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**TSOs' proposal for the Use of Congestion Income Methodology in accordance with Article 19(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity**

3 July 2020

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## Whereas

- (1) This document is a common Methodology proposal developed by Transmission System Operators (hereinafter referred to as “TSOs”) for the use of congestion income (hereafter referred to as “UCI Methodology” or “This Methodology”) in accordance with Article 19(4) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (hereafter referred to as “Regulation (EU) 2019/943”).
- (2) The UCI Methodology takes into account the general principles and goals set out in Regulation (EU) 2019/943 as well as Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity, hereafter referred to as “Directive (EU) 2019/944”, Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management (hereafter referred to as “CACM Regulation”), Commission Regulation (EU) 2016/1719 establishing a guideline on forward capacity allocation (hereafter referred to as “FCA Regulation”) and Commission Regulation (EU) 2017/1485 establishing a guideline on electricity transmission system operation (hereafter referred to as “SO Regulation”).
- (3) The goal of Regulation (EU) 2019/943 is to establish rules to ensure the functioning of the internal market for electricity including requirements related to the development of renewable forms of energy and environmental policy.
- (4) According to Article 19(1) of Regulation (EU) 2019/943, the procedure for the distribution of revenues of congestion-management procedures, among uses allowed by the same Regulation, shall be subject to review by the regulatory authorities. Therefore, it is the national regulatory authority (hereafter referred to as “NRA”) competence to decide upon the use of those revenues, hereafter referred to as congestion income (“CI”), pursuant to the provisions of the same Regulation.
- (5) Article 19(2) of Regulation (EU) 2019/943 identifies priority objectives for the use of CI. According to Article 19(3) of the same Regulation, where the priority objectives have been adequately fulfilled, the CI may be used for calculating network tariffs.
- (6) According to Article 19(5) of Regulation (EU) 2019/943, when CI is used for calculating network tariffs, the yearly report of NRAs shall set out how the TSOs fulfilled the priority objectives set out in Article 19(2) of Regulation (EU) 2019/943. Therefore, it is NRA competence to decide upon the adequate fulfilment of the priority objectives.
- (7) Article 19(4) of Regulation (EU) 2019/943 formulates the minimum requirements for a methodology for use of CI.
- (8) The NRAs determinations on uses of CI, considering the UCI methodology, may impact the level of national network tariffs. Fixing or approving the network tariff is a duty of the NRA, as set out in Article 59 of Directive (EU) 2019/944.
- (9) Tax and accounting regimes vary across Member States and are defined by the Member States themselves. The way various revenue sources of a TSO may be considered by tax administration can be different. As a general principle, set out in EU law, tariffs must reflect TSO costs, as ruled by national standards and as validated by the relevant NRA. Depending on these national standards, some cost items might be considered differently. The UCI Methodology shall take tax regimes and accounting regimes into account so that it can be efficiently implemented.
- (10) In regulated TSO's business models, investment decisions to maintain and increase interconnection and cross-zonal capacities are not based on CI alone, but are justified by network development plans with comprehensive analyses of their technical and economic impact and/or a cost / benefit analysis.
- (11) Sources for covering costs related to the adequate fulfilment of priority objectives defined in the Article 19(2) of Regulation (EU) 2019/943 are many and vary across the jurisdictions. Such costs

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can be covered via CI or via network tariffs or other network charges, while avoiding any double remuneration. To fund new investments, TSOs can also resort to financing sources such as debt, equity or grants.

## **Article 1**

### **Subject matter and scope**

1. This Methodology sets out:
  - a) the conditions under which CI may be used for the purposes referred to in Article 19(2) of Regulation (EU) 2019/943;
  - b) the conditions under which CI may be placed on a separate internal account line for future use for those purposes; and
  - c) for how long CI may be placed on such an internal account line.
2. This Methodology shall apply to:
  - a) all bidding zone borders to which Regulation (EU) 2019/943 applies and where CI is collected;
  - b) CI derived from capacity allocation based on the coordinated NTC approach and the FB approach.
3. The UCI Methodology does not apply to interconnectors which are exempted from Article 19(2) and (3) of Regulation (EU) 2019/943 or from the provisions of Article 16(6) of Regulation (EC) No 714/2009 or from the provisions of Article 6(6) of Regulation (EC) No 1228/2003, for the limited period of time of such exemptions.

