



# **Cross Border Framework for Electricity Transmission Network Infrastructure - An EREG Conclusions Paper**

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## Executive Summary

EREGG published in October 2006 an EREGG Public Consultation Paper on the “*Cross border framework for transmission network infrastructure*”. This paper analyzed and made recommendations regarding the present framework and process for the provision of transmission network infrastructure across the EU, and invited views.

The consultation paper in particular noted that the process for obtaining building and construction authorisations and permissions for transmission network infrastructure is a crucial immediate issue, and needs to be recognized and tackled. It also noted that present provision of transmission network infrastructure is largely driven by national law and requirements. Obligations on authorities or Transmission System Operators (TSOs) seldom or insufficiently extend to cross border infrastructure or the need to integrate markets. Consequently, the cross border development of transmission infrastructure may be impeded.

The recommendations included in the paper addressed the building and construction authorisations and permissions, the planning and operation standards (hereinafter called ‘operating and security’ standards), the regulatory framework, the role of regulators and TSOs, as well as the question of ‘merchant’ interconnectors.

EREGG received 13 written responses, which are available on the EREGG website ([www.erggeg.org](http://www.erggeg.org)). This Conclusions Paper sets out EREGG’s conclusions and recommendations in the light of the responses received. EREGG’s recommendations concerning the cross border framework for transmission network infrastructure are briefly summarized as follows:

- Building and construction authorisations and permissions:  
Processes need to be clarified and expedited. Clear political support is needed. An independent view of a project’s wider benefits is needed.
- Regulatory framework and operating and security standards:  
An overall legal and regulatory framework should be put in place that obliges and allows TSOs and regulators to pursue the development of transmission network infrastructure across and between national markets. This framework should include some form of overarching EU wide operating and security standards.
- Role of regulators:  
EU regulators should be given some form of collective duty and competence to oversee and promote (cross border) transmission network provision and approve cost allocation of cross border elements as appropriate. Each national regulator will need appropriate competences, independence and resources.
- Role of TSOs:  
Each TSO should be given a collective role to build and operate the EU grid, under regulatory oversight. TSOs should be given a new collective institutional basis in order that they can fulfil this role.
- Merchant interconnectors:  
EREGG should work to clarify the criteria and process regarding the exemptions regime under Article 7 of Regulation 1228/2003.

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## 1 Introduction

### 1.1 Purpose of paper

1. The development of a single market for electricity across the EU will crucially depend upon, among other things, the provision and availability of sufficient cross border transmission infrastructure capacity. In this context, ERGEG published on 4 October 2006 an *ERGEG Public Consultation Paper on "Cross border framework for transmission network infrastructure"*, hereafter the "Consultation Paper".
2. The Consultation Paper drew conclusions regarding the framework for transmission investment and provision of cross border transmission infrastructure, and made a number of initial recommendations. It invited views from interested parties regarding these.
3. This Conclusions Paper summarizes and assesses the responses received. It restates ERGEG's conclusions and recommendations regarding the cross border framework in the light of these views. ERGEG intends that these recommendations will be :
  - taken into account by individual regulators in considering their approach to these matters;
  - used to inform the wider debate on the provision of cross border infrastructure, particularly regarding the question of building construction authorisations and permissions; and
  - used as one basis for advice to the European Commission and other legislators where community policy and legislation is being developed.

### 1.2 Recap of ERGEG Consultation Paper

4. The Consultation Paper recalled and described the ways in which transmission network infrastructure is typically provided. It noted that on a national basis, in general a 'regulatory contract' exists where TSOs are required to plan, maintain and invest in transmission networks in order to meet certain Standards, and that regulators oversee such activities and mandate remuneration for the TSOs. It noted that private parties might also build and operate transmission infrastructure on the basis of user fees for the infrastructure (i.e. Merchant lines).
5. The Consultation Paper broadly described current practice regarding the regulatory and legislative framework across the EU Member States plus Norway, as well as a number of case studies of individual cross border electricity interconnectors. Processes were analyzed in terms of the need for building and construction authorisations and permissions, the regulatory framework, the role of regulators and TSOs, and in terms of cross border elements.
6. The Consultation Paper underlined - inter alia - the following issues:

- The process for obtaining building and construction authorisations and permissions for transmission network infrastructure is a crucial immediate issue which needs to be recognized and tackled;
  - The current provision of transmission network infrastructure is largely driven by national law and requirements. Obligations on authorities or TSOs seldom or insufficiently extend to cross border infrastructure or the need to integrate markets;
7. A first view on Recommendations in the Consultation Paper included:
- Extensions to planning and operation standards on TSOs to include cross border obligations;
  - Adjustment of regulators' duties and competences to include some cross border or regional elements;
  - Re-orientation of the role of TSOs in order that they act in a more joint manner, subject to regulatory oversight;
8. The Consultation Paper invited views on all aspects raised.

### 1.3 Responses received

9. ERGEG received 13 responses to the Consultation Paper. Seven responses were from Transmission System Operators or organisations including representation of TSO activities. One was from an organisation representing energy intensive users. Two were from organisations mainly concerned with electricity distribution activities. Five were from organizations representing national or European electricity market participants. One was from a market participant with interests at all levels of the electricity supply chain. One was from an academic institution. Responses therefore spanned the geographic and industrial structure of the EU electricity market.
10. The respondents were :
- Austrian Power Grid (APG)  
Austrian TSO
  - Centrica  
UK energy supplier
  - Energibedriftenes landsforening (EBL)  
Norwegian Electricity Industry Association, representing members in transmission, distribution and generation
  - European Transmission System Operators (ETSO)  
Association of EU TSOs
  - EURELECTRIC  
Union of the electricity industry

- Groupement Européen des entreprises et Organismes de Distribution d'Energie (GEODE)  
Association representing energy distributors in Europe
- Institute of International Economic Law, University of Helsinki  
Finnish University
- Iberdrola  
Spanish gas and electricity utility
- International Federation of Industrial Energy Consumers (IFIIEC)  
Organisation representing energy intensive industry throughout the EU
- MAVIR  
Hungarian TSO
- Scottish and Southern Energy (SSE)  
UK energy supplier
- Union Française de l'Électricité (UFE)  
Organisation representing French electricity industry
- Verband der Netzbetreiber (VDN)  
Organisation representing German TSOs

11. These responses are available on the ERGEG website.

#### **1.4 Relevant recent developments**

12. Since the publication on 4 October 2006 of the Consultation Paper, a number of developments regarding transmission networks and the provision of cross border transmission network infrastructure have occurred.

