

# Public consultation on the update of ACER's Recommendation on good practices for the treatment of the investment requests, including cross-border cost allocation requests for projects of common interest

Fields marked with \* are mandatory.

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## Overview

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**Regulation (EU) 347/2013** (<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0347>) introduced the cross-border cost allocation (hereinafter also 'CBCA') as a regulatory tool aimed at facilitating the implementation of projects of common interest (hereinafter also 'PCI'). Article 12 of Regulation (EU) 347/2013 included specific provisions on CBCA for PCIs. Such provisions also contained rules and legal deadlines for National Regulatory Authorities (hereinafter also 'NRAs') to decide and agree upon cost-sharing, and it placed the Agency as a last-resort decision maker in case of NRAs disagreement.

To facilitate the CBCA processes, the Agency issued its first CBCA Recommendation in 2013. The Agency also started regularly issuing monitoring reports on CBCA decisions. On 18th December 2015 the Agency issued an updated CBCA Recommendation ([https://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Recommendations/ACER%20Recommendation\\_05-2015.pdf](https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation_05-2015.pdf)), providing guidance to project promoters on the submission of an investment request, as well as to NRAs on the assessment of the investment request and the allocation of costs across Member States. The recommendation also touches upon tariff inclusion of the investment costs and details the reporting requirements of project promoters towards NRAs and Transmission System Operators of the relevant Member States.

Following the revision of Regulation (EU) 347/2013, **Regulation (EU) 2022/869** (<https://eur-lex.europa.eu/eli/reg/2022/869/oj>) (hereafter also 'TEN-E Regulation') confirmed the role of NRAs and the Agency in the context of CBCA. Article 16(11) of the TEN-E states that, by 24 June 2023, *"the Agency shall adopt a recommendation for identifying good practices for the treatment of investment requests for projects of common interest. That recommendation shall be regularly updated as necessary, in particular to ensure consistency with the principles on the offshore grids for renewable energy cross-border cost sharing as referred to in Article 15(1). In adopting or amending the recommendation, the Agency shall carry out an extensive consultation process, involving all relevant stakeholders."*

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## Why we are consulting

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In the light of the revisited TEN-E Regulation provisions, and building on the results of the monitoring reports on CBCA decisions, the Agency has initiated the process of updating the 2015 CBCA Recommendation. As part of this process, the Agency has compiled a list of priority topics for stakeholder

consultation.

Stakeholders are encouraged to offer their experience and opinions on the existing CBCA Recommendation as well as on the topics identified by the Agency and described in this public consultation.

Responses should be submitted **by Friday 31st March 2023, 23:59 hrs (CET)** by filling in this ACER Survey form.

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## Data Protection and Confidentiality

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The Agency will process personal data of the respondents in accordance with **Regulation (EU) 2018/1725** (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>), taking into account that this processing is necessary for performing the Agency's consultation tasks. More information on data protection is available on the Agency's website.

Following this consultation, the Agency will make public: the number of responses received; organisation names, unless they should be considered as confidential; all non-confidential responses; and the Agency's summary of the evaluation of responses, in which the Agency may link responses to specific respondents or groups of respondents.

You may request that (1) the name of the organisation you are representing and/or (2) information provided in your response is treated as confidential. To this aim, you need to explicitly indicate whether your answer contains confidential information, and provide a valid reason if you want that the name of your organisation remains confidential.

The Agency will not publish personal data.

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## Respondent's data

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\*Name and Surname

\*Email

\*Organisation

\*Country of your organisation

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia

Denmark  
Estonia  
Finland  
France  
Germany  
Greece  
Hungary  
Ireland  
Italy  
Latvia  
Lithuania  
Luxembourg  
Malta  
Netherlands  
Others  
Poland  
Portugal  
Romania  
Slovak Republic  
Slovenia  
Spain  
Sweden

Please, indicate here your country in case not available from the list above

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## Confidentiality

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\* Your response will be published on the Agency's public consultation web page. Please confirm that:

My response and name of my organisation can be published

My response can be published without my organisation's name (You are asked to give a justification below)

My response contains confidential information; a redacted version will be published (Please ensure you marked the specific text by preceding and closing it with [CONFIDENTIAL]. In addition, you are asked to give a justification below)

\* If your submission contains confidential information, you have to claim confidentiality according to Article 27 of **ACER's Rules of Procedure** ([https://acer.europa.eu/en/The\\_agency/Organisation/Administrative\\_Board/Administrative%20Board%20Decision/Decision%20No%2019%20-%202019%20-%20Rules%20of%20Procedure%20of%20the%20Agency.pdf](https://acer.europa.eu/en/The_agency/Organisation/Administrative_Board/Administrative%20Board%20Decision/Decision%20No%2019%20-%202019%20-%20Rules%20of%20Procedure%20of%20the%20Agency.pdf)). Please provide a justification for your request to treat specific information in your response as confidential.

