

PUBLIC CONSULTATION ON THE TSOS' PROPOSAL FOR USE OF CONGESTION INCOME METHODOLOGY

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Response to public consultation comments received during the consultation held from 20 March to 1 May 2020.

15 responses have been received from the following stakeholders (in alphabetic order): Baltic Cable AB, Bundesnetzagentur (BNetzA), CLEEE (French industrial and professional consumers association), Distriktsenergi, Norway, EMCO AS, Enel, Energy Authority (Finland), Fortum Power and Heat Oy, IFIEC Europe, Moyle Interconnector Ltd., Norsk Hydro, Statkraft, Transmission Investment, UPM-Kymmene Oyj, and one respondee who requested to remain anonymous.

Remarks:

- i. Identical comments from different stakeholders have been grouped and summarized where possible to improve the readability;
- ii. The reference to the articles and paragraphs are based on the version of [draft Methodology](#) and the [draft explanatory document](#) that were submitted to public consultation. When an All TSOs response to a comment or a group of comments refers to an article or paragraph, it relates to the numbering used in the version which was finally submitted to ACER.
- iii. ED = Explanatory Document

Legend related to the consideration of the received comments

ACCEPT: this means that ENTSO-E changed the draft methodology to accommodate (partly or fully) the comment.	(A)	Out of scope: this means that ENTSO-E considered that the comment touched upon a point which is not in the scope of this methodology.	(OS)
Consider: this means that ENTSO-E accommodated this point in the explanatory document.	(C)	Reject: this means that ENTSO-E rejected the comment as it goes against the defined principles or objectives.	(R)

Some cells are left blank because (A), (C), (OS) or (R) do not apply, e.g. on comments which supported TSOs' view.

Topic	Category comment	of Specific article (if relevant)	Summary of comments	Accept (A) / Consider (C) / Reject (R) / Out of Scope (OS)	TSOs responses
Stakeholder involvement	Use of CI, cost categories, Fulfillment of objectives, Retention period for separate account	1, 3, 4(3), 4(8)	Fortum Power and Heat Oy stated that stakeholder involvement is important. It was suggested that stakeholder involvement be included for determining the optimal use of congestion income (Art 1), the process of the NRA approval of the cost categories (Art 3), the process of the NRA assessment of the adequate fulfilment or the priority objectives where some of the congestion income is used when calculating network tariffs (Art 4(3)) and the process of placing remaining congestion income on a separate account (Art 4(8)).	(R)	TSOs note that NRAs have the opportunity to involve stakeholders at any stage of the methodology's implementation if they wish. However, no obligation relating to stakeholder involvement other than the consultation of NRAs and stakeholders requested in Article 19(4) is provided for in the Regulation 2019/943. In some areas such involvement may even be infeasible e.g. due the short time defined by Article 19(5) of the Regulation 2019/943 for the NRA report related to the adequate fulfilment of priority objectives. Hence, we have not included specific reference to stakeholder involvement in the Methodology.
Hybrid projects	Clarification on application of Methodology for Hybrid projects	1	One respondee recommended the further consideration of whether hybrid projects are captured under the methodology.	(R)	TSOs note that Regulation 2019/943 does not provide for any specific separate treatment of hybrid projects. Recital (38) of the Regulation 2019/943 indicates that there should be rules on the use of revenues from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from those rules. Therefore the only distinction requested by the Regulation is the different treatment of exempted projects (for which the Methodology does not apply, as clarified in its Article 1(3)). Hence, we do not believe there is scope within the legal framework to allow hybrid regulated projects to be treated in a different way than other regulated projects under the methodology.

