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Brussels, 1 September 2004

CONGESTION MANAGEMENT GUIDELINES

EFET mark-up after ERGEG Proposal of 2 May 2005

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[N.B. ERGEG recommended changes in its Proposal of 2 May 2005 are the subject of a two page commentary; this EFET mark-up is a re-submission of comments rendered already in September 2004 in time for the Florence Forum of 2004, in so far as those comments have not been overtaken by the ERGEG recommended changes (see some blue strike-throughs), together with some additions highlighted in yellow. Our suggested additions to the text are inserted in this pink text and comments also in pink text but inside square brackets.]

EXPLANATORY NOTE

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1. INTRODUCTION

The Regulation provides in Article 8(4) for the Commission to “... amend the guidelines on the management and allocation of available transfer capacity of interconnections between national systems set out in the Annex, in accordance with the principles set out in Articles 5 and 6, in particular so as to include detailed guidelines on all capacity allocation methodologies applied in practice and to ensure that congestion management mechanisms evolve in a manner compatible with the objectives of the internal market. ...”

Article 8(4) states further that “... where appropriate, in the course of such amendments common rules on minimum safety and operational standards for the use and operation of the network, as referred to in Article 5(2) shall be set. ...”

The attached draft guidelines therefore propose such an amendment for the management and allocation of interconnection capacity, i.e. the Congestion Management Guidelines. They are based on the following principles arising from the Regulation:

- i. economic efficiency and promotion of competition,
- ii. maximizing of the amount of capacity available and the use made of it,
- iii. transparency to network users on a non-discriminatory basis,
- iv. secure network operation,
- v. largely revenue neutral mechanisms from the point of view of system operators.

Security and reliability rules will be proposed in separate guidelines.

[Both guidelines (“congestion management” and “security/reliability”) should be coordinated together; the security guidelines may not flaw the congestion guidelines]

[The Guidelines refer to all congestions as defined by the Regulation, that limit cross border trade.

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It is important that national Regulators endeavour to apply the same principles on the non-EU borders towards the third countries, that form part of the European electric power system. [First and foremost it is important that national Regulators actually enforce the principles as part of their home regulatory regime and as part of their ERGEG co-operation within the EU.]

Where there is no congestion, there shall be no restriction of access to the interconnection and no specific procedure for access to transmission service. [Actually, this rule should apply in the case of both “commercial” and “physical” congestion, or a mixture of both; the latest suggested ERGEG definition is applicable only to “commercial congestion”]

The information and statement that there is no congestion shall be published and made available to all users. This is particularly important in order to avoid additional costs that would not benefit either the market or any user. Nevertheless, even where there is no congestion, the TSOs must comply with all rules and requirements (and if no rules exist nationally, create such rules, to the extent they are so empowered) on information transparency and eventually also perform case studies if a congestion is expected. The final decision, subject to the application of EU law, on how to proceed and on the actual approach to be followed by the TSOs – i.e. if there are any “preventive” measures needed – must be approved by the responsible Regulators.

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The Guidelines define the basic requirements for coordinated congestion management, that is congestion management with a wider scope than a single, bilateral congestion of interconnection capacity between two Member States (TSOs). Nevertheless, the Guidelines do not specify the details of operational procedures to be applied for coordinated congestion management. Therefore, only the basic definitions of key concepts are necessary and these are provided below.

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1.1 Structural Congestions

In the context of these Guidelines, structural congestions are those congestions – either at the interconnection between Member States (TSOs) or internal to a Member State (TSO) – that frequently limit the cross-border electricity exchange. Frequent or even systematic congestions within a Member State (TSO), which do not significantly limit cross-border flows, are not considered as structural congestions in these Guidelines. Structural congestions may involve one or more transmission lines¹.

1.2 Intermittent Congestions

In the context of these Guidelines, intermittent congestions are sporadic congestions – either at the interconnection between Member States (TSOs) or internal to a Member State (TSO) – that may occasionally limit the cross-border electricity exchange. Intermittent congestions can be solved by the concerned TSOs without permanently and significantly constraining cross-border electricity exchange. Intermittent congestions require the establishment of allocation procedures for congestion management, but these procedures do not have to be applied permanently.

[Rather than try to quantify more precisely here what is structural and what is physical congestion, or even to explain concepts of physical and commercial congestion more thoroughly, the most helpful addition to this introduction would be to introduce the idea of the creation and sale/ auction of transmission capacity rights, even in advance of actual declarations of congestion. The Commission and ERGEG with the consent of TSOs must for this purpose agree upon an extension of definitions and rulemaking under the Guidelines, to include the allocation of capacity rights by market based means, even in the case of “anticipated possible intermittent congestion”].

