Bundesnetzagentur

Revenues resulting from cross-border congestion management from 01 January 2021 to 31 December 2021

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

The English version is a courtesy translation only.

I. Introduction

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) during the previous calendar year. The report has to set out

(a) the amount of congestion income collected (see section II. below),

(b) 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 (see section III. below),

(c) the amount that was used when calculating network tariffs; and

(d) verification that the amount referred to in point (c) complies with this Regulation and the methodology developed pursuant to paragraphs 3 and 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, cross border capacity at Germany's borders is explicitly allocated via daily, monthly

[1] Since the Go-live of the ALEGrO-Interconnector between Germany and Belgium in November 2020. LTTRs for this new border were introduced for the first time for January 2021.

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 the 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. 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).

II. Congestion Income per border

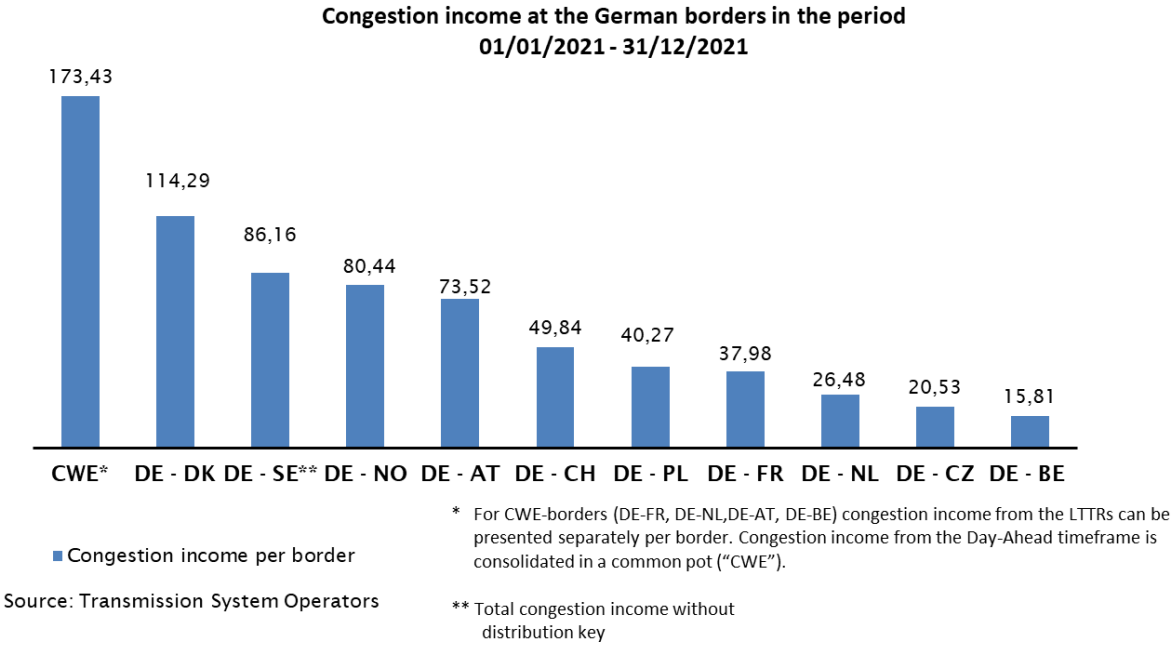
The following TSOs are involved in the congestion management of the individual borders:

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 calendar year 2021, the aggregated congestion income of the TSOs amounts to 718,730,781 €.

[2] Capacity of the Baltic Cable (SE-DE) is solely offered via implicit daily auctions.

The congestion income collected at the respective German borders is illustrated in the following figure:



III. Use of congestion income

a. Purposes according to article 19 para. 2 and 3 Reg. 2019/943

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 article 19 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 Abs. 2 lit. a)**	**Maintaining or increasing cross-zonal capacities** **Art. 19 Abs. 2 lit. b)**	**Taken into account for tariff calculation** **Art. 19 Abs. 3 S. 1**	**Placed on a seperate internal account line** **Art. 19 Abs. 3 S. 2**
50Hertz	21.474.233 €	57.914.521 €	-	
Amprion	191.184.918 €	13.275.383 €	-	45.556.879 €
TenneT	216.874.267 €		-	
Trans-netBW	58.234 €	86.232.348 €	-	
Total	**429.591.652 €**	**157.422.252 €**	**0 €**	**45.556.879 €**

A verification on compliance with the methodology according article 19 para. 4 Reg. 2019/943 (as required pursuant to article 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 article 6 para. 2 of the Use of Congestion Income Methodology approved by ACER decision No 38/2020 of 23 December 2020.

