

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.

Overview

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), 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.*"

Why we are consulting

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.

Data Protection and Confidentiality

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.

Respondent's data

*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

Confidentiality

*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)

Confirmation

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

Contact informaton

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).

Consultation questions

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

Question boxes do not allow more than 5000 characters.

- 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.

As TSO and Member of ENTSO-E we had been involved in several discussions for example via Fora and Roundtable Discussions. From our perspective, the CBCA is a powerful tool, but it can become a complex process that involves many parties, and it must be carefully managed to keep it as simple as possible. As a matter of fact, it may produce counterproductive effects, slowing rather than fostering investments, adding bureaucracy, multiple and sterile cross-invoicing of TSOs across Europe and damaging the good cooperative spirit among project promoters, NRAs and Member States in developing transmission infrastructures.

Further, we have already received several CBCA requests from third-party project promoters and TSOs. From those experiences we would like to highlight, that the current CBCA practice entails from the view of TSOs high and unforeseen financial risks leading to a costly and administrative process to mitigate these risks. In our case, CBCA requests appeared 'out of the blue' and had financial volumes in the range of Amprion's annual net profit, while timely cost recovery is still not ensured. This leads to two basic risks: 1) A potential sudden CBCA payment would create a liability on the one side of the balance sheet, while this is not covered by an asset on the other side of the balance sheet. 2) Moreover, German TSOs can recover CBCA cost only with a time lag of two years from tariff payers, which creates a huge liquidity and performance risk. As in every responsible-minded privately financed enterprise, this triggers immediately risk management systems. Among other highly administrative measures, the supervisory board has to be informed and the risk is closely monitored by authorized company representatives and risk supervisory boards. This is followed by high-level letter exchanges and extensive use of resources to mitigate the risk. In most cases, the significant net benefit of Germany was demonstrated in a CBA calculation with hardly understandable assumptions. The scenarios of the CBCA requests were determined by the hosting countries and therefore not always understandable by us. Moreover, we made the experience, that the calculated benefits depended highly on the used tools. All in all, we have seen a very broad range of numbers, which made it hard - if not impossible - to come to a final and reliable conclusion as the basis to distribute large sums of money. Finally, most of the requesting project promoters pursued the sole objective of obtaining EU CEF funds. Therefore, the cost recovery by other TSOs was usually not an objective.

In a nutshell, we experienced the CBCA process as a huge entrepreneurial risk and highly bureaucratic process, which is destroying value for the European society. Moreover, it has a detrimental effect on the good cooperation between project promoters.

- 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

Similar to the ENTSO-E position - Yes there may be drawbacks. In the first step basic guiding principles should already be defined to avoid negative and reactive effects. Based on TSOs experiences, the lack of guiding principles often causes inefficiencies due to diverging interpretation which should be avoided. A minimum of guiding principles should in any case be stipulated by June 2023 in order to avoid counteracting effects of a direct non-adapted transposition of CBCA principles for the purposes of future CBCS (focus offshore) in the transitional period up to mid-2024 (EC). The second step should be done carefully and only after experience with the new categories were collected to avoid the need of amendments afterwards. Furthermore, the recommendation should interact with the to-be-developed sea-basin CBCS to avoid double counting of projects so sufficient links and references might reflect that. Hybrid projects should be included as a specific and well-defined category. In the CBCA, the underlying CBA and the applied methodology need to be assessed carefully with regard to which benefits should be considered in the project-specific CBA used in the CBCA process.

*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?

See our answer to the previous question - and
- It is important to include cross-category effects, as some projects connect several categories in one project

- 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) 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) 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.**

The scenarios are the basis of the calculation of net benefits. Therefore, it is one of the most crucial parts of the CBCA request. It is of utmost importance that these scenarios are based on mutually agreed figures (best ENTSO-E / TYNDP scenarios). Calculations based on other not known assumptions can lead to non-realistic country net-benefits.

The usage of TYNDP scenarios as basis for the CBCA process can also ease the agreement process.

