

# Decision

(B)2306  
2 December 2021

Decision on Elia Transmission Belgium's *ex-ante* report on the use of congestion revenues for the year 2022 as referred to in Article 19(1) of Regulation (EU) 2019/943

Article 19(1) of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity

Non-confidential version

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# INTRODUCTION

Below, the COMMISSION FOR ELECTRICITY AND GAS REGULATION (CREG) analyses the *ex-ante* report of Elia Transmission Belgium SA (hereafter: Elia) on the use of the congestion revenues for the year 2022.

This decision is taken pursuant to Article 19(1) of Regulation 2019/943 which mandates national regulatory authorities to approve the procedure for the allocation of congestion revenues collected by transmission system operators.

Elia's report was produced in accordance with the modalities contained in the methodology referred to in Article 19(4) of Regulation (EU) 2019/943 and in the CREG Guidelines of 24 June 2021.

This methodology (hereinafter: the methodology) was proposed by ENTSO-E and approved by ACER on 3 July 2020 in its decision 38-2020<sup>1</sup>.

In addition to the introduction, this decision is divided into five chapters. The first chapter describes the legal framework in which this decision is being made. The second chapter outlines the background and the third chapter provides the framework for the consultation. The fourth chapter contains the analysis of the Elia report. Lastly, the fifth chapter contains the decision.

This decision was approved by the CREG Management Committee on 2 December 2021.

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<sup>1</sup> Decision No 38/2020 of the European Union Agency for the Cooperation of Energy Regulators of 23 December 2020 on the methodology for the use of congestion revenues for the purposes referred to in Article 19(2) of Regulation (EU) 2019/943, in accordance with Article 19(4) of Regulation (EU) 2019/943

# 1. LEGAL FRAMEWORK

## 1.1. ARTICLE 19 OF REGULATION (EU) 2019/943

Article 19 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (Clean Energy Package) provides a framework for transmission system operators' use of the congestion revenues they collect.

Article 19(1) requires national regulators to approve the procedure for the allocation of the congestion revenues collected by transmission system operators.

*"1. Congestion-management procedures associated with a pre-specified timeframe may generate revenue only in the event of congestion which arises for that timeframe, except in the case of new interconnectors which benefit from an exemption under Article 63 of this Regulation, Article 17 of Regulation (EC) No 714/2009 or Article 7 of Regulation (EC) No 1228/2003. The procedure for the distribution of those revenues shall be subject to review by the regulatory authorities and shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to reduce congestion."*

Article 19(2) sets out priority objectives for the allocation of congestion revenues.

*"2. The following objectives shall have priority with the respect to the allocation of any revenues resulting from the allocation of cross-zonal capacity:*

*(a) guaranteeing the actual availability of the allocated capacity including firmness compensation; or*

*(b) maintaining or increasing cross-zonal capacities through optimisation of the usage of existing interconnectors by means of coordinated remedial actions, where applicable, or covering costs resulting from network investments that are relevant to reduce interconnector congestion."*

Article 19(3) specifies that where these two priority objectives have been adequately fulfilled, the balance of congestion revenues may be taken into account in the calculation of tariffs.

*"3. Where the priority objectives set out in paragraph 2 have been adequately fulfilled, the revenues may be used as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs or fixing network tariffs, or both. The residual revenues shall be placed on a separate internal account line until such a time as it can be spent for the purposes set out in paragraph 2."*

Article 19(4) refers to the methodology for the use of congestion revenues to achieve the priority objectives.

*"4. The use of revenues in accordance with point (a) or (b) of paragraph 2 shall be subject to a methodology proposed by the transmission system operators after consulting regulatory authorities and relevant stakeholders and after approval by ACER. The transmission system operators shall submit the proposed methodology to ACER by 5 July 2020 and ACER shall decide on the proposed methodology within six months of receiving it.*

*ACER may request transmission system operators to amend or update the methodology referred to in the first subparagraph. ACER shall decide on the amended or updated methodology not later than six months after its submission.*

*The methodology shall set out at least the conditions under which the revenues can be used for the purposes referred to in paragraph 2, the conditions under which those revenues may*

*be placed on a separate internal account line for future use for those purposes, and for how long those revenues may be placed on such an account line."*

Article 19(5) deals with reporting on the actual use of congestion revenues.

*"5. Transmission system operators shall clearly establish, in advance, how any congestion income will be used, and shall report to the regulatory authorities on the actual use of that income. By 1 March each year, the regulatory authorities shall inform ACER and shall publish a report setting out:*

*(a) the amount of revenue collected for the 12-month period ending on 31 December of the previous year;*

*(b) how that revenue was used pursuant to paragraph 2, 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 this Regulation and the methodology developed pursuant to paragraphs 3 and 4. Where some of the congestion revenues are used when calculating network tariffs, the report shall set out how the transmission system operators fulfilled the priority objectives set out in paragraph 2 where applicable."*

## **1.2. THE METHODOLOGY**

The methodology referred to in Article 19(4) of Regulation 2019/943 was proposed by ENTSOE-E and approved by ACER in its decision 38-2020 of 3 July 2020.