##### 4 November 2006 disturbance on transmission networks in UCTE area

13. On Saturday 4 November 2006, the UCTE interconnected grid was affected by a serious incident originating from the North German transmission grid. The disturbance had its starting point in Germany, but subsequently a major part of Europe suffered from it. Following the tripping of many high voltage lines, the UCTE grid was divided into three islands (West, North East and South East) and this resulted in significant power imbalances in each island, as well as significant interruptions to power supply for end customers.

14. A number of investigations have been undertaken so far. E.On, the TSO operating the grid where the incident originated, undertook an immediate investigation and published a report on 14 November 2006. In addition UCTE published its final report on 30 January 2007.

15. The incident illustrated important shortcomings and deficiencies regarding the way that cross border transmission infrastructure is operated.

16. EREGG has also published both interim<sup>1</sup> and final<sup>2</sup> reports on the system disturbance on 4 November 2006 and submitted these to the EU Commissioner for energy, Andris Piebalgs. EREGG's final report made two broad recommendations:
- There is a need for an enhanced legal and regulatory framework to minimize the risk of future interruptions; and
  - Measures by TSOs themselves to secure effective coordination and cooperation among each other are required. This must take place under regulatory oversight.
17. The EREGG final report recommended that an integrated EU Grid requires a legally binding framework based on fully effective compliance, monitoring and collaboration. In particular, a need exists for detailed and specific obligations on TSOs in relation to the coordinated operation of the networks across the Internal Energy Market and the provision of information exchange between TSOs. TSOs must be clearly accountable to regulators and also publicly in respect of the effective operation of the networks they run, and for the way in which networks interact.

#### European Commission Strategic Energy Review

18. On 10 January 2007, the European Commission published its Strategic Energy Review<sup>3</sup> (SER), which follows up the Commission's 2006 "Energy Green Paper"<sup>4</sup>. The SER set out an action plan designed to put in place the necessary framework for achieving a real Internal Energy Market. The Commission highlighted inter alia the following requirements :
- Effective regulation – energy regulators' powers and independence need to be harmonized to the highest common denominator, and they should also be tasked with promoting the development of the Internal Energy Market;
  - Transparency – further market transparency will greatly facilitate market functioning;
  - Infrastructure – the Commission has set out a *Priority Interconnection Plan*;
  - Network security – common minimum and binding network security standards are necessary in the EU;
  - Adequacy of electricity generation and gas supply capacity – pointing to the need for an internal market that properly signals and rewards investment;
  - Energy as a public service – the Commission will develop an Energy Customers' Charter.

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<sup>1</sup> EREGG Interim Report "The lessons to be learned from the large disturbance in European power supply on 4 November 2006", (E06-BAG-01-05, 20 December 2006), available at : [www.ereg.org](http://www.ereg.org)

<sup>2</sup> EREGG Final Report "The Lessons to be learned from the large disturbance in the European power system on the 4th November 2006", (E06-BAG-01-06, 6 February 2007), available at : [www.ereg.org](http://www.ereg.org)

<sup>3</sup> See [http://ec.europa.eu/energy/energy\\_policy/index\\_en.htm](http://ec.europa.eu/energy/energy_policy/index_en.htm)

<sup>4</sup> See [http://ec.europa.eu/energy/green-paper-energy/index\\_en.htm](http://ec.europa.eu/energy/green-paper-energy/index_en.htm)

19. The Commission has in this context indicated its intention to bring forward a “third package” of further legislation designed to achieve the Internal Energy Market.

*Priority Interconnection Plan*

20. As part of its Strategic Energy Review, the Commission has put forward a Priority Interconnection Plan. This highlights the need to interconnect further national gas and electricity markets with physical infrastructure in order for example to promote an efficient market across the EU. It proposes a number of actions designed to facilitate the construction of these. Proposed actions include :
- Appointing four European co-ordinators to pursue the four most critical projects: the Power-Link between Germany, Poland and Lithuania; connections to off-shore wind power in Northern Europe; an electricity interconnection between France and Spain; and the Nabucco pipeline, bringing gas from Central Asia, the Caspian region and the Middle East to Central Europe;
  - Harmonizing regional planning by strengthening cooperation between transmission systems operators who will monitor and analyse the development planning at regional level;
  - Encouraging streamlined planning and authorization procedures by inviting the Member States to set up national procedures within which planning and approval of projects of European interest should be completed within five years; and
  - Examining the need to increase EU funding in particular to facilitate the integration of renewable energy into the grid.

EREGG’s response to the European Commission’s Communication “An Energy Policy for Europe”

21. ERGEG published its response<sup>5</sup> to the Commission’s Communication. It sets out the requirements that ERGEG believes will be needed to establish a new and strengthened legislative framework and the required regulatory arrangements, in order that competitive single electricity and gas markets can develop. These requirements include the development of integrated single grids for the EU internal market in electricity and gas, regulatory oversight at national and EU level, and democratic accountability of both regulators and TSOs. ERGEG sees effective unbundling of transmission network activities as a key overarching condition. The response is therefore particularly pertinent to the question of cross border transmission infrastructure.
22. The response recommended that legislation is developed in order to deliver the necessary elements of a strengthened legislative and regulatory framework. Key elements include the definition of high level public interest objectives for the secure and efficient operation of an integrated EU grid, the placement of collective obligations on national transmission system operators (TSOs) to develop European operating and security standards and individually to comply with these European (and

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<sup>5</sup> ERGEG’s response to the European Commission’s Communication “An Energy Policy for Europe” (C06-BM-09-05, 6 February 2007), available at:<http://www.ergeg.org>



national) standards, as well as the definition of the roles and responsibilities of the TSOs and Regulators in a more coherent EU framework. The regulatory framework would need to be amended such that an upwardly harmonised level of minimum powers and independence is given for each national regulator when acting at national level and collectively at EU level. The institutional roles of regulators and TSOs would have to be revised accordingly, so as to develop an EU electricity network body from ETSO and to enhance the existing European regulatory group. Regulators would need to ensure effective market oversight and have a duty to co-operate as well as a responsibility to oversee the secure and efficient development and operation of the EU grid.