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Retain NRA flexibility	Cap&floor regime	General	One respondent noted that the cap and floor regime in Great Britain has to date proved an effective tool for incentivising the development of interconnection capacity and advancing the priority objectives of the Regulation, as well as the objectives of the GB energy policy. They noted that different jurisdictions have used different methods in pursuit of similar aims; this diversity reflects the discretion that has historically been provided for in EU energy legislation and supported the Methodology as it preserves the discretion required to reflect the range of approaches in different jurisdictions. Statkraft also referred to the UK cap and floor regime and stated that this should be in line with the Methodology.		TSOs agree with the principle of preserving the flexibility of NRAs when applying the Methodology. The cap and floor regime is a good example of such flexibility. This is compliant with the Methodology and is already further explained in the ED.
Single interconnector companies	Addressed by UCI	General	Bundesnetzagentur noted that single interconnector companies should remain unaddressed in the methodology at least for the time being and the methodology should not include special provisions with regard to single interconnector companies.		TSOs agree that no special provisions with regards to Single Interconnector companies should be included in the Methodology.. Non-exempted Single interconnector companies are addressed by the methodology, as well as all other TSO companies are.
Single interconnector companies	Socialisation of benefits		Statkraft noted that the table as included in Annex 4 indicates that Single Interconnector Companies do not socialise benefits. This is not correct as the welfare gains obtained by allowing for cross-border exchanges do not only encompass CI but also an import and export surplus (see figure 4 of the explanatory document). Import and export surplus can also be named net consumer and net producer surplus. These import and export surplus are socialised and thus all grid users have a net benefit from the interconnector.	(C)	TSOs agree that the explanation may be misleading. We have adjusted the relevant text in Annex 4 of the ED.
Single interconnector companies	Treatment of SICs and other TSOs	Whereas; 1	Statkraft, Transmission Investment, Moyle Interconnector Ltd. and Baltic Cable AB noted that the Methodology shall take into account the differences between the business models of network TSOs and of Single Interconnector Companies. E.g. Single Interconnector Companies do not pass costs and risks to grid users and CI is the sole source of revenues. They note that Recital 7 of the methodology only refers to "regulated TSO's business models". They noted that the wording should be added to clarify that NRAs should treat CI for regular TSOs and Single Interconnector Company TSO's differently, stating that the accompanying Explanatory Document does recognise this distinction but that there is no reference to this within the methodology. They stated that simply mentioning the distinction in the "Explanatory Document" is not sufficient to provide legal security for Single Interconnector Companies. Single Interconnector Companies may have differing forms of regulation, cost base, risk exposure and be without access to wider tariffs which affects the risk/reward balance, which should be reflected in the Methodology. In addition, respondents refer to the Judgment of the European Court of Justice (Case C-454/18) of 11 March 2020 relating to Baltic Cable AB v Energimarknadsinspektionen.. Baltic Cable AB noted that, in relation to Single Interconnector Companies, the European Court of Justice highlighted the important role of the NRA to ensure that they are "put in a position in which it is able to carry out its activity in financially acceptable conditions" by covering costs for maintenance and operation and making an "appropriate profit", "by way of derogation" from Art. 19.2, 19.3 Reg. (EU) 2019/943 (European Court of Justice, Case C-454/18, recital 77, 78).	(R)	TSOs note that: <ul style="list-style-type: none"> Single Interconnector Companies (SICs) can in some cases benefit from exemption from Article 19 of Regulation 2019/943, and the Methodology doesn't apply to exempted TSOs. This has been clarified in Article 1(3) of the Methodology. If not exempted, pursuant to Article 43(1)(a) of Directive EU 2019/944, act as a transmission system operator;. Therefore no special treatment is necessary for non-exempted SICs. According to the ECJ Decision on case C-454/18, point 79, should not be discriminated against by comparison with other transmission system operators; therefore non-exempted SICs don't need a special treatment. The Regulation 2019/943 allows regulated SICs to recover costs directly resulting from past network investment (depreciation and capital remuneration), and operation and maintenance costs since it includes "cost resulting from network investment". This is reflected in the Methodology (cost categories (vii) and (viii) and has been clarified in the chapter 2.4.1 of the ED.
Single interconnector companies	Approval of costs and eligibility	3(2)	Moyle Interconnector Ltd. noted that for SICs, the regulatory regime may not examine individual costs but rather the totality of costs, and may treat some costs as pass-through (which is recognised in Article 4(1)). They argued that this should be somehow reflected in the Methodology.	(R)	TSOs consider that the Methodology should not include special provisions with regard to single interconnector Companies vs. other TSOs. Also, TSOs consider that the provision of article 3.1 of the Methodology "For each TSO, the exact list and the detailed measures for the definition of such cost categories depend on the national regulatory framework" covers sufficiently the concerns expressed.