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## Confirmation

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I accept that ACER processes my data in line with its data protection rules.

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## Contact informaton

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The Agency will accept only feedback provided through this ACER Survey form.

For any other inquiry, please contact Stefano Astorri (Stefano.ASTORRI@acer.europa.eu).

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## Consultation questions

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Question boxes can be extended by dragging the low right corner.

Question boxes do not allow more than 5000 characters.

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### - Introduction -

\*Can you share your previous experiences and role with investment requests, CBCA decisions, and the 2015 Recommendation from the Agency? Also, please, include your overall perspective on these topics.

We have participated in two investment requests and CBCA decisions proposals for regulating authorities. One CBCA proposal was rejected by ACER, one CBCA proposal was accepted by NRA.

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### - Scope of the CBCA Recommendation -

While Regulation (EU) 347/2013 introduced CBCA for the project categories of electricity transmission projects and gas transmission, Liquefied Natural Gas (or compressed natural gas) and underground storage projects, the Regulation (EU) 2022/869 opens the CBCA to other project categories such as hydrogen, electricity storages, smart electricity-grids and smart gas-grids.

For some of these project categories there is currently very limited regulatory experience, or their cross-border impacts might not have been significantly explored. The related cost-benefit analysis (CBA) methodologies are still in the making and they are not expected to be adopted by the deadline for the CBCA Recommendation, while the first list under the revised TEN-E Regulation including the new project categories is expected towards the end of 2023. Finally, the European Commission's cost-sharing guidelines for the deployment of the sea-basin integrated offshore network development plans (Article 15 of the TEN-E Regulation) – which shall be considered by the CBCA recommendation for consistency – are due by June 2024.

Thus, with respect to the new project categories subject to CBCA, in the Agency's view, it could be today premature to include project-specific CBCA recommendations. Given the above, the Agency plans a two-step approach for updating its CBCA Recommendation.

A first step, by 24 June 2023, targeting the inclusion of general guidelines which could be applied by project promoters to any project category and (where relevant) more specific guidelines for "traditional projects" (i.e. electricity and gas, to the level the latter category is covered by the TEN-E provisions). Such update is

likely to touch upon the elements already identified as priority topics for stakeholder consultation and described in this document.

Then, a second step, by 24 June 2025, building also on the European Commission's cost-sharing guidelines for the deployment of the sea-basin integrated offshore network development plans (due by June 2024), the first PCI Lists, the CBA Methodologies application for the new project categories, the first experiences concerning CBCA decisions from new project categories, and the first scenarios following the Agency's Scenario Framework Guidelines. This second step could also include other project categories, to the extent these project categories would fall under NRAs competences.

\*Do you see any drawback in the proposed 2-step approach?

- Yes  
 No

\*Please, justify your answer

2 steps approach creates uncertainty and increases risks for project developers.

\*With regards to the new project categories in the TEN-E (hydrogen, electricity storages, smart electricity-grids and smart gas-grids), do you see relevant changes to the proposed approach and, more in general, to the CBCA Recommendation?

Categorizing projects is a positive approach helping project promoters to prioritize their projects. However, it is important to create fair recommendation across different categories maintain equal level playing field.

## - Scenarios for CBCA decisions -

Article 16(4) of the TEN-E require that each investment request is accompanied by a project-specific cost-benefit analysis ('CBA') considering at least the joint scenarios for network development planning (hereinafter also 'TYNDPs') referred to in Article 12 of the TEN-E Regulation.

Scenarios depict potential paths that energy demand and supply may take in the future. These scenarios are not predictions and, as such, the societal and financial consequences of a project's implementation will always carry a level of uncertainty. Additionally, scenarios may even lead to opposite outcomes when evaluating the project's cost-benefit analysis. From this perspective, it could be considered that the net-negative and net-positive impacts on the countries affected by the CBCA assessment (both hosting and non-hosting countries) should always be demonstrated at least in one reference scenario and/or should be confirmed in multiple scenarios[1].

In the Agency's view, the quality of the scenarios used for project assessment is a critical element for a robust allocation of costs among countries.

