

## **Annex III**

### **Evaluation of responses to the NRA and TSO consultation on the preliminary draft Agency Decision on the CCRs Proposal**

#### **1 Introduction**

Following the public consultation which took place 22 June to 20 July 2016, and for which the evaluation of responses is provided in the preceding Annex (Annex IIa), the Agency subsequently held a consultation for national regulatory authorities (NRAs) and transmission system operators (TSOs). This subsequent consultation was held in the context of the ongoing process towards an Agency decision on the 'All TSOs' proposal for Capacity Calculation Regions (CCRs) in accordance with Article 15(1) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a Guideline on Capacity Allocation and Congestion Management', pursuant to Article 9(11) of Commission Regulation (EU) 2015/1222 ( the CACM Regulation)<sup>1</sup>.

In particular, NRAs and TSOs were asked to provide their comments on the preliminary draft Decision on the CCRs Proposal, together with a preliminary definition of the CCRs, a preliminary Evaluation Paper of the Public Consultation and a preliminary Technical Justification Document demonstrating the existence of a structural congestion on the DE-AT border. The consultation took place from 15 September to 7 October 2016 (inclusive).

#### **2 Responses**

By the end of the consultation period, the Agency received responses from **ENTSO-E** (as a 'joint response of all TSOs') as well as individual responses from **three TSOs**, and **four NRAs**.

The 'joint response of all TSOs' by ENTSO-E was primarily focused on expressing concerns on the direct merger of the Central West Europe (CWE) and CEE (Central East Europe) CCRs. Besides this primary concern, ENTSO-E also provided comments of an editorial/factual nature and comments of a clarification nature.

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<sup>1</sup> OJ L 197, 25.7.2015, p. 24–72.

Two of the TSOs, Amprion and TenneT (on behalf of TenneT TSO BV and TenneT TSO GmbH), confirmed the above concerns expressed in the 'joint response of all TSOs' by ENTSO-E, while stressing points of particular concern.

One TSO (Austrian Power Grid) provided diverging comments from the 'joint response of all TSOs' by ENTSO-E. In particular, it expressed its full support for the intended merger of the CWE and CEE CCR. It also provided comments with respect to the inclusion of the DE-AT bidding zone border and on the Agency's Technical Justification Document.

Two of the NRAs (Institut Luxembourgeois de Régulation and Urząd Regulacji Energetyki) provided comments on the all TSOs' proposal on capacity calculation regions, which were of an editorial /factual nature. One of the NRAs (Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen) provided comments, which were of a clarification nature to the Agency's Technical Justification Document.

One NRA (E-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft) provided comments of a more substantive nature with respect to the inclusion of the DE-AT bidding zone border and on the Agency's Technical Justification Document .

The following table is organised according to the individual respondents and their comments. It contains a summary of all comments received during the consultation period, as well as the Agency's corresponding views.

### ENTSO-E Response (as a joint response of all TSOs)

The ENTSO-E response raised specific concern about the Agency's amendment to the all TSOs' proposal on capacity calculation regions, namely the merger of the CWE CCR and the CEE CCR into one CCR.

The following comments were made in this regard:

- The current approach, as described in the all TSOs' proposal on capacity calculation regions (the development of a common flow-based day-ahead capacity calculation methodology and subsequent merger of the CWE and CEE CCRs) would enable TSOs to fully focus their attention on developing and implementing a common flow-based day-ahead methodology.
- The current approach provides the required regional flexibility before the implementation of the common flow-based day-ahead capacity calculation methodology and is similar to the approach provided for in Article 15(3) of the CACM Regulation.
- ENTSO-E highlighted the availability of a roadmap toward the merger and the Memorandum of Understanding (MoU) signed on 3 March 2016.
- All CWE and CEE TSOs entered into a 'legally binding' Cooperation Agreement, legally formalising the MoU principles, and the cooperation provided therein is ongoing and currently delivering results.

While the Agency acknowledges that a direct merger will imply some challenges, it also believes that all the efforts and progress achieved already in the framework of the ongoing regional projects should help foster the development of common methodologies at the level of the two regions.

The Agency also considers that the CACM Regulation is flexible enough and perfectly compatible with the existence of (sub-) regional projects, provided the latter are consistent with the common methodologies developed at regional level.