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Single interconnector companies	Appropriate profit	General; Whereas	The "appropriate profit" should take into account that a single interconnector company faces higher risks than a network TSO. Baltic Cable AB, Statkraft and Transmission Investment noted that this needs be reflected in the Methodology in terms of the NRA's competencies when deciding on the proper use of CI. Transmission Investment noted that there is no section which considers the level of risk against the allowable returns of a project and argued that it should be made clear that NRA's are able to adjust the level of allowable return to incentivise the development of projects which carry higher levels of investment risk by legal entities beyond network TSOs with access to regulated tariffs. The appropriate level of return should reflect the level of development/construction/operational risk of the entity taking the project forward, in particular taking into account the level of consumer support via tariffs that may already be in place. If this differentiation is not possible projects which carry higher levels of investment risk will only be carried out by entities underwritten by tariffs and hence consumers. This will limit competition and unnecessarily place increased levels of risk on consumers.	(OS)	TSOs note that specifying an appropriate profit for SICs is out of scope of the Methodology.
Single interconnector companies	Maintenance costs	3(1)	Statkraft noted that Article 3(1) of the methodology stipulates that TSOs may allocate CI to "Maintenance OPEX related to assets which contribute to maintaining or increasing cross-zonal capacity" complying either with Article 19(2) (a) and / or Article 19(2) (b) of the Regulation (EU) 2019/943. They stated that it seems clear that, based on the ECJ decision, allocating CI to cover maintenance costs would not be compliant with Article 19(2) (b) (as this is the successor of Article 16(6) (b) of Regulation 714/2009).	(A), (C)	TSOs note that Regulation 714/2009 and Regulation 2019/943 are not identical. In particular, Regulation 2019/943 additionally refers to "costs resulting from investment". Operation and maintenance costs for a network investment are a result of that investment. Hence, we included maintenance and operation in the list of eligible costs. We have made an amendment in the chapter 2.4.1 of the ED in relation to this issue to clarify it. Points 53-63 of the ECJ decision explicitly refer to point (b) of the first subparagraph of Article 16(6) of Regulation No 714/2009. We do not believe this aspect of the ECJ finding is relevant to Article 19 of Regulation 2019/943 and therefore to the Methodology.
Single interconnector companies	Usage of CI	3(7)	Baltic Cable AB suggested that a new Art 3.7 should be included in order to reflect European Court of Justice, Case C-454/18, recital 78 as follows: "In order to prevent discrimination of Single Interconnector Companies, the NRA shall authorise these companies, by way of derogation from Art. 19(2) and Art. 19(3) of Regulation 2019/943, to use part of the CI it receives in order to cover the maintenance and operating costs of the interconnector and to make an appropriate profit."	Partly (A), partly (OS)	Maintenance costs were included in the draft Methodology submitted to the public consultation. TSOs added "operating" costs to Article 3 (1 viii). As stated above, specifying an appropriate profit for SICs is out of scope of the Methodology.
Single interconnector companies	Separate accounting line	4	Moyle Interconnector Ltd. noted that the idea of a separate account line is not necessary for Single Interconnector Companies (as the only assets on which congestion income could be spent are interconnectors). The respondee would view this as a notional account line for reporting purposes only.	(R)	TSOs consider the Methodology should not include special provisions with regard to SICs vs. other TSOs. Moreover, a provision for a separate account line for reporting purposes is included in article 5(4)(b) of the Methodology. Chapter 2.6.4.5 of the ED clarifies this is a notional account in which no money is actually "stored".
Single interconnector companies	Cost eligible for coverage by CI	3(1)	Transmission Investment noted that with respect to para 1(vii). for a Single Interconnector Company there is no other means of recovery of costs than via its own CI. They suggested that to avoid potential for unintended conflict or omission, CI should be allowed to be allocated to all costs incurred from project inception to, and including, the project's decommissioning (subject to NRA approval in paras 4, 5 and 6). They suggested that they would support a separate Article setting out the cost categories for Single Interconnector Companies in order to make the distinction between types of TSO simpler and clearer. They suggested that it may be that revenues for Single Interconnector Companies are allocated differently to normal tariff regulated TSOs, because in their view an additional Article setting out the cost categories will avoid any future misinterpretation issues. As an alternative they suggested that this Article could be revised to list costs that can NOT be allocated to CI, (i.e. Excluded cost categories rather than allowable cost categories).	(R), partly (A)	TSOs consider the Methodology should not include special provisions with regard to single interconnector Companies vs. other TSOs. Also, TSOs consider that the provision of article 3(1) of the Methodology "For each TSO, the exact list and the detailed measures for the definition of such cost categories depend on the national regulatory framework" covers sufficiently the concerns expressed. In relation to BNetzA comments (see below), amendments (not specific to SICs) have been made in the Methodology related to the inclusion of the costs of development in cost category (vi) and of accruals for asset dismantling costs in cost category (viii).