Furthermore, to obtain robust solutions it is important to use a multi-scenario approach based on ENTSO-E and ENTSOG scenarios (i.e. not only one scenario should be the basis for a cost allocation but the robustness should be proven by an assessment of several TYNDP scenarios).

Further, some margin to compensate for the associated uncertainty still being connected to the "consistent scenario" should be introduced.

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

The data basis should be transparent and understandable for all involved/considered parties. Therefore, only TYNDP scenarios should serve as input data for the CBA within a CBCA decision, except if the concerned NRAs of hosting and non-hosting Member States decide otherwise (currently, the use of own scenarios is allowed) and no externalities beyond benefits stemming from the TYNDP scenarios should be considered.

***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.**

Similar to the ENTSO-E position – The ACER recommendation should provide concrete specifications regarding the scenarios in the CBCA decision process. In particular, clear proposals on how many and which scenarios should be used, and in how many scenarios a net positive benefit has to be seen to allow a CBCA request. A non-hosting country should exhibit in all TYNDP scenarios a positive net benefit if considered for a CBCA, to provide a fair and common ground. A minimum threshold respecting the size of the country (RES potential, electricity consumption, imports, ...) should be set on impact on non-hosting countries in CBCA decision process. In detail:

- A CBCA should be applied only if there is no doubt that citizens of non-hosting countries would also significantly profit from the project. Therefore, the net benefit of at least one of the hosting countries should be negative in all TYNDP scenarios. If, according to all TYNDP scenarios, more than 50% of the benefits are allocated to the hosting countries, the scope of any CBCA decision should be limited to the hosting countries.
- In case of a CBCA application, the selection criteria to determine involved countries needs to be fair and the number of involved countries limited to a minimum. A non-hosting country should exhibit in all TYNDP scenarios a positive net benefit if considered for a CBCA. The currently applied absolute significance threshold of 10% (determined by the ACER recommendation 05/2015) needs to be transformed into a relative significance threshold related to the “size” of the country using e.g. criteria like gross domestic product, annual demand or population. Through this, the details of the methodology based on the absolute size of a country would be more robust, and a fair determination of influenced countries would be ensured.

- 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?**

As already explained above, the CBA has to provide clear provisions on scenarios, tools etc. to derive at objective final numbers acceptable by all stakeholders, which can be used to allocate costs fairly. Moreover, the process has to be as simple as possible and complexity has to be reduced.

If this will not be the case, the CBCA will lead to multiple interpretations or subjective assumptions, which will make it difficult or impossible to agree on a common cost sharing key.

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

It is essential that the CBA is based on agreed figures and methodologies and calculated by ENTSO-E. Therefore, the latest CBA guideline (4th ENTSO-E Guideline for Cost Benefit Analysis of Grid Development Projects, see: https://eepublicdownloads.blob.core.windows.net/public-cdn-container/tyndp-documents/CBA/CBA4/221215_CBA4-Guideline_v1.0_for-public-consultation.pdf) should set the framework for the calculations and according to this guideline the projects should be assessed based on the latest available and European-wide scenarios of TYNDP. For cases where generation units are part of the project (e.g. hybrid offshore projects), that would mean a careful assessment on how to "extract" the benefit of the transmission part.

Instead of project promoters providing the CBA calculations for a CBCA themselves, ENTSO-E, as the entity with comprehensive knowledge, should calculate the CBAs to ensure that the CBAs are based on commonly agreed figures leading to comparable results.

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

Recalling the ENTSO-E positions - In the TNYDP project submission, costs are considered as a range. This range should also be included in the CBCA process.

To account for the uncertainty, the following points could be considered:

- CBCA should be applied only, if at least one hosting country has a negative net impact/benefit
- If more than 50 % of the benefits are allocated to the countries on whose territory the infrastructure is being built ("hosting countries"), limit the scope of any CBCA decision to only the hosting countries
- Non-hosting country should have in all TYNDP scenarios a positive net impact if considered for a CBCA

*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.