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2. ECONOMIC EFFICIENCY AND THE PROMOTION OF COMPETITION

In relation to the economic efficiency, the Regulation states in Article 6(1) that: “... *Network congestion problems shall be addressed with non-discriminatory market based solutions which give efficient economic signals to the market participants and transmission system operators involved. ...*”.

The main consequences of this Article are that congestion management mechanisms must include a mechanism whereby potential network users reveal the value they place on gaining access to the part of the network in question. This implies some form of allocation procedure whereby network users must bid for the available capacity in some way, whether directly or indirectly.

Economic efficiency is more likely to be delivered where capacity is used by those who value the capacity the most.

¹ A simple structural congestion between two Member States (TSOs) would involve one or several interconnection tie-lines that need to be handled in a common manner for congestion management. A more complex structural congestion between several Member States (TSOs) would involve one or several tie-lines on several interconnections that need to be handled in a common manner for congestion management including calculation of capacity, nomination, allocation and operational issues.

However this simple result is dependent on a number of assumptions relating, in particular, to the market structure of the industry. Since, in reality, the European market is characterized by instances of market dominance in certain Member States or regions, there is a clear case that the congestion management methods should be designed in such a way that this is taken into account in order to promote the economic efficiency of the electricity market. Accordingly, congestion management methods should not hinder market contestability, should not inhibit the entry of any player, including end users, and should neither facilitate nor consolidate the abuse of any market power.

In addition, in the interests of efficiency in a general sense, the adopted method for congestion management should not result in undue transaction costs to market participants or TSOs.

Finally, in the interests of promoting competition and allowing for a range of different contract structures, any differences in the way different transactions are treated, for example short term trading between organised markets or longer term bilateral contracts, should be permitted only when they are shown not to distort or hinder the development of competition. [We agree – see the section of EFET September 2004 paper, commenting on the April 04 version of the Guidelines, which deals with co-existence of market coupling with explicit auctions.]

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While it is important to encourage financial markets, it is necessary to ensure that there is a balance between short term capacity allocation (for example for the day ahead market) and the longer term capacity allocation (for example yearly and monthly auctions) where these financial markets are yet to develop.

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3. RULES ON MAXIMISING THE AVAILABLE CAPACITY AND CAPACITY USE

Article 6 (3,4,5) of the Regulation specifies the requirements on maximizing the available capacity, information, return of the non-used capacity to the market and netting, referring also to network security.

The need to maximise the use made of available capacity is also interpreted in these guidelines to imply the facilitation by TSOs of integration of organised wholesale day ahead and intraday markets. This is ensured through an appropriate sequencing of allocation procedures and transfer of information. [N.B. EFET has done considerably more work on these aspects of market integration this winter. We will be making detailed proposals in an annex to our response to the invitation to comment on the progress of liberalisation, sent out by Francois Lamoureux, due by the end of June 2005.]

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This is considered particularly relevant where such market integration automatically allows for any un-used capacity to be transferred to other users. However the guidelines do not rule out other avenues to ensure that the use of available capacity is optimised.

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4. TRANSPARENCY

The electricity market will not function correctly unless sufficient information is available on a non-discriminatory basis. Therefore, within the relevant legislative framework, Member States and regulatory authorities should pay special attention to the transparency of the wholesale markets in all areas affected by any congestion, which includes information on short term forecast and realised system load by market time unit and information on the installed generation capacity.

Article 5(3) of the Regulation includes the requirements relating to transparency. In particular “... *Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. These publications shall be made at specified intervals before the day of transport and shall include, in any case, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity. ...*”

[We believe Regulators need to be much more proactive and rigorous with respect to creating transparency in the market. Both inter-TSO exchange of data and the release of data about utilization of infrastructure to the market are underdeveloped in key continental countries. See EFET slides presented at 11th Florence Forum.]

[In fact, to accord with best wholesale market practice, publication of data by TSOs or market operators needs to be broken down for every hour of each day for every day of the year. This applies to transmission, generation and demand data, both *ex ante* and *ex post*. [Further guidance on best practice can be drawn from Nordic, English, French (for transmission) and Dutch (for generation) experience.] In addition, other information [“other” - IS THIS LACK OF PRECISION DELIBERATE?] is also required to ensure that interest of economic efficiency and the promotion of competition are fulfilled. Transparency is indeed a pre-requisite for effectively competitive markets – a congestion management method complying with Regulation and Guidelines shall be able to deliver transparency accordingly. National regulatory authorities shall regularly evaluate the congestion management methods, with respect to compliance with the principles and rules established in the Electricity Regulation and Guidelines. The evaluation process shall include consultation with relevant parties and stakeholders and it shall pay special attention to the issue of transparency. [Good suggestion, but mere *evaluation* may not be enough.]