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Separate internal account line	Rolling forward/ Single Interconnector Companies	4(7)	Baltic Cable AB noted that it should be clear that in cases where the Single Interconnector Company's sole source of revenue is CI, the separate line account – in case it is negative – cannot actually be "sent to zero" neither by CI nor via any additional cash flows but losses have to be carried forward.	(R)	There was a typo in the Methodology submitted to public consultation, it should have read "set to zero" instead of "sent". This has been corrected in the Methodology in Article 5(6). TSOs consider the Methodology should not include special provisions related to SICs. In general, since the separate account's purpose is to collect money (where it is in TSO's account books) or to report on the unused CI for priority objectives (where it is for reporting purposes), it cannot be negative. If the separate account is in TSO's account book, setting the separate account to 0 means using all the money of the separate account and, if expenditures are higher than the amount of the separate account, have recourse to more debt or tariff increase to fund the gap. The Methodology sets out that only in the case the separate account is for reporting purposes, the "negative amount" shall be carried forward to the next year(s). This is clarified in chapter 2.6.5 of the ED.
Date of implementation	Come into force of Methodology and covered CI	1	Bundesnetzagentur stated that it should be consensual that only congestion income generated after Reg. (EU) 2019/943 has become applicable (January 1st 2020) will be within the scope of the methodology. In particular, they suggested that the methodology will not be applicable to congestion income from previous years included in an operator's balance sheet and spent after January 1st 2020. They stated that the background of this position is the simple fact that use of Congestion income from previous years may lead to an offset in the investment, potentially as long as the asset is depreciated. Insofar, use of congestion income will remain dependant on the specific decisions by NRAs, provided said decisions were made in accordance with the then applicable legal framework. Thus, the decisions by any NRA up to January 1st 2020 regarding PCIs, investments in interconnectors and investments necessary to transport additional foreign electricity flows as congestions relevant investments, will remain applicable regardless of the outcome of this methodology setting procedure.	(A)	With regard to the implementation date in the new Article 6 we define it as the start of the calendar year following the first advance communication requested by Article 4(5), concretely 01/01/2022 TSOs agree with the principle that the methodology should not be applied retroactively. Article 6 further clarifies that "any relevant decision of a NRA on how CI generated prior to implementation date" is unaffected by the Methodology.
Congestion Income and costs	TSO's share on CI and costs	Whereas; 3(1iii); 3(2)	Transmission Investment noted that clarity should be added on the revenues to which the methodology is referring. Throughout the methodology there is reference to how CI should be allocated by a TSO. However, CI is generated on a border between bidding zones and is distributed between the TSOs who own the cross border assets based on a proportion defined by Article 73 of CACM (EU reg 2015/1222) and agreed by NRAs. The respondee suggested that there should be an explanation within the methodology to clarify that the terms setting out how CI can be used relate only to each TSO's share of the CI within their area of responsibility and not the total CI generated by the border. Baltic Cable AB noted that it is crucial that the Methodology makes clear that each TSO is only responsible to bear the costs for remedial actions which result from congestions within their own network. They stated that, according to Art. 3 Draft UCI Method, TSOs have to use CI for remedial action costs pursuant to Art. 19.2 Reg. (EU) 943/2019. They stated that neither Art. 19.2 Reg. (EU) 943/2019 nor Art. 3 Draft UCI Method obliges TSOs to bear remedial action costs other than those needed to resolve congestions in their own network. However, for the avoidance of doubt, the respondee suggests the methodology should be clarified in this regard in order to fully comply with the polluter principle as one of the most fundamental principles of European (Environmental and Energy) Law.	Partly (C), partly (OS)	TSOs note that the Methodology relates only to CI collected by the TSO in question (as is clear from point (a) of article 19(5) of Regulation 2019/943). A clarification has been added in the ED under chapter 2.2. In addition, we note that the Methodology relates only to allocating CI to certain cost categories, not to deciding on the costs which have to be borne by individual TSOs (this is addressed in other methodologies).
Definition of "Allowed revenues"	No additional "profits" from CI	2(2a), 4	Bundesnetzagentur noted that there there must not be "additional profits" from CI and suggested that it is made clearer that there must not be a "double remuneration". To the extent that costs are financed using congestion income, they argued that there has to be an according cut in allowed revenues that eventually leads to a reduction of tariffs. Given that tariff reduction is among the secondary purposes of congestion income usage according to art. 19 para. 3 Reg. (EU) 943/2019, they suggested that it is clear the law has to be interpreted restrictively towards financing costs (usually) included in the allowed revenues by use of congestion income. UPM-Kymmene Oyj made a similar comment.	(A)	The avoidance of double remuneration is now addressed in the Methodology in Recital (11) and cost category (vi) of Article 3.1.