## **Article 2**

### **Definitions and interpretation**

1. For the purpose of the UCI Methodology, terms used in this document shall have the meaning given to them in Regulation (EU) 2019/943, CACM Regulation, FCA Regulation and the SO Regulation.
2. The following terms shall apply:
  - a) 'Cross-zonal asset' means network element used to link bidding zones;
  - b) 'Internal asset with cross-zonal relevance' means network element within a bidding zone which affects at least one transfer capacity between zones;
  - c) 'Operational Expenditures' (OPEX) means operational and maintenance expenses related to existing network assets.
3. In this Methodology, unless the context requires otherwise:
  - a) the singular indicates the plural and vice versa;
  - b) any reference to legislation, regulations, directives, orders, instruments, codes or any other enactment shall include any modification, extension or re-enactment of it then in force.

## **Article 3**

### **Cost categories contributing to priority objectives**

1. In pursuit of the fulfilment of the priority objectives (a) and (b) of Article 19 (2) of Regulation (EU) 2019/943, TSOs shall allocate CI to one or some of the following cost categories complying either with Article 19(2) (a) and / or Article 19(2) (b) of Regulation (EU) 2019/943. For each TSO, the exact list and

the detailed measures for the definition of such cost categories depend on the national regulatory framework.

- **System operation costs, including inter alia:**

- i. Costs related to firmness measures activated by TSO(s) that guarantee cross-zonal schedules resulting from firm allocated capacity, in accordance with CACM and FCA Regulations while complying with the safety standards of secure network operation, and costs related to remedial actions activated to maximise available capacity for cross-zonal trade, in accordance with Article 16 of Regulation (EU) 2019/943,
- ii. Firmness compensation costs: TSOs' costs related to compensation of the owners of curtailed transmission rights which cannot be used in order to ensure system security, in accordance with FCA and CACM Regulations,
- iii. Financial net costs associated to hedging options: costs related to hedging products against volatile market spreads, different from long-term transmission rights offered by TSOs to market operators in accordance with FCA regulation,
- iv. Remuneration of non-nominated Long-Term Physical Transmission Rights and Financial Transmission Rights as provided by the FCA Regulation,
- v. Costs of regional security coordinators (RSCs) and regional coordination centres (RCCs) which perform tasks related to TSOs regional coordination in one or more capacity calculation regions.

- **Costs resulting from network investments that are relevant to reduce interconnector congestion, including inter alia:**

- vi. Ongoing investment or capital expenditures for renewal, replacement, reinforcement of existing assets, or new assets which significantly contribute to maintaining or increasing cross-zonal capacity, including the costs of development and construction phases of such assets.

Investment or capital expenditures shall include, inter alia:

- a) The efficiently incurred costs related to dismantling assets, as long as they are related to a renewal or reinforcement of those assets or they are a requirement set out as a result of the permitting process for the construction or refurbishment of another asset.
- b) All of the costs necessary for the permitting process, such as those allowing a better integration of the asset in the environment, provided they are considered efficient by the relevant NRA.

Investment costs funded by CI should not be covered twice by CI and tariff revenues.

- vii. Costs directly resulting from past network investments:

- a) Capital expenditure costs during the depreciation period of the asset: depreciation and capital remuneration (equity and/or debt) related to investments which significantly contribute to maintaining or increasing cross-zonal capacity,
- b) Where applicable according to the national regulatory framework, remuneration of assets under construction related to investments which significantly contribute to maintaining or increasing cross-zonal capacity,
- c) Where appropriate, cost of long-term leasing of network elements that significantly contribute to maintaining or increasing cross-zonal capacity.

The cost category (vii) shall be considered according to national regulatory practices, using either detailed reporting or proxy values.

- viii. Other costs resulting from network investments:
- a) Maintenance and operating costs (OPEX) related to assets which significantly contribute to maintaining or increasing cross-zonal capacity,
  - b) Taxes directly linked to assets which significantly contribute to maintaining or increasing cross-zonal capacity and are thus considered in the same way as OPEX,
  - c) Electrical losses resulting from assets significantly contributing to cross-zonal capacity (excluding those losses covered by the Inter-TSO Compensation mechanism),
  - d) The following cost items, on the obligatory condition that they are allocated to a specific asset which significantly contributes to maintaining or increasing cross-zonal capacity by the NRA:
    - a. Additions to accruals for asset dismantling costs,
    - b. Specific insurance costs (machine insurance),
    - c. Costs for rescue concepts of maintenance and repair teams.

