

Public Consultation

on

Update of ACER cross-border cost allocation (CBCA) Recommendation

PC_2023_EG_03

Evaluation Report

23 June 2023

1. INTRODUCTION

1.1 Background, purpose and objectives

Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure ('2013 TEN-E Regulation') introduced the cross-border cost allocation ('CBCA') as a regulatory tool to facilitate the implementation of projects of common interest ('PCIs') and projects of mutual interest (PMIs).

According to Article 12 of the 2013 TEN-E Regulation, national regulatory authorities ('NRAs') shall decide and agree upon cost-allocation, with the EU Agency for the Cooperation of Energy Regulators ('the Agency') serving as a last-resort decision maker in case of NRAs disagreement or upon request of the concerned NRAs.

To facilitate the CBCA processes, the Agency issued its first CBCA Recommendation in 2013. In 2015, based on the experience gained with the first investment requests and CBCA decisions, the Agency updated its Recommendation. The Recommendation provided 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 decision on the cost allocation across Member States. The recommendation also touched upon tariff inclusion of the investment costs and detailed the reporting requirements of project promoters towards NRAs and transmission system operators ('TSOs') of the relevant Member States.

Regulation (EU) 689/2022 ('revised TEN-E Regulation') confirmed the role of NRAs and the Agency in the context of CBCA. Pursuant to Article 16(11) by 24 June 2023, the Agency shall adopt a recommendation for identifying good practices for the treatment of investment requests for PCIs and PMIs. The 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.

Pursuant to Article 16(11) of the revised TEN-E Regulation, in adopting or amending the CBCA Recommendation, the Agency shall carry out an extensive consultation process, involving all relevant stakeholders. In light of the revised TEN-E Regulation's provisions and building on the experience gained with latest cross-border cost allocation (CBCA) investment requests¹, the Agency invited stakeholders to submit their views on the existing CBCA Recommendation as well as on specific topics identified by the Agency.

1.2 Timeline and process

The Agency organised a public consultation from 23 February 2023 to 31 March 2023.

In parallel, the Agency held on 16 March 2023 a dedicated workshop with targeted stakeholders².

All responses are reviewed and are summarised in this report.

¹ ACER's latest update of CBCA decisions (November 2021, 45 decisions): https://acer.europa.eu/Official_documents/Acts_of_the_Agency/Documents/2021116-Overview%20of%20CBCA%20decisions.pdf; ACER's latest monitoring report on CBCA decisions: https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/2020-09_4th-ACER-CBCA-report.pdf;

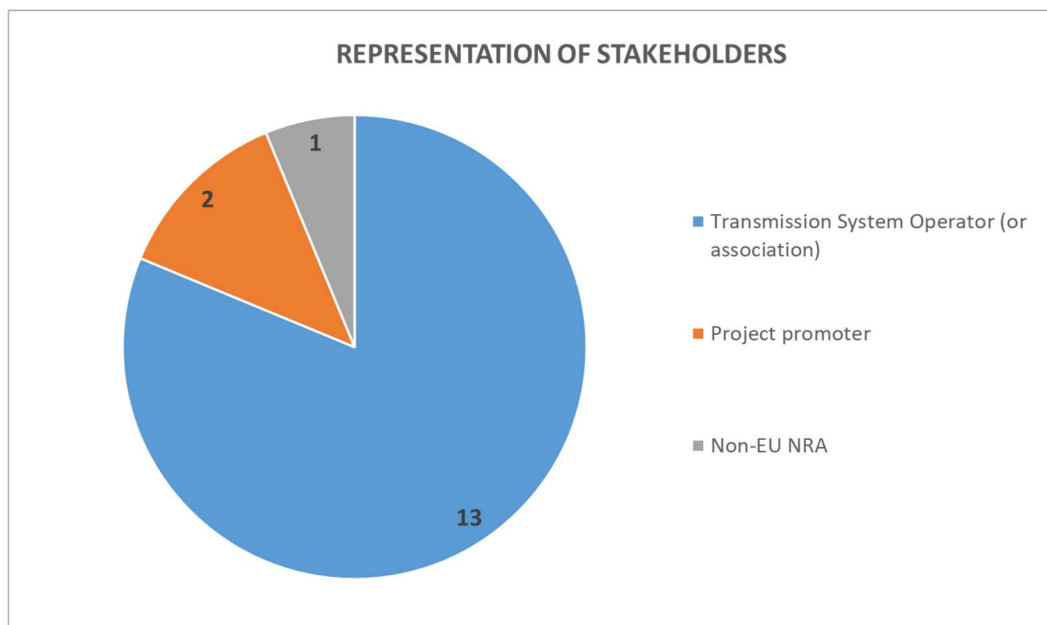
² <https://www.acer.europa.eu/public-events/acer-workshop-cbca-recommendation-update-targeted-stakeholders>

The key feedback was further analysed and were included in a dedicated table, together with the Agency views.