The Agency's **Scenario Framework Guidelines** ([https://www.acer.europa.eu/sites/default/files/documents/Official\\_documents/Acts\\_of\\_the\\_Agency/Framework\\_Guidelines/Framework%20Guidelines/FG\\_For\\_Joint\\_TYNDP\\_Scenarios.pdf](https://www.acer.europa.eu/sites/default/files/documents/Official_documents/Acts_of_the_Agency/Framework_Guidelines/Framework%20Guidelines/FG_For_Joint_TYNDP_Scenarios.pdf)) adopted on 25 January 2023 request to build a set of scenarios which shall include, at least, a most-likely central scenario (based on National Energy and Climate Plans, 'NECPs') and low-economy and high-economy

variants (as a stress test on network and project development).

As stated in Article 16(5), in allocating costs across borders, the relevant NRAs shall seek a mutual agreement based on, but not limited to, the project-specific CBAs submitted by project promoters, which will be based on joint TYNDP scenarios, after the first implementation of Article 12 of the TEN-E Regulation. The Agency considers that it is advisable to keep a balanced approach, by including all the variants recommended by the Scenario Framework Guidelines. NRAs shall consider all the relevant TYNDP scenarios and other scenarios for network development planning, allowing a robust analysis of the project of common interest. Within this framework, when allocating costs across borders, NRAs could jointly agree to attribute different weights to the CBA results from the different scenarios, considering the robustness of each scenario.

In the Agency's view, as indicated in Article 16(5) of TEN-E, the focus should always be on the mutual agreement of NRAs on which scenarios to be used. For this reason, the TEN-E Regulation envisages the possibility for both project promoters and NRAs to identify additional scenarios as long as these are consistent with the European Union's 2030 targets and its 2050 climate neutrality objectives and be subject to the same level of consultation and scrutiny as the process provided for in its Article 12. This option could be particularly relevant until TYNDP 2024 scenarios will be available, given the assessment in the Agency's

#### **Opinion**

**6/2022**

([https://www.acer.europa.eu/sites/default/files/documents/Official\\_documents/Acts\\_of\\_the\\_Agency/Opinions/Opinions/ACER%20Opinion%2006-2022%20on%20draft%20TYNDP%202022%20Scenario%20Report.pdf](https://www.acer.europa.eu/sites/default/files/documents/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2006-2022%20on%20draft%20TYNDP%202022%20Scenario%20Report.pdf)) on key elements of the draft TYNDP 2022 Scenario Report and the Agency's recommendation to swiftly update at least one scenario. The choice to use additional scenarios should be justified by tangible inputs and their compliance with the 2030 targets and 2050 climate neutrality objectives should be properly demonstrated.

[1]For example, by demonstrating the impacts in 75% of the scenarios chosen for the investment request.

\*Please, explain which are, in your opinion, the advantages and disadvantages associated with the use of scenarios in the context of investment requests and CBCA decision-making.

Advantages: great variety of scenarios encompass broad perspective of the system developments and reflect multiple possible paths giving better clarity of the background.  
Disadvantages: multiple scenarios create less certainty of the investment decision rationale. Negative outcome on less likely scenario might outweigh the positive scenario on political basis.

\*Please, explain which are, in your opinion, the elements which would justify the use of additional scenarios compared to the TYNDP ones.

Detailed international studies in cooperation with involve parties.

\*Please, provide specific and concrete suggestions on how the Agency's CBCA recommendation can support further guidance on how to deal with scenarios in the CBCA decision process.

Template preparation for standard projects.

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- CBA assessment and CBA methodologies -

While the CBCA responds to the challenge on how to distribute and assign the costs of energy infrastructure projects across beneficiary and cost-bearer countries, the CBA aims to assess, identify and quantify the social benefits stemming from the realisation of these projects.

The TEN-E Regulation states that the investment request shall be accompanied by an up-to-date project-specific CBA consistent with the relevant methodology developed pursuant to Article 11. Also, according to Annex V(7) of TEN-E, the ENTSOs' CBA methodologies should ensure that the countries on which the project has net positive or net negative impact are identified. Both positive impact and negative impact should be quantified and, to the extent possible, monetised.

The CBA methodologies represent therefore a fundamental tool for CBCA, as a robust and shared methodology can provide a basis for identifying benefits and discuss compensations. In the Agency's view, in order to increase the transparency and foster constructive discussions on the benefits, the project-specific CBAs should quantify all relevant benefits in monetary terms to the extent possible and identify all countries impacted positively or negatively by the project. Not less important, the CBA Methodologies should allow for an integrated energy system assessment.