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>The deadlines provided in the CACM Regulation are 'too short and hence very challenging in case of a direct merger. This will create legal and regulatory uncertainty.'</li> <li>A 'direct merger risks to put on hold ongoing regional projects', for example the development of a CWE flow-based intraday capacity calculation methodology among others.</li> <li>The 'prime focus in the merged region would be on developing a common flow-based day-ahead capacity calculation methodology'.</li> </ul> <p>ENTSO-E made the following requests to the Agency:</p> <ul style="list-style-type: none"> <li>Deadlines included in the MoU are made binding in the Agency decision, which could include timelines for the additional methodologies that must be developed together with the development and implementation of the flow-based day-ahead capacity calculation methodology, for example the common methodology for countertrading and redispatching (and cost sharing). This would ensure a feasible and pragmatic approach towards the merger of the CCRs.</li> <li>The legal and regulatory uncertainty referred to in the previous paragraph must be addressed in the Agency's final decision.</li> <li>The TSOs invited concerned NRAs and the Agency to openly and commonly discuss and agree on 'what to do with the ongoing regional projects' and on 'a concrete action plan' for the implementation of the Agency's decision.</li> </ul>	<p>The Agency deems important to remind that the deadlines to submit the methodologies to NRAs' approval are explicitly defined in the CACM Regulation and it is not within the competences of the Agency to change them. The Agency however strongly encourages the TSOs and NRAs of the concerned region to quickly discuss and agree on the expectations regarding the level of details of the methodologies in order to reduce the potential regulatory uncertainty.</p>

- To address the concerns raised in the previous paragraphs in a 'legally enforceable way' in case the Agency proceeds with amending the all TSOs' proposal on capacity calculation regions by merging the CWE CCR and the CEE CCR into one CCR.

Additional issues raised in ENTSO-E's response are summarised below:

- All TSOs understood that the operative part of the Agency's Decision and any annexed determination of CCRs would be binding whereas any other annexes would be provided as non-binding justification.
- All TSOs recommended that the Agency stresses in its decision the importance of considering critical third country borders in technically relevant processes.
- All TSOs proposed to remove paragraph 2 in Article 11 of the all TSOs' proposal on capacity calculation regions because the interconnections are already in operation on the bidding zone borders 'LT-SE4' and 'LT-PL'. Paragraph 2 was included because the interconnectors were not in operation at the time of submission of the all TSOs' proposal on capacity calculation regions.
- All TSOs informed the Agency that the 'Language waiver will be dealt with by individual TSOs who will provide the declaration individually where appropriate and in due time.'
- All TSOs also provided corrections of an editorial nature, as the all TSOs' proposal on capacity calculation regions contained several typos and/or misspellings.

The binding nature of the Agency's Decision on CCRs follows from Article 288 TFEU. Annexes I, II, III, IV and V are an integral part of this Decision while Annex Ia is included for information and illustration only.

A paragraph was added in the Decision to address the concern over critical third country borders.

Paragraph 2 of Article 11 was removed.

Respondents' views	ACER's views
<p><b>Amprion GmbH Response</b></p> <p>Amprion confirmed that it fully supports the approach advocated in the ENTSO-E response (summarised above) and highlighted the heterogeneity of the regulatory frameworks and market arrangements in the merged region, therefore making the development of methodologies within the timeframes provided in the CACM Regulation 'an impossible task for the involved TSOs'.</p> <p>In particular, Amprion views the development of a common intraday capacity calculation methodology no later than 10 months after the approval of the proposal for a capacity calculation region as an 'impossible obligation'.</p>	<p>See above.</p>
<p><b>TenneT Response (on behalf of TenneT TSO BV and TenneT TSO GmbH)</b></p> <p>TenneT confirmed that it supports the approach advocated in the ENTSO-E response (summarised above). In particular, it stressed that the all TSOs' proposal on capacity calculation regions is fully compliant with all the requirements of the CACM Regulation. TenneT highlighted that the current approach provides for a timely and successful definition of CCRs and that the Cooperation Agreement (referred to above in the ENTSO-E response) demonstrates the next step and a first result. It also highlighted TenneT's dedication to this process and follow-up procedure.</p> <p>TenneT also particularly welcomed the Agency's view that, to the extent necessary, some flexibility could be granted to the CWE-CEE TSOs, for</p>	<p>See the core Decision why the Agency considers that the All TSOs' Proposal is not compliant with Regulation.</p>