The cost category (viii) shall be considered according to national regulatory practices, using either detailed reporting or proxy values.

- ix. Other costs related to the optimisation of usage of new and existing assets which significantly contribute to maintaining or increasing cross-zonal capacity, where it is duly justified by the TSO and NRA how such costs are of cross-zonal relevance.
2. Investments considered when allocating CI include:
- a) Cross-zonal assets (including interconnectors)
  - b) Internal assets with cross-zonal relevance.
3. Costs corresponding to the cost categories in Article 3(1) of this Methodology shall be incurred and can be covered by CI only if they are considered efficient by the relevant NRA at national level.

#### **Article 4**

##### **National processes for advance communication**

1. Based on the cost categories listed in Article 3(1) of this Methodology, TSOs shall clearly establish in advance, and communicate to their NRA:
- a) For which of the cost categories (i) to (ix) CI will be used,
  - b) Where relevant, the list of specific projects related to the category (vi) for which CI will be used,
  - c) Where relevant, an indicative amount, in Euros or local currency, of CI foreseen to be collected and of CI foreseen to be used for those cost categories for the calendar year(s) following the date on which the TSO communicated the information to the relevant NRA.

The amount of CI and of certain cost categories, especially those related to system operation costs (i.e. firmness measures and costly remedial actions) present an inherent uncertainty in their forecasts due to e.g. their interdependence with real-time operation processes. For those costs categories, the respective NRA may allow TSOs not to provide the relevant amounts.

- d) Where applicable, indicative amounts to be taken into account when approving the methodology for calculating network tariffs or fixing network tariffs, or both, for the calendar year(s) following the date the TSO communicated the information to the relevant NRA.

The indicative amount for this purpose is affected by the forecasted CI, the amounts forecasted to be spent on cost categories and/or the amounts forecasted to be placed on a separate internal account line. Accordingly, it might be affected as well by the inherent uncertain nature of mentioned cost categories.

- e) Where applicable,
- a. indicative amounts (new and cumulated) to be placed on a separate internal account line during the calendar year(s) following the date on which the TSO communicated the information to the relevant NRA,
  - b. information on which of the cost categories (i) to (ix) CI placed on the separate internal account line will be used in the future,
  - c. where relevant, the list of specific projects related to the category (vi) to which CI placed on the separate internal account line will be used,
  - d. and the related multi-year estimate of indicative amounts for those cost categories.

The indicative amounts for this purpose are affected by the forecasted CI and by the amounts forecasted to be spent on either cost categories and/or the amount to be taken into account when approving the methodology for calculating network tariffs or fixing network tariffs, or both. Accordingly, it might be affected as well by the inherent uncertain nature of mentioned cost categories.

2. The forecasted amounts are non-binding. During the current year, TSOs may update the declared information in order to provide the respective NRA with more accurate information on the indicative amounts.
3. The TSO shall duly justify to the relevant NRA the reason why concerned cost categories (vi) to (ix) are of relevance to the priority objectives set out in Article 19(2) of Regulation (EU) 2019/943. The justification can be provided either asset by asset or by groups of assets. It can be based inter alia on:
  - a) Survey showing the significant impact existing Internal asset with cross-zonal relevance have on cross-zonal capacity,
  - b) The Ten-Year-Network-Development-Plan and, in particular, the expected increase of a cross-zonal capacity thereof,
  - c) National network development plans, according to national practice and, in particular, the expected increase of a cross-zonal capacity thereof,
  - d) Action plans in accordance with Article 15 of Regulation (EU) 2019/943,
  - e) Solutions to the issues that the derogation in accordance with Article 16(9) of Regulation (EU) 2019/943 seeks to address; and,
  - f) Any applicable provision from the national regulatory framework in force.
4. The information related to Articles 4(1) to 4(3) shall be provided by the TSO to the relevant NRA in accordance with the national regulatory practices or any other method determined by the NRA.
5. A first advance communication from the TSO to the relevant NRA is due by 30<sup>th</sup> September 2021. It shall concern the use of CI for the calendar year 2022.
6. The subsequent advance communications shall be submitted by the TSO to the relevant NRA by 31<sup>st</sup> October, unless the NRA decides an earlier date. The frequency of the advance communications shall be outlined by the NRA, and shall be at least once every two years. The advance communications shall concern the use of CI for the next calendar year or the two next calendar years.