It should be noted that even if benefits should be monetized, they remain diverse. On the one hand, they are computed with widely diverse approaches which do not have the same level of reliability. On the other hand, some benefits are not as tangible as others. The presence of benefits with different reliability levels is a clear limit to adding benefits.

The rules for computing the national net balances of costs and benefits - currently set in Annex II of the CBCA Recommendation 05/2015 - are an essential element for the cost-benefit analysis (and the CBA methodologies) to be factored in the CBCA decisions. The TEN-E Regulation requires all potential PCIs to meet mandatory sustainability criteria. While it is vital to ensure that the project-specific cost-benefit analyses are properly designed to capture sustainability benefits, attributing these benefits among countries can be a complex task, particularly given the pan-European nature of some of these benefits. It is crucial to determine the scope of the sustainability impacts and to distinguish between types of emissions, whether they have a global impact (such as carbon dioxide or other greenhouse gas emissions) or a primarily localized impact (such as nitrogen dioxide, sulfur dioxide, and particulate matter).

\*In case you were involved in CBCAs, please indicate, from your experience, the key issues related to the application of the CBA methodologies in the context of investment requests and CBCA decision-making?

Up to date information on long term plans for all related parties and detailed project implementation descriptions.

\*Please indicate the key elements that the project-specific CBA should provide in the context of investment requests and CBCA decision-making?

Investment costs and implementation timeline.

\*How should cost uncertainty be addressed in the project-specific CBA and in the CBCA decision-making?

Uncertainties should be a part of sensitivity analysis not main scenario.

\*Should sustainability benefits be taken into account in the CBCA decision process when allocating costs among the concerned countries?

Yes

- Depending on benefit category / type of emissions  
 No

\*Please, justify your answer and provide concrete suggestions on how the Agency's CBCA Recommendation can deal with the allocation of sustainability benefits in the context of investment requests and CBCA decision-making.

Sustainability benefits could be positive/negative/neutral and nor fully quantified in monetary units. CBCA decision could be influenced (among monetary criteria) on minimum/maximum number of sustainability positive/negative benefits achieved.

## - The compensation mechanism -

The current CBCA recommendations are based on the view that one of the main barriers for a project to be implemented is the net negative impact in a hosting country.

In the current CBCA recommendations (section 2.6 of CBCA Recommendation 05/2015), the Agency proposes the implementation of a "net loser compensation" mechanism, unless otherwise agreed upon by the NRAs during the decision-making process. This wording highlights the importance and priority of NRAs' agreement in CBCA decision-making. This approach is also deemed practical due to the high level of uncertainty associated with calculating benefits. In addition, agreements that go beyond the compensation of the net negative impact are also possible.

In the past years, there have been suggestions to go beyond the "net loser compensation", by ensuring that each hosting country would reach at least a minimum level of positive-net-benefit.

In its **Monitoring Reports on Cross-Border Cost Allocation Decisions** ([https://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/2020-09\\_4th-ACER-CBCA-report.pdf](https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/2020-09_4th-ACER-CBCA-report.pdf)), the Agency has noticed that, since 2015:

- All investment requests resulted in an agreement between the concerned NRAs on the allocation of the investments costs without need for the Agency to act as a last resort, with the exception of two CBCA procedures;
- In several instances, the decisions deviated from traditional cost sharing solutions, taking also into account the benefits of the projects.

\*The Agency CBCA Recommendation 05-2015 recognises the importance and the priority given to the NRA's agreement in CBCA decision-making, by foreseeing the possibility to diverge from the mechanism suggested in the Recommendation itself. Do you think that the priority to NRAs' agreement should be revisited? Please justify your answer.

In case of cost disputes NRAs are incapable of taking decisions and involvement of third party necessity.

\*Can you provide your perspective on the specific and concrete advantages and disadvantages associated to the application of a "net loser compensation" mechanism and offer evidence to support this view?



Advantage of net loser compensation mechanism creates a possibility for implementing higher socioeconomic value projects for the whole system. The party implementing the project with net loss outcome might choose the project if the compensation is granted.

Disadvantage of net loser compensation mechanism: it creates risks for other due to possible additional costs,

\*Do you think that the compensation mechanism currently foreseen in the Agency's CBCA Recommendation should be revisited?

- Yes  
 No

\*Please, justify your answer

Involving net positive impacted counterparties create complexity to the CBCA decision making and invokes pushback due to possible costs sharing consequences.