Respondents' views	ACER's views
<p>example to develop less detailed methodologies and/or to propose a step-wise implementation of the methodologies commonly developed at the Core region's level.</p>	
<p><b>Austrian Power Grid AG (APG) Response</b></p>	
<p>APG provided diverging comments from the 'joint response of all TSOs' by ENTSO-E (summarised above). These views are outlined in the following paragraphs.</p>	
<p>APG expressed its full support for the intended merger of the CWE and CEE CCR, for the following reasons:</p> <ul style="list-style-type: none"> <li>• From a technical point of view, the existing two regions consist of a highly meshed transmission grid and therefore this approach will ensure best compliance with the required common congestion management procedures.</li> <li>• It is important that the CWE and CEE TSOs together continue to develop one common flow-based capacity calculation concept (based on developments already made regionally).</li> <li>• Governance rules of the merged region will ensure that ongoing projects in the regions (for example, flow-based intraday capacity calculation) can continue to be implemented in a timely manner at the sub-regional level until flow-based market coupling is implemented and/or until these local projects can be extended to the whole merged region.</li> </ul>	<p>The Agency agrees.</p>

Respondents' views	ACER's views
<p>APG raised concerns with respect to the inclusion of the DE/LU-AT bidding zone border. In this respect, APG provided its legal and factual point of view, summarised below:</p> <p>Legal:</p> <ul style="list-style-type: none"> <li>• APG provided a semantic analysis of Article 15(2) of the CACM Regulation, whereby it insisted that the use of the word 'attributed' necessarily implies that only currently existing bidding zone borders may be included and assigned to a CCR.</li> <li>• APG reiterated comments made in the previous consultations, that new bidding zone borders may only be implemented in the course of a procedure according to Article 32 <i>et seq.</i> of the CACM Regulation. APG considers the creation of new bidding zone borders in the course of an Article 15 procedure as 'circumventing' the specific procedure, as 'clearly contrary to the purpose and concept' of the CACM Regulation, and that the two procedures cannot be applied 'interchangeably'. Furthermore, APG considers that the Agency 'ignores' the in-depth assessment of the current bidding zone configurations according to Article 32 <i>et seq.</i> of the CACM Regulation which has been started by ENTSO-E, and is thus in violation of the binding procedural rules. APG requests that the Agency's decision is kept within the 'intended scope' and that it supports the bidding zone review as the basis for such 'fundamental changes.'</li> <li>• APG stressed the importance of also taking into account the provision in point 1.7 of Annex I to Regulation (EC) No 714/2009. Based on the</li> </ul>	<p>The Agency disagrees that Article 15 of the CACM Regulation refers to existing bidding zone borders (see the core decision for further details).</p> <p>The Agency disagrees that the inclusion of new bidding-zone borders is outside the scope of Article 15 of the CACM Regulation and that Article 32 of the CACM Regulation is the exclusive path to introduce a new bidding zone border (see the core decision for further details).</p> <p>The Agency is of the view that its findings prove that the non-inclusion of the DE-AT border in the CCRs proposal would clearly go against Regulation (EC) No 714/2009 and the objectives of the CACM Regulation. The need for implementing a capacity allocation mechanism on the DE-AT border and therefore for including this border in the CCRs Proposal has been thoroughly assessed and discussed; this finding has received a favourable Opinion from the whole NRAs' community but one.</p> <p>Finally, the inclusion of new bidding zone borders in the CCRs Proposal does not undermine any bidding zone review process. Neither has any such process formally started yet, nor is its launch precluded by the aforementioned inclusion.</p> <p>According to the Agency's findings, the DE-AT interconnection is structurally congested and therefore requires the implementation of a capacity</p>