Recalling the ENTSO-E positions:

- CO2 is included in ETS and therefore also in the SEW.
- Societal: CO2 emissions does not stop at borders, and a reduction would benefit the whole of Europe - therefore it should not be considered for CBCA.
- Local emission could theoretically be considered and used in a CBCA, but that would require models with very high granularity (on powerplant level) to be able to identify which emissions and how much is being emitted per powerplant

- 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), 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.

Similar to the ENTSO-E position - CBCA should be considered as a last resort, as the preferred approach should remain a voluntary negotiated solution between NRAs of hosting countries (since such a voluntary solution is a CBCA). Country specific needs or country specific context might be very relevant in the allocation of costs, for which NRA's have a much deeper insight and understanding of regional contexts than European instances.

This holds particularly true in the context where a project benefits is strongly influenced by the potential developments of other projects. In such cases, a CBA carried out for a cluster of projects will likely not result in a clear CBCA outcome. Negotiated multilateral solutions will more likely result in adequate (and in some cases innovative) cost sharing agreements.

*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?

Similar to the ENTSO-E positions - A positive net benefit for the hosting country seems to be a prerequisite for project realization in most cases. However, in the case where projects that are considered economically viable from a European perspective, but economically unviable from the perspective of one of the hosting countries, any net loser compensation needs to be agreed or decided in advance of the project to avoid adverse incentives.

Particular attention should be given to the possible differences that may arise between the forecasted costs and benefits and actual ones, such that the outcome of a CBCA ensures the financial neutrality of the TSOs concerned. Experience has shown that net negative impacts are extremely sensitive to scenarios and the used calculation tools. Therefore, we propose the following amendment:

In this respect, certain matters with regards to payments and cost recovery need to be addressed.

While the 2015 ACER guideline indicates lump sum payments to hosting TSOs as the preferred method, this may lead to high financial risks for TSOs. Ownership and decision rights as well as treatment in balance sheets are unclear and credit rating deterioration would pose significant risks.

It must be ensured that the paying TSO actually gets benefits as expected. Several options should be considered:

- Periodic payments of non-hosting TSOs which are related to the delivery of the project: One-off payment should be avoided in favour of payment profiles stretching e.g. on the duration of the amortization of the assets. Payments should be immediately reflected in the tariff without any timelag so that it does not affect its balance sheet as a liability without corresponding assets.
- Contractually governed minimum availability of the project and refunding of CBCA payment if criteria are not fulfilled: The insurance that the paying TSO actually gets benefits as expected is fundamental in the CBCA construction and is to be considered under the introduction of "post-treatments" and "cost and benefits" monitoring along the economic depreciation period of the relevant assets. Here the difference between actual real costs and assessed socio-economic benefits should not be underestimated. The financial neutrality of the TSOs is not defined on the latter. Socio-economic benefits do not mitigate any financial exposure and risks (e.g. creditworthiness deterioration risk)
- Adaptation of the ownership/governance of the project to include non-hosting contributing countries: under this approach, (lump-sum) payments from a non-hosting TSO would be tied to rights of ownership on the asset; Certain practical questions pertaining to governance and the consistency of these equity investments with some unbundling rules would nonetheless be questionable. Also, national laws in many countries explicitly state that transmission network shall be owned by the local TSO, and prevent foreign participation in the network.

Finally, how much a country has to pay should consider the absolute Socioeconomic welfare. In other words, the determination of the costs to be borne by countries exceeding the 10% threshold currently determined by the 2015 recommendation should be based on their share of the project's total benefits. An EU fund (or a substantial intervention of external institutions, as financial risk mitigator & liquidity provider) could be used to cover the portion of the costs that exceeds the benefits for the hosting countries and which is not reallocated to other countries. If, for example, multiple countries with a benefit < 10 % are excluded from the CBCA, the costs should not be allocated to

the countries with a benefit > 10 %, as currently in practice. To finance the share of countries below the 10% threshold, CEF funding would be an option.