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Definition of "Allowed revenues"	No additional "profits" from CI		EMCO AS was also concerned that TSOs might be permitted to use parts of the CI as a way to gain profits, e.g. that they would not be obliged to use them for the limited regulated purposes as described in EU legislations, e.g. current EU electricity directive/regulation.	(R)	TSOs note that the Regulation obliges TSOs to use CI for the priority objectives therefore TSOs cannot simply keep CI for additional profits.
Definition of "Allowed revenues"	Amend wording so that applicable for SIC and TSO	2(2a)	Transmission Investment noted that the definition of "Allowed revenue" in para 2(a) is appropriate when defining the allowed revenues of tariff regulated TSOs, but does not fit in relation to Single Interconnector Companies. Hence, they argued that the definition should be changed to be more applicable to all types of TSOs and avoid any future confusion.	(A)	The previous cost category (vii) from the draft Methodology has been split into two cost categories (now (vi) and (vii)) in order to better reflect the difference between on the one hand ongoing investment or capital expenditures, and on the other hand costs directly resulting from past network investment. Therefore, the references to allowed revenue are not necessary anymore and have been removed from the Methodology.
Basis of investment decisions	positive CBA	Whereas (7)	Fortum Power and Heat Oy, Statkraft, Norsk Hydro, IFIEC Europe and ENEL noted that investments falling under the UCI should be based on network development plans and subject to an efficiency and socio-economic cost benefit analysis, with this CBA also including the impact on adequacy and grid reliability and non-monetised components. They noted that the explicit aim of article 19 is to stimulate TSOs to invest in new interconnector capacity and that NRAs should therefore steer TSOs to invest in interconnector capacity if, and only if, the business case for society is positive.		TSOs agree with the principle that only network investments with a cross-border impact which have a positive impact on society should be undertaken. This principle is reflected in the recitals and explained in the ED and therefore we do not propose any change in relation to this comment.
Basis of investment decisions	EU COM price differential threshold	Whereas (7)	Fortum Power and Heat Oy suggested that additional interconnections should be prioritised if the price differential exceeds an indicative threshold of 2 €/MWh between Member States, regions or bidding zones, as determined in the European Commission communication on strengthening Europe's energy networks (COM(2017) 718 final https://ec.europa.eu/energy/sites/ener/files/documents/communication_on_infrastructure_17.pdf)	(OS)	TSOs note that a price differential larger than 2€/MWh does not per se mean a positive CBA. In addition, we note that mandating any prioritisation among investments is outside the scope of the Methodology. The Methodology has been developed to provide discretion to NRAs in relation to judgements on the "adequate fulfilment" of the objectives in Article 19(a) and (b) of 2019/943. We do not believe any change is required in the methodology in relation to this comment.
Basis of investment decisions	Decision body for investments	3(2)	Norsk Hydro noted that the decision-making authority on new investments in transmission capacity, both cross-zonal and internal, must be within the national state. The respondent interprets article 3.2 which states that "such costs categories shall be incurred only if they are considered efficient by the relevant NRA at national level" to confirm this view.		TSOs agree with this respondent's view. We do not believe any further change in the Methodology is required.
Basis of investment decisions	NRA has flexibility to avoid over-investment and decide on usage of CI	4(3)(4)	CLEEE noted that it is a priority to ensure the adequate investments are made in order to ensure "smooth" interconnection, but that it is also a priority to avoid over-investments and to let each country's regulator decide what level of revenue can be reverted back to the network revenue.		TSOs agree with this respondent's view. We do not believe any further change in the Methodology is required.
Basis of investment decisions	National decision supplemented by cross-border coordination	General	IFIEC Europe noted that it is very important that a cross-border coordination is conducted in order to ensure efficient investments that contribute towards European market integration, even though these analyses are conducted on a Member State level and approved by the relevant NRA, based on the congestion income that is available to each Member State.	(OS)	TSOs appreciate the benefits of cross-border coordination when deciding on network investments. We note that there are European coordination processes (e.g. TYNDP) which facilitate this. We do not believe that co-ordination on investment planning is within the scope of the Methodology. As such, we do not believe any further change is required in relation to this comment.
Costs	Approval of costs and eligibility	3(2)	Referring to Art 3(2) ("Such costs categories shall be incurred only if they are considered efficient by the relevant NRA at national level"), Moyle Interconnector Ltd. noted: (a) a typographical mistake: "of" should be "if". (b) it is not clear whether this means that NRAs approve only the categories, or the level of cost.	(A)	TSOs have corrected the typo. In relation to the second comment, we included a new Article 4 in the Methodology defining the national process for utilisation of CI. Based on the cost categories in Article 3(1) TSOs shall establish in advance and communicate to their NRA, where relevant, the indicative amounts of CI used for the relevant cost categories. According to the new Article 4 (7) the TSOs advance communication is subject to review by the NRA, which may request or, after consulting the TSO, decide changes.
Costs	Cost eligible for coverage by CI	3	CLEEE strongly support article 3 of the proposal and recommend giving each country's TSO sufficient flexibility to define the costs that have an impact on the optimization of the interconnection capacities.		TSOs note the support of this respondent

