

**RECOMMENDATION No 01/2022
OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 20 December 2022

**ON NRAS' ACTIVITIES AND REPORTING ON THE USE OF CONGESTION
INCOME**

THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS,

Having regard to Regulation (EU) No 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast)¹, and, in particular, Articles 2(b) and 6(2) thereof,

Having regard to the outcome of the consultation with the ACER's Electricity Working Group,

Having regard to the favourable opinion of the Board of Regulators of 14 December 2022, delivered pursuant to Article 22(5)(a) of Regulation (EU) No 2019/942,

Whereas:

- (1) According to Article 19(5) of Regulation (EU) 2019/943 of the European Parliament and Council of 5 June 2019 on the internal market for electricity (recast)² (hereafter referred to as "Regulation (EU) 2019/943"), every year National Regulatory Authorities (NRAs) shall inform ACER and shall publish a report regarding the amounts and the use of congestion income.
- (2) In accordance with Article 19(4) of Regulation (EU) 2019/943, ACER decided on the Transmission System Operators' (hereinafter "TSOs") proposal for a methodology for the use of congestion income (hereafter "UCI Methodology").
- (3) Pursuant to Article 6(2) of Regulation (EU) 2019/942, on 23 December 2020, ACER issued its recommendation No 1/2020 on the NRA activities and reporting on the use of congestion income, providing guidance to NRAs to harmonise and streamline their reporting obligations under Article 19(5) of Regulation (EU) 2019/943.
- (4) In accordance with Article 9 (1) of Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices by way of derogation from Union rules on congestion income, Member States may use the surplus congestion income revenues

¹ OJ L 158, 14.6.2019, p.1.

² OJ L 158, 14.6.2019, p.84.

resulting from the allocation of cross-zonal capacity to finance measures in support of final electricity customers.

- (5) Pursuant to Article 6 of the UCI Methodology, the UCI Methodology shall apply to congestion income (hereafter “CI”) collected from 1 January 2022 and shall be applicable from the first advance communication of each TSO.
- (6) Therefore, the provisions of the UCI Methodology are in full effect for the reports of National Regulatory Authorities (NRAs) regarding the use of CI 2022 (to be published in early 2023).
- (7) In light of the above, of the experience in the first two years of NRA reporting on the amounts and use of congestion income and of the need for updates due to Council Regulation (EU) 2022/1854, ACER deems it appropriate to issue an update of its recommendation on NRA reporting, to assist regulatory authorities and market participants in sharing good practices pursuant to Article 6(2) of Regulation (EU) 2019/942.
- (8) Starting with congestion income collected in 2022, the following procedural steps (as further explained in Annex I to this Recommendation) are applicable:
 - according to Article 4 of the UCI Methodology, each TSO shall send an advance communication to NRAs regarding the proposed use of CI during the next calendar year, with the first communication due by 30 September 2021;
 - according to Article 4(7) of the UCI Methodology, from 2021 on, the NRA shall decide by 31 December on the use of CI during the next calendar year;
 - according to Article 5(2) of the UCI Methodology, at the beginning of each calendar year, each TSO shall provide a communication (from 2023) 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;
 - according to Article 19(5) of Regulation (EU) 2019/943 and to Article 6 of the UCI Methodology, by 1 March every year (from 2023), NRAs shall inform ACER and shall publish a report setting out:
 - (a) the amount of revenue collected in the previous year;
 - (b) how that revenue was used, including the specific projects the income has been used for, and the amount placed on a separate account line;
 - (c) the amount that was used when calculating network tariffs; and
 - (d) verification that the amount referred to in point (c) complies with Regulation (EU) 2019/943 and the UCI Methodology.
- (9) Recital (41) of Regulation (EU) 2019/943 states that to better ensure optimal investment in the trans-European grid and to better address the challenge where viable interconnection projects cannot be built for lack of prioritisation at national level, the use of congestion rents should be reconsidered. Regulation (EU) 2019/943 introduced a NRA

reporting on the use of congestion income to ACER, expanding the former provisions of NRA public reporting pursuant to point 6.5 of Annex (I) of Regulation (EC) 714/2009³.