Respondents' views	ACER's views
<p>provision therein, APG thinks 'it is obvious that all guidelines referred to in Regulation (EC) No 714/2009 call for a thorough assessment of the actual need for congestion management and of the effects of this measure on the electricity market. It should be efficient with the lowest impact on the market'.</p> <ul style="list-style-type: none"> <li>• APG considers that Regulation (EC) No 714/2009 tasked TSOs with the assessment referred to in point 1.7 of Annex I to Regulation (EC) No 714/2009 and that furthermore, the CACM Regulation assigns the competence to assess the effects of new bidding zone borders on network security and on the market to TSOs. Therefore, 'a unilateral decision' by the Agency on the separation of the DE-AT bidding zone is contrary to point 1.7 of Annex I to Regulation (EC) No 714/2009.</li> <li>• APG highlighted the Commission Decision in the <i>Swedish Interconnectors</i> case<sup>2</sup>, which it considers concluded that TSOs must not limit interconnection capacity in order to solve congestion inside their own control area. APG considers that the Agency, therefore, must provide evidence that implementing a congestion management mechanism on the DE-AT border is 'not deemed sufficient to solve</li> </ul>	<p>calculation procedure (on that interconnection) pursuant to Regulation (EC) No 714/2009. The implementation of a coordinated capacity allocation procedure on the DE-AT border addresses usual and structural congestion on that (congested) interconnection in accordance with Regulation (EC) No 713/2009, and is not designed to solve internal structural congestion elsewhere in the network.</p> <p>Since the CCRs Proposal of all TSOs includes the DE-AT bidding zone, the Agency's competence entails the obligation to assess and decide whether this proposed inclusion is correct and lawful. Therefore, the Agency does not take a unilateral decision outside any relevant framework, but only accepts or rejects what all TSOs propose to implement. If the Agency accepts this proposal, the proposed implementation of a DE-AT bidding zone border is indeed a decision of the TSOs. Moreover, The implementation of coordinated capacity allocation procedure on the DE-AT border is not 'a unilateral decision' by the Agency but a requirement of Regulation (EC) No 714/2009 resulting from the fact that the DE-AT interconnection is structurally congested.</p> <p>According to the Agency's findings, the DE-AT interconnection is structurally congested and therefore requires the implementation of a capacity calculation procedure (on that interconnection) pursuant to Regulation (EC) No 714/2009. The implementation of a coordinated capacity allocation procedure on the DE-AT border addresses usual and structural congestion on that (congested) interconnection in accordance with Regulation (EC) No 714/2009, and is not designed to solve internal structural congestion</p>

<sup>2</sup> Case COMP/39351 – *Swedish Interconnectors*, Decision of 14 April 2010.

Respondents' views	ACER's views
<p>congestion within the control area of a Member State'.</p> <ul style="list-style-type: none"> <li>• APG considers that the inclusion of the DE/LU-AT bidding zone border in the all TSOs' proposal on capacity calculation regions was 'primarily a reaction to the ACER Opinion' and that many TSOs and respective NRAs 'misinterpreted the opinion as a binding decision.'</li> </ul> <p>Factual:</p> <ul style="list-style-type: none"> <li>• APG highlighted that, to date, a thorough and adequate assessment on the inclusion of a new bidding zone border has not taken place, which is the reason a bidding zone review was initiated pursuant to Article 32 <i>et seq.</i> of the CACM Regulation. Furthermore, the draft Agency decision 'proposes a new German-Austrian bidding zone border without any thorough evaluation of necessity, alternatives and the far reaching consequences'.</li> </ul> <p>APG provided the following specific comments with respect to the Agency's Technical Justification Document:</p> <ul style="list-style-type: none"> <li>• APG considers it a fact that the Agency is not competent to investigate potential internal congestions. Therefore, by pointing out internal congestions in Austria, the Agency exceeds its competences. Furthermore, it considers the Agency's analysis as discriminatory since it neglects other potential or evident congestion in other Member States.</li> </ul>	<p>elsewhere in the network.</p> <p>The Agency fully acknowledges the non-binding character of its Opinion 09/2015. The Agency is, however, of the view that the findings in this Opinion, as well as the new ones in Annex IV to this Decision, prove that the non-inclusion of this border in the CCRs Proposal would clearly go against Regulation (EC) No 714/2009 and the objectives of the CACM Regulation.</p> <p>The need for implementing a capacity allocation mechanism on the DE-AT border and therefore for including this border in the CCRs Proposal has been thoroughly assessed and discussed; this finding has received a favourable Opinion from the whole NRAs' community but one.</p> <p>Section II of the Technical Justification Document does not claim that there exist internal congestions within Austria today. On the contrary, it merely assesses a maximum transfer capacity between Germany and Austria in a hypothetical situation when all the flows resulting from the DE-AT exchanges would actually be realised through the DE-AT border. E-Control and APG claim that the DE-AT border is not congested and the main proof to support this claim is according to them the fact that there is about 11000 MW of capacity on this border. While such a claim clearly ignores the fact that almost 60 % of electricity flows are realised through other</p>