#### Workshop on electricity transmission infrastructure

23. CEER hosted a workshop<sup>6</sup> concerning electricity transmission infrastructure on 13 February 2007, attended by representatives of the European Commission (DG ENV and DG TREN), TSOs, industry, Member States, regulators, and other interested parties. The workshop was particularly concerned with the issue of building and construction authorisations and permissions for transmission infrastructure projects. Presentations were made by TSOs regarding particular illustrative projects from around the EU, and by the European Commission regarding the Priority Interconnection Plan and the question of balancing the public's concerns and critical infrastructure construction.
24. Some broad messages and issues emerging from the workshop included :
- There is a broad consensus that complex processes and unpredictable timetables for Building and Construction Authorisations and Permissions (BCAP) processes in many Member States are a major issue in terms of building necessary further transmission infrastructure;
  - In the BCAP processes, it could be helpful for a neutral party to represent the wider benefits of a proposed project in terms of for example maintaining or increasing security of supply and possibilities for enhanced market functioning. Such a view would present benefits to be balanced against those representing local costs.
  - More information and education concerning the perceived drawbacks and health risks could enable BCAP processes to be more informed. Formal guidance on the parameters that TSOs should meet in terms of health risks could also help here, for example concerning the maximum magnitude of electro-magnetic fields.
  - The undergrounding of AC cable is not seen as an economically viable option for enhancing transmission infrastructure.
  - Some useful progress is being made or seen, for example concerning the European Commission's proposal for coordinators for priority

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<sup>6</sup> *Electricity Infrastructure Workshop* 13 February 2007, Brussels. Documents and presentations available at: [www.ceer-eu.org](http://www.ceer-eu.org)

interconnections, and some initiatives in Scandinavia regarding planning processes and alleviating local concerns.

- Much of the relevant legislation is at a Member State level, and so going forward it will be helpful to engage and work with Member States and relevant ministries in order to discuss and initiate developments in BCAP processes.

25. The Workshop agreed to :

- Pursue further the dialogue with the European Commission, TSOs and above all Member States and ministries in order to achieve progress; and
- Convene a further meeting in early 2008 to assess progress.

26. CEER also recalled that the CEER/EREGEG 2007 Work Programme foresees further work on transmission topics and therefore these topics will also be considered to some extent during this work.

## 2 Consideration of responses

### 2.1 Introduction

27. All together, respondents to the ERGEG Consultation Paper commented on most of the issues raised. This chapter summarizes respondents' views and sets out ERGEG's view in the light of these.
28. Many respondents welcomed the ERGEG Consultation Paper, remarking for example that it was a useful and accurate description of the issues facing the development of the single market. One TSO respondent suggested that a single European grid already exists and that what is needed is a single Internal Electricity Market.

### 2.2 Building and Construction Authorisations and Permissions

#### 2.2.1 Recap of ERGEG Consultation Paper

29. All builders of transmission infrastructure need to obtain appropriate Building and Construction Authorisations and Permissions (BCAPs). BCAP processes are typically lengthy and uncertain and generally differ between countries; as a result, the cross border infrastructures need to comply with at least two national or local processes. Consideration of a number of cross border case studies and input from ETSO extended and confirmed this view. The BCAP issue is therefore a crucial and immediate issue in terms of the extent to and speed with which further transmission infrastructure capacity can be provided and the single market developed.
30. ERGEG in its recommendations made a number of observations regarding how BCAP processes might be improved. These included the need to expedite BCAP processes, the possibility of national regulators or ERGEG providing an independent view to BCAP processes, and the need to reconcile national or EU benefits of some transmission infrastructure projects against local costs.

#### 2.2.1 Respondents' views

31. There was general agreement among respondents that the often long and difficult processes involved in obtaining BCAPs is a crucial issue. Many of these respondents therefore called for more to be done to facilitate BCAPs. In particular many respondents agreed that BCAP processes need to be faster, easier, and more harmonized between countries.
32. Some respondents called for a clear political commitment to help overcome BCAP difficulties, a stronger role for the EU Commission, and rules or guidelines at an EU level that include deadlines and last resort procedures for BCAP processes.
33. Regarding the question of whether or not it might be helpful for national regulators and / or ERGEG to provide an independent view to a BCAP process of the impact of a project on competition and broader market participation, respondents' views were mixed. One respondent explicitly supported the view that BCAP processes should include the possibility of seeking the independent views of national regulators and/or ERGEG. Other respondents struck a more cautious note suggesting that it was not

obvious that input from another institution would expedite BCAP processes, furthermore, in their view this would be a role for national regulators rather than ERGEG.

34. A couple of respondents between them representing TSO and distribution interests agreed that it will ultimately be necessary and helpful for BCAP processes to recognize that wider economic and security of supply benefits at a national or EU level need to be reconciled in some manner with costs at a local level. One of these respondents suggested using existing instruments such as structural policy to give communities affected by transmission infrastructure projects better access to European funds. This respondent suggested for example that priority projects that increased local employment opportunities could compensate local communities for some of the disadvantages associated with the relevant transmission infrastructure project.
35. Two respondents representing TSOs highlighted the question of undergrounding of cable. They noted for example that any recommendation to increase the use of undergrounding could delay the realisation of projects since further or repeated authorisations processes would be needed. One further suggested that using underground cables would not improve the environmental record of the projects and would also increase the costs of future lines.
36. One respondent suggested that the list of transmission investment case studies given in the ERGEG Consultation Paper is not exhaustive, and that other examples could be added. Another respondent said that none of the case studies used any underground cable, and suggested that ERGEG's conclusion that some projects increased the use of underground cables in order to ameliorate environmental concerns was therefore false.
37. Regarding the legislative developments in Germany and Italy designed to expedite BCAPs, two respondents representing TSOs argued that these had not yet resulted in sufficiently effective BCAP processes in those countries. One of these respondents remarked that the German law ('Infrastrukturplanungsbeschleunigungsgesetz') is expected to enter into force in early 2007. On the other hand, one respondent described the German and Italian legislative changes as 'positive developments'.
38. One respondent suggested that any new pan-EU arrangement regarding BCAPs should be fair and contribute to competitive and efficient markets, and that any new legislative developments for BCAP should be complemented by consistent and coherent measures for trade and other market features.

### 2.2.3 ERGEG view

39. It is clear that the process for BCAPs, including land planning, is widely recognized as an immediate and crucial issue for the development of the transmission infrastructure capacity necessary for the pan-EU electricity market. ERGEG therefore confirms its view here as set out in its Consultation Paper.
40. ERGEG supports the view that in overcoming these issues clear political commitment is needed. For example, the revision of the law in Italy has, according to regulators'

experience, helped to reduce the time needed to secure BCAPs. It will be necessary for BCAP processes at a national level to be reviewed and revised. It may be helpful or necessary to underpin considerations at a national level with EU wide measures or legislation.