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Costs	NRA has flexibility to decide on details for cost categories	3	One respondent noted that they agree with the guideline cost categories that can be used for the fulfilment of priority objectives and viewed the list as sufficient for the purposes of covering the range of costs that might contribute to the priority objectives of Article 19(2) of the Regulation, but also in providing flexibility to acknowledge national regulatory heterogeneity. The respondent supported the methodology in providing the NRAs with a key role in assessing and approving the cost categories identified by the TSO in terms of their contribution to the priority objectives. For clarification, it was suggested to amend the final bullet point of Article 3(3), so that it reads: "Any applicable provision from the national regulatory framework in force."	(A)	TSOs agree with this suggestion. We have amended the Methodology.
Costs	General comment	General	Enel suggested that curtailments of merchant lines with long-term transmission rights or financial exemptions should occur only as a last resort after curtailing the other PTR holders.	(OS)	TSOs note that prioritisation of curtailment is outside the scope of the Methodology. We therefore believe that no further change is required in relation to this comment.
Costs	Definition of costs	3	Enel noted that priority in covering costs should be given to capacity allocated to private developers of merchant lines, because investment on transmission capacity rights is more long term (and then more risky) than capacity allocated through explicit/implicit auctions, which are, in turn typically short-term. They suggested that compensation costs should be included between firmness costs and firmness compensation costs categories.	(R)	TSOs note that there is no basis in Article 19 of Regulation 2019/943 to give priority to merchant interconnectors. Therefore no change is required in relation to this comment.
Costs	Cost eligible for coverage by CI	3 (1 vii and viii)	Bundesnetzagentur stressed that the cost categories listed in art. 3 para. 1 vii and viii of the draft Methodology should only be financed by congestion income in as far as they are accepted by the NRA as additional costs caused by an interconnector investment project. They stated that this applies especially to OPEX and – at least from the perspective of the German regulatory system – to long-term leasing costs.		TSOs agree with the respondent's view. We note that the costs should not be limited to interconnector investment projects but also to internal assets with significant cross-zonal relevance, as reflected in the Methodology.
Costs	Cost eligible for coverage by CI	3 (1 vii and viii)	Bundesnetzagentur noted that the following necessary cost items should be included as eligible, on condition that they are allocated to a specific interconnector investment project by the NRA: <ul style="list-style-type: none"> • Additions to accruals for asset dismantling costs • Specific insurance costs (machine insurance) • Costs for rescue concepts of maintenance and repair teams 	(A)	TSOs agree with this comment. We have included the cost items in the list in Article 3 (1) (viii) in the Methodology, however such costs should not be limited to interconnectors but should also include those related to asset which significantly contributes to maintaining or increasing cross-zonal capacity. This has been added in the Methodology.
Costs	Justification for investments with cross-border impact	3 (3)	Bundesnetzagentur noted that investments necessary to transport additional foreign electricity flows should be added to the list of purposes eligible for financing by congestion income.	(A)	TSOs agree that internal lines can contribute to cross-border flows. This is clear in Article 3(2) of the Methodology. We made a clarification on this in the definition in Article 2(b) in the Methodology.
Costs	CI shall only be used to cover investments in own grid	3(2)	Baltic Cable AB suggested that it should be clarified that any obligation to invest into the network in order to establish a common European electricity market is limited to investments into each TSO's own network, unless the TSO chooses to invest differently. They suggested that Art 3.2 be amended as follows: "Such costs categories shall be incurred only if they are considered efficient by relevant NRA at national level. This assessment is carried out for each TSO separately and is limited to each TSO's network. In particular, Art. 16(13) of Regulation 2019/943 remains unaffected."	(OS)	TSOs note that the selection of investments cannot be restricted by the Methodology, and that article 16(13) is out the scope of the Methodology. Hence, no further change is required in relation to this comment.
Adequate fulfilment of priority objectives	Efficient levels of investment	General	ENEL noted that as explained by ENTSO-E in the explanatory document of the UCI methodology proposal, the target of "absolut zero congestion" is a sub-optimal solution that can bring to system inefficiency. We especially share that "considering that in any case all CI should mandatorily be spent sooner for investing, may result in costs that are economically unjustifiable for the community " In calculating the optimal investment level, the costs incurred should be duly considered.		TSOs note and share these comments. However the decision or the process on the optimal investment level is beyond the scope of the Methodology.
Adequate fulfilment of priority objectives	"Adequate fulfilment" linked to 70% target	4, 5	ENEL noted that CI should be used to invest in grid reinforcement needed to reach a 70% target also on merchant interconnectors..	(R)	TSOs note that the Methodology should not put any focus on merchant interconnectors

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Adequate fulfilment of priority objectives	"Adequate fulfilment" linked to 70% target	4, 5	Bundesnetzagentur explicitly stated that the "adequate fulfilment" must not be related to the 70% target.		TSOs note that the intention of the Methodology is to give NRAs discretion in relation to "adequate fulfilment", rather than to link it to a specific criterion. Hence, the Methodology does not link the achievement of objectives to the 70% target for any network assets, and this is clear in chapter 2.6.3 of the ED. We therefore believe that no further change is required in relation to this comment.
Adequate fulfilment of priority objectives	NRA decides on fulfilment.	4	CLEEE, Bundesnetzagentur, Energy Authority (FI), CLEEE and one other respondee support that the draft Methodology gives discretion to the NRAs to define "adequate" fulfilment.		TSOs note the support of the respondees.
Adequate fulfilment of priority objectives	Include rationale for "adequate fulfilment"	General	Statkraft noted that the draft Methodology does not provide clear guidance on the proper use of congestion income (CI) and recommended to include some rationale on the proper use of CI in the methodology.	(R)	TSOs note that the basis on which the Methodology has been developed is to provide flexibility to NRAs to determine the appropriate use of CI in a local setting. We do not believe any further change to the Methodology is required in relation to this comment. The rationale is already included in the Methodology as the costs categories and features of the separate account should be efficient (see in particular article 3(3)) and the investments should have a positive socio economic impact (as already explained in recital (10) of the Methodology and chapter 2.4.2 and related annexes of the ED).
Adequate fulfilment of priority objectives	Primarily usage of CI for investments reducing cross-border congestion	4(1)(2)	IFIEC Europe suggested that any congestion income should primarily be used for those cost categories contributing to priority objectives (Cf. art 4.1 & 4.2), in particular in efficient investments in network investments that reduce structural cross-border congestion, as they argued this leads to the best long term advantages towards European market integration and the Electricity Target Model. They suggested that only when no additional efficient network investments that are relevant to reduce (structural) cross-border congestion are available should congestion income be applied for the reduction of system operation costs.	(R)	TSOs note that the respondee implicitly suggests a prioritisation of infrastructure investment over system operation costs. However, this is not supported by the Regulation 2019/943 (which places 19(a) and (b) on the same level). Hence we do not believe any change to the Methodology is appropriate in relation to this comment.
Adequate fulfilment of priority objectives	Primarily usage of CI to increase/maintain IC capacity	4	UPM-Kymmene Oyj noted the importance of guaranteeing the actual availability of the allocated capacity and maintaining or increasing cross-zonal capacities when using CI. In addition, they stated that it is of utmost importance to maintain a specific member state as one undivided price zone.	(OS)	TSOs note that bidding zone configuration is outside the scope of the Methodology, and that the Methodology has been drafted to provide discretion to NRAs to respond to local circumstances in determining the most appropriate use of CI. We do not believe any further change is required in relation to this comment.
Adequate fulfilment of priority objectives	CI used for tariff reductions on the same level as other priority objectives	4; General	Norsk Hydro and Statkraft argued that any congestion income should be used for grid tariff reduction in addition to cost categories contributing to priority objectives (Cf. art 4.1 & 4.2), in particular in efficient investments in network investments that reduce structural cross-border congestion based on socio-economic criteria. One if those respondees argued that use of CI of network TSOs to reduce network tariffs is a legitimate goal as it ensures that grid users, that carry the costs and risks of the current interconnectors, also benefit from that same interconnectors.		TSOs note that Regulation 2019/943 is clear that fulfilment of objectives under Article 19(a) and (b) is compatible with using CI for tariff reductions. TSOs agree that tariff payers carry the costs of current regulated interconnectors, so it is legitimate they can also benefit from CI via tariff reduction. This is allowed by the Methodology. We do not believe further change is required.
Separate internal account line	Rolling forward	4(7)	Fortum Power and Heat Oy noted that Art 4(7) determines that a negative result of the separate account line, when the account is for reporting purpose, shall be carried forward to the next year(s). They argue that this would mean that the congestion income during the next year(s) would need to cover earlier investments and would thus not be fully available for the next year's needs and future needs, and point out that this could cause distortions between different market participants (e.g. between generators and power users) compared to the basic principle that grid investments are each year covered from the TSO financial balance when they exceed the congestion income during that year and the amount available from previous years on the separate account line. They also argued that It is also against the basic principle that congestion income should be used to relieve the congestions on which the congestion income is gathered. They suggested that the forward carrying of a negative result of the separate account line should not be allowed.	(C)	The separate account for reporting purposes is a notional account, in which no money is actually "stored". We have included further clarification on this issue in the ED (chapter 2.6.4.5). In this case all grid investments (and other expenses) are each year covered from the TSO's financial balance. As explained in chapter 2.6.5 of the ED, carrying forward negative amounts is necessary to guarantee that over a multi-year period the amount in the separate account for reporting purposes remains unaffected by the yearly pace of expenditures.