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

- Yes
 No

*Please, justify your answer

Similar to the ENTSO-E position - According to the gathered experience, there are several ways in which the compensation mechanisms may be improved going forward. One is that the current CBCA process and payment methods have implied significant financial risks in terms of balance sheets and ratings. The involved TSOs have gotten no asset or security for their CBCA payment and timely cost recovery was not ensured. (see answer to previous questions).

Further, as already mentioned before a CBCA extended to non-hosting countries should be applied only if there is no doubt that citizens of non-hosting countries would also significantly profit from the project. Therefore, the net benefit of at least one of the hosting countries should be negative in all TYNDP scenarios. If, according to all TYNDP scenarios, more than a certain threshold (e.g. 50%) of the benefits are allocated to the hosting countries, the scope of any CBCA decision should be limited to the hosting countries.

Especially in view of the future developments the compensation mechanisms should be revised: The significant investment needs in infrastructure in the coming years could lead to enormous payment requests between TSOs. According to the ECs Offshore Strategy, only the offshore build-out is expected to cost at least 800bil of which 2/3 is expected to be infrastructure. The potential liabilities of non-hosting TSOs, which are not connected to any assets, might impose significant threats to the financial results of TSOs. If the balance sheets are burdened with liabilities only, this might impact the rating and bankability of TSOs and therefore increase capital costs which has a significant negative impact on costs for end consumers.

- 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?

Similar to the ENTSO-E position – A decision taken by ACER should be an exception. If an agreement could not be reached by the relevant NRAs, this probably indicates that the case in question is particularly complex and subject to a high degree of cost uncertainty. In such a case, the guidelines recommended by ACER had not led to a common view on a specific case. Therefore, presumably there is no standard procedure, which could be implemented by ACER for deciding on a specific CBCA.

In case ACER takes a decision the following inputs should be considered in the decision-making process:

- TSOs' proposals, NRAs' proposals, anticipated RG development in general.
- An uncertainty range linked to the scenario(s) (see also answers 1 and 3 on "Scenarios for CBCA decision").
- The maturity of the coordination between the involved Member States.

*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.

Because the fact, that it was not possible to reach an agreement between the concerned NRAs indicates, that there have been difficulties following the guidelines given by ACER's CBCA Recommendation. Therefore, ACER should examine all scenarios and calculations extra carefully in order to avoid unjustified payments between Member States. Thereby, ACER should consider to use European Funding (such as CEF) to reduce the impact on transmission tariffs resulting in a direct benefit for consumers. It should also be examined if the monitoring obligations should be higher in cases the CBCA decision was taken by ACER and how to proceed in case the costs and benefits later on in reality differ from the ones calculated as basis for the CBCA.

- 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) 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

Recalling the ENTSO-E position - In the offshore context, the EC's guidance on a sea-basin Cost-benefit cost-sharing and the known project-wise CBCA meet. This complicates the matter as it is hard to distinguish.

- Where is the boundary between a project / a cluster of projects / a sea-basin? Is the boundary linked to a target date? A target interconnection rate? A target amount of offshore RES being connected? A number of countries involved?
- Which countries have to be involved in the CBCA or SB- CBCS: Only the countries as listed in the offshore priority corridors? What if any project crosses sectors - the TEN-E corridors for different project-categories do involve different lists of countries.
- Assuming the SB-CBCS is made for information only, as basis for political negotiations, what is the desired outcome on projects?
 - o For PCIs, the CBCA should not be strictly applied in such a way that would bind non-hosting countries where voluntary negotiated solutions are possible. Where possible, cost-recovery options should be encouraged whereby paying TSOs may be involved in the ownership and/or decision making of projects.
 - o For non-PCIs, how will real money be moved between e.g. coastal countries and land-locked countries? Northern European countries will still see more impact than southern European countries, although the flows might travel through the entire system.
- Within a sea basin, there may be PCI/PMI and non PCI/PMI projects that will be taken into account in the SB- CBCS assessment. How will this be dealt with the fact that the CBCA is only required for PCI projects (article 16 of TEN-E)?