41. The idea that it will ultimately be necessary and helpful to reconcile EU or national benefits against local costs have been reinforced by respondents, and ERGEG acknowledges this idea.
42. Given that a principal aim of revision of BCAP processes and any compensation mechanisms will be to enhance the development of the single market, ERGEG sees a role for national regulators or ERGEG to inform BCAP processes, particularly in a cross border context. Regulators will be able to give an independent view of a project's impact on the single market for example, or could at least be expected to comment on a case made by a TSO. Of course the scope of such input or comment would be confined to the effect on the market or the development of competition. ERGEG notes here that present legislation in some EU Member States does not permit this, and so EU or national legislation will require amendment.
43. Views from the *Electricity Infrastructure Workshop held on 13 February* reinforced the idea that it would be helpful for the wider benefits of any infrastructure project to be represented by an independent third party rather than, as is often the case, the TSO. The wider benefits might include maintaining or increasing security of supply, and increasing gains from trade. This independent third party would put the case for the benefits of a project, to be evaluated against the case, put by others, regarding the costs of a project. ERGEG sees considerable merit in this idea, as a way of more objectively evaluating projects.
44. It is clear that in the case of infrastructures spanning a border, differences in processes either side of a border can introduce further uncertainty and delay. ERGEG would therefore favour making processes, for example for obtaining the necessary licences, more compatible.
45. ERGEG suggests therefore that these issues are pursued, including dialogue between regulators, Member States, and other interested parties notably TSOs.
46. Regarding the question of undergrounding, ERGEG would agree that any proposition for the use of more underground cable should be assessed among other things by an economic cost benefit test. The case studies in ERGEG's Consultation Paper included some examples of the increased use of underground cables (for example the *San Fiorano-Robbia* line from Italy to Switzerland) and therefore conclusions in this respect remain valid. Regarding the use of case studies in general, ERGEG recalls that those presented in its Consultation Paper were always intended to be illustrative of the issues rather than an exhaustive analysis of all relevant projects.

## 2.3 Framework for provision of transmission network infrastructure

### 2.3.1 Recap of ERGEG Consultation Paper

47. TSOs in each country have the primary responsibility for building, maintaining and operating transmission infrastructure. At a national level, requirements usually exist for TSOs to meet certain Operating and Security Standards<sup>7</sup> in order that the transmission infrastructure is provided to a high level and system stability and security of supply are maintained. Investment and modes of operation are primarily determined by the need to meet these rules.
48. Given that the TSO is both a monopoly provider of networks and provides a service with a strong public interest, the arrangements at national level are subject to regulatory oversight. The relevant regulatory authority both monitors and enforces the rules that the TSOs are required to meet, and may penalise a TSO for non-compliance. The relevant regulatory authority generally mandates transmission tariffs or at least the methodology, revenues or returns to the TSO. This 'regulatory contract' essentially allows the TSO to finance adequately its activities in return for adequate provision of transmission infrastructure. Indeed it is a requirement under EU law (Directive 2003/54/EC) that regulatory authorities are responsible for fixing or approving at least the methodologies used to define transmission tariffs. Member States may choose to go beyond these minimum requirements.
49. Private and non-regulated provision of transmission infrastructure is also possible, often referred to as 'Merchant' model. Private and non-regulated provision of transmission infrastructure often relates to an interconnector between markets where price differences can be arbitrated through use of the interconnector. The private investor profits from constructing and then selling access rights to such an interconnector.
50. In either case, any new construction of transmission infrastructure will require the necessary Building and Construction Authorisations and Permissions (BCAPs). The processes for obtaining such BCAPs usually involve the submission of applications to one or more relevant authorities, and justifications on economic, environmental, technical or other grounds. The procedures are often lengthy, difficult and uncertain.
51. The ERGEG Consultation Paper found that few obligations or processes relate to cross border provision of transmission network infrastructure. Operating and Security Standards typically apply at the national level and therefore do not encourage TSOs to invest in order to maintain or enhance cross border capacity. No 'regulatory contract' exists for cross border capacity. Hence it is difficult for a TSO in country C to obtain remuneration for an asset that might be needed there in order to enhance transmission capacity between two further countries A and B. The 'cost allocation' is therefore a key element for allowing the development of an EU wide grid. No mechanism has presently been implemented which encourages a TSO in country C to provide efficient levels of transmission capacity or to ameliorate the TSO's risk in doing so. Regulation 1228/2003 provides some means for TSOs to be remunerated for hosting cross border flows on the existing network.

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<sup>7</sup> In the ERGEG Consultation Paper, the terms 'Planning and Operating Standards' and 'Security and Reliability Standards' were used. In this Conclusions Paper the term 'Operating and Security Standards' is used.

52. ERGEG's initial recommendations included the following :

*Operating and Security Standards*

- Processes and rules should be developed to include EU or regional dimensions
- TSOs should be obliged to meet these

*Cost allocation*

- Regulators' competences should be enhanced in order for appropriate cost allocation mechanisms, risk sharing, and cost efficient provision of infrastructure to be introduced.

2.3.2 Respondents' views

*Overarching framework*

53. Some respondents expressed support for an overarching and pan-EU framework for the provision of transmission network infrastructure. One respondent representing TSOs remarked for example that the existence of a 'regulatory gap', where each regulator only has authority within its Member State, contributes to the uncertainty regarding remuneration of investment. This respondent also suggested that the roles and responsibilities of the key market participants should be as follows :
- Member States and Governments should be responsible for creating and maintaining the overarching policy and framework;
  - Regulatory authorities should cooperate with each other in implementing a long term stable framework; and
  - TSOs would continue to be responsible for planning and developing the European network.
54. One respondent also argued for ERGEG to make more concrete and detailed proposals regarding a consistent regulatory process at the EU level, as well as regarding the issue of cooperation between TSOs.
55. One respondent struck a note of caution here by arguing that the development of the ITC scheme had shown how poorly developed pan national regulation could have negative consequences for the development of the single market.
56. One respondent argued for the implementation at a European level of a similar exercise to the multiannual French programming of investments (*la Programmation pluriannuelle des investissements (PPI) française*). The PPI is intended to set the objectives of the development of the means of production to the development of consumption. The TSO informs the PPI by providing estimates of the balance of production.