7. Pursuant to Article 19(1) of Regulation 2019/943, the TSO advance communication is subject to review by the NRA, which may request or, after consulting the TSO, decide changes.

The NRA shall decide by 31<sup>st</sup> December on the use of CI during the next calendar year(s), including on the relevance to the priority objectives of the cost categories communicated by the TSO and, where relevant, on the multi-year estimate for the separate internal account line.

In doing so, the NRA shall indicate for which of the cost categories (i) to (ix) of Article 3(1) of this Methodology the TSO shall use CI and, if relevant, place CI in the separate internal account line.

## **Article 5**

### **Congestion Income Allocation**

1. TSOs shall allocate CI to cost categories resulting from the review and decision by the NRA pursuant to Article 4(7) of this Methodology. To that end, the actual CI collected and efficiently incurred costs are considered and not the indicative amounts given in the advance communication.
2. At the beginning of each calendar year, each TSO shall provide a communication to the relevant NRA on the actual use of CI during the previous calendar year, which shall be used as input for the NRA report prepared every year pursuant to Article 19(5) of Regulation (EU) 2019/943. This information shall be provided by the TSO to the NRA in accordance with the national regulatory practices or any other method determined by the NRA. It may contain provisional data, while the final data concerning the previous year are then provided by the TSO at a later stage according to the practice decided by the NRA.
3. Where some of the CI is used when calculating network tariffs, the NRA shall assess if the TSO(s) under its regulatory oversight has/have adequately fulfilled priority objectives during the 12-month period ending on 31 December of the previous year. This assessment shall be based on the cost categories decided by the NRA as per Article 4(7) of this Methodology, without prejudging deviations on the indicative amounts for certain cost categories communicated in advance to the NRA.
4. Where the residual amount of CI is placed on a separate internal account line, the features of the separate internal account line must be determined. To this purpose, inter alia the accounting and tax rules applying to the Member State where the TSO is settled and the impact of a separate internal account line on the national network tariff level shall be duly considered. Ultimately, the most efficient way of implementing the separate internal account line shall be chosen from the two following options:
  - a) A separate internal account line in the TSO's account book, or a functionally equivalent facility; or
  - b) A separate internal account line for reporting purposes, or a functionally equivalent facility of CI and expenditures related to cross-zonal capacities.
5. Where applicable, the residual CI may be placed on the separate internal account line until the accrued amount reaches the multi-year estimate decided by the NRA pursuant to Article 4(7) of this Methodology. The accrued CI shall remain placed on the separate internal account line until it is spent for the identified investments or other expenditures.

The multi-year estimate can be updated by the TSO or following NRA's request, in order to provide more accurate information on forecasted CI or spending on cost categories or related to a project progress.

6. Where actual expenditures corresponding to the cost categories which were decided by the NRA pursuant to Article 4(7) of this Methodology exceed CI in a given year, in cases where the separate internal account line contains sufficient CI from previous years, the amount of the separate internal account line shall be reduced by the difference between those expenditures and CI. Should this result in the amount of the separate internal account line be negative a given year, this amount shall be set to zero and, where the separate internal account line is for reporting purposes, the negative amount shall be carried forward to the next year(s).

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7. If on a given year no efficient use of the CI cumulated on the separate internal account line is identified in the NRA's decision pursuant to Article 4(7) of this Methodology, or if meeting the priority objectives necessitates an amount lower than the CI cumulated on the separate internal account line, CI from the separate internal account line in TSO's account book shall be used to set network tariffs.

## **Article 6**

### **Implementation of the UCI Methodology**

1. The UCI Methodology shall be implemented from the first advance communication requested by Article 4(5) of this Methodology.
2. The UCI Methodology shall apply to CI collected from 1 January 2022.
3. Any relevant decision of a NRA on how CI generated prior to 1 January 2022 is to be used to comply with Regulation (EU) 714/2009 and Regulation (EU) 2019/943 remains unaffected by this Methodology.

## **Article 7**

### **Language**

1. The reference language for this Methodology shall be English.
2. For the avoidance of doubt, where TSOs need to translate this Methodology into their national language(s), in the event of inconsistencies between the English version decided upon by ACER in accordance with Article 19(4) of Regulation (EU) 2019/943 and any version in another language, the relevant TSOs shall be obliged to dispel any inconsistencies by providing a revised translation of the Methodology to their relevant NRA.