PUBLIC CONSULTATION ON THE TSOS' PROPOSAL FOR USE OF CONGESTION INCOME METHODOLOGY

3 JULY 2020

Topic	Category comment	of Specific article relevant (if relevant)	Summary of comments	Accept (A) / Consider (C) / Reject (R) / Out of Scope (OS)	TSOs responses
Separate internal account line	In many cases least beneficial for network customers and internal market	4(4)	Bundesnetzagentur noted that placing congestion income on a separate account may in many cases be the least beneficial for network users and for the internal market as this congestion income will neither be invested promptly to improve the infrastructure nor be used to reduce tariffs, in order to reduce the costs allocated to network users. Especially with regard to the proposed separate account line for reporting purpose, they suggested that TSOs might make investments outside the scope of network operation and collect profits that will create additional cost for network users due to incentives for delays. In that scenario, they argued that there is no incentive for TSOs to make investments and that instead they would be incentivised to keep high amounts of income on the separate accounts for as long as possible. They suggested that this disincentive for investments is even strengthened, because assets under construction should be included in the asset base for calculating the return on capital.	(C)	TSOs consider that if the separate account is in TSO's book, there is no profit for the TSO since the money accrued in the separate account must be reserved for future uses. TSOs explained in the ED (chapter 2.5.4.2) that in particular where national accounting principles allow the treatment of CI as a deferred income, no revenues are shown in the profit and loss statement for the fiscal year in which CI was received, therefore there is no profit for the TSO.
Separate internal account line	How long congestion income is place on separate account	4(8)	Bundesnetzagentur suggested that it would be most appropriate to leave the competence of deciding as to how long congestion income is placed on a separate account with NRAs. They noted that the draft Methodology reflects this in (Art. 4 para. 8), but stated that they had understood from discussions of the workshop on April 15 and between NRAs and ACER that ACER is in favour of providing a minimum number of years in the methodology, before the income can be used for tariff reduction. The respondee stressed that this would be inefficient and eventually conflicting the principle of subsidiarity.	(A)	TSOs agree with this comment. Article 4(8) (now Articles 5(5)) and 5(7) has been redrafted.
Separate internal account line	How long congestion income is place on separate account	4(8)	IFIEC Europe and Norsk Hydro noted that they are not in favour of art 4.8 (retention period for CI) as they do not see any value for defining a period where a temporal mismatch between costs for consumers and benefits would be applied, even though they take note of the comment provided during the workshop that for smaller Member States this would ensure that grid tariffs should not be increased drastically whenever large investments have to be done in a given year.	(R)	TSOs note that Article 19 of Regulation 2019/943 imposes that a duration of the separate account shall be defined. Article 4(8) (now Articles 5(5)) and 5(7) has been redrafted. In addition, the Methodology says that the separate account in TSO's account book shall be implemented only where it is efficient.
Separate internal account line	No placing of CI on a separate internal account for future financing requirements (4(4ii))	4(4ii)(5)	IFIEC Europe and Norsk Hydro noted that they are not in favour of placing congestion income on a separate internal account for any future financing requirements, but rather argue that this congestion income should be used to reduce the grid tariffs for consumers, in order to ensure that there is no temporal disparity between costs for consumers and benefits. They suggested that this should guarantee that grid costs are aligned in time with the corresponding benefits, thus also strengthening the acceptance of potential grid tariff increases over time. At the same time they mention that they support for reporting purposes of any internal accounting systems (thus supporting art 4.6 to a certain extent), as long as they do not create the above-mentioned temporal mismatch in effective grid tariffs.	(C)	TSOs note that there are good arguments for using CI for tariff reduction, and as a result having an immediate impact on network customers, as long this is possible (i.e. when the priority objectives are adequately fulfilled). TSOs note that placing CI on a separate account line when priority objectives are not fulfilled is an obligation by Regulation 2019/943. We note that the respondees are supportive of the concept of the potential to use a separate account line for reporting purposes. We do not believe any change to the Methodology is required in relation to this comment. Chapter 2.6.4.5 of the ED has been adjusted.
Separate internal account line	Retention of CI only based on transparent reasons, otherwise CI used for tariff reduction	4	UPM-Kymmene Oyj noted that if TSOs need to reserve congestion income to an internal account for allocation to priority objectives at a later stage, these needs must be clearly and transparently stated. Otherwise they argue that congestion income should be used to reduce TSO tariffs. UPM-Kymmene Oyj noted that the separate account line in TSO's account book can be useful in specific and limited circumstances when there are clear and already foreseeable large future investments e.g. to interconnections which increase social welfare. They suggest that placing CI in a separate account line should be done only in cases which are approved by national regulatory authority and used to tariff reduction if there is no investment decision done by TSO in a reasonable time.	(A)	TSOs agree with this response. We included a clarification in the new Article 4 (1) stating that, where applicable, TSOs should make transparent the cost categories on which CI stored on the separate account will be used in the future, a list of specific projects for which CI will be used, and a related estimate of the cost categories. Using the CI placed in the separate account for tariff reduction, where no present or future efficient investments or other kind of costs are possible, is allowed by article 5(7) of the Methodology.

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Separate internal account line	CI after fulfillment of objectives must not be used for tariff reduction but stored in separate account for future investments	4(4)	Fortum Power and Heat Oy noted that congestion income after fulfilling the annual priority objectives should always be primarily reserved to future network investments through a separate account line, instead of reducing network tariffs. They argue this would secure better stability of network tariffs and support the financing certainty of the needed future investments. They also proposed that congestion income could be reserved regionally to implement commonly decided regional grid investments that can relieve the congestions most efficiently. The respondee does not agree with the reasoning in the ENTSO-E explanatory document that a separate account line could cause negative impacts to grid users. On the contrary, they state that using congestion income to reduce grid tariffs may cause major distortions between different grid users. For example, a congestion in export direction results in low electricity prices which reduces profitability of power generators, but they argue that generators would not benefit if the congestion income is used to reduce consumption grid tariffs. They state that the basic principle should be for congestion income to be used both during the ongoing year and for future years to relieve the congestions on which the congestion income is gathered. Only when no further investments with positive socio-economic net benefits can be found for reducing congestions either through the TSOs own or other regional investments, and after stakeholder consultation, should congestion income be used in the grid tariff calculation.	(R)	TSOs note that the use suggested by the respondent is fully allowed by the methodology, but using the CI for tariff reduction is as well allowed by Regulation 2019/943 Art. 19, under the condition that the priority objectives are fulfilled, and thus cannot be prevented in the Methodology. The Methodology provides NRAs with flexibility to allocate CI to tariffs or on a separate account line if the priority objectives have been fulfilled. Hence, we do not believe that further change is required to the Methodology in relation to this comment.
Separate internal account line	Flexibility for setting up separate internal account line	4(6)(7)	CLEEE strongly supported Articles 4.6 and 4.7 of the proposal, which allowed a flexible but transparent accounting method for interconnection revenue and expenses.		TSOs note the support of this respondee.
General	General	General	District Energy supported the method proposed in the hearing. This seemed satisfactory from a customer's point of view		TSOs note the support of this respondee.