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Subject: ERGEG Public Consultation of the draft Congestion Management Guidelines

Dear Mr. Vasconcelos,

ETSO welcomes the opportunity given to provide its views on the draft Guidelines on Congestion Management of the 1228/2003 EC Regulation circulated by ERGEG in May 2005. Following the previous comments already issued by ETSO in April 2004, the draft Guidelines stress the main roles of TSOs regarding the allocation of available capacities and its content clearly defines market-based allocation mechanisms. Furthermore, they are globally in line with the ETSO Vision on Congestion Management. Therefore, ETSO believes that the new Guidelines are a positive step forward towards the implementation of the Regulation and, therefore, aiming at the emergence of an efficient IEM.

Since ETSO was established in 1999 at the initiative of the European Commission, its main goal has been to ensure the development of the Internal Electricity Market while maintaining the security of supply. Through ETSO, the European TSOs have been key technical partners in this process. As requested by the Florence Forum, ETSO has made robust and pragmatic proposals that have been gradually put into practice after the final agreement of the European Commission and of the Regulators. Moreover, ETSO has already developed a number of concepts, methods, and products which have set up the current framework for the practical improvement of cross-border trade through congested grids thanks to the publication of a number of innovative documents that are now key references for other European bodies (including academics). The following are just some examples of important milestones:

- ETSO has provided the definitions of NTCs and ATCs (with an agreed computation methodology (2001)) and seasonal NTC values publication on the ETSO website since 2003 ;
- it has put in place the first extensive day-ahead data exchanges to forecast congestion on the meshed grids of continental Europe (2001). ETSO has started the DACF process and has passed it to other TSO regional associations when operational (2001);
- it has actively contributed to stopping useless controversies opposing explicit auctions and market splitting by showing that these schemes could be combined. This has been the basis for the “ETSO Vision” which aims at fulfilling any market requirement without prerequisite, and has given to ETSO a central and “neutral” role in cross-border congestion management issues (2002);
- it has shown the importance of modelling the network constraints in any market based allocation procedure, and specially in meshed grids, through the concept of “flow-based transmission modelling” (2002);

- recently, the innovative proposal for efficient market-based congestion management and, more importantly, for a decentralised European market integration “Flow-based Market Coupling” by ETSO and EuroPEX has been used as a reference for the mini-fora process and contributed to the European market design (2004);
- it has contributed to setting up the key concepts in the complex field of monitoring market power in congested power systems (2004) and evaluated the use of preventive countertrade as a mean to guarantee firm transmission capacity (2005);
- it has actively promoted transparency and data publications on congestion management issues through the ETSO website (2002).

In addition to this, ETSO plans to publish very soon further developments regarding, for instance, the roles of the TSOs in the monitoring of market power as well as an overview of different products for risk hedging in congestion management.

Power Systems are extraordinarily complex and the role of the TSOs is to handle the physical issues providing a smooth playing field to the market participants. For an efficient trade of electricity, market arrangements must be set up that are compatible both with market participants needs and the technical and economical reality of power systems. Network access, congestion management and operation of balancing markets and ancillary services are examples that highlight the crucial importance of the transmission system in the development of sustainable and competitive electricity markets. Through ETSO, the TSOs should be seen as the key partners and drivers to facilitate the process of establishing the sound and efficient European market design yet to be achieved. Avoiding misconception of the market design should be considered as one of the main challenges for the development of the IEM in the next years.

TSOs are not market players. They are neutral bodies, whose independence is established by the previous Internal Electricity Market Directives. TSOs ensure that the changes in the Regulations can be effectively implemented on a day-to-day practical basis, without jeopardising the secure operation of the interconnected power system and contributing to the establishment of the necessary confidence in the market. Surprisingly, ERGEG's public consultation seems to consider ETSO as any other market participant despite the fact that TSOs are simply not market players. While in every public consultation on congestion management at the national or regional levels TSOs are not seen as any other market participants but rather as key technical partners deeply involved in the design of the solution, ETSO does not understand why the same cannot apply at the European level, of course, in the interests of achieving the IEM.

For all these reasons, ETSO considers very disappointing that the background document published by ERGEG together with the draft guidelines proposal do not mention even once the role and achievements of ETSO so far. This in our view hides the reality of the development process.

ETSO feels that some of the issues raised by the draft Guidelines may still need to be completed or reviewed before practical application. As an example of this, through the text, rights and obligations of TSOs and Market Participants should be balanced and designed for an overall economic optimum.

Although significant progress has been achieved if compared to the previous version circulated in February 2004, ETSO still observes some misunderstanding of key concepts such as the relationship between physical flows and commercial exchanges. Specially the high expectations placed in perfect forecasts of physical flows for “optimal” capacity calculations seem misleading, since the final generation and load patterns are the key elements that determine the actual physical flows (i.e. the calculation of capacities is in fact no other than a mere “chicken and egg story”). Sound “flow based” modelling provided by TSOs takes into account the physical flows derived from commercial exchanges and can produce benefits through the harmonisation of TSOs’ activities. However, ETSO believes that

greater benefits can be gained from regulatory harmonisation across the variety of market designs in Europe and welcomes the proposed General Provisions added by ERGEG intended to clarify the roles and responsibilities of Regulators. It should be reminded that as the background paper states, it was in 2000 when most of the participants in the Florence Forum agreed that market based congestion management mechanisms should be implemented at all borders. Despite the proposals made by TSOs either coordinated or bilaterally in all borders, those market based mechanisms have not been implemented at all congested borders due to the regulatory procedures in the different countries or the disagreement of the regulators themselves at that time.

In addition to the comments already sent to the European Commission and CEER in December 2004, which do not seem to have been considered at all by ERGEG for unknown reasons, ETSO has now prepared again some additional minor comments on the original text of ERGEG's new version (please refer to the enclosed change-marked version). In order to further review these comments, in addition to the Public Hearing scheduled on the 30th of June 2005, ETSO would like to present them to ERGEG in a meeting that could take place at your convenience.

The conclusions of the 11th Florence Regulatory Forum noted that Congestion Management is still a key issue for the creation of an efficient IEM. The 1228/2003 Regulation is in force from the 1st of July 2004, but reality shows that access to the interconnections does not fully comply with the Regulation in many cases. ETSO believes that efficient market oriented methods for the allocation of scarce capacity are already available. The joint ETSO-EuroPEX proposal "Flow-based Market Coupling" for cross-border congestion management and integration of electricity markets across Europe provides a sound basis in this respect.

ETSO will continue to fully support the EC initiative of the seven regional mini-fora with concrete proposals and looks forward to the publication of detailed Guidelines on Congestion Management according to the timetable of the anticipated process suggested by ERGEG, which should provide the appropriate regulatory framework necessary for successful implementation.

With best regards,

A handwritten signature in black ink, appearing to be 'André MERLIN', written in a cursive style.

André MERLIN
President

Copy: Mr. Lamoureux