2. STAKEHOLDER ANSWERS

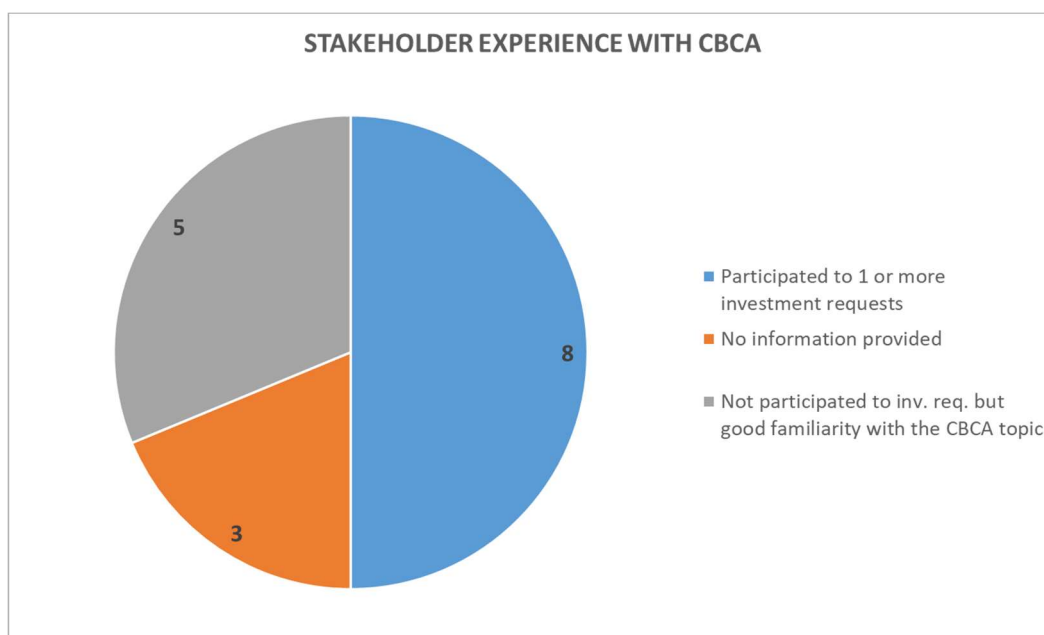
Sixteen stakeholders responded to the public consultation.

Three respondents requested not to publish the name of their organisation.



It is worth noting that more than half of the respondents to the public consultation submitted answers that showed a certain degree of similarity and coordination. Therefore, it is recommended that the overall findings of the consultation are interpreted accordingly.

Stakeholders were also asked to explain if and how they had any previous experience with investment requests, with CBCA decisions, and with use of the Agency's 2015 Recommendation. Most of the respondents had direct experience with investment requests and/or have already participated and contributed to the discussion on CBCA under the 2013 TEN-E Regulation and its revision.



2.1 Topic 1: Scope of the CBCA Recommendation

No.	Consultation questions
1.	Do you see any drawback in the proposed 2-step approach? Please, justify your answer.
2.	With regards to the new project categories in the TEN-E (hydrogen, electricity storages, smart electricity-grids and smart gas-grids), do you see any relevant addition/change to be implemented in the CBCA recommendation?

Short description of the responses
<p>All 16 respondents provided comments to at least one of the questions.</p> <ul style="list-style-type: none"> 6 stakeholders agree with the approach described by ACER in the public consultation, specifying that there is no urgent need for a more precise framework and the proposed timing is reasonable. 10 stakeholders argued that a 2-step approach could create further uncertainty, foster diverging interpretation and delay investment decisions. Some stakeholders expressed concerns on not clearly considering specific project categories in the CBCA Recommendation. Some stakeholders consider CBCA as a powerful tool which, on the other hand can become a too complex process involving many parties, and it must be carefully managed to keep it simple. 1 stakeholder expressed concern that an update of the CBCA Recommendation in 2025 would be too late.

Respondents' replies	ACER views
ACER should include in the 2023 Recommendation at least basic guiding principles to avoid negative and reactive effects.	ACER agrees with this comment and the CBCA Recommendation provides basic guiding principles applicable to any project category.
ACER should indicate a transition period for the entry into force or at least the considering of the 2023 ACER Recommendation for ongoing CBCA processes.	ACER agrees on the need for a stable framework. A reference to the non-applicability of the ACER CBCA Recommendation to the already ongoing CBCAs was included in Section 1.
ACER should include clear reference to gas, hydrogen and offshore hybrid project categories in the CBCA Recommendation.	The ACER CBCA Recommendation is aligned with the project categories identified by Article 16(1), Article 16(2) and Article 24 of Regulation (EU) 2022/869. Where relevant, reference to specific project categories were also included. However, in ACER's view a too restrictive or differentiated approach would be incompatible with the need for general principles and a harmonised approach.
ACER should update the guidelines of "other project categories" before June 2025 to give some legal certainty to their developers.	ACER acknowledges the need for timely update. However, the CBCA Recommendation update should also take into account relevant external input such as the European Commission's guidance for Cross-border cost sharing (CBCS) ³ , ENTSOs' Ten-year Network Development Plan (TYNDP) 2024 and the new Cost Benefit Analysis (CBA) Methodologies by Article 11 of Reg. 2022/869 currently under different level of development. Thus, a too early update of the CBCA Recommendation would not allow to properly capitalise on this input and bring significant added value.

2.2 Topic 2: Scenarios

No.	Consultation questions
3.	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.
4.	Please, explain which are, in your opinion, the elements which would justify the use of additional scenarios compared to the TYNDP ones.
5.	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.

³ By 24 June 2024, the Commission shall, with the involvement of the Member States, relevant TSOs, the Agency and the national regulatory authorities, develop guidance for a specific cost-benefit and cost-sharing (CBCS) for the deployment of the sea-basin integrated offshore network development plans (Article 15 of Reg. 2022/869).

Short description of the responses

15 respondents provided comments to at least one of the questions.