*Operating and Security Standards*

57. One respondent representing TSO interests pointed out that each synchronised electricity region in Europe already have Operating and Security standards and rules via the relevant regional associations, for example UCTE, NORDEL and BALTIJA.
58. Opinions were mixed on the extent to which overarching Operating and Security Standards are needed. A number of respondents expressed a preference for each TSOs to be bound by obligations relating to the EU or regional market rather than just to the national market. One of these respondents stressed the importance of the provision of information between TSOs, to allow them to make the correct investment decision. Another of the respondents suggested that any pan EU or regional Operating and Security Standards should have a legal basis in a Directive or Regulation, or be a legal requirement to meet rules given by CENELEC.
59. Some respondents argued for a more regional approach for Operating and Security Standards. Between them, these respondents noted that physical differences in national or regional markets would point to the need for Operating and Security Standards to differ at the regional or synchronously connected level. One of these respondents argued for any such multi-national rules to be limited to co-ordination between relevant TSOs, for example regarding co-ordinated network planning and information exchange.
60. One of these respondents also noted the main focus of each TSO is their national (or sub-national) market, and that investment planning, construction and operations are mainly done at this level. This respondent therefore urged caution in considering the extent of further obligations on TSOs that relate to cross border issues.
61. A number of respondents, particularly those representing TSO interests argued between them that mandatory or more overarching Operating and Security Standards are not needed and may be counter productive. Reasons given included the views that existing arrangements are sufficient (such as the UCTE Operational Handbook), TSOs are able to cooperate and/or agree standards and rules appropriately among themselves, and that overarching standards would be difficult to introduce in a legal sense. Regarding cooperation between TSOs, one respondent suggested that it would be preferable for now to monitor work that is occurring between ETSO and the European Commission regarding Operational Network Security, which includes compatibility issues at cross border points.
62. In general most respondents acknowledged that some form of overarching Operating and Security Standards are needed for the single market. Opinions varied however regarding the geographical and technical scope of such standards given that some respondents suggested that the status quo is more or less sufficient. Others stressed the need to be pragmatic, bearing in mind the regional characteristics of the interconnected system and the fact that each TSO is presently operating on the basis of national rules and issues.

*Cost allocation*

63. A number of respondents highlighted the issue of cost allocation. They suggested that in order for cross border investment to occur, the problem of a TSO building and



maintaining assets in country C that primarily benefit trade flows and market participants in countries A and B needs to be addressed: A mechanism to remunerate TSO in country C from market participants (or by proxy, TSOs) in countries A and B is needed. One respondent said that it saw the role of ERGEG in addressing the cost allocation issue, with the implication that this would build on work associated with Regulation 1228/2003 and the Inter-TSO Compensation (ITC) scheme.

64. In this context, a number of respondents, representing mainly TSO interests, mentioned that they found present and/or proposed models for an ITC scheme under Regulation 1228/2003 inadequate in terms of providing an economically efficient solution to the cost allocation problem. They argued between them for a better approach that allows remuneration to a TSO to reflect costs and risks incurred by a TSO in respect of cross border flows.
65. One respondent noted that within the framework of Directive 2005/89/EC, Member States should take account of the need for renewal of the transmission network. This respondent suggested therefore that this as well as an incentive to build new lines might point to a higher return on investment.

#### *Incentives on TSOs*

66. A few respondents raised the issue of the need to financially incentivise TSOs to identify and provide adequate transmission infrastructure capacity, including in a cross border context. A couple of respondents also suggested that locational and/or congestion price signals are needed in order to signal where such investment is required.
67. One respondent suggested that the stated preference for incentivisation of TSOs in the ERGEG's Consultation Paper is controversial with the statement in the Paper (paragraph 33) that regulation will typically include caps on transmission revenue.

#### 2.3.3 ERGEG view

##### *Overarching framework*

68. Remarks from respondents have broadly been supportive of ERGEG's view as set out in the ERGEG Consultation Paper that there are gaps in the present regulatory framework particularly relating to cross border issues. ERGEG therefore underlines that some form of enhanced legal and regulatory framework is required that will obligate and allow the relevant actors – particularly TSOs and regulators – to pursue the development of transmission network infrastructure across and between national markets in order to underpin the emergence of a single market.
69. It is nevertheless important to recognize, as one respondent pointed out, that any new proposals to modify the regulatory framework will need to be carefully designed in order to promote effective functioning markets.
70. Regarding the PPI, ERGEG notes that this is concerned with the development of the generation / demand balance as opposed to transmission infrastructure planning directly.

### *Operating and Security Standards*

71. In ERGEG's view, the existing EU legal and regulatory framework does not provide a sufficient basis for the development of the single market as it is primarily designed to set the conditions for competitive markets within Member States. Therefore an EU regulatory framework needs to be developed to address the issues set out in ERGEG's Consultation Paper. Present practice suggests that operational planning coordination between TSOs has a European dimension and needs to be undertaken on a wider and more vigorous basis. Furthermore, although some regional agreements include Operating and Security Standards relating to cross border infrastructure, these are often not compulsory or enforceable. It is also the case that significant gaps in such rules may exist. For example many of the present regional rules relate to technical standards and are not primarily designed to facilitate the development of the single market. The development of overarching Operating and Security Standards will therefore also be a pragmatic element of the legal and regulatory framework.
72. In addition, ERGEG's Final Report<sup>8</sup> on the disturbances of 4<sup>th</sup> November, published on 7 February 2007, demonstrated that the status quo cannot be expected to guarantee a secure and reliable network capable of delivering security of supply and an integrated EU electricity market. ERGEG reinforces its view therefore that binding multinational Standards will be required.
73. It will of course be necessary in developing such Standards to take a pragmatic approach. ERGEG recognises that each TSO presently has obligations mainly in respect of its national market, and that differences exist in the technical characteristics and priorities in each of the synchronously connected regions. A pragmatic approach may therefore be to develop a hierarchical approach, in which high level and consistent Standards are set across the EU, underpinned by legislation. These Standards would for example reflect high level public interest objectives in maintaining a secure and stable transmission grid across the EU. These Standards should be placed in some manner on TSOs jointly, such that each TSO will continue to meet its national obligations, but will also be required to operate and maintain its system in order that the single market is developed. Detailed standards or rules can be developed at a more local level. In developing this hierarchy, emphasis should be placed on delivering the complementary goals of security of supply and a competitive market.
74. ERGEG confirms its view that some form of overarching Operating and Security Standards will be required.

### *Cost allocation*

75. It is clear that respondents share ERGEG's view that the cost allocation issue needs to be highlighted and addressed in order that cross border transmission infrastructure capacity can be developed. This issue will by extension include questions of the appropriate bearing of risk, for example regarding stranded assets. ERGEG confirms its view as set out in its Consultation Paper.

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<sup>8</sup> See footnote 2 above.