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5. REVENUE NEUTRALITY

Article 6(6) of Regulation discusses the use to be made of any revenues collected as a result of congestion management mechanisms. Regulators are required to implement the requirements of Article 6(6) and should therefore ensure that revenues are accounted for in a transparent way.

[There surely should be a mention at this point of the use of congestion rents – especially in a market-coupling regime – for co-ordinated re-dispatch of plant and counter-trading.]

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The use of congestion rents for investments in maintaining or increasing the interconnection capacity should preferably be assigned to specific predefined projects with a clear compromise to accomplish them in a reasonable time. In the case of TSOs belonging to a holding that owns other companies performing liberalized activities at the same time, complying with this recommendation must be verified and approved by the

responsible Regulatory Authority. In case of merchant lines, the regulator will decide on whether or not, on the base of transparent and non discriminatory criteria, an affiliate carrying out merchant line activities is sufficiently separated from any other market activities. To that matter regulators may wish to consider any market power issues while making that decision.

6. MERCHANT INTERCONNECTORS

In case of merchant lines, the regulator will decide on whether or not, on the base of transparent and non discriminatory criteria, an affiliate carrying out merchant line activities is sufficiently separated from any other market activities. To that matter regulators may wish to consider any market power issues while making that decision.

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GUIDELINES ON CONGESTION MANAGEMENT

NOTE: UNLESS IT IS DIFFERENTLY SPECIFIED, THESE GUIDELINES APPLY TO CONGESTION MANAGEMENT ON ALL INTERCONNECTIONS, INCLUDING MERCHANT INTERCONNECTIONS.

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1. EFFICIENT USE OF AVAILABLE TRANSMISSION CAPACITY

1.1. TSOs shall endeavour [endeavour is to weak, please delete] to accept all commercial transactions including those incurred by cross border trade not operating any transaction-based distinction. [Poor use of English language – reference here to objective and non-discriminatory criteria needed?]

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1.2. In case the scheduled commercial transactions are not compatible with secure network operation, the TSOs shall coordinate to alleviate the congestion complying with the grid operational security while bearing in mind that any associated costs are at an economically efficient level, for example through redispatching or countertrading.

1.3. Where structural congestion exists, considering the fact that the European continental network is a highly meshed network and that the use of interconnection lines has an effect on the physical flows of electric power, congestion management procedures and system operation between TSOs shall be coordinated as far as possible and calculations of the capacity available to the market shall primarily be based on the actual physical electric power flows.

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1.4. The capacity allocation at an interconnection shall be coordinated and implemented using common allocation procedures by the neighbouring TSOs involved, with the further co-operation of third party TSOs, whose networks cause or receive any significant flows passing across that interconnection. These common allocation procedures should be described in detail, approved by the responsible Regulators and the description made transparently available to all the users.

1.5. Coordination between TSOs shall [at least] [what is better than “at least”? Is this an opaque way of dispensing with the absolute obligation for methods to be market based?!] include the optimisation [What is actually meant by “optimisation” ? What is the optimisation function? This sub-section must not be allowed to detract from the clear obligation in the Regulation for TSOs to work towards “maximisation of capacity”] of the allocations in view of the promotion of fair and efficient competition and the secure operation of the grids. This coordination shall take into account the actual global grid situation resulting from all transactions accepted by other TSOs.

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1.6. Coordination shall also include the exchange of information. The means, time and frequency of information exchange, as well as the nature of the data sent and received, shall be compatible with best wholesale practice in the functioning of the electricity markets. The information exchange shall in particular enable all TSOs affected by the physical electric power flows resulting from transactions accepted by other TSOs to forecast these flows and to take them into account in the assessment of available interconnection capacities.

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1.7. The actual physical electric power flows, resulting from transactions accepted by other TSOs are best taken into account when at least a regional co-ordination between TSOs covers all the steps from capacity calculation and

allocation to the operation of the network. There is a risk, that must be avoided, to have a sub-optimal result for the electric power flows and therefore for competition among market participants, if each interconnection is treated only bilaterally between the two TSOs concerned.

1.8. A single multilateral allocation procedure shall be applied latest from [] in the following areas:

- Nordel (i.e. Denmark, Norway, Sweden, Finland, Germany, Poland),
- North-Western Europe (i.e. Benelux, Germany, Austria, France),
- Northern borders of Italy (i.e. Italy, France, Switzerland, Germany, Austria, Slovenia),
- Central Europe (i.e. Germany, Poland, Czechia, Slovakia, Hungary, Austria and Slovenia),
- Iberian peninsula (i.e. Spain, Portugal, France),
- between the UK, Ireland and France
- Baltic states (i.e. Estonia, Latvia, Lithuania).

[GOOD – Force this discussion to precision in Rome!!!]