- (10) In order to contribute to the goal set out in recital (41) of Regulation (EU) 2019/943 and to the broader Union goals, ACER intends to monitor and report on the use of congestion income in the EU, including on whether its use contributes to the objectives set out in Article 19 of Regulation (EU) 2019/943. Such task is carried out in line with ACER's duties to monitor the internal electricity markets as well as the implementation of the projects of common interest, the Union-wide network development plans and other projects which create new interconnector capacity. It will complement the related ACER reports and opinions.
- (11) As the NRA reports on congestion income published pursuant to point 6.5 of Annex (I) of Regulation (EC) 714/2009 were fragmented and different across Members States, standardised information from NRAs would be instrumental to ensure that ACER has the information it needs to carry out its task.
- (12) The NRAs' assessment stipulated in Article 19(3) of Regulation (EU) 2019/943 of the adequate fulfilment of the objectives set out in Article 19(2) of the same Regulation depends on the observed time-window and the assessment is affected by the uncertainties of the future needs of new interconnection capacity. Therefore, this assessment can be performed in different ways, and in order to promote consistent implementation among the NRAs, ACER provides the present recommendation,

HAS ADOPTED THIS RECOMMENDATION:

ACER recommends National Regulatory Authorities (NRAs) to provide their reports pursuant to Article 19(5) of Regulation (EU) 2019/943 according to the template of section 1 below, and (if applicable) submit a multi-year estimate of indicative amounts to be spent on cost categories of Article 3(1) of the UCI Methodology according to section 2 below.

ACER recommends NRAs to assess the adequate fulfilment of priority objectives set by Article 19(2) of Regulation (EU) 2019/943 (hereafter "Priority Objectives") according to section 3 below.

Note: The NRAs will be free to redact data, and send two versions of the report to ACER in case business secrets do not allow them to publish the full report.

³ Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009, p.15).

1. Template for NRA reports pursuant to Article 19(5) of Regulation (EU) 2019/943

1.1. In order to both facilitate the NRAs' reporting task pursuant to Article 19(5) of Regulation (EU) 2019/943, and to streamline the ACER's monitoring activity, ACER recommends that the NRA's report pursuant to Article 19(5) includes the following elements:

Inputs

- a) Amount of congestion income (CI) collected within the reporting period at Member State-Member State borders or between internal Bidding Zones of a Member State, i.e. CI before the firmness compensation costs and before the remuneration of non-nominated long-term physical or financial transmission rights;
- b) Amount stored in a separate internal account line at the beginning of the reporting period;
- c) Adjustments of congestion income of previous years due to provisional data.

Expenditures and carry-over

- d) Amount of congestion income used for Priority Objectives within the reporting period;
- e) Amount of congestion income not used within the reporting period and placed in a separate internal account line (at the end of the reporting period);
- f) Amount of congestion income used for tariff reduction;
If congestion income is used for tariff reduction, verification of compliance with Regulation (EU) 2019/943 (assessment of adequate fulfilment of Priority Objectives);
- g) Surplus CI spent for electricity customers support pursuant to article 9 of Council Regulation (EU) 2022/1854;
- h) Taxes on CI saved in the separate account, in countries where taxation is foreseen.

Additional information

- i) Amount of congestion income within the reporting period per border;
- j) Congestion income used for each of the nine cost categories defined by Article 3(1) of the UCI Methodology;
- k) When expenditures are related to projects which increased or will increase cross zonal capacities (i.e. expenditures for cost category vii and vi of Article 3(1) of the UCI Methodology, respectively), the following project-related information;
 - the project name and code⁴;
 - the yearly expenditure recovered from congestion income;
 - in case the projects were / are not included in the EU TYNDP, the justification of their relevance with the Priority Objectives, in line with paragraph 1.2 below.

⁴ Using the TYNDP codes, and if not available the National Development Plan ones.

- 1.2. The relevance of a project with the Priority Objectives is justified by the ways foreseen in article 4.3 of the UCI Methodology, or in case where the project is marked as “critical network element” in the implementation of the Flow Based Allocation Methodology.
- 1.3. If (e) above is not zero, the NRA report should include a multi-year estimate (MYE) with the content described in section 2 below. A MYE may also be submitted in case an NRA intends to use CI for network tariffs and wishes to facilitate NRA’s assessment of the fulfilment of the Priority Objectives.
- 1.4. If (f) above is not zero, the NRA report should include the assessment of adequate fulfilment of Priority Objectives, according to the criterion of section 3 below.
- 1.5. ACER recommends NRAs to submit the above information to ACER in electronic format (according to the template of Annex II to this Recommendation in the application made available by ACER).