The sum of expenses in the table above does not equally match the overall congestion income of calendar year 2021 of 718,730,781 €. This is due 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 collected by Baltic Cable AB between 1 July 2013 and 30 June 2015 to a separate internal account line. 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 elec-

tricity and repealing Regulation (EC) No 1228/2003[3]. Baltic Cable AB has filed 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 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 is applicable 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 generate a profit as well as for the operation and maintenance of the interconnector, in order to prevent discrimination compared to other TSOs and to ensure that that TSO is in a position in which it is able to carry out its activity under financially acceptable conditions, which includes generating an appropriate profit.

As Reg. 714/2009 has been recast as of 1 January 2020, it does not apply to congestion income collected in 2021. BNetzA deems the main findings the ECJ made in its decision of 11 March 2020 transferable to article 19 para. 2 and 3 of Reg. 2019/043. Baltic Cable AB has informed BNetzA by letter of 18th February 2021 that congestion income collected during the year 2021 was used for the operation, funding and for the maintenance of the transmission capacities of the Baltic Cable AB as well as for Taxes, fees the remuneration of asset depreciation and to cover capital costs. The use of congestion income to cover the risks and costs arising from the operation and funding of the Baltic Cable AB was in line with the according legal framework, especially with Art. 19 para. 2 and 3 Reg. 2019/943. BNetzA will review the use of congestion income by the Baltic Cable AB, also for previous years, and will decide on it.

[3] 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.

b. Specific projects CI has been used for

According to article 5 para. 2 in conjunction with article 3 of the Use of Congestion Income Methodology approved by ACER decision No 38/2020 of 23 December 2020, TSOs have to submit a list of specific projects to which congestion income has been used and to set out the relevance of these projects for the priority objectives according to article 19 para. 2 Reg. 2019/943. The methodology applies to congestion income collected from 2022 onward (art. 6). Anyhow, TSOs (except for Baltic Cable AB) have submitted a list concerning calendar year 2021 on request by BNetzA. The projects are listed in the following table.

#	Project Name	Project Code	Project Commissioning Date	Total CAPEX (actual or expected in €)	Capacity increase per border (MW)	Project expenditure recovered from CI in the relevant year (€)
50Hertz GmbH						
1	HVDC SuedOstLink Wolmirstedt to area Isar	130	2027	4.220.000.000	400 MW (DE-PL) 150 MW (DE-CZ) 100 MW (DE-AT)	52.067.377
2	Hansa PowerBridge I	176	2026	660.000.000	700 MW (DE-SE4)	4.469.584
3	Kriegers Flak CGS	36	2020	320.000.000	400 MW (DE-DK2)	1.377.560
Amprion GmbH						
1	ALEGrO	92.146	2020	350.097.699	1000 (DE-BE)	11.179.190
2	Niederrhein (DE) - Doetinchem (NL)	113.145	2018	99.984.786	1500 (DE - NL)	2.096.193
TenneT TSO GmbH						
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TransnetBW GmbH						
1	SuedLink	DC 3, DC 4	2026, 2028	5.557.000.000	600 MW	52.946.369
2	Ultranet	DC 2	2024, 2026	698.000.000	600 MW	19.501.619
3	Netzverstärkung Badische Rheinschiene	P49	2028/2029	776.000.000	Indirect increase on borders DE-CH and DE-FR	13.437.791
4	Netzverstärkung Eichstetten - Bundesgrenze	P176	2026	59.000.000	300 MW	346.569

TSOs have duly justified the relevance of each project for the priority objectives according to article 19 para. 2 Reg. 2019/943. There are no projects by TenneT TSO GmbH included in the table. This is because TenneT TSO GmbH has not invested congestion income in any (inter)connection project in 2021.