76. The ITC scheme is clearly relevant to this issue. Regulation 1228/2003 is framed in such a way that the ITC scheme relates more to the remuneration of TSOs of costs related to existing networks. It is clear therefore that a more general solution to the cost allocation and/or tariffication issue will require modifications in current legislation or further legislation.
77. ERGEG is ready to provide technical advice to the European Commission at its request regarding the ITC scheme under the Regulation.

#### *Incentives on TSOs*

78. ERGEG acknowledges that there are potential advantages in incentivising TSOs to identify, build and operate transmission infrastructure efficiently, including or particularly relating to that for cross border capacity and potentially involving an enhanced rate of return on some fraction of investment. ERGEG therefore in principle favours such an approach. Nevertheless, it is important to bear in mind that the effectiveness and efficiency of such an approach will crucially depend on the careful design of the incentive mechanism. Moreover such incentives will generally function most efficiently where network activities are effectively separated from other market activities so that the TSO is not influenced by other interests.
79. Regarding the form of regulation such as regulated tariffs or return, as described in paragraph 33<sup>9</sup> of the ERGEG Consultation Paper, and their potential conflict with financial incentives on TSOs, ERGEG clarifies that in its view the types of regulation described in paragraph 33 might well already be sufficiently flexible to allow for financial incentives for some portion of a TSO's activity. In any case, in principle ERGEG sees no contradiction in allowing some form of price or rate of return regulation for some portion of a TSO's activity to be supplemented by a financial incentive on some related or other portion of a TSO's activity.

## **2.4 Role of TSOs**

### 2.4.1 Recap from ERGEG Consultation Paper

80. TSOs in each Member State are clearly well integrated into the legal and regulatory framework and operate and maintain transmission networks to a high level according to the relevant rules and standards. There are, however, few obligations on TSOs relating to the provision of cross-border transmission infrastructure. Coordination for example may not be fully mandated. Most national frameworks do not for example compel a TSO to take account of the cross-border elements of multi-country standards, such as those given by UCTE.
81. Consequently TSOs do not, and indeed according to national legislation often cannot act jointly to plan, operate and invest in networks.. The same is often true for cooperation regarding planning, ex ante emergency planning, outages and new connections planning, and market information management. It is thus recognised

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<sup>9</sup> "For a TSO, its obligation to meet the prescribed Standards will be underpinned by an explicit or implicit "regulatory contract" whereby regulators undertake to sanction an appropriate rate of return or an appropriate level of transmission tariffs necessary for TSOs to recoup investment and operation costs. Regulators monitor and enforce the prescribed Standards. Regulation will therefore generally include restrictions or caps on TSO's overall transmission revenue, return, or transmission charges."

that co-ordination between national and European network bodies will be needed. There is a role for TSOs to act in an enhanced joint manner.

82. EREGG made initial recommendations therefore that TSOs should be given a remit to take into account consumers on a regional or pan EU basis, including a requirement for TSOs to cooperate more closely. This remit might include a new institutional basis for the TSOs, which should be subject to the usual established regulatory relationship between regulator and regulated entity.

#### 2.4.2 Respondents' views

83. A number of respondents supported the idea of more intense cooperation between TSOs, particularly concerning energy planning, outages and congestion management. ETSO suggested that TSO coordination could be further enhanced through the more formal grouping of TSOs envisaged by the Commission's 2006 Green Paper, and noted that it was willing to explore this with the European Commission. One respondent representing TSO interests suggested that a formalisation of the role of the existing TSO associations towards the EU would be helpful.
84. One respondent suggested that good cooperation between TSOs is best facilitated by harmonising and developing common rules and regulations across the electricity sector in Europe.
85. One respondent argued that as a minimum measure TSOs should be obliged to publish coherent and co-ordinated medium term plans for network expansion, including information on cross border transmission infrastructure capacity. This respondent argued that this would encourage TSOs to plan investment in collaboration with neighbouring TSOs. In a similar vein, another respondent argued for the establishment of regional planning process everywhere in Europe.
86. One respondent representing TSO interests proposed establishing a service provider to guarantee the synchronous system level co-ordination. This would have the advantage of providing a synchronous system level co-ordination and collaboration, in order to rule interactions among regions.
87. Some respondents also noted some potential drawbacks regarding the question of mandated closer cooperation between TSOs. One for example said that it might be difficult to oblige TSOs to act in some European manner or with a view to the wider EU market given that a TSO is generally governed by national law and that funding is generally only granted in support of national security obligations rather than regional ones. Other respondents argued that TSO cooperation concerning for example operational standards and investment planning is already well organised through institutions such as ETSO and the UCTE Operational Handbook, with the implication that there was no need for revised arrangements and that new legislation is not necessarily required.
88. One respondent pointed out that article 6 of Directive 2005/89/EC concerning Security of Supply and Infrastructure already provides some basis for TSOs to cooperate concerning investment decisions.

89. One respondent said that it is also necessary to separate the obligations of infrastructure providers from the obligations of a system operator given that the infrastructure provider has an obligation to invest while the system operator has obligations related to day to day operational responsibility. The infrastructure provider therefore needs both an obligation to invest and the necessary incentive in terms of funding.

#### 2.4.3 ERGEG view

90. The case for more intensive TSO cooperation seems clear. Operation and investment in transmission networks to support security of supply and electricity trade across the EU can only take place where national TSOs work together in some manner. The need for co-ordination between national and European regulatory and network bodies and their respective frameworks is needed. The recent disturbance on 4 November 2006 underlines this point concerning operation.
91. Furthermore, investment is a particular issue, since this requires, among other things, TSOs to form joint views about future developments in the interconnected national markets.
92. ERGEG therefore favours TSOs being given an obligation and a mandate to operate and invest in a joint manner. An appropriate mechanism for this would be the creation of a formal body of TSOs, acting jointly to develop and meet overarching Operating and Security Standards as set out above. This body would be subject to the oversight of an enhanced European regulatory group.
93. ERGEG's view therefore is that TSOs comprising this body would be obliged as regards cross-border framework for transmission network infrastructure:

#### Individually:

- to develop, operate and maintain the European grid in addition to the ones they already hold in respect of national networks;
- to comply with European standards, including operating and security standards, as well as existing national ones;
- to co-operate with other TSOs as necessary to comply with the European standards, including undertaking system and investment planning in respect of the European grids;
- to publish relevant information to ensure adequate transparency;

#### Collectively:

- to develop and maintain the new European standards approved by regulators acting jointly;
- to develop and maintain approved methodologies for charging and allocating the cost of the European grid;

- to report on the performance of the European grid;
- to enable co-operation between national TSOs necessary for the fulfilment of their European obligations (or where it is efficient for them to do so).