2. Multi-year estimate of indicative amounts to be spent on cost categories of article 3(1) of the UCI Methodology

- 2.1. In case congestion income is placed in a separate internal account line, the TSOs shall include in their communication to their NRA a multi-year estimate (MYE) of indicative CI amounts for the cost categories for which the separate account line will be used in the future. The MYE can be revised whenever deemed necessary by the competent NRA.
- 2.2. If according to the MYE, CI is foreseen to be used for the cost category (vi) of article 3.1 of the UCI Methodology, ACER recommends that NRAs include in their reports, for each relevant project, as specified in recital 2.3 below, an indicative spending estimation for every year until its commissioning.
- 2.3. For the purpose of recital 2.2, a project which significantly contributes to maintaining or increasing cross-zonal capacity is defined as a “relevant project” if it is included in the PCI list or its indicative total capital expenditure estimation exceeds:
 - 100 million euro for a Member State where the average transmission capital expenditure in the previous three years was above 1000 million euros;
 - 50 million euro for a Member State where the average transmission capital expenditure in the previous three years was in the range 500-1000 million euros;
 - 25 million euro for a Member State where the average transmission capital expenditure in the previous three years was less than 500 million euros.
- 2.4. Revisions of the yearly spending estimation for the cost category (vi) of article 3.1 of the UCI Methodology should be explained in the following cases:
 - In case any of the yearly estimates significantly diverge from the corresponding estimate of the previous year (>+20% or <-20%);
 - In case of consecutive changes to the yearly estimates which amount for more than 20% of the initial estimate.

3. Criterion of assessment of adequate fulfilment of Priority Objectives

- 3.1. If the CI of the previous year is intended to be fully or partly used when calculating the network tariffs, the NRA shall assess the adequate fulfilment of Priority Objectives.
- 3.2. ACER recommends that in this case, a MYE, as described in section 2 above, accompanies the NRA's report on the use of CI.
- 3.3. In the cases where a MYE was defined, ACER recommends that:
 - a. NRAs calculate the difference: CI collected in the previous year minus the actual total spending for categories (i) to (v) and (viii) to (ix) of article 3.1 of the UCI Methodology [hereafter "*CI available for infrastructure spending*"];
 - b. if the *CI available for infrastructure spending* **is equal or greater than** the sum of the yearly targets set in the latest multi-year estimate for categories (vi) and (vii) of article 3.1 of the UCI Methodology, then the priority objectives can be considered fulfilled if the yearly targets set in the latest multi-year estimate for categories (vi) and (vii) are met;
 - c. if the *CI available for infrastructure spending* **is less than** the sum of the yearly targets set in the latest multi-year estimate for category (vi) and (vii) of article 3.1 of the UCI Methodology, then the priority objectives can be considered fulfilled if the actual spending on projects of categories (vi) and (vii) is equal or greater than the *CI available for infrastructure spending*.

This Recommendation is addressed to National Regulatory Authorities.

Done at Ljubljana, on 20 December 2022.

- SIGNED -

For the Agency
The Director
C. ZINGLERSSEN

Annex I: Overview of the procedural steps according to the UCI Methodology

1.1 TSO's proposal on the use of CI for the next calendar year(s)

Actor: TSOs

Content of the action: TSOs shall communicate to their NRA the elements included in article 4.1 of the UCI Methodology regarding the following calendar year(s)

Time of action: by 31 October (unless an earlier date is decided by the competent NRA) annually or biennially (to be decided by the competent NRA).

1.2. NRA's decision on the use of CI for the next calendar year(s)

Actor: NRA

Content of the action: According to point 4.7 of the UCI Methodology, each NRA shall decide:

- for which of the cost categories (i) to (ix) of Article 3(1) of the UCI Methodology the TSO shall use congestion income in the upcoming period (one or two years);
- on the relevance of the cost categories communicated by the TSO to the priority objectives;
- if a separate internal account line was and/or is to be used, on the multi-year estimate for the separate internal account line and for which of the cost categories (i) to (ix) of Article 3(1) of the UCI Methodology the TSO shall place congestion income in the separate internal account line.

Indicative time of action: by 31 December

1.3 TSO's communication on the actual use of CI during the previous calendar year

Actor: TSOs

Content of the action: TSOs shall communicate to their NRA any of the information set out in Section 1 of this Recommendation, as requested by the NRA.