## - The Agency's role when dealing with CBCA -

The TEN-E Regulation indicates that where the relevant NRAs have not reached an agreement on the investment request, or upon a joint request from the relevant national regulatory authorities, the decision shall be taken by the Agency within three months of the date of referral to the Agency. Before taking such a decision, the Agency shall consult the relevant NRAs and the project promoters.

The decision taken by the Agency would be based on the technical analysis of the project(s) and of its societal impacts on the relevant countries and may account for inputs from the project promoters and the relevant NRAs.

As such, the CBCA Recommendation aims not only to establish good practices for investment request handled by NRAs, but also to indicate the practices that the Agency intends in principle to apply when being competent. While the Agency expects this "default" method/approach to be suited for all investment requests, it will deviate from it where it considers such approach as not appropriate for a particular case. For instance, the Agency might choose to only implement the default approach on elements where the relevant NRAs have informed the Agency that they have not reached a consensus.

\*What would you deem important to be considered by the Agency when taking a decision on CBCA?

Yes, it might incentivize NRAs to reach final decision in more efficient manner.

\*Should the CBCA Recommendation specify distinct approaches for NRAs and the Agency to implement?

- Yes  
 No

\*Please, justify your answer and, in case of Yes, provide concrete elements where the approaches might differ.

CBCA recommendation for NRAs could be focused on project specific CBA basis, While CBCA recommendations for ACER could be focused on default methods.

## - Cross border cost allocation for offshore grid projects -

As indicated above, the Agency's intention is to include the analysis of offshore projects in the 2025 update of the CBCA Recommendation. Still, given the expected increased role of offshore grids for renewable energy having the dual functionality of interconnection and of offshore grid connection[2] and considering the conclusion of the **Copenhagen Energy Infrastructure Forum 2022** ([https://commission.europa.eu/system/files/2022-08/8th\\_energy\\_infrastructure\\_forum\\_-\\_final\\_conclusions.pdf](https://commission.europa.eu/system/files/2022-08/8th_energy_infrastructure_forum_-_final_conclusions.pdf)) which called for the Agency's guidance on how to address cost sharing for offshore cross-border infrastructure project investments, the Agency includes some specific questions already in this public consultation.

Benefits from offshore grid projects could involve several countries and lead to misalignments between costs and benefits in each country while, based on the latest CBCA Monitoring Report, the Agency has observed that a limited number of CBCA decision have considered clusters of projects and have allocated costs to more than two countries.

Also, it must be noted that, according to the TEN-E Regulation, only the electricity transmission (interconnection) assets would be under the scope of the CBCA recommendation (i.e. not the offshore production facilities).

[2]According to the EU strategy on offshore renewable energy, adopted in 2020 "*the investment needs for the large-scale deployment of offshore renewable energy technologies by 2050 are estimated to be almost EUR 800 billion, around two thirds to fund the associated grid infrastructure and a third for offshore generation*".

\*Can the CBCA Recommendation be improved to boost efficient investments in offshore grids for renewable energy?

- Yes, as long as a multi-project/multi-country CBCA is performed.
- Yes, by adjustments to the CBCA Recommendation.
- No / not significantly.
- Other options

\*Please, justify your answer

Multi-project/multi-country CBCA might help to develop more sophisticated market based offshore parks.

\*Please, provide specific and concrete suggestions on how the Agency's CBCA recommendation can provide further guidance on how to deal with offshore grids for renewable energy.

Provide standard market design templates including detailed implementation of costs, congestion revenue sharing, balancing and operational responsibilities.

## - Others -

In addition to the topics identified above, the Agency would also like to consult on other aspects, even if not a priority.

The CBCA Recommendation 05-2015, in section 2.6, specifies in 10% the threshold to be used to identify

countries with significant net positive impact.

The application of such threshold allows to allocate costs only to these countries that will benefit with a sufficient degree of certainty. Its application also allows to keep the CBCA decision manageable by not considering countries with small benefits. Additionally, already today, the CBCA recommendation include the step-wise reduction of the threshold up to 5%, when the application of the 10% threshold would make not possible to cover the compensation required.

\*Does the significance threshold and its step-wise reduction need to be revisited? If so, please, provide specific and concrete suggestions on how the significance threshold approach could be changed

No, lower threshold would create more administrative burden.

Finally, would you like to share anything else with us regarding the Agency's CBCA Recommendation?

## Contact

Contact Form ([/eusurvey/runner/contactform/CBCA\\_Recommendation\\_Update](/eusurvey/runner/contactform/CBCA_Recommendation_Update))

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