required by the RfA - in the three additional documents² (the latter not being meant for all RAs' approval).

Finally, the amended FCA CIDM proposal exhibits more clarity and accurateness by improving the quality of the content, structure, wording and consistency through the document and with other relevant legislation including previously approved methodologies.

The amended FCA CIDM also specifies the impact on the objectives of Regulation 2016/1719 and justifies the provided implementation timeline. It furthermore takes account of the principles of the CACM CIDM.

IV. Conclusions

Based on the above rationale, **all RAs agreed to approve the amended FCA CIDM proposal.**

According to Article 4(11) of Regulation 2016/1719, all RAs³ should issue their national approval decisions on the basis of this agreement – reached on 22 May 2019 – within two months after the receipt of the amended proposal by the last RA, i.e. at the latest by 17 June 2019.

² Those include an explanatory note, the FCA CID “non-standard” sharing keys’ table (former Annex 1) and the FCA CID parameters applied according to Art. 4.4 FCA CIDM.

³ All regulatory authorities here refers to all regulatory authorities of the Member States, where Transmission System Operators (TSOs) have issued Long-Term Transmission Rights. Some regulatory authorities (the NRAs of Finland, Lithuania, and Sweden) have exempted their TSOs pursuant to Art. 30(1) of Commission Regulation (EU) 2016/1719 (FCA GL) from issuing Long-Term Transmission Rights and therefore, according to Art. 30(7) of the FCA GL, these TSOs do not have to submit the terms, conditions and methodologies (TCMs) foreseen in Art. 57 of the FCA GL. Consequently, the aforementioned regulatory authorities do not have to approve the respective TCMs.