1 Respondents did not provide any feedback.

Stakeholders provided different and, in some cases, divergent views, which are summarised below:

- The use of different scenarios would allow to capture a broader perspective of the system developments and reflect multiple possible paths, providing a comprehensive background of the project assessment and the investment request. On the other hand, a disadvantage associated to the use of multiple scenarios is the risk to create uncertainty on the investment decision rationale and to create negative effect where “less likely” scenario outweigh “more likely” scenarios.
- When the use of TYNDP scenarios is recommended, there is the need to choose the most relevant TYNDP scenario and the possibility to update/supplement assumptions with national data, which have often gone through the same level of consultation as TYNDP scenarios and are often more updated. There is also the need to allow in parallel the possibility to use other scenarios from a pool of scenarios that are considered solid and from reliable industry operators.
- The TYNDP scenarios are often outdated when they are ready to be used (until the TYNDP is published there might be an gap of more than 2 years).
- Additional scenarios should be allowed just in exceptional cases where for example TYNDP scenarios substantially differ from the national policy or are out of date (due to changes in EU policy, unexpected events, etc.).
- The disadvantage of using the TYNDP (and the Offshore National Development Plan (‘ONDP’) scenarios is that they are not designed to form the basis for distributing actual costs between countries or project participants. Scenarios are only best guesses and expectations for the future.
- It is of utmost importance that scenarios are based on figures mutually agreed by the concerned parties.

Stakeholders' suggestions	ACER views
<p>There should be an agreement among NRAs and promoters on scenario(s) for CBCA upfront the submission of the application to NRAs.</p>	<p>ACER agrees on the importance of a broad consensus around the scenarios to be used for TYNDP and CBAs. ACER Recommendation invite project promoters to inform since the beginning the concerned NRAs and to provide NRAs with the consultation documents, as soon as distributed to or received from the TSOs (Section 2.6). However, Article 16(5) of Reg. 2022/869, foresees that NRAs shall seek a mutual agreement based on, but not limited to, the information provided by project promoters in the investment request.</p>
<p>ACER could issue, for each EU-wide TYNDP, recommendation which scenario shall be used as the most relevant for CBCA.</p>	<p>ACER did not deem it necessary to limit NRAs choice, beyond the legal requirements, in which scenario or combination of scenarios they should use for the purpose of finding agreement on the investment request. ACER also recommends that</p>

Stakeholders' suggestions	ACER views
	scenarios are always built in line with ACER Scenario Framework Guidelines ⁴ .
The integrated use of ENTSO-E and ENTSO-G scenarios should be ensured in order to create a valuable overview integrating all sectors and multisectoral projects and developments.	ACER agrees on the importance of using integrated scenarios across the sectors, whose quality is expected to be robust enough for their use in CBA and CBCA. In line with Article 16(4) and Article 15(5) of Reg. 2022/869, the CBCA Recommendation foresees the consideration of TYNDP scenarios for CBCA as well as of additional scenarios (see Sections 2.5, 3.6 and 3.7).
The approach of central scenario with low- and high-economy variants will provide a good basis for CBA analysis, assuming that the central scenario is ambitious and following the latest assumptions concerning the relevant inputs.	In line with ACER Scenario Framework Guidelines ACER agrees on the relevance of a central scenario with its variants. The consideration of TYNDP scenarios in CBCA is foreseen by Reg. 2022/869 and also in ACER Recommendation (see Sections 2.5, 3.6 and 3.7).
It is important that when the use of TYNDP scenarios is recommended, there is a possibility to choose the most relevant TYNDP scenario and the possibly outdated assumptions in that scenario can be updated with most recent forecasts.	ACER agrees on the need to choose the most relevant and robust scenarios. In line with Article 16(4) and Article 16(5) of Reg. 2022/869, the CBCA Recommendation suggests that, once all scenarios considered by promoters are evaluated by NRAs, NRAs could consider additional scenarios to ensure proper robustness of the CBCA decision (see Section 3.6).
If project promoters and NRAs are allowed to introduce their own scenarios, it should be secured that the input data and scenario building approach is compliant with the common guidelines used at pan-European level, e.g. in TYNDP and with EU targets. And the data basis should be transparent and understandable for all involved/considered parties.	ACER agrees with this comment. According to the CBCA Recommendation, all additional scenarios should be compliant with 2030 and 2050 targets. Also, additional scenarios should be complaint with ACER Scenario Framework Guidelines (see Sections 2.5, 3.6 and 3.7).
The scenarios addressed in the TYNDP should include smart grid technologies apart from traditional grid reinforcement technologies, thus more complex scenarios should be studied.	ACER agrees that scenarios should look, to the extent possible, at the whole energy system, as also reflected in the ACER Scenario Framework Guidelines.
ACER should provide a template for standard projects.	ACER acknowledges the need for a template which could help promoters/NRAs to understand if scenarios are compliant with ACER Scenario Framework Guidelines. However, this would be

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https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Framework_Guidelines/Framework%20Guidelines/FG_For_Joint_TYNDP_Scenarios.pdf

Stakeholders' suggestions	ACER views
	today premature since ACER Scenario Framework Guidelines will be applied for the first time to TYNDP 2024 scenarios.
ACER should include in the Recommendation clear proposals on how many and which scenarios should be used.	ACER did not deem it necessary to limit NRAs choice, beyond the legal requirements, in which robust and plausible scenario or combination of scenarios they should take into account for the purpose of finding agreement on the investment request. . ACER recommends that scenarios are always built in line with ACER Scenario Framework Guidelines ⁵ .ACER also recognises that the choice on scenarios for CBCA is influenced by factors (such as the scenarios quality; input data time stamp; etc.) making it impossible to define ex-ante, in the ACER CBCA Recommendation, how many and which scenarios should be used for CBCA.
ACER should include clear proposals for 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 prevent cherry-picking.	ACER agrees to the need for providing clarity and a solid framework for the identification of impacted countries. ACER adapted the CBCA Recommendation (see Section 3.8) to further reflect on the need for a more certain framework for the identification of net-benefiter and net-cost-bearer countries.