Time of action: at the beginning of each year (unless a different date is decided by the NRA).

1.4. NRA's report on the use of CI for the previous calendar year

Actor: NRA

Content of the action: the NRA shall publish and submit to ACER a report on the use of CI for the previous calendar year.

ACER recommends that the NRA report provides information, according to the Template described in section 1 herein.

Time of action: by 1 March

Clarifications on the action:

If CI of the previous year is intended to be fully or partly used when calculating the network tariffs, the NRA has to assess whether the priority objectives (a) and (b) of Article 19 (2) of Regulation (EU) 2019/943 were adequately fulfilled.

ACER recommends NRAs to perform this assessment according to the criterion described in section 3 herein.

Annex II: CI templates

CI overview

Inputs	€	
a) Amount of congestion income (CI) collected within the reporting period at Member State-Member State borders or between internal Bidding Zones of a Member State	X	A
b) Amount stored in separate internal account line from years before the previous one (at the beginning of the reporting period)	X	
c) Adjustment of congestion income of previous year due to provisional data (" + " if actual previous year was greater than the provisional one, " - " if it was less than the provisional one)	X	
Total available congestion income	0	B
Expenditures and carry-over		
d) Amount of congestion income used within the reporting period for priority objectives set by Article 19(2) of Regulation 2019/943	X	C
e) Amount of congestion income not used in the previous year and placed in a separate internal account line (at the end of the reporting period)	X	
f) Amount of congestion income used for tariff reduction	X	
g) Surplus CI spent for electricity customers support pursuant to article 9 of Council Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices	X	
h) Taxes on saved CI, in countries where taxation on the amounts saved in the separate account is foreseen pursuant to national laws	X	
Sum of expenditure and carry-over of CI	0	D
Additional information⁵		
i) Amount of congestion income in the previous year for border X-Z	X	
i) Amount of congestion income in the previous year for border X-Y	X	
i) Amount of congestion income in the previous year for border X-W	X	
Sum of CI of previous year	0	E

⁵ For transparency, in this section also the CI collected at non-EU borders should be reported.

j) Congestion income used in the past year for each of the cost categories defined by Article 3(1) of the UCI Methodology (€)

Cost categories	CI (€)	
i	X	
ii	X	
iii	X	
iv	X	
v	X	
vi	X	
vii	X	
viii	X	
ix	X	
Sum	X	

F

Checks: A (only the part pertaining to MS-MS borders and internal BZs) should be equal to E, B should be equal to D and C should be equal to F

k. CI project-related information

When previous year expenditures are recovered from congestion income and are related to projects which increased or will increase cross zonal capacities, the following project-related information should be provided:

Project name	Project code (*)	Project expenditure recovered from congestion income in the previous year (€)	For projects non-included in the EU TYNDP: justification of the relevance of the project with the priority objectives (**)	Comments (***)

(*) Only for projects not commissioned yet: the TYNDP code, and if this is not available the NDP code

(**) Justification according to article 1.2 of this Recommendation.

(***) Especially in the following cases:

- (a) if the current TYNDP data (commissioning date, expected or actual CAPEX) need updating or
- (b) for NDP projects reported for first time in the UCI report, their total CAPEX

l. (If applicable) Multi-year estimate -future spending per category

Indicative amounts to be spent for the cost categories defined by Article 3(1) of the UCI Methodology, for which the separate account line will be used in the future.

Cost categories defined by Article 3(1) of the UCI Methodology	Year y (current year)	Year y+1	Year y+2	Year y+3	Year y+4	Year n (*)
i						
ii						
iii						
iv						
v						
vi						
vii						
viii						
ix						
Sum	0	0	0	0	0	0

(*) up to the last year when the income in the separate account is planned to be used

m. (If applicable) Multi-year estimate -spending per project

In case there is projected spending on the cost categories (vi) and (vii) of article 3.1 of the UCI Methodology, the following project-related information should be provided:

Project name	Project code (*)	Project expenditure (€)					
		Year y (current year)	Year y+1	Year y+2	Year y+3	[up to commissioning year]
XZ							
YW							

(*) the TYNDP code - if not available the NDP code

Annex III: Cost categories contributing to priority objectives (vi) and (vii) of article 3 of the UCI Methodology

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.

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.