## 2.4 Role of regulators

### 2.5.1 Recap of ERGEG Consultation Paper

94. The role of regulators in respect of the oversight of the provision of transmission infrastructure capacity was set out in the Consultation Paper. It was noted for example that each regulator typically has powers and competences to oversee investment and remuneration at a national level, and to ensure that TSOs meet relevant Operating and Security Standards. However these powers and the associated 'regulatory contract' rarely extend to cross-border provision of capacity. Regulators in countries A, B and C for example cannot in general easily mandate cost allocation and money transfers where TSO in country C undertakes investment that solely benefits transfers from country A to B.
95. ERGEG's initial view therefore was that regulators should have duties to take into account the EU market and to cooperate with each other. In addition regulators should have additional competences to allow them to oversee planning and operation of transmission networks on a multi country basis and, to allow appropriate cost allocation, and to monitor, gather and share information on a multi country basis.

### 2.5.2 Respondents' views

96. A number of respondents supported the idea of modifying the duties and competences of regulators in order that the interests of EU customers and/or cross border issues are taken into account. Two of these respondents noted that in order for this to happen, the present set of national regulatory powers need to be 'levelled up'. One of the respondents said that it saw no political problem in the idea of modifying regulators' duties and competences, since growing interdependency of national markets means that network disruption in one Member State rapidly leads to supply difficulties in neighbouring states. Another respondent argued that current differences between regulators' duties and competences across Europe mean that it may be 'difficult for them to authorise and grant funding for investments that enhance cross border capacity'.
97. Other respondents broadly supported the creation of a European Regulator with powers in relation to cross border trade, including the development of new interconnections, and the operation and capacity allocation of existing interconnection infrastructure among Member States.
98. Other respondents implied that they preferred the status quo. One respondent for example argued that a first priority is to establish well functioning economic incentives which will drive market integration, rather than by increasing powers of regulators to override market decisions. This respondent argued for expedited legislative harmonisation process in Europe and further elaboration of detailed rules and regulations (including for congestion management and tariffication) that will facilitate

increased cross border trade, rather than new cross competences for regulators. Respondents also noted that modifying the duties of regulators would require significant legislative change and that enhanced or modified powers for regulators would be a further bureaucratic obstacle to market development. In general the respondents favoured developing greater cooperation between regulators through the existing body ERGEG, perhaps supplemented by a harmonised decision making process.

99. A couple of respondents explicitly supported the idea that regulators and TSOs should be mandated to a closer and specific cooperation.

### 2.5.3 ERGEG view

100. The arguments for some form of enhanced cross-border competences and duties on regulators remain compelling in ERGEG's view. Maintenance of the status quo is unlikely to allow a significant development in the processes necessary to identify, oversee and fund cross-border transmission infrastructure capacity. It seems clear that some form of cross-border cooperation between regulators and a legal basis for this is needed in order that cross-border transmission capacity can be developed.
101. ERGEG therefore favours the introduction of a duty on regulators to cooperate with each other together with sufficient powers for regulators to oversee jointly the planning and operation of networks and hence TSOs. ERGEG suggests as a first view that this would include powers as regards cross-border framework for transmission network infrastructure
- to oversee and approve the European operating and security standards;
  - to approve the methodology for appropriately allocating the costs and risks of investments in the European grid;
  - to monitor, gather and share information,
102. Such powers should of course be accompanied by an obligation on regulators to be accountable to, as appropriate, national parliaments and EU institutions.
103. An appropriate institutional form could, as some respondents have pointed out, be an extension of the ERGEG itself. Under this arrangement, ERGEG would be mandated to oversee the EU transmission market, and would have appropriate powers to do this. This need not be overly bureaucratic; it should be possible for example to limit the scope of any new competences and powers for ERGEG to those required for cross-border issues.
104. These arrangements will require legislative changes. ERGEG presently sees this as an issue to be developed from the European Commission's Strategic Energy Review and expected proposals for new legislation at a national and EU level.
105. Of course other market developments and rules will need to be progressed, including those for congestion management and tariffication. ERGEG is committed to consulting on and developing other necessary market arrangements, as set out in its Work Programme for 2007 and beyond.

## 2.6 Contract or 'Merchant' model

### 2.6.1 Recap from ERGEG Consultation Paper

106. The Consultation Paper noted that transmission network infrastructure can be provided either on a regulated basis by TSOs, or through private investment generally by non-TSO parties. Private investment is generally described as a 'Contract' or 'Merchant' model. Typically in this case the private party receives revenues from charging users access fees, which are generally unregulated. This model is most likely to be used where the access to the infrastructure can be well controlled and managed, for example where loop flows provide only minor disturbances, and where sufficient price differences exist between the two areas that become connected by the infrastructure such that arbitrage is desirable. Hence this model is typically applicable for large sub-sea DC interconnectors.
107. According to the provisions of the electricity Directive 54/2003/EC and the Regulation 1228/2003, parties wishing to build transmission infrastructure under the Merchant Model and charge access fees not subject to regulation must obtain an exemption. In order to obtain an exemption, certain criteria, which are set out in the Regulation, must be met.
108. ERGEG in its Consultation Paper noted that 'Merchant' provision of transmission infrastructure could in principle supplement the existing EU network, particularly for DC interconnectors. ERGEG suggested therefore that it would be helpful for the exemptions regime, and the regulatory process accompanying it, to be made clear for all potential investors. Such clarity would include a description of the process, the way in which criteria for exemptions might be assessed, the circumstances where exemptions might expect to be accompanied by additional criteria, and the prospect of obtaining a full or partial exemption.

### 2.6.2 Respondents' views

109. Some respondents commented that given the low level of transmission interconnection between EU Member States relative to the needs of the single market, 'Merchant' provision of transmission infrastructure is a useful way of increasing interconnectedness. One respondent commented for example that there is an urgent need to find ways to attract investments to interconnectors. Another respondent remarked that the American PJM market relies on significant 'Merchant' investment.
110. These respondents also argued for more clarity in the criteria and process for exemptions, suggesting for example that more clarity would create a favourable investment climate. They therefore supported ERGEG's suggestion for the exemptions regime and regulatory processes accompanying it to be made clear for all potential investors.
111. One respondent particularly raised the issue of one of criteria related to an exemption, as provided for in Article 7 of Regulation 1228/2003. The second criterion in Article 7 requires that, in order for an exemption to be granted :



*(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;*

This respondent argued that this criterion implies that in 'normal' situations a 'Merchant' model interconnector is not eligible for an exemption, and that the Regulation therefore favours TSOs (under a regulated approach) as constructors and operators of interconnectors. This respondent argued that the possibility to make the interconnector project economically viable should not be restricted to cases where the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted. The respondent called for the Regulation to be redrafted to exclude the risk related criterion, or at least for national authorities to indicate how the risk criterion is to be interpreted and how it will be applied in practice.