2.3 Topic 3: CBA assessment and CBA Methodologies

No.	Consultation questions
6.	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.
7.	Please indicate the key elements that the project-specific CBA should provide in the context of investment requests and CBCA decision-making.
8.	How should cost uncertainty be addressed in the project-specific CBA and in the CBCA decision-making?
9.	Should sustainability benefits be taken into account in the national net balances and later in the CBCA decision process?

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https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Framework_Guidelines/Framework%20Guidelines/FG_For_Joint_TYNDP_Scenarios.pdf

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Short description of the responses

All 16 respondents provided comments to at least one of the questions.

Concerning question 6. the respondents underlined that, while acknowledging different levels of progress among the single-sector CBA Methodologies currently available, the current CBA Methodologies do not allow for a meaningful monetisation of some benefits and it do not always allow to capture all benefits stemming from the projects' realisation. Stakeholders also flagged the complexity of CBA Methodologies which could lead to multiple interpretations of results, thus creating more uncertainty within the CBCA. Some stakeholders also raised the issue that TYNDP results cannot be used for CBCA, since they do not provide country-specific results while project promoters are responsible for calculating costs and benefits on a country-specific level.

Concerning question 7. the respondents identified the following key elements which the project-specific CBA should ensure in the context of investment requests and CBCA decision-making: (1) Project implementation timeline; (2) the latest available and European-wide scenarios of TYNDPs; (3) the variation of benefits for the affected countries; (4) investment costs of the project (CAPEX and OPEX); (5) the need to base the CBAs on agreed figures and methodologies.

Concerning question 8. on cost uncertainty, stakeholders flagged that in the TYNDP project submission, costs are considered as a range and these ranges should also be included in the CBCA process. To cover further uncertainties, it would also be beneficial to offer guidance when the estimated cost range is exceeded. According to the respondents, the PCI/PMI candidate projects' investment costs should be non-confidential and should be integral part of the PS-CBA to ensure transparency. Sensitivity analysis could also help to address cost uncertainty.

Concerning question 9. on sustainability, most respondents commented that sustainability benefits should be taken into account in the CBCA process when allocating costs among concerned countries. However, 10 out of 15 stakeholders having indicated such preference, specified that sustainability benefits should be taken into account but depending on the benefit category / type of emissions.

Stakeholders' suggestions	ACER views
On CBA Methodology	
ACER should clarify what is intended and expected by "the result of market testing" since the type of documents and process is not defined in the Regulation.	ACER amended the text of its CBCA Recommendation in order to further elaborate on the definition and the requests for "results of market testing". See Section 2.8 and Annex IV.
The CBA by ENTSOG as an integral part of EU-wide planning procedure shall be the basis for the CBCA. This CBA methodology will be broadly consulted, commented by ACER and approved by the European Commission.	In line with Article 16(4) of Reg. 2022/869, the CBA carried out by project promoters for the investment requests must be consistent with the CBA Methodologies defined in Article 11. ACER CBCA Recommendation is aligned with this requirement.
All potential payers should be involved in CBAs from the very beginning. Not agreed CBAs will only lead to "counter-CBAs" showing that the benefits are differently allocated.	ACER agrees with the need for a timely and broad involvement of all concerned actors. The ACER CBCA Recommendation provide guidelines for project promoters on how to address the public consultations concerning investment requests.

Stakeholders' suggestions	ACER views
<p>The CBA should provide a calculation of expected net benefits and their distribution between Member States, in society (producers, consumers, TSOs), as well as across sectors (e.g., electricity, hydrogen) to reap the benefits of energy system integration. Also, some risk analysis should be provided.</p>	<p>ACER agrees with the principle that CBA need to be comprehensive and comprehensible and that it should provide comparable and monetised information on costs and benefits and relevant cross-border monetary flows, disaggregated per country. This is a requirement from Reg. 2022/869, Annex V and it is also reflected in Annex IV of ACER CBCA Recommendation.</p>
<p>PS-CBA methodology should monetise all the benefits and costs and not just rely on qualitative indicators.</p>	<p>ACER agrees with the principle that CBA need to be comprehensive and comprehensible and that it should provide comparable and monetised information on costs and benefits and relevant cross-border monetary flows, disaggregated per country. This is a requirement from Reg. 2022/869, Annex V and it is also reflected in Annex IV of ACER CBCA Recommendation.</p>
<p>Sustainability should be assessed in a broader sense, not only via the GHG; but other indicators, such as avoided air pollution and methane emissions, should be included as well.</p>	<p>ACER agrees that sustainability benefits have different aspects to be considered when assessing a project. Aspects that go beyond CO2 and GHG reduction and that should be treated carefully in the context of CBCA. ACER Recommendation includes guidelines on sustainability under Annex I.</p>
<p>Avoided investments in other technologies should as well as benefits from repurposing existing pipelines (vs building new ones) also be seen as a benefit.</p>	<p>ACER acknowledges that current CBA Methodologies could be further improved to take into account more benefits. ACER underlines that, at the time of drafting the CBCA Recommendation, all CBA Methodologies envisaged by Article 11 of Reg. 2022/869 were still under development.</p>
<p>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.</p>	<p>ACER acknowledges that a single entity calculating the CBAs may ensure a more comparable framework. However, ACER notices that Article 16(4) and Annex III(2) of Reg. 2022/869 respectively put the CBAs submitted for CBCA and for PCI under the responsibility of project promoters.</p>
<p>We would recommend that hybrid project developers across multiple Member States should submit a shared cost-benefit analysis.</p>	<p>ACER agrees with this comment. CBCA Recommendation strengthens the role of project clustering and includes such recommendation in Section 2.1.</p>
<p>In the ACER Recommendation 05-2015, the socio-economic welfare (SEW) is stated to include producer surplus, consumer surplus and congestion rent. When neighbouring countries are considering a cross-border transmission line, it can be that the combined consumer and producer surplus is strongly positive, but due to negative congestion rent the total SEW is</p>	<p>In the calculation of the socio-economic welfare (SEW) the variation of the congestion rent, the variation of the producer surplus and the variation of the consumer surplus should all be accounted for, as each of them constitutes a value to the society.</p>