CBCA should target regulated projects and should therefore not be used to subsidize merchant projects.

Finally, the significant costs that will be needed to build out the offshore transmission infrastructure (two third of 800b€ - roughly 500b€ according to the 2020 EC Offshore Strategy) will require considerable effort for which the availability of European funding will be a condition. While currently available amounts of CEF funding will be insufficient to satisfy this condition, additional mechanisms should be made available.

***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.**

It must be assured that the recommendations follow the core principles as outlined in the answer before.
As a more meshed offshore grid is only at the beginning the benefits of all assets will increase with every additional project. Therefore, a project-based CBCA might not be able to capture a correct view of the benefits & costs. All measures of cost sharing must be reflected i.a. the project promoter's agreement or MoU.

- 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**

Similar to the ENTSO-E position - Uncertainty will increase (especially for offshore due to huge number of investments and difficulty to calculate the benefits).

As a general principle, the CBCA recommendation needs to ensure that - in theory - each party (company, citizen etc.) bears via grid tariffs the share the total costs of a project, which is reflecting its benefit. To avoid discrimination, this principle should apply irrespective of the location in the EU (small or large member states), which puts an absolute significance threshold into question. At the same time, it is important to keep the administrative burden of a CBCA as low as possible and reduce risks for TSOs. In theory each member state in Europe is benefitting from each new project build in the EU - even if by a tiny fraction. Therefore, the involvement of CBCA parties needs to be somehow limited.

The present implementation of the 10 % threshold, in contrast, favours small countries over larger countries in terms of CBCA payments. The 10 % threshold is based on an absolute value. As a consequence, the smaller a country is, from an economic perspective, the smaller is the risk to fulfil the 10 % criterion and be considered for payment under CBCA. On a relative basis, the smaller state could actually benefit even more from a new infrastructure asset.

As a solution, the CBCA should differentiate between a) the question if a member state has to pay and b) how much it has to pay.

Concerning a) it should apply the significance threshold on a relative basis (normalized e.g. based on GDP, population, electricity consumption, to be further discussed) so that each party in the EU has the same opportunity and risks irrespective of the location.

Concerning b), a party, which is exceeding the significance threshold should only pay its own share of the cost. Everything else (i.e. the fraction of cost reflecting the benefits of parties not exceeding the relative significance threshold) should be borne by EU funding (and not by those who are already paying their share as it is current practice).

Furthermore, it should also be noted that if many countries have a benefit above 10%, the project could theoretically be overfinanced by other non-hosting TSOs when the net negative benefits are taken into account. The sum of all positive benefits could be used as the norm to determine individual relative cost shares.

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

Recalling the ENTSO-E position - It is important to stay pragmatic. The new CBCA Recommendations need to increase focus on sector integrating elements, as these are more decisive than before. The energy systems have reached a state where mutual support must be encouraged to reach European targets as fast as possible.

With the energy transition the grid is forced to change rapidly. Considering the impact the grid has on benefits, this should be considered.

Recognizing the uncertainties in scenarios and the significant changes that will result from the energy transition, we propose not to make the CBCA mandatory on non-hosting countries.

Currently, CBCA payments lead to high financial risks for TSOs. Treatment in balance sheets is unclear and credit rating deterioration is possible. Cost recovery without any time lag from tariffs has to be ensured to avoid huge financial risk for TSOs and their ratings.

Furthermore, it must be ensured that the CBCA paying TSO actually gets what is paid for in the sense that the asset or group of assets for which the CBCA is in place are able to deliver the benefits that have been calculated as part of the CBCA. The paying non-hosting TSOs need security/return for their payments. Options: a) Periodic payments of non-hosting TSOs which are related to the progress of the project; b) Contractually governed minimum availability of the project and refunding of CBCA payment if criteria are not fulfilled, c) Adaptation of the governance of the project to include non-hosting contributing countries.

Contact

Contact Form (/eusurvey/runner/contactform/CBCA_Recommendation_Update)