1.9. TSOs shall [surely TSOs should either be absolutely obliged to optimise or endeavour to maximise, otherwise the obligation derived from the Regulation itself is doubly diluted] to optimise the extent to which capacity is firm – having regard to the obligations of the TSOs involved and the rights of market parties – in order to facilitate effective and efficient competition. []

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1.10. The congestion management procedure to be followed by the TSOs and network users involved shall be coordinated so that it is carried out on a common timetable across the affected (regional or wider, EU) markets, in order to be most effective in line with the Article 6(4,5).

1.11. Where organised wholesale electricity markets exist special attention must be paid to non-discrimination regarding bilateral transactions.

1.12. The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure. Where market participants fail to use (or, in the case of explicitly auctioned capacity, give back in due time or secondarily trade) the capacity that they have committed to use, they shall be exposed to a penalty [such a market participant will be in imbalance and will be charged the imbalances fees, why a second “penalty”? Application of a UIOLI rule – if appropriate - and the functioning of a properly facilitated secondary capacity]

market should avert any necessity for such “penalty”]. If a TSO does not fulfil the obligation, it will be financially liable for the consequences. How will this be determined, which consequences are we talking about? Essentially the market price for the buying back of capacity, being the equivalent of the price indicated in the secondary capacity rights market among users, – once it exists! – should determine the contractual liability of the relevant TSOs. It will normally equate to the opportunity cost of being out of balance if the capacity is withdrawn at very short notice. *Much greater precision in the guidance in this area is needed.*]. The method for the determination of this liability shall be set out in advance, and must be subject to approval by the relevant national Regulator or Regulators. The key concepts of penalties and consequences on failure to honour obligations shall be described in detail within the description of the actual congestion management method that will be made available transparently to all the users. All these concepts (together with the congestion management method) need to be approved by the involved regulatory authorities.

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- 1.13. Efficient use of cross-border capacity entails that all unused capacity will either be secondarily traded or be made available for re-assignment by the relevant TSOs (use-or-lose-it principle) and that the allocation procedure shall take into account different time horizons. [The suggested ERGEG changes to the language in this sub-article are not very clear and certainly give no hint as to the role, which should be played by a secondary market in capacity rights.]
- 1.14. Whenever necessary, re-assignment of unused capacity should take into account also problems relevant to the degree of competition and market power issues. [WHAT DOES THIS MEAN? CLEARLY ANTICIPATES ALSO USE OF A NON-MARKET BASED METHOD?]

[Where is previous Art. 1.15? Not mentioning obligation to net predicted flows where possible is regressive. It is not feasible to maximise capacity availability in a manner, which is economically efficient without anticipating net flows for the year or month ahead (unless 100% of capacity is allocated through a day ahead implicit auction, an option we counsel against.)]

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2. MECHANISMS FOR CONGESTION MANAGEMENT

- 2.1. The TSOs, or, where appropriate, Member States, shall provide non-discriminatory and transparent standards, which describe which congestion management methods they will apply under which circumstances. These standards, together with the security standards, shall be described in publicly available documents.
- 2.2. National regulatory authorities shall regularly evaluate the congestion management methods, paying particular attention to compliance with the principles and rules established in the Regulation and the Guidelines and terms and conditions set by regulators themselves in compliance with the aforementioned principles and rules. Such evaluation should include consultation of all market players and dedicated studies.
- 2.3. In case of structural congestion, the congestion management methods shall ensure that the power flows associated with all allocated transmission capacity comply with network security standards being at an acceptable level. [This formulation of “compliance” is unclear and probably misconceived. The process in reality needs to be turned on its head i.e. capacity should be declared available based on flow forecasts (as anticipated in Article 1 of the Guidelines and in the ETSO-Europex paper. Then, after some or all allocation occurs, but at an appropriate interval before power flows per hour occur, TSOs should re-evaluate network security and curtail if necessary based on up-to-date flow predictions.)] A particular request for transmission service shall only be denied when the power flows resulting from its acceptance, in addition to the other accepted requests, lead to a situation where secure operation of the power system can no longer be guaranteed, and where that request has an economic value (expressed through willingness to pay) lower than other request accepted under the same contractual conditions whose rejection would also secure the power system.
- 2.4. TSOs shall make efforts to [the obligation to harmonise must be absolute not optional!] harmonise the procedures for congestion management on different interconnections in order to facilitate efficient trade across several interconnections. [It can never be accepted as good practice for a TSO to introduce unilateral congestion arrangements at a control zone border.]
- 2.5. Where requests for transmission service do need to be constrained, the following rules shall be applied
- (1) In situations where there is a high correlation between the capacities available to the market at congested borders, coordination among the involved TSOs is of utmost importance.
 - (2) Methods for congestion management adopted shall give efficient economic signals, promote competition and be suited for regional application.
 - (3) Depending on the conditions of competition, it may be necessary that the congestion management mechanisms allow for capacity allocation to be both for long term and short term transmission capacity. [In what

competitive conditions would only long term or short term allocation be appropriate?) They may then be implemented for example on an annual, monthly, weekly, daily and intra-day basis. The allocation method may depend on the timeframe, for example long term allocation (yearly, monthly) will require e.g. (what else is market based?) explicit auctions and short term allocation (intra-day) will require e.g. implicit auctions.