112. One respondent in particular raised the issue of proceedings at EC level. This respondent noted that in the case of the Estlink merchant interconnector project, the European Commission had not taken a formal decision under Regulation 1228/2003 not to oppose an exemption for this project. Instead the Commission had chosen to let the time period (two months), within which it was able to oppose an exemption, lapse. This respondent argued that this approach should be altered, and that the Commission should instead make a well founded decision.
113. One respondent raised the issue of the application of Articles 81 and 82 of EC competition law to 'Merchant' model interconnectors, particularly in terms of the product market definition. This respondent suggested that these issues are affected by an exemption and called for their clarification.

#### 2.6.3 ERGEG view

114. ERGEG confirms its view that it will be helpful to clarify the exemptions regime and regulatory processes accompanying it. Such a clarification should help potential investors in formulating potential projects and should therefore contribute to a more efficient investment process. It would at least be helpful for example to pay attention to the fact that applications for exemptions typically involve national authorities from at least two Member States as well as the Commission. ERGEG would note in addition that it is in any case fully committed to transparency in terms of regulatory process and the minimisation of regulatory uncertainty.
115. It is nevertheless also important to recall that regulators do not in each Member State have competences or a mandate to make a first assessment of exemptions under the Regulation. Competences sometimes fall to ministries for example, and the Commission has power of veto. ERGEG would therefore need to make any clarification regarding the exemptions process subject to these other authorities.
116. ERGEG would like therefore to develop some guidance on how regulatory authorities intend to assess exemption applications. Such guidance should reduce regulatory uncertainty and so facilitate investors and investment projects. ERGEG notes here that it will also be important for the rules concerning how 'Merchant' projects interface with the regulated network to be clearly set out.

117. Regarding the risk criterion, ERGEG notes that this must be assessed in the overall context of the provisions for the exemption requirements and the details of the exemption application under consideration. It may be the case for example that this risk criterion is particularly applicable in meshed network situations where obligations on TSOs would normally point to TSOs undertaking investment.
118. Regarding EC competition law, ERGEG can only remark that this is outside its area of competence and would refer it to the relevant competition authorities.

## 2.7 Other related issues

### 2.7.1 Use of congestion revenue

#### Respondents' views

119. Two respondents raised the issue of the use of congestion revenue from the management of congestion on interconnectors. One of these respondents noted that Regulation 1228/2003 requires such revenue to be used in particular ways, including the lowering of national grid tariffs. This respondent argued that if the use of the revenue were to become the usual use, it would in effect be a tax on congestion revenue and moreover would not lead to an increase in interconnection capacity. Both respondents argued therefore for congestion revenues to be used to increase interconnection capacity, perhaps within the scope of a regional funding system.

#### ERGEG view

120. ERGEG recalls in this context that Regulation 1228/2003 requires such revenue to be treated in particular ways. Furthermore ERGEG agrees that in principle that where congestion occurs and congestion incomes are obtained, this is a clear signal that the market requires increased connection capacity. TSOs should therefore be subject to some obligation or regime that encourages them to provide additional capacity as necessary, and this might well include an obligation to channel congestion incomes into new cross border investment. Nevertheless it is important to recall that such investments must be justified on a cost – benefit basis and that oversight of TSO spend is necessary in order that it is clear that congestion incomes are put to proper use.
121. ERGEG would also remark in passing that regulators should coordinate and be transparent in the way that revenue is used. Congestion management revenue for example might be pooled in some regional manner, subject to regulatory oversight and the need to allocate costs appropriately between the TSOs involved.

### 2.7.2 Unbundling

#### Recap from ERGEG Consultation Paper

122. In the context of the role of TSOs, ERGEG emphasised that TSOs can only properly take on the necessary roles in an effective and non-discriminatory manner where they are properly and effectively unbundled, and where an overarching regulatory oversight exists.

### Respondents' views

123. Several respondents raised the issue of unbundling in relation to the provision of transmission infrastructure. Two respondents emphasised the point that a TSO can only be expected to have a neutral, non-discriminatory and effective interest in purely network issues where there is proper and robust unbundling of network activities. One respondent suggested that proper and effective unbundling must also include a certain distance from national interests otherwise there will be a lack of European thinking in tackling new projects.

### ERGEG view

124. Regarding unbundling and the necessity for TSOs to act in a neutral and non-discriminatory manner with respect to transmission networks, ERGEG strongly agrees that network activities need to be properly and effectively separated from competitive activities. ERGEG therefore confirms its view as set out in the Consultation Paper. The European Energy Regulators position on unbundling and their reasoning is clear in the *CEER comments on the European Commission's Energy Green Paper* and in the *ERGEG response to the European Commission's Communication "An Energy Policy for Europe"*<sup>10</sup>. In principle, therefore, ERGEG regards ownership unbundling as the preferable solution.

## **2.7.3 Transparency**

### Respondents' views

125. One respondent representing TSO interests noted the importance of transparency of information in order to facilitate confidence in the market. The respondent suggested that any further calls for obligations on TSOs to provide further information to the market should be assessed both in the context of the data already available in the public domain and the fact that TSO publication of generation data is subject to the timely provision of data by generators to TSOs and generator permission to publish this data.

### ERGEG view

126. ERGEG agrees that adequate data transparency and information management are particularly important for a well functioning market. ERGEG notes the issues that TSOs raise in terms of achieving appropriate levels of transparency, and is committed to working with TSOs and others in order to address these issues.

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<sup>10</sup> See [www.ceer-eu.org/portal/page/portal/CEER\\_HOME/CEER\\_PUBLICATIONS/CEER\\_DOCUMENTS](http://www.ceer-eu.org/portal/page/portal/CEER_HOME/CEER_PUBLICATIONS/CEER_DOCUMENTS) and [http://www.ergreg.org/portal/page/portal/ERGEG\\_HOME/ERGEG\\_DOCS/ERGEG\\_DOCUMENTS\\_NEW/Energy%20documents](http://www.ergreg.org/portal/page/portal/ERGEG_HOME/ERGEG_DOCS/ERGEG_DOCUMENTS_NEW/Energy%20documents) respectively.

### 3. Conclusions and recommendations

#### 3.1 Introduction

127. This chapter sets out ERGEG's conclusions and recommendations