

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)

* 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). Please provide a justification for your request to treat specific information in your response as confidential.

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.**

Our company is preparing an investment request and the related CBCA decisions. In our opinion there is a lack of clarity in some parts of the Regulation 347/2013. This could lead to different interpretations of the guidelines by the National Authorities involved. The conclusion is that, despite the supportive approach of the involved NRAs, the uncertainty related to the activities to be performed does not help project promoters in preparing the necessary set of documents. On such basis, a sort of explanatory example or standard documentation could be very useful to understand point by point what is needed.

- 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

We think that the scope of first step should be improved: in defining the scope of the first step, it should be better explained the extent of "traditional projects" covered by TEN-E provisions (i.e. inclusion of article 24 - Derogation for interconnections for Cyprus and Malta).

*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?

It is important to highlight the methodology to be followed in order to completely and correctly evaluate the environmental benefits. In particular, along the first period until June 2025, it could be difficult evaluate correctly the constraints related to the infrastructure (e.g.: transportation of hydrogen at 100% could not be feasible due to constraints at the entry point or the final user connected to the grid).

- 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.

In our opinion, the utilization of scenarios strictly related to the TYNDP allows to evaluate the impacts of the project(s) considering the framework expected by the Authorities. However, a potential complication could result from a mismatch between the considered scenarios and the expected development of the system (e.g.: a new large scale hydrogen production site could create difficulties to the local operator of the grid because its system is not able to manage the sources at the entry point in a proper manner and in due time; consider certain volumes of import without having the correct evidence of enough production projects).

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

In order to be consistent with the European Union's 2030 targets and its 2050 climate neutrality objectives, additional scenarios should be considered, aligned with the TYNDP ones. Consequently, in our opinion it could be preferable to consider the TYNDP scenarios, allowing in parallel the possibility to use other(s) scenarios from a pool of scenarios that are considered solid or from reliable industry operators.

***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.**

No particular suggestion

- 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?**

One of the point that would be necessary to clarify regards what is intended and expected in article 16-4-b) by "the result of market testing" since the type of documents and process is not defined. For the project promoter the consequence is that there could be a different interpretation of what a market testing consist in and what is expected by ACER.

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

No specific comment

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

No specific comment

***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 are important to be taken into account in the CBCA decision process, for global benefits there should be some indications on the way to allocate them to the different countries.
Having a reference regarding the estimation of the prices for CO2 or hydrogen, could help in the quantification, otherwise there is arisk for the promoter to refer to a wrong value, causing a mistake in the economic quantification.

- 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.

*◆We agree with the priority given to NRAs agreement in the CBCA decision-making.

*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?

The net loser compensation mechanism, as it has been proposed by ACER, seems to be satisfying at that point.

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

- Yes
 No

*Please, justify your answer

The mechanism currently proposed in the ACER recommendation seems satisfying therefore there should be no indication to modify it at this stage.

- 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?

No specific comment

*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.

We don't have a specific opinion on this topic.

- 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**

No opinion to express

***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.**

No particular suggestion

- 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**

We believe that the 10% threshold and its step-wise reduction does not need to be revisited.

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

In our opinion, the Agency could improve the clarity of the recommendations and the framework, simplifying the preparation of the investment request and CBCA by the project promoter.

In addition to that, it could be helpful to define a separate approval process for the investment request and the CBCA, in particular providing a clear path for this one. The separate approach could help the project promoter thanks to a potential fast track approach in order not to miss the potential call for funding, where the approved CBCA is mandatory.

In order to guarantee a proper support by the Agency towards the project promoter during the funding calls, the parties, CINEA and the Agency, could agree on a reasonable timeframe after the submission deadline where the project promoter can obtain the validation of the CBCA. In fact, if the project promoter has already in place a validation process with the Authorities, it could be reasonable to define an extra window for reaching the CBCA validation, since the process is not in the hands of the project promoter and therefore it could take more time than the one for the request of funding.

Contact

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