- (4) Mechanisms for an intra-day congestion management of interconnector capacity shall be established in order to maximize opportunities for trade and to make provisions for cross-border balancing.
- (5) Each of capacity allocation procedures shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity that was not allocated in previous allocations and any capacity released by the capacity holders from previous allocations.
- (6) An appropriate allocation of capacity among the different timeframes that may include an option for keeping a minimum percentage of the interconnection capacity for the daily or intra-daily allocation shall be proposed by the relevant TSOs and approved by the respective Regulators. In defining their proposals the TSOs shall take into account:
 - (a) The characteristics of the markets
 - (b) The operational conditions, such as the implications of netting
 - (c) A level of harmonization of the percentages and timeframes adopted for the different capacity allocation mechanisms in place
- (7) Capacity allocation methods and congestion management mechanisms shall [the market reveals value, not the action of a TSO], reveal the value placed on capacity (either directly or indirectly) and produce directional price signals to market participants.

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- (8) Congestion management mechanisms shall ensure that capacity is allocated to those who place the highest value on capacity together with adequate incentives to ensure that they are going to use it. [N.B. Explicit auctions only give the right to buyers, not the obligation, to use capacity. There is nothing wrong with leaving the right unexploited if in fact pricing between areas changes unexpectedly, for example; a properly facilitated secondary market in transmission rights contracts plus a “conversion to financial”, in case the related capacity defaults into a day ahead implicit auction, will take care of incentivizing utilisation adequately. Any abusive hoarding can be investigated by regulators on a case by case basis.] This shall apply to each capacity allocation mechanism in place and each timeframe.
- (9) Assignees of transmission capacity shall be required to pay for allocated capacity according to a methodology based on the economic

value of that capacity as revealed by the process in (7) and (8) above.
[No such methodology needs to be invented if a secondary market in capacity rights is facilitated and recognised by TSOs and regulators.]

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- (10) Other than in the case of merchant lines, establishing reserve prices in capacity allocation methods shall not be allowed.
- (11) In principle, all potential network users will be permitted to participate in the allocation process without restriction. Exceptionally, restrictions may be made where regulators are in possession of objective evidence of abuse of market dominance related to bidding for, or hoarding of, allocated capacity.
- (12) In order not to risk creating or aggravating problems related to any dominant position of market player(s), the competent regulatory authorities, if appropriate, may impose restrictions in general or on individual company for reasons of market dominance.
- (13) Priority access rights to interconnection capacity should not be assigned to those contracts which violate Articles 81 and 82 of the EC Treaty. Existing long term contracts should have no pre-emption rights when they come up for renewal but the capacity shall be made available through open, market-based mechanisms.

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To promote the creation of liquid electricity markets, capacity should be freely tradable provided that the TSO is informed sufficiently in advance. [This provision is fine as far as it goes, but as noted elsewhere, much greater clarity is needed in the Guidelines about how a secondary market in capacity rights would come about and corresponding rights and duties of different actors. In turn this requires open dialogue between traders and TSOs about the original contractual construction of the primary capacity rights. EFET has agreed to begin this dialogue with ETSO on 8 July 2005.] [Furthermore the Guidelines should specify that any voluntary adjustments to bundled legacy contracts for cross border supply by the contracting parties should where possible drive the capacity reservation element of the contract towards the tradable market.]

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- 2.6. In cases where nomination for an expected flow between two countries (TSOs) significantly affects conditions in the third country (TSO), congestion management methods shall be co-ordinated between the two countries (TSOs) concerned and the third country (TSO) through a common allocation procedure. National Regulators shall ensure that no congestion management procedure with significant effects on power flows in other networks, be devised unilaterally. [Is this a way for one TSO or Regulator to impair progressive reforms in a neighboring control area or territory?]

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WHY HAVE PROVISIONS, ENCOURAGING OPTIMISATION OF AVAILABILITY AND FIRMNESS OF CROSS BORDER CAPACITY THROUGH CO-ORDINATED PLANT RE-DESPATCH AND COUNTER TRADE, DISAPPEARED (old Article 2.8)? THIS IS REGRESSIVE.