Respondents' views

- APG considers that the Agency is indirectly asking to shift potential internal congestion to the DE-AT border and this is in violation of EU law (as explained in a previous paragraph with respect to point 1.7 of Annex I to Regulation (EC) No 714/2009).
- APG stressed that 'it is well known that the majority of intraday stops on this border are needed to ensure the effectivity of cross border re-dispatch measures to relieve congestion within Germany'.

ACER's views

interconnections, which are structurally congested, Section 2 of the technical justification demonstrates that even in a scenario where all the flows resulting from DE-AT exchanges would actually be realised through the DE-AT border, this border would be able to accommodate far less electricity exchanges than the claimed 11000 MW.

The implementation of a coordinated capacity allocation procedure on the DE-AT border does not necessarily imply that the cross-zonal capacities on this border should or will reflect the internal congestions in any of the involved bidding zones. In accordance with point 1.7 of Annex I to Regulation (EC) No 714/2009, the internal network elements may indeed temporarily limit the capacities between bidding zones, but only when this is required due to operational security and when it is economically more efficient than other available measures.

Firstly, the Agency notes that the reasons for intraday stops are not transparently reported, in particular the name and location of the claimed congested network elements and the party requesting the intraday stop should be transparently published. Secondly, the Agency fails to understand why the intraday stops on the DE-AT border would be needed in case the congestion appears only within Germany. Namely, the stopping of intraday trade within Germany (from north to south) should actually be sufficient to solve congestion problems within Germany, such that any subsequent trade on the DE-AT border would not aggravate the congestion within Germany. Finally, the Agency understands that the intraday stops aim to prevent further aggravation of congestion, which has previously been solved with redispatching. However, the mere fact that in 58% of days the stopping of intraday trade on the DE-AT border does help to prevent the aggravation of congestion somewhere constitutes a sufficient additional reason to believe that this border is congested.

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>• APG considers that the Agency 'neglects or spuriously justifies with improper arguments' evidently effective measures, those being the installation of the PSTs in Mikulowa, the temporary disconnection of the 220-kV-line Vierraden – Krajnik and the integration of the PSTs at the German-Czech Republic border scheduled for Q1 2017.</li> <li>• In general, APG considers the Agency's Technical Justification Document as providing very simplified investigations, lacking in depth technical and economical assessments and therefore inadequate to assess the necessity or the appropriateness of any congestion management measure.</li> </ul>	<p>The Agency has provided solid reasons why it believes that the referred network developments do not render the DE-AT border as uncongested. On the other hand, APG did not provide arguments why it believes the Agency's justifications are spurious or improper.</p> <p>The Agency considers the evidence provided by the Technical Justification Document as sufficient and adequate to conclude that the DE-AT border is structurally congested. In particular, the analysis based on the PTDF data is considered as a very thorough and undisputed assessment of the impact of the DE-AT border on structurally congested network elements.</p>
<p><b>Institut Luxembourgeois de Régulation (ILR) Response</b></p>	
<p>ILR made one remark, namely that the Luxembourg country is missing on the map in the all TSOs' proposal on capacity calculation regions.</p>	<p>The Agency agrees.</p>
<p><b>Urząd Regulacji Energetyki (URE) Response</b></p>	
<p>URE made one comment, that is to remove paragraph 2 in Article 11 in the all TSOs' proposal on capacity calculation regions, for the same reasons specified in ENTSO-E's response above (under additional issues).</p>	<p>The Agency agrees.</p>
<p><b>Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (BNetzA) Response</b></p>	