Stakeholders' suggestions	ACER views
<p>negative. As the congestion rents are supposed to be used to relieve congestion situations, it is somewhat absurd situation that negative congestion rent can stop the development of cross-border connection.</p>	
<p>On cost uncertainty</p>	
<p>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</p>	<p>ACER disagrees with this "50%" proposal. The reason for such limitation is not justified. The compensations, if needed, should be provided by the net beneficiary countries regardless whether they are hosting or not the project.</p> <p>However, ACER agrees with the need for providing clarity and a solid framework in identifying the impacted countries. ACER adapted the CBCA Recommendation to further reflect on the need for a more certain framework for the identification of net-benefiter and net-cost-bearer countries (see Section 3.8).</p>
<p>For CAPEX costs a reserve in amount of inaccuracy of budget calculation shall be applied.</p>	<p>ACER agrees on the needs to take into account, to the extent possible, costs uncertainty already in the phase of CBCA. Therefore, the CBCA Recommendation includes a section dedicated to uncertainty and their treatment (see Section 3.10).</p>
<p>Final settlement shall be done only after completion of the project. In the decision all cost of the projects should be clearly allocated to relevant regulatory revenues.</p>	<p>ACER finds this feedback aligned with the approach described in the CBCA Recommendation. NRAs are free to decide on any payment method they see fit, the lump-sum method at the commissioning seems a reasonable fall-back option, as it leaves the risk of time overruns on the hosting Member State who is usually in control of it.</p>
<p>Simulation analysis like Monte Carlo should be used. Differences in risk profiles could be important. Two promoters involved in a common project with equal NPV mean for the two promoters but with very different distribution function for the outcome (different risk) should be compensated differently with CEF and possibly trigger a CBCA where the low risk part transfers funds to the high risk part. Risk should be seen as a cost.</p>	<p>In ACER's view remuneration to the project promoter (i.e. setting an efficient risk/revenue balance) is beyond the scope of the CBCA recommendations.</p>
<p>For a CBCA an exclusive assessment of the cost-effectiveness of projects in the course of a purely monetary CBA is no longer appropriate. Rather, parameters such as the transportability of RES and the avoidance of CO2 emissions must also be taken into account in the</p>	<p>ACER Recommendation does not limit the evaluation of costs and benefits to the monetised indicators only. ACER agrees with the comment that current CBA Methodologies should be further improved to take into account more benefit aspects. ACER pursues further monetisation of not yet</p>

Stakeholders' suggestions	ACER views
<p>assessment. If these (currently) cannot be quantified in euros, a points or traffic light system should be introduced for this purpose.</p>	<p>monetised benefit indicators by the ENTSOs CBA methodologies, while avoiding overlaps. Some of the monetised indicators already capture sustainability/climate benefits.</p> <p>Also, ACER notices that, at the time of drafting the CBCA Recommendation all CBA Methodologies envisaged by Article 11 of Reg. 2022/869 are still under development.</p>
<p>On sustainability</p>	
<p>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 power plant level) to be able to identify which emissions and how much is being emitted.</p>	<p>ACER agrees with the principles of this comment. ACER CBCA Recommendation distinguishes among different “sub-categories” of sustainability benefits and their possible monetisation (Annex I).</p>
<p>As the sustainability is the key target for the EU in coming decades this criterion shall be included and monetized within allocation of costs. A clear methodology/price of e.g. 1 ton of CO2 would completely enhance the process. However, Hydrogen should not be considered as the only emission-free gas and the infrastructure enabling its transport and production should not be preferred over other emission-free gases that the member state counts on in its energy mix to help it achieve an emission-free economy.</p>	<p>ACER agrees with the comment that sustainability aspects shall be also considered for CBCA. The ACER CBCA Recommendation distinguishes among different “sub-categories” of sustainability benefits and their possible monetisation (Annex I).</p> <p>ACER understands that the respondent(s) suggest that also other gases than hydrogen could bring emission reduction. ACER Recommendation does not limit sustainability benefits to specific energy sources. ACER also notices that, at the time of drafting the CBCA Recommendation the ENTSOG and JRC gas and hydrogen CBA Methodologies were still under development.</p>
<p>All socioeconomic factors should be included in the CBA and hence in a CBCA. However, some factors are very difficult to assess and should be evaluated with great care. One thing to consider could be the geographic/local impact of the sustainability benefit. If CO2 emission credits from one Member State to another is part of the project financing, this (monetization of the carbon externality) should be reflected in the calculation and distribution of net benefits as a part of the CBA. If this is not the case, CO2 emissions should only be included in the total socioeconomic welfare of the project but should not be considered for CBCA purposes.</p>	<p>ACER agrees with the comment that sustainability aspects shall be, to a certain extent, also considered for CBCA. The ACER CBCA Recommendation reflect those principles and distinguishes among different “sub-categories” of sustainability benefits and their possible monetisation (Annex I).</p>

2.4 Topic 4: The compensation mechanism

No.	Consultation questions
10.	As described above, the Agency 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.
11.	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?
12.	Do you think that the compensation mechanism currently foreseen in the Agency's CBCA Recommendation 05-2015 should be revisited? Please, justify your answer.

