Bundesnetzagentur

Revenues resulting from cross-border congestion management from 1 January 2022 to 31 December 2022

Report pursuant to article 19 para. 5 s. 2 of the Regulation (EU) 2019/943

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, 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 allocated via daily, monthly and annual auctions[1]. For most interconnectors this is done for

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

the day-ahead timeframe via implicit allocation in the European market coupling[2], furthermore capacity is explicitly allocated for annual and monthly products. Implicit auctioning, which allocates both the commodity and the cross-border capacity jointly, is in place between the bidding zone borders between Austria, Belgium, Croatia, the Czech Republic, France, Germany, Hungary, Luxembourg, the Netherlands, Poland, Romania, Slovakia and Slovenia in the so called CORE Region (day-ahead flow based market coupling since June 2022) and also between the Northern bidding zone borders of Germany (Denmark, Sweden and Norway). 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). 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.

II. Congestion Income per border

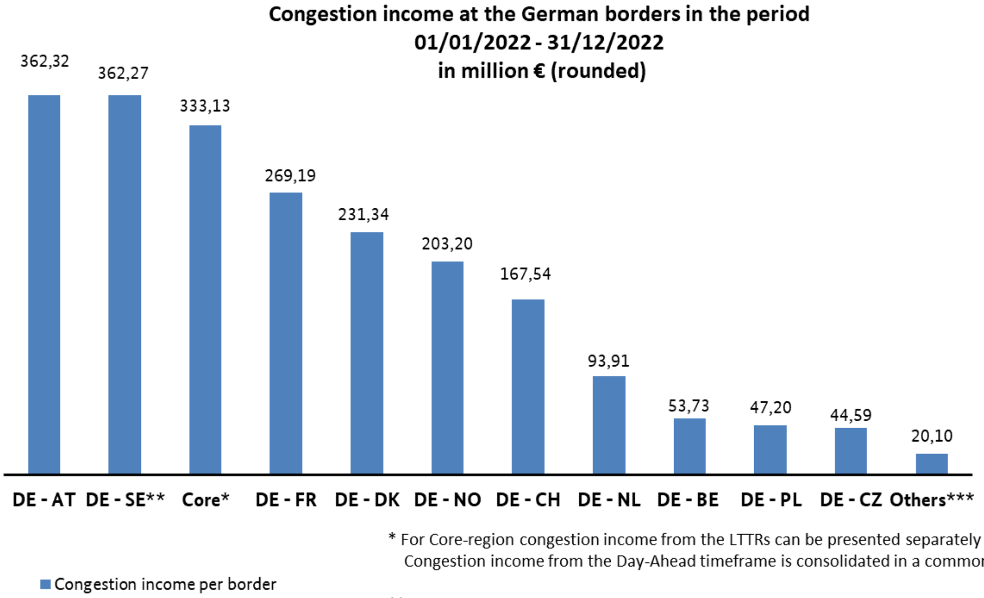
The following TSOs are involved in the congestion management of the individual borders:

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 2022 the aggregated congestion income of the TSOs amounts to 2.188,51 million €.

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

[2] Exemption: DE-CH.



Source: Transmission System Operators

* For Core-region congestion income from the LTTRs can be presented separately per border. Congestion income from the Day-Ahead timeframe is consolidated in a common pot ("Core").

** Total congestion income without distribution key

*** Amount of congestion income from the balancing timeframe (MARI and PICASSO)

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) (mio. €)	Maintaining or increasing cross-zonal capacities Art. 19 Abs. 2 lit. b) (mio. €)	Taken into account for tariff calculation Art. 19 Abs. 3 S. 1 (mio. €)	Placed in a separate internal account line Art. 19 Abs. 3 S. 2 (mio. €)
50Hertz	57,50	114,10	0,00	0,00
Amprion	709,66	2,09	0,00	1,43
TenneT	632,88	0,00	0,00	0,00
TransnetBW	0,28	308,29	0,00	0,00
Summe	**1400,32**	**424,49**	**0,00**	**1,43**

As required in article 19 para. 5 s. 2 d) Reg. 2019/943, Bundesnetzagentur approves the compliance of the use of congestion income of the year 2022 by the aforementioned TSOs with the ACER Methodology Decision No 38/2020.

The sum of expenses in the table above does not equally match the overall congestion income of calendar year 2022 of 2.188,51 mio. €. 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 electricity 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). In November 2019, BNetzA hast certified Baltic Cable AB as a TSO. Regarding the complaint of Baltic Cable AB against the decision by EI, the ECJ has ruled on 11 March 2020 that

[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.

- 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 2022. 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 February 24, 2023 has referenced the ongoing dispute about the use of congestion income by Baltic Cable. The use of congestion income in this case is subject to the court proceedings at the Higher Regional Court of Düsseldorf (VI-3 Kart 33/22 [V]) against BNetzA's decision (BK4-21-064).

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 on which congestion income has been used. The projects are listed in the following table.

#	Project Name	Project Code	Project Commissioning Date	Project expenditure recovered from CI in the relevant year (million €)
50Hertz GmbH				
1	HVDC SuedOstLink Wolmirstedt to area Isar	130	2027	32,8
2	Hansa PowerBridge I	176	2026	3,7
3	HVDC Link from area Klein Rogahn to area Isar	DC20	2030/2032	77,6
Amprion GmbH				
1	ALEGrO	92.146	2020	1,3
2	Niederrhein (DE) - Doetinchem (NL)	113.145	2018	0,8
3	Uchtelfangen (DE) - Vigy (FR)	2.441.245	2028	0,0
TenneT TSO GmbH				
-				
TransnetBW GmbH				
1	SuedLink	DC 3	2026, 2028	213,6
2	Ultranet	DC 2	2024, 2026	60,6
3	Netzverstärkung Badische Rheinschiene	P49	2028/2029	32,6
4	Netzverstärkung Eichstetten - Bundesgrenze	P176	2026	1,5

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 2022.