Respondents' views	ACER's views
<p>BNetzA's comments were specific to the Agency's Technical Justification Document and consisted of the following:</p> <ul style="list-style-type: none"> <li>Internal network element Remptendorf-Redwitz is '(physically) congested' not 'structurally (physically) congested'.</li> <li>Underlined that there are recent and planned network investments in Germany and Austria but unlike with internal congestion in DE, these investments will not suffice to render the DE-AT border congestion free.</li> </ul>	<p>The Agency's Opinion 09/2015 concludes that this network element is structurally (physically) congested. Furthermore, this network element is often cited as the most significantly congested network element within Germany (See for example the quarterly report from BNetzA (pp.15-16): <a href="http://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Energie/Unternehmen_Institutionen/Versorgungssicherheit/Stromnetze/System- u. Netzsicherheit/Quartalsbericht_Q3_2015.pdf;jsessionid=1A1A9B16276E61EC24FEA71D9B27D1DA?_blob=publicationFile&amp;v=5">http://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Energie/Unternehmen_Institutionen/Versorgungssicherheit/Stromnetze/System- u. Netzsicherheit/Quartalsbericht_Q3_2015.pdf;jsessionid=1A1A9B16276E61EC24FEA71D9B27D1DA?_blob=publicationFile&amp;v=5</a>).</p> <p>The Agency cannot make such an assessment.</p>
<p><b>E-Control Austria für die Regulierung der Elektrizitäts- und Erdgaswirtschaft (E-Control) Response</b></p> <p>E-Control underlined its support for the merger of the CWE and CEE CCRs as they think it is the correct and necessary step towards the necessary level of coordination and the achievement of the Internal Energy Market.</p> <p>E-Control raised concerns with respect to the inclusion of the DE-AT bidding zone border, which are summarised in the following:</p>	<p>The Agency agrees.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>E-Control recalled all its previous arguments against the ACER Opinion 09/2015 such as the appeal to the Board of Appeal (A-001-2015), the actions for annulment before the General Court (T-671/15 and T-63/16), the request for amendments to the all TSOs' proposal for CCRs, and the submitted comments on the draft Agency decision (20 July 2016 and 9 September 2016).</li> <li>E-Control highlighted the letter from the European Commission dated 15 September 2016, which supported E-Control's interpretation, that the reconfiguration of existing bidding zone borders is governed by the bidding zone review procedure under Articles 32 to 34 in the CACM Regulation. It also recalled that other stakeholders expressed similar views to the European Commission and E-Control in the public consultation, which ended on 20 July 2016.</li> <li>E-Control considers the Agency's argument that other new bidding zone borders were included in the all TSOs' proposal for CCRs as unconvincing since those other borders do not have direct connections, and new infrastructure is planned and under construction.</li> <li>E-Control considers the inclusion of the DE-AT bidding zone border in the definition of the CCRs as pre-empting an uncertain outcome of the ongoing bidding zone review, thereby influencing this process and any decisions/results. In addition, the inclusion of the bidding zone border gives the 'wrong signals' to market participants and 'adversely affects' the market.</li> </ul>	<p>The Agency agrees that the bidding zone border should be considered as the main process to review the bidding zone configuration. But the Agency disagrees with the interpretation that the bidding zone review process is to be considered as the exclusive path (see the core decision for further details).</p> <p>The Agency notes that the fact that these borders currently do not have interconnections does not imply that these interconnections will require capacity allocation once they are constructed. Therefore, the decision to introduce the capacity allocation on newly constructed interconnections within the CCR decision is equivalent to a decision to introduce capacity allocation on the DE-AT border.</p> <p>In the Agency's views, the inclusion of new bidding zone borders in the CCRs Proposal does not undermine any bidding zone review process. Neither has any such process formally started yet, nor is its launch precluded by the aforementioned inclusion.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>• E-Control considers that the inclusion of the DE-AT bidding zone border in the CCR definition suggests that all potentially new bidding zone borders examined in the bidding zone review be assigned in the CCR decision process.</li> <li>• E-Control expressed its doubts that the Agency is conducting a fair and impartial consultation during the decision process, and referred to the ENTSO-E/FSR conference on 23 September 2016 in Bratislava as an example. It also cited Article 41 of the Charter of Fundamental Rights of the European Union.</li> <li>• E-Control expressed its disagreement with the Agency's technical justification document and considers that the Agency's decision should be based on current and future situations.</li> <li>• E-Control recalled that a situation where physical flows do not follow the contractual paths is not unique in Europe, thus cannot be used as evidence when including new bidding zone borders.</li> <li>• E-Control made the Agency aware of information it received from APG which explained that scheduled imports from Germany to Austria exceeded the (n-1) secure capacities calculated for Germany-Austria (7259 MW) in the Agency's technical justification document in about 1% of the hours for day-ahead schedules and 0.1% for actually realised schedules in 2015 and the first half of 2016.</li> </ul>	<p>In contrast to the DE-AT border, the Agency does not have sufficient evidence that a coordinated capacity allocation is required on other bidding zone borders considered in the informal bidding zone review process.</p> <p>The Agency strongly rejects this unsubstantiated allegation. Further, it is to be reminded that the Agency can issue decisions only after a favourable opinion by the required majority of its Board of Regulators members.</p> <p>The Technical Justification Document provides an assessment of the referred network developments and provides argument why they do not change the Agency's conclusion that the DE-AT border is structurally congested and requires permanent capacity allocation procedure.</p> <p>In response to E-Control's letter, the Agency noted that on all EU borders, where a significant part of electricity exchanges are realised through other borders, a permanent capacity allocation procedure is implemented – the DE-AT border being the sole exception.</p> <p>The Agency notes that the quoted value (7259 MW) in the Technical Justification Document is a hypothetical capacity in a situation where:</p> <ol style="list-style-type: none"> <li>a) all electricity exchanges on the DE-AT border would be realised through that border; and</li> <li>b) all interconnectors would be fully loaded before the first congestion would appear;</li> </ol> <p>As these assumptions do not match the reality, the given value can only be considered as a proxy of the transfer capacity between Germany and Austria.</p>