Short description of the responses

14 out of 16 respondents provided comments to at least one of the questions.

Respondents generally agreed that the priority to NRAs' agreement shall be preserved as the NRAs have the best knowledge of their national specificities and ACER should intervene only as last resort. Thus, the possibility to diverge from the mechanism suggested in the Recommendation should be maintained in the update of ACER CBCA Recommendation. In particular, stakeholders suggested that cost-sharing should remain a voluntary negotiated solution between NRAs of the hosting countries, while CBCA extended to non-hosting countries should be considered as a last resort. On the contrary, a respondent proposed the role of NRAs in CBCA for the PCIs to be weakened, in favour of other European authorities, with the view that this approach would ensure lower risk of delays/cancelation of projects.

11 Respondents out of 16 confirmed the need to revisit the compensation mechanism in the CBCA Recommendation. The other respondents either indicated that the net-loser compensation mechanism should be retained or did not provide specific view on the topic. According to the respondents in favour of amending the compensation mechanism, the main issues are: (1) involving net positive impacted counterparties creates complexity to the CBCA decision making and invokes pushback due to possible costs sharing consequences; (2) a lump sum payments to hosting TSOs as preferred method may lead to high financial risks for TSOs in terms of balance sheets and ratings, ownership and decision rights, especially in view of the significant investment needs in infrastructure expected in the coming years; (3) the need to ensure that the paying TSO actually gets benefits as expected.

A stakeholder raised concern that CBCA "funds", along with CEF and other grants, are typically subtracted from the investment cost when calculating tariffs, which is known as the Regulatory Assets Base (RAB). This practice could potentially disincentivize infrastructure operators from investing, as subsidies would decrease their RAB and, in turn, the overall return on their investment.

Stakeholders' suggestions	ACER views
CBCA should not be binding upon the non-hosting countries that could have been identified as beneficiaries as long as they would disagree with the results presented to them. This holds particularly true in the context where project	ACER acknowledges the need for providing clarity and a solid framework in identifying the impacted countries. ACER adapted the CBCA Recommendation (see Section 3.8) to further reflect on the need for a more certain framework for the

Stakeholders' suggestions	ACER views
<p>benefits are 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.</p>	<p>identification of beneficiary and cost-bearer countries.</p> <p>In line with Section 2.1 of the CBCA Recommendation, ACER agrees that a CBA provided for clusters of projects only is not suitable for deciding on a cross-border cost allocation.</p>
<p>Particular attention should be given to the possible differences that may arise between the forecasted costs and benefits and actual ones. Experience has shown that net negative impacts are extremely sensitive to scenarios and the used calculation tools.</p>	<p>ACER agrees on the need to take into account, to the extent possible, costs uncertainty already in the phase of CBCA. ACER CBCA Recommendation includes a section on treating uncertainties (Section 3.10).</p>
<p>The project should be exempted from the CBCA process if there are no losers.</p>	<p>While ACER agrees with the principle that negative net impact in a hosting country is a clear barrier for implementation of an infrastructure, the CBCA shall not be limited to these cases. ACER also underlines that the relevant NRA decisions concern not only agreement on cost allocation, but also on the investment request itself.</p>
<p>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; contractually governed minimum availability of the project and refunding of CBCA payment if criteria are not fulfilled; adaptation of the ownership/governance of the project to include non-hosting contributing countries.</p> <p>Payments should be immediately reflected in the tariff so that it doesn't affect its balance sheet as a liability without corresponding assets. But it raises the question if the network tariff is the appropriate tool to reflect the whole social benefit of a project for the country (according to Reg. 2019/943 Article 18, network tariff should reflect only network costs).</p> <p>Cost recovery without any time lag from tariffs has to be ensured to avoid huge financial risk for TSOs and their ratings.</p>	<p>ACER agrees on the need to take into account, already in the phase of the CBCA decision and to the extent possible, the uncertainty related to the actual availability of the infrastructure non-hosting countries are also contributing to. In this regard, the ACER CBCA Recommendation includes a section dedicated to uncertainty and their treatment (Section 3.10).</p> <p>NRAs are free to decide on any payment method they see fit, the lump-sum method at the commissioning seems a reasonable fall-back option, as it leaves the risk of time overruns on the hosting Member State who is usually in control of it.</p>
<p>To investigate ways for member states to hedge their benefits beforehand (i.e. built-in hedging instruments into benefit allocation after the investment has been made). This could allocate</p>	<p>The CBCA recommendation include proposals for ex-ante defined mechanism for adjustments of the CBCA (see Section 3.10).</p>

Stakeholders' suggestions	ACER views
long-term flows of costs and benefits in a more stable way.	
To avoid unintended disincentive related to how cost sharing is treated in the RAB, new mechanisms could be introduced in the TEN-E to allow project promoters to receive a return on the whole RAB: CBCA funds, instead of decreasing the RAB, could be used as a "supplement revenue" to remunerate the investment.	ACER considers this comment out of scope of the CBCA recommendation since referring to changes of Reg. 2022/869.
New ways of implementing CBCA payments should be explored. For example, under the current market conditions, that are likely to prevail for several years, it is extremely difficult to obtain long-term contracts to trigger infrastructure projects; however, once built, the capacity created might enjoy a high short-term demand. Given the uncertainty associated with the use of the infrastructure, the CBCA could be designed as a pre-approved amount of money (a maximum) that will only be called by the project promoter on an annual basis as a "supplement revenue" if revenues collected in the short-term are insufficient to attain a minimum rate of return.	NRAs are free to decide on any payment method they see fit, the lump-sum method at the commissioning seems a reasonable fall-back option, as it leaves the risk of time overruns on the hosting Member State who is usually in control of it.