3. CALCULATION OF INTERCONNECTION CAPACITY

3.1. The TSOs shall publish a general scheme for calculation of the interconnection capacity for the different timeframes based upon the electrical and physical realities of the network. Such a scheme shall be subject to approval by the Regulatory Authorities of the involved Member States concerned. [General comment on this sub-article 3.1 and the whole Article 3: It does not mention explicitly that available capacity should be maximized, a primary requirement of the Regulation itself. Maximization as such is only touched on in Article 4, where it is a more peripheral consideration.]

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3.2. The safety standards and the operational and planning standards should form an integral part of the information that TSOs should publish in open and public document. Also this document shall be submitted to the approval of national regulators.

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3.3. TSOs shall offer to the market transmission capacity that is as 'firm' as possible. A reasonable fraction of the capacity may be offered to the market under the condition of decreased firmness, but at all times the exact conditions for transport over cross border lines shall be made known to market participants

3.4. The relevant TSOs shall calculate the interconnection capacities for the different timeframes, using a common network model. The values of these interconnection capacities shall be published together with the corresponding base case and the main constraints.

3.5. In case of structural congestion, TSOs shall in all circumstances, optimise the extent to which capacity is firm – having regard to the obligations of the TSOs and the rights of market parties – in order to facilitate effective and efficient competition. [OK, now removed by ERGEG.]

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3.6. When there is intermittent congestion, restrictions on network access shall apply only for the time when the congestion exists.

3.7. When preparing the day-ahead grid operation, the TSOs must exchange information with neighbouring TSOs including their forecast grid topology, availability of generation units, and load flows in order to optimise the use of the overall network through operational measures.

3.8. When balancing the network inside the control area through operational measures in the network and through redispatching, the TSO must take into account the effect of these measures on neighbouring control areas. [TSOs and regulators should take on a commitment positively to use re-despatch and counter-trade to maximise capacity available at borders.]

3.9. TSOs shall avoid limiting interconnection capacity in order to solve congestion inside their own control area. In any case, if the congestion within the control area limits the interconnection capacity, it must be only to the extent that it is justifiable from the technical viewpoint [what does this

mean?] and for reasons of operational security. Such a situation can only be tolerated until the long-term solution is found. [This sentence is very woolly and we suggest has no place in Guidelines properly adopted in comitology.] The methodology and projects to achieve the long-term solution shall be described and transparently presented to all the users by the TSOs. [This sentence vague and apparently tolerates governments and regulators passing responsibility endlessly to each other, while in the meantime TSOs do whatever they wish?]

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[SUMMARY OF EFET OBJECTIONS TO FORMULATION OF SECTIONS 2 & 3:

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The overall obligation of TSOs and Regulators to ensure maximisation of available cross border transmission capacity has been severely diluted by deletions from the first draft of the Guidelines in April 2004 and by new draft provisions, which in sum:

- Omit any requirement for TSOs to collaborate or Regulators to intervene, in order to net predicted flows at borders for the purpose of calculating expected availability of capacity
- Permit TSOs unilaterally to reduce, or Regulators to require the reduction of, declared availability of capacity at a border at any time in advance of allocation and for any period, supposedly in order to anticipate security factors, which may in normal circumstances over such a period never need to be applied
- Fail to mention the desirability of proactive measures to co-ordinate plant re-despatch and engage in counter-trading (especially to maintain firm allocation at a maximised level)
- Tolerate until an unspecified date the continuation of attribution of congestion to borders (for reasons of “operational security”, which apparently do not have to be explained or justified), in circumstances where in fact congestion could be dealt with inside a national system or control area with greater economic efficiency.]

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4. TIMETABLE FOR MARKET OPERATIONS

4.1. The involved TSOs shall publish a general description of the method applied for maximising the capacity available to the market based upon the electrical and physical realities of the network. Such a method shall be subject to approval by the regulatory authorities of the involved Member States concerned. [Both previous sentences belong to Article 3, in which, as already noted it is remarkable that there is no explanation of what “maximising capacity” availability at borders should entail.] The coordination procedure between the different TSOs involved in the resolution of a structural congestion may consist in general of the following basic steps according to a common timetable:

- (1) Allocation of the available transmission capacity of the interconnections that are involved in structural congestions may take place over several timeframes: one year, one or several months, one week, daily or intra-daily.
- (2) The access rights of long- and medium term allocations shall be firm transmission rights, with no obligation to be used. It shall be subject to the use-it-or-lose-it rule at the time of nomination.
- (3) Prior to each allocation, the involved TSOs shall jointly publish the capacity which will be allocated as well as the time periods during which the capacity will not be available (for the purpose of maintenance for example). The TSOs shall publish the allocated capacity as soon as possible after each allocation, as well as an indication of prices paid. Such indications should be subject to approval by regulatory authorities.
- (4) Nomination of transmission rights shall take place sufficiently in advance, before the day-ahead sessions of all the relevant organised markets and before the publication of the capacity to be allocated in the day-ahead or intra-day allocation mechanism. The involved TSOs shall jointly publish the nominated capacity as soon as possible thereafter².
- (5) The allocation of the available transmission capacity shall take place sufficiently in advance. Before the allocation, involved TSOs shall jointly publish the capacity which will be allocated, taking into account where appropriate the capacity released by any long term contracts and the firm transmission rights and where relevant the netted nominations thereof.

