Bundesnetzagentur

Revenues resulting from cross-border congestion management from 01 January 2020 to 31 December 2020

Report pursuant to article 19 para. 5 s. 2 of the Regulation on the Internal Market

The English version is a courtesy translation only.

According to article 19 para. 5 s. 2 of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (hereafter: Reg. 2019/943), Bundesnetzagentur shall annually by 01 March publish a report informing on the amount and use of the congestion income collected by the national transmission system operators (TSOs) in the previous calendar year. The report has to set out

- the amount of congestion income collected
- how that congestion income was used pursuant to paragraph 2, including the specific projects the income has been used for, and the amount put on a separate account,
- the amount that was used when calculating network tariffs; and
- verification that the amount referred to in point (c) complies with this Regulation and the methodology developed pursuant to paragraphs 4.

There are capacity constraints at the German borders with Austria, Belgium[1], the Netherlands, France, Switzerland, the Czech Republic, Poland, Denmark, Sweden and Norway, which require a congestion management procedure in compliance with Reg. 2019/943. According to these provisions, congestion management procedures shall be market-based, transparent and non-discriminatory. With respect to these criteria,

[1] Since the Go-live of the ALEGrO-Interconnector between Germany and Belgium in November 2020. LTTRs for this new border are introduced first for January 2021. Therefore, there is no designated congestion income for DE-BE in this report.

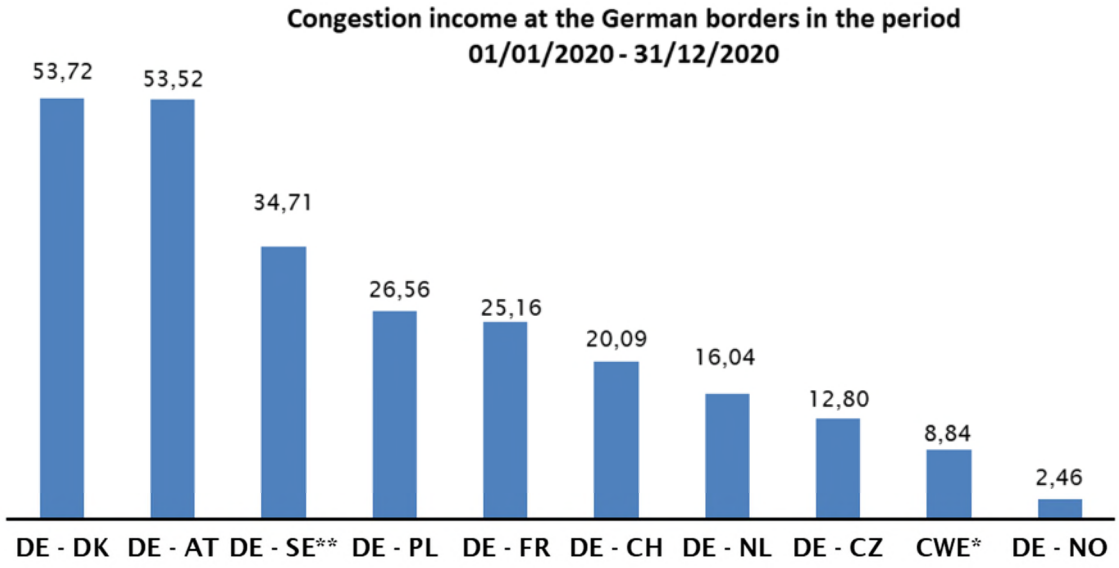
cross border capacity at Germany's borders is explicitly allocated via daily, monthly and annual auctions[2], whilst at interconnectors with Western and Northern borders capacity is explicitly allocated for annual and monthly products and implicitly allocated in a market coupling regime for the day-ahead market. In an explicit auction capacity is offered beforehand and therefore separated from electricity trade. Whether capacity is allocated to a specific auction participant depends on the level of its bidding price. Implicit auctioning, which allocates both the commodity and the cross-border capacity jointly is in place at Germany's Western borders (since May 2015 CWE region with flow based market coupling) and Northern borders (Denmark, Sweden and Norway). The day-ahead market coupling started first on 9 November 2010 and for intraday trading via the XBID platform on12 June 2018.[3] Hence, congestion income is generated by TSOs from the price spread which remains between the respective countries after the market coupling and the remuneration of long-term transmission rights (LTTRs).

The following TSOs are involved in the congestion management of the individual borders:

Border	**Involved Transmission System Operators**	
	TSO(s) on German side	**Neighbouring TSO**
DE - AT	Amprion, TenneT TSO, TransnetBW	Austrian Power Grid (AT)
DE - BE	Amprion	Elia (BE)
DE - NL	Amprion, TenneT TSO	TenneT TSO (NL)
DE - FR	Amprion, TransnetBW	RTE (FR)
DE - CH	Amprion, TransnetBW	Swissgrid (CH)
DE - CZ	TenneT TSO, 50Hertz Transmission	CEPS (CZ)
DE - PL	50Hertz Transmission	PSE-O (PL)
DE - DK west	TenneT TSO	Energinet.dk (DK)
DE - DK east	50Hertz Transmission	Energinet.dk (DK)
DE - SE	Baltic Cable AB	Baltic Cable AB
DE - NO	TenneT TSO	Statnett SF

In this consideration of a calendar year 2020, the aggregated congestion income of the TSOs amounts to 253.902.035 Euro. The congestion income gained at the individual German borders is illustrated in the following figure:

[2] Capacity of the Baltic Cable (SE-DE) is solely offered via implicit daily auctions.
[3] The border to Austria was introduced on 1 October 2018 by the DE/AT split.