2.5 Topic 5: The Agency's role when dealing with CBCA

No.	Consultation questions
13.	What would you deem important to be considered by ACER when taking a decision on CBCA?
14.	Should the CBCA Recommendation specify distinct approaches for NRAs and the Agency to implement? Please, justify your answer and provide concrete elements where the approaches might differ.

Short description of the responses
<p>13 out of 16 respondents provided comments to at least one of the questions.</p> <p>8 respondents explained that the ACER Recommendation shall describe a common approach to ensure an equal treatment of all projects. 5 stakeholders indicated that the CBCA Recommendation should specify distinct approaches for NRAs and the Agency, since the inability of the concerned parties to reach an agreement might also suggests that there were challenges in adhering to the guidelines outlined in the Recommendation or a non-standard approach would be more suited.</p>

Short description of the responses

Some stakeholders also stressed the view that a decision taken by ACER should be an exception (i.e. ACER as last resort) and that ACER should decide as a neutral party while ensuring transparency and an extensive participation of concerned stakeholders.

Stakeholders' suggestions	ACER views
<p>In case ACER takes a decision the following inputs should be considered in the decision-making process:</p> <ul style="list-style-type: none"> • Expected net benefits. • Risks related to costs. • Risks related benefits and tangible lesser tangible benefits. • TSOs' proposals • NRAs' proposals • Anticipated regional development in general • An uncertainty range linked to the applied scenario(s). • The maturity of the coordination between the involved MSs. • The financial sustainability of the companies involved. • An extraordinary protective safeguard condition should be activatable in order to avoid decisions leading to financial detrimental impacts, not affordable for a TSO company 	<p>ACER considers that the CBCA Recommendation considers to a large extent all the elements proposed.</p>
<p>ACER should be appointed for the coordination of national authorities.</p>	<p>ACER considers that NRAs, as confirmed also by other stakeholders' feedback, are best suited to deal with the specific CBCA cases, due to the different national specificities. Still, ACER keeps track of NRAs decision making (following their notification of the receipt of the investment request) and support them for any related inquiries.</p>
<p>ACER should not exceed the functions allocated to it in the TEN-E.</p>	<p>In line with Article 16(7) of Reg. 2022/869, ACER will decide on CBCAs if requested by the concerned NRAs or if no agreement among the concerned NRAs is reached within 6 months.</p>

2.6 Topic 6: Cross border cost allocation for offshore grid projects

No.	Consultation questions
15.	Can the CBCA be improved to boost efficient investments in offshore grids for renewable energy?
16.	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.

Short description of the responses
<p>15 out of 16 respondents provided comments to at least one of the questions.</p> <p>While 3 stakeholder believed that ACER CBCA Recommendation do not need to be amended, 7 stakeholders confirmed the need for adapting the CBCA Recommendation in order to boost efficient investments in offshore grids for renewable energy.</p> <p>In particular, stakeholders flagged out the difficulties and the higher uncertainties associated to the assessment of benefits for projects in the offshore grid context and energy hub projects, as there are many new offshore projects foreseen which will influence each other and also due to the nature itself of those projects. According to some stakeholder, a project-based CBCA would not be able to capture a correct view of the benefits and costs. Thus, the preference for a multi-projects CBCA which could be more appropriate. Some stakeholders also expressed preference for a negotiated voluntary solution as default approach between respective countries of the hosting project promoters.</p> <p>Referring to the link between the EC's guidance on a sea-basin cost-benefit analysis and cost-sharing (the CBCS), and the ACER CBCA Recommendation, respondents flagged out several concerns such as: (1) how to define boundary between projects/countries/regions for the assessment of benefits and costs; (2) which countries should be involved in the CBCA or CBCS and based on which criteria; (3) within a sea basin there may be also non-PCI/non-PMI projects but regulation envisaged CBCA only for PCI/PMI projects; (4) the involvement of land-locked countries.</p> <p>Some stakeholders emphasized that countries may be hesitant to contribute to projects due to the associated high uncertainty of costs and benefits. This uncertainty may lead to significant delays in implementing the projects. These stakeholders also believe that funding, such as an increase in CEF funding or other/new support mechanisms, would be necessary for projects that are not commercially viable for the hosting countries, but are economically viable from a European perspective.</p> <p>A stakeholder pointed out that the structure of hybrid and multi-purpose projects suggests that congestion revenues are likely to be concentrated on specific sections. However, as project costs are often shared fairly between countries, it is crucial that arrangements are in place to fairly share the benefits accrued on all lines, regardless of asset ownership. This becomes particularly important if sections of the hybrid project are internalised or defined as extensions of a Member State's domestic transmission system.</p>

Stakeholders' suggestions	ACER views
Execute a JUMBO-TOOT/JUMBO PINT to assess the value of a set of projects for a Region.	ACER included in its CBCA Recommendation suggestion for project clustering for CBCA, which are also applicable to hybrid and multi-purpose

Stakeholders' suggestions	ACER views
The composition of the set of projects for either TOOT or PINT follows the rules of the Reference grid).	projects (see Section 2.1), and for cost identification (Section 3.5).
Congestion rents should be properly considered in the CBCA Recommendation.	According to ACER CBCA Recommendation, congestion rents should also be taken into account in the cost allocation.

2.7 Topic 6: Others

No.	Consultation questions
17.	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
18.	Would you like to share anything else with us regarding the Agency's CBCA Recommendation?

Short description of the responses
<p>14 out of 16 respondents provided comments to at least one of the questions.</p> <p>Concerning question 17. Stakeholders showed diverging view on the need to revisit the 10% threshold. Those in favour of revisiting the threshold argued that an absolute significant threshold would benefit smaller countries, from an economic perspective, since with a smaller risk to fulfil the 10% criterion. On the contrary, stakeholders recommending to preserve the same approach, explained that 10% threshold and its step-wise reduction is adequate also for future projects. In particular, those stakeholders argued that a threshold reduction would create more administrative burden.</p> <p>Concerning question 18. Stakeholders' additional remarks were directly included in the table below.</p>

Stakeholders' suggestions	ACER views
On the threshold	
The significance threshold should be applied 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.	ACER considers that a uniform threshold among countries ensures non-discrimination (i.e. each citizens has the same weight).

Stakeholders' suggestions	ACER views
<p>A party, which is exceeding the significance threshold should only pay its own share of the cost. Everything else (e.g., 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).</p>	<p>ACER considers that the application of the significance threshold is a pragmatic approach in view of the related administrative costs. However, ACER notices that the CBCA Recommendation envisages the possibility for a step-wise reduction of the significance threshold. Also, ACER reminds that according to Reg. 2022/869 NRAs should allocate 100% of the expected efficient investment costs.</p>
<p>Others feedback</p>	
<p>To better understand the practical workings of a non-hosting country's involvement in CBCA projects, it would be beneficial to have some fictitious examples.</p>	<p>ACER took note of this request. Examples may be provided by ACER as separate information, not part of the CBCA Recommendation.</p>
<p>Recognizing all uncertainties in scenarios and the big changes in the energy transition, we propose not to make the CBCA mandatory.</p>	<p>ACER notices that CBCA is not a mandatory process for all PCIs/PMIs. However, according to Article 18 of Reg. 2022/869, CBCA is a mandatory step for projects aiming at Union finance assistance.</p>
<p>It is important to stay pragmatic.</p>	<p>ACER agrees with this feedback and considers that the proposed CBCA Recommendation ensures a pragmatic approach and provides a sufficient level of additional specific guidelines.</p>
<p>The new CBCA Recommendation needs to increase focus on sector integrating elements.</p>	<p>In line with its Position Paper "<i>towards greater consistency of cost-benefit analysis methodologies</i>", ACER recognises the importance of sector integration. However, ACER underlines that at the time of drafting the CBCA Recommendation the level of sector integration was still mostly captured at scenario level while the CBA Methodologies purely remain single-sector methodologies.</p>
<p>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</p>	<p>According to Article 16(4) of Reg. 2022/869, project promoters shall submit an investment request which shall include a request for a cross-border cost allocation.</p>
<p>To get future PCI/PMI realized when their timely commissioning would profit also from the access to CEF funding, it would be to foresee an exemption from the CBCA decision process for projects with a CBA indicating net positive benefits for (all) the hosting Member State(s). In particular, in the past project promoters have been obliged to perform consultations on "no CBCA" proposals (i.e. CBCA=0).</p>	<p>According to Article 18 of Reg. 2022/869, CBCA is a mandatory step for projects seeking Union finance assistance while Article 16 describes all the main steps to be ensured by project promoters and NRAs, including the public consultation.</p>

Stakeholders' suggestions	ACER views
<p>Clear milestones and timing for the investment request process should be set, so that it can't be delayed arbitrarily.</p>	<p>ACER CBCA Recommendation is aligned with the timing set in Article 16 of Reg. 2022/869. The Recommendation also includes additional guidelines (such as on the duration of the consultation period).</p> <p>Although it is crucial to implement the CBCA steps within a reasonable timeframe, it is also essential to ensure a thorough and robust preparation and evaluation of all investment request elements, which might require multiple iterations before reaching an appropriate level of readiness.</p>

- Annex I: List of Respondents

No.	Organisation	Activity	Confidential
1.	Undisclosed stakeholder	"Transmission System Operator (or association)"	Organisation's name not to be disclosed.
2.	GASCADE Gastransport GmbH	"Transmission System Operator (or association)"	No
3.	Undisclosed stakeholder	"Transmission System Operator (or association)"	Organisation's name not to be disclosed.
4.	UBITECH ENERGY	"Project Promoter"	No
5.	Fingrid	"Transmission System Operator (or association)"	No
6.	NET4GAS	"Transmission System Operator (or association)"	No
7.	Energinet	"Transmission System Operator (or association)"	No
8.	ENTSO-E	"Transmission System Operator (or association)"	No
9.	Enagás S.A	"Transmission System Operator (or association)"	No
10.	Amprion GmbH	"Transmission System Operator (or association)"	No
11.	TenneT TSO GmbH (Germany) and TenneT TSO B.V. (Netherlands)	"Transmission System Operator (or association)"	No
12.	Undisclosed stakeholder	"Transmission System Operator (or association)"	Organisation's name not to be disclosed.
13.	Ofgem- Office of Gas and Electricity Markets	"Non-EU NRA"	No
14.	Gas Infrastructure Europe (GIE)	"Transmission System Operator (or association)"	No
15.	Elia Belgium	"Transmission System Operator (or association)"	No

No.	Organisation	Activity	Confidential
16.	50Hertz Transmission GmbH	"Transmission System Operator (or association)"	No