² After this nomination takes place, an amount of transmission capacity in a structural congestion may still be available to be allocated for three reasons: a) capacity may have been left aside for a short-term allocation; b) capacity rights may not be nominated; c) nominated capacity rights might create opposite flows in the same transmission line.

- EFET
- (6) Depending on the market organization (e.g. existence of organized power exchanges), market structure, and condition of competition in the markets of member states involved, firm transmission rights can be allocated in the day ahead allocation, or implicit auctioning, or a combination thereof can be used. In any case, the day-ahead allocation shall not discriminate between agents that want to use the rights to exercise physical bilateral contracts or to bid into power exchanges. The highest value bids, whether implicit or explicit, should be successful.
- (7) However, the Member States may decide to allocate all the interconnection capacity through implicit auctioning especially in regions where financial energy markets are well developed. [This sentence perpetuates a fundamental misunderstanding of the distinction between a congestion management process and the allocation of transmission capacity rights. If all physically available capacity across a given interconnection becomes subject to implicit day ahead auctioning, then TSOs must additionally offer to the market term financial capacity rights. Otherwise accurately hedging the related cross border basis risk becomes problematic. The failure to issue such rights is the one major flaw in the NordPool market design.]
- (8) Successive intra-day allocations for the day D of the available transmission capacity shall take place on days D-1 and D, after the issuing of the indicated or actual day-ahead production programs. Before the allocation, the TSOs involved shall jointly publish the capacity which will be allocated, taking into account all netted day - ahead nominations and the day-ahead production programs. The TSOs involved shall jointly publish the allocated capacity immediately after the allocation.
- (9) Where the intra-day sessions of the power exchanges exist, the allocations shall preferably be made by implicit auctioning. The rules and time schedules of these allocations shall facilitate cross border trade of balancing energy. The involved TSOs shall publish the allocated capacity immediately after each intra-day allocation.

EFET has in 2005 done considerable work in a special project group to describe ways of improving and harmonising the day-ahead, intra-day and balancing arrangements within and between control areas. This work is described in an annex to a submission to be made to DG TREN at the end of June 2005. We strongly advise that the "ELBAS" model be put in place to govern intra-day arrangements wherever feasible.]

5. TRANSPARENCY

- 5.1. TSOs shall publish all relevant data related to network availability, network access and network use including a report where congestion exists, its reason, the methods applied for managing the congestion and the plans to cope with it in the future.
- 5.2. TSOs shall publish all relevant data concerning cross-border trade according to the best possible forecast. This includes the procedures for allocating capacity, including the time and procedure for applying for capacity, a description of the products being offered and the obligations and rights of both the TSOs and the party obtaining the capacity.
 - (1) annually: all information on the long term evolution of the transmission infrastructure and its impact on cross border transmission capacity
 - (2) monthly: month and year-ahead forecasts of the transmission capacity available to the market taking into account all information available to the TSO at the time of the forecast calculation (e.g. impact of summer and winter seasons on the capacity of the lines, maintenance on the grid, availability of the production units, etc.);
 - (3) weekly: week-ahead forecasts of the transmission capacity available to the market for each market time unit (which may be an hour or a quarter of an hour), taking into account all information available to the TSOs at the time of calculation of the forecast, such as weather forecast, availability of the production units etc.;
 - (4) daily: day-ahead transmission capacity available to the market for each market time unit;
 - (5) the total amount of all contracts predating the EU directive 96/92/CE and having a priority right of access to cross border transmission capacity, the daily values of the total capacity taken by them as well as its provisional evolution in the coming years;
 - (6) total capacity already given out by market time unit and all relevant conditions under which this capacity may be used (e.g. auction clearing price, obligations how to use the capacity, etc.), so that the remaining capacity is revealed;
 - (7) total capacity used by market time unit immediately after the moment of nomination;
 - (8) as soon as possible after real-time, aggregated realised commercial and physical flows by market time unit, including a description of the effects of any corrective actions taken by the TSOs (like curtailment) for solving network or system problems;
 - (9) aggregated information for the previous day on planned and forced outages.

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(10) [Something more precise on generation data please!!! 5.7 below does not say anything about what and how.]

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5.2 All relevant information shall be available for the market in due time for the negotiation of all transactions (such as the moment for negotiation of year supply contracts for industrial customers or the moment when bids have to be sent into organised markets).