Respondents' views	ACER's views
<ul style="list-style-type: none"> <li>E-Control considers the Agency's Technical Justification Document as discriminatory. In particular, the Agency illustrates that there may be insufficient HV capacities within Austria but does not provide similar analyses for other Members States and network areas.</li> <li>E-Control disagrees with the Agency's line of argumentation in the Agency's Technical Justification Document on intraday stops since these are actually used to ensure the effectiveness of redispatching actions, and therefore disagrees with the Agency's subsequent conclusion on the location of congestions. E-Control is of the view that in 'predominant number of hours when these stops are needed this is due to problems not at the German-Austrian border but at other places in the network (mainly within Germany).'</li> <li>E-Control clarified that there are no longer-term reservations within a bidding zone. Furthermore, E-Control emphasised that this situation would be maintained or reinforced by establishing capacity allocation on the German-Austrian border (since capacities allocated for longer-term and day-ahead timeframes would prevail over capacities made available to the intraday timeframe). E-Control also clarified that there</li> </ul>	<p>E-Control has often claimed that the DE-AT border is not congested because there is about 11000 MW of physical capacities on the border, which is more than the maximum exchanges observed on this border. To dispute this claim, the Agency has indeed analysed what would be the actual capacity between Germany and Austria in case all the DE-AT electricity exchanges would be realised through this border.</p> <p>Firstly, the Agency notes that the reasons for intraday stops are not transparently reported, in particular the name and location of the claimed congested network element and the party requesting the intraday stop should be transparently published. Secondly, the Agency fails to understand why the intraday stops on the DE-AT border would be needed in case the congestion appears only within Germany. Namely, the stopping of intraday trade within Germany (from north to south) should actually be sufficient to solve congestion problems within Germany, such that any subsequent trade on the DE-AT border would not aggravate the congestion within Germany. Finally, the Agency understands that the intraday stops aim to prevent further aggravation of congestion, which has previously been solved with redispatching. However, the mere fact that 58% of days the stopping of intraday trade on the DE-AT border does help to prevent the aggravation of congestion somewhere, is a sufficient additional reason to believe that this border is congested.</p> <p>The Agency agrees that the discrimination in this case is not very obvious and has corrected this part of the Technical Justification Document.</p>



Respondents' views	ACER's views
is no discrimination between timeframes and that all market participants have the opportunity to trade in all the abovementioned timeframes.	