Source: Transmission System Operators

* For CWE-borders (DE-FR, DE-NL,DE-AT, DE-BE) congestion income from the LTTRs can be presented separately per border. Congestion income from the Day-Ahead timeframe is consolidated in a common pot ("CWE").

** Total congestion income without distribution key

According to article 19 para. 2 of Reg. 2019/943, the following objectives shall have priority with respect to the allocation of any revenues resulting from the allocation of cross-zonal capacity:

a) Guaranteeing the actual availability of the allocated capacity including firmness compensation; or
b) Maintaining or increasing cross-zonal capacities through optimisation of the usage of existing interconnectors by means of coordinated remedial actions, where applicable, or covering costs resulting from network investments that are relevant to reduce interconnector congestion.

Where these priority objectives have been adequately fulfilled (in accordance to article 19 para. 3 of Reg. 2019/943), the revenues may be used as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs or fixing network tariffs, or both. According to para. 3 s. 2 of Reg. 2019/943, the residual revenues shall be put on a separate internal account until they can be spent for the purposes set out in paragraph 2.

The TSOs have reported to Bundesnetzagentur on the actual use of the congestion income pursuant to article 19 para. 2 and 3 of Reg. 2019/943, as illustrated in the following table:

	Guaranteeing the actual availability of the allocated capacity art. 19 para. 2 a)	**Maintaining or increasing cross-zonal capacities art. 19 para. 2 b)**	**Tariff calculation art. 19 para. 3 s. 1**	**Placed on a separate internal account art. 19 para. 3 s. 2**
50Hertz	5.703.862 €	31.058.576 €	-	-
Amprion	4.702.317 €	58.864.138 €	-	- 9.881.721 €
TenneT	86.280.902 €	-	-	-
TransnetBW	11.013 €	44.247.039 €	-	-
Summe[4]	**96.698.094 €**	**134.169.753 €**	**-**	**- 9.881.721 €**

The sum of expenses in the table does not equally match the overall congestion income of the year 2020 of 253.902.035 €. This is firstly due to the consideration of non-periodic congestion income to be invested and secondly due to the legal dispute on the use of congestion income by Baltic Cable AB. Insofar, Bundesnetzagentur points out the following:

By decision of 9 June 2016, the Swedish regulatory authority Energimarknadsinspektionen (EI) has obligated Baltic Cable AB to transfer a part of the congestion income generated by Baltic Cable AB between the 1 July 2013 and 30 June 2015 to a separate internal account. In view of EI, the previous use of the congestion income by Baltic Cable AB did not meet the requirements of Article 16 (6) of Reg. 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003[5]. Baltic Cable AB has filled a complaint against this decision at the administrative court in Linköping (case number 4728-16). For its preliminary ruling, the administrative court in Linköping has requested the

[4] TSOs have reported to Bundesnetzagentur according to article. 19 para. 5 s. 2 b) Reg. 2019/943 on the projects, that are or will be subject to investments pursuant to para. 2 b) of the article. The single projects as well as the distribution of the congestion incomes to the different purposes of use according to article 19 para. 2 and 3 Reg. 2019/743 are not published due to the protection of business secrets.

[5] As of 01 January 2020, Reg. 714/2009 is no longer in force. Its article 16 para. 6 is replaced by art. 19 para. 2 and 3 of Reg. 2019/943; cf. article 70, 71, annex II Reg. 2019/043.

European Court of Justice (ECJ) to clarify the applicability and scope of Article 16 (6) of Reg. 715/2009 (case number C-454/18). The ECJ has ruled on 11 March 2020 that

- Article 16(6) of Reg. 714/2009 must be interpreted as applying to an undertaking which merely operates a cross-border interconnector,
- point (b) of the first subparagraph of Article 16(6) of Reg. 714/2009 must be interpreted as meaning that, when a TSO merely operates a cross-border interconnector, the operation and maintenance costs of that interconnector cannot be regarded as network investments to maintain or increase interconnection capacities within the meaning of that provision and
- the second subparagraph of Article 16(6) of Reg.714/2009 must be interpreted as meaning that, when a national regulatory authority applies that provision to a TSO that merely operates a cross-border interconnector, it is for that authority to authorise that TSO to use part of its congestion revenues to make a return as well as for the operation and maintenance of the interconnector, in order to prevent it being discriminated against by comparison with the other TSOs concerned and to ensure that it is in a position in which it is able to carry out its activity in financially acceptable conditions, which includes making an appropriate profit.

As Reg. 714/2009 has been recast as of 1 January 2020, it does not apply to congestion income collected in the year 2020. BNetzA deems the main findings the ECJ made in its decision of 11 March 2020 transferable to Art. 19 para. 2 and 3 of Reg. 2019/043. Baltic Cable AB has informed BNetzA by letter of 1 Febuary 2021 that congestion income collected during the year 2020 will be used to cover the risks and costs arising from the operation and funding of the Baltic Cable. BNetzA will review the use of congestion income, also for previous years.

A report on compliance with the methodology according art. 19 para 4 Reg. 2019/943 (as required pursuant to art. 19 para. 5 s. 2 d) Reg. 2019/943) is not made, as the methodology will apply to congestion income collected from January 2022 onwards according to ACER decision of 23 December 2020.