5.3. All information published by the TSOs shall be made freely available in an easy way. All data should also be accessible in an adequate and standardised means of information exchange, to be defined in close co-operation with market parties. This includes information on past time periods with a minimum of two years, so that new market entrants also have access to this data.

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5.4. When forecasts are published, the *ex post* realised values of the forecast information shall also be published, in the time period following that to which the forecast applies.

5.5. The actual flows at the interconnections shall be published accordingly (e.g. on the website) by the TSOs in an appropriately timely manner.

5.6. The demand forecast information for each control area shall also be published by the TSO

5.7. The TSO shall publish also the relevant information on generation.

5.8. TSOs shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each TSO in their relevant area. The same set of data shall be made available to the Regulatory Authorities and to the European Commission upon request.

6. USE OF CONGESTION INCOME

6.1. Congestion management procedures may generate revenue only in case of congestion. The procedure for the distribution of these revenues will be established by the Regulatory Authorities and it shall neither distort the allocation process in favour of any party requesting capacity or energy nor provide a disincentive to TSOs to decrease the amount of congestion.

6.2. The revenues resulting from the allocation of interconnection capacity shall be used for one or more of the following purposes:

- (1) Guaranteeing the actual availability of the allocated capacity
- (2) Network investments required for maintaining or increasing the interconnection capacities
- (3) As an income to be taken into account in the process of calculating the network tariffs

National Regulators shall be transparent about the priority in the use of these revenues.

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- 6.3. The congestion income shall be shared among the involved Member States according to criteria agreed between TSOs involved and approved by the respective Regulators.
- 6.4. TSOs shall clearly establish beforehand the use they will make of any congestion rent they may obtain and report on the actual use of these rents. Regulatory authorities shall verify that this use complies with the Regulation and Guidelines and that the total amount of congestion rents resulting from the allocation of interconnection capacity are devoted to any of the three purposes described in 6.1 of these Guidelines.
- 6.5. On an annual basis, and by 30 June each year, the regulatory authorities must publish a report setting out the use made of the revenues in question together with a verification that this use complies with the Regulation and these Guidelines and that the total amount of congestion rents is devoted to any of the three prescribed purposes.
- 6.6. When taken into account in the process of calculating the network tariffs, congestion rents should lead to a reduction of tariffs on top of any other regulatory method used for the calculation of tariffs.
- 6.7. The use of congestion rents for investments in maintaining or increasing the interconnection capacity shall preferably be assigned to specific predefined projects with a clear compromise to accomplish them in a reasonable time with particular reference to authorisation process. In the case of TSOs belonging to a holding that owns other companies that perform liberalized activities at the same time, complying with this recommendation must be verified and approved by the responsible Regulator. In case of merchant lines, the Regulator shall decide on whether or not an affiliate carrying out merchant line activities is sufficiently separated from any other market activities.

7. TRANSMISSION NETWORK EXPANSION WITH MERCHANT INVESTMENT

1. There shall be open access to both regulated and merchant network facilities on non-discriminatory conditions. Any network charges or collection of congestion rents must be set – or determined by market mechanisms - in a non-discriminatory and transparent manner. The regulatory authorities must have the responsibility for ensuring this.
2. Initial long-term contracts for transmission capacity may be authorized, if they respect the basic principles expressed in Regulation, these Guidelines and by the Regulators, on congestion management, notably the use-it-or-lose-it rule.
3. The remuneration of the owner of a merchant network facility would not be regulated but, in principle, it shall follow the same rules on open

access, transparency and non-discrimination that apply to regulated facilities. However, while the remuneration of a regulated network facility is determined a priori on the basis of incurred costs or the results of an open tender for construction, the remuneration of a merchant network facility shall be based on the congestion rents earned by the facility and there will be no regulated limit to its value. This notably implies that the existence of a merchant line cannot prevent the construction of an additional regulated or merchant line, even if it induces a decrease of the congestion rent levied by the merchant line. Equally, the conditions under which any such additional regulated line may be built need to be set out in advance in order to minimize regulatory risk for the merchant investor. Congestion rents shall be the result of an allocation mechanism compliant with the Regulation and these Guidelines.

4. Since there is no regulated remuneration there is no regulated cost to be allocated for the merchant lines. The remuneration of the merchant investment is obtained from congestion rents and long-term contracts.
5. In case a merchant direct current line is treated for regulatory purposes as a (G, L) pair, it will have to pay the corresponding national network charges as a generator and a load, in so far as such charges are reflective of national locational charges for the TSO concerned. Additional charges may also be made corresponding to incurred externalities in network operation
6. Future interconnections that are exempted from the Article 7 of the Regulation will be considered as merchant lines.