Article 3 of the methodology defines the cost categories that contribute to the priority objectives for the allocation of management revenues set out in Article 19(2) of Regulation 2019/943.

Article 4 of the methodology sets out the national process for *ex-ante* communication by the system operator on the use of congestion revenues.

Article 4(7) specifies that the *ex-ante* report is subject to approval by the national regulatory authority, pursuant to Article 19(1) of Regulation (EU) 2019/943.

## **1.3. THE CREG GUIDELINES**

Articles 4 and 5 of the methodology grant national regulatory authorities a certain degree of freedom in the timing of the submission of *ex-ante* and *ex-post* reports and the periodicity of the *ex-ante* report.

On 24 June 2021, CREG sent Elia the "*Guidelines for the drafting and submission of ex-ante and ex-post reports on the use of congestion revenues*" by letter.

As regards *ex-ante* reporting, the guidelines provide for an initial report by 30 September 2021, and then by 31 October 2022 and 2023. Thereafter, the *ex-ante* reports must be submitted every two years, on 31 October.

## **2. BACKGROUND**

On 30 September 2021, in accordance with Article 4 of the methodology, Elia sent the CREG its *ex-ante* report on the use of congestion revenues for the year 2022 as referred to in Article 19(1) of Regulation (EU) 2019/943.

## **3. CONSULTATION**

The CREG's Board of Directors has decided not to hold a consultation on this decision.

Given the confidential nature of the information contained in Elia's report and in this decision, only Elia should be consulted. However, as this decision is an unconditional approval of Elia's report, the consultation would serve no purpose.

## **4. ANALYSIS OF THE *EX-ANTE* REPORT**

Article 4 of the methodology describes the elements to be contained in the *ex-ante* report, in particular information to be provided for the different cost categories defined in Article 3.

The national regulatory authority is responsible for verifying the application of Article 4 and in doing so for confirming the cost categories (i) to (ix) of Article 3(1) for which congestion revenues are to be used. If the anticipated congestion revenues exceed the amounts of the cost categories (i) to (ix) of Article 3(1), the national regulatory authority must confirm the amount of the congestion revenues to be placed in a separate account for future use. The national regulatory authority may also decide to take into account the balance of congestion revenues when approving the method for calculating network access tariffs or the value of network access tariffs.

Below, the CREG analyses the correct application of Article 4 of the methodology by Elia in the context of its *ex-ante* report on the use of congestion revenues to achieve the priority objectives in 2022.

## **4.1. FORECASTING THE AMOUNT OF CONGESTION REVENUES**

### **4.1.1. Introduction**

The CREG guidelines stipulate that the amount of congestion revenues to be taken into account must be based on the budget set out in the last approved tariff proposal, potentially adjusted in line with any relevant new information.

### **4.1.2. Elia's report**

The amount of congestion revenues estimated in the adapted tariff proposal for the 2020-2023 regulatory period is M€ [CONFIDENTIAL] for 2021 and M€ [CONFIDENTIAL] for 2022.

However, Elia estimates that the amount for 2022 will be exceeded due to the delay in the project to upgrade the Avelgem-Avelin/Mastaing cross-border line. The budget for the adapted tariff proposal forecasted the completion of this project by the end of 2021. It now appears that, according to Elia, the project will not be completed until the end of 2022. Elia estimates that the expected congestion revenues of M€ [CONFIDENTIAL] will reach M€ [CONFIDENTIAL] on the BE-FR border, i.e. an increase of M€ [CONFIDENTIAL].

Elia considers that the increase of congestion revenues of M€ [CONFIDENTIAL] must be added to the estimated amount of congestion revenues for 2022. This amount corresponds with Elia's latest estimate of the congestion revenues for 2021, i.e. M€ [CONFIDENTIAL].

### **4.1.3. The CREG's analysis**

The CREG has no information on the delays incurred by RTE in upgrading the Avelgem-Avelin/Mastaing cross-border line.

Therefore, the CREG does not have any data that would enable it to verify the expected increase in congestion revenues on the Belgian-French border in 2022 as a result of the delays in the project to upgrade the Avelgem-Avelin/Mastaing cross-border line.

The CREG notes, however, that Elia's proposal to take over the latest estimate of the congestion revenues for 2021 is representative for the congestions before the upgrade of the Avelgem-Avelin/Mastaing cross-border line. The CREG also notes that the estimated amount for 2021 (M€ [CONFIDENTIAL]) is a decrease (- 8 %) with regard to the budget (M€ [CONFIDENTIAL]) which can be considered conservative compared to the decrease observed in the first half of 2021 (- 16 %).

The amount of the congestion revenues for 2022 is therefore consistent with the budgets of the tariff proposal, reality observed in the first semester of 2021 and the new elements at Elia's disposal. Consequently, it complies with the CREG guidelines.

## **4.1. THE COST CATEGORIES REFERRED TO IN ARTICLE 3(1) OF THE METHODOLOGY**

### **4.1.1. Introduction**

Article 3(1) of the methodology lists nine cost categories that are eligible for the priority objectives defined in Article 19(2) of Regulation (EU) 2019/943. Article 3(2) specifies that only investments for interconnectors and internal lines with a cross-zonal impact can be taken into account. Lastly, Article 3(3) specifies that only costs deemed reasonable by the national regulatory authority may be considered.

Article 4 of the methodology specifies the information that must be included in the *ex-ante* communication of the network operator. This information is listed below where necessary.

Below, the CREG analyses the cost categories and amounts taken into account by Elia in its *ex-ante* report for 2022, as well as compliance with the CREG guidelines and Articles 3 and 4 of the methodology.

### **4.1.2. Elia's report**

Elia considers that expenditure is expected in 2022 for four of the nine cost categories listed in Article 3(1) of the methodology, for a total of k€ [CONFIDENTIAL], of which k€ [CONFIDENTIAL] is operational expenditure and k€ [CONFIDENTIAL] capital expenditure.

The operational costs for categories (i) and (v) are not specifically described or justified.

In accordance with Article 4(1.b) of the methodology, Elia provides the list of investment projects in category (vi), which refers to investments under construction, including the costs of the development and construction phases. This list contains 11 projects, most of which are Projects of Common Interest (PCI), for a total amount of M€ [CONFIDENTIAL].

In accordance with Article 4(3) of the methodology, Elia must explain how the amounts in cost categories (vi) to (ix) contribute to the priority objectives. This explanation is given in Chapter 6 of Elia's report.

The projects in category (vi) essentially meet the "European markets and security of *supply*" driver of the tariff proposal and have been approved as such by the CREG.

The costs in category (vii) are those resulting from past investments in the network and were used to maintain and increase interconnector capacity, in particular depreciation, return on capital and cost of debt.

Elia has compiled a list of 40 projects at the 380kV voltage level that help to maintain or increase cross-border exchange capacity. The depreciation charge for these projects is forecasted at k€ [CONFIDENTIAL]. The return on equity and the cost of debt are estimated at k€ [CONFIDENTIAL] and k€ [CONFIDENTIAL] respectively.

### **4.1.3. The CREG's analysis**

The CREG notes that the costs in category (i) correspond exactly to the 2022 budgets for preventive and curative congestion management activations. The CREG is not aware of any information that could call this budget into question with sufficient certainty.

CREG does not have specific information on the costs reported for category (v).

The CREG notes that in the adapted tariff proposal 2020-2023, the 2022 investment budget for the "Development of the European market and security of supply" category is € [CONFIDENTIAL], which is higher than the amount taken into account by Elia for the costs of category (vi). In 2020, the amount invested for this category of projects was M€ [CONFIDENTIAL] for a budget of M€ [CONFIDENTIAL].

The estimated investment for category (vi) projects therefore appears to be conservative and consistent with the budgets.

The CREG does not have specific information on the costs reported for category (vii). Nevertheless, the CREG notes that the contribution to the RAB of the projects in category (vii), multiplied by the budgeted rate of return, is equal to the amount of return on capital taken into account by Elia in its report.

## **4.2. CONCLUSION**

The CREG notes that the provisions of Article 4 of the methodology and the guidelines have been correctly applied.

In view of the above findings and analysis, the CREG notes that for 2022 the estimated costs for cost categories (i) to (ix) are consistent with the budgets and amount to approximately five times the estimated congestion revenues.

It can therefore be considered that all the congestion revenues for the year 2022 will be allocated to the priority objectives defined in Article 19(2) of Regulation (EU) 2019/943.

## **5. DECISION**

Considering Article 19 of Regulation (EU) 2019/943 of 5 June 2019 on the internal market for electricity;

Considering Articles 3 and 4 of the methodology proposed by ENTSOE-E and approved by ACER Decision 38-2020 of 3 July 2020;

Considering the "*CREG Guidelines for the drafting and submission of ex-ante and ex-post reports on the use of congestion revenues*" of 24 June 2021;

Considering the *ex-ante* report of Elia Transmission Belgium SA on the use of congestion revenues for the year 2022;

Considering the CREG's analysis described in Chapter 4 of this Decision;

The CREG has decided to approve Elia Transmission Belgium's *ex-ante* report on the use of congestion revenues for the year 2022 as referred to in Article 19(1) of Regulation (EU) 2019/943.



For the Commission for Electricity and Gas Regulation:

Laurent JACQUET  
Director

Andreas TIREZ  
Director

Koen LOCQUET  
Acting Chairman of the Board of Directors

## **APPENDIX 1**

**Elia Transmission Belgium's *ex-ante* report on the use of congestion revenues for the year 2022 as referred to in Article 19(1) of Regulation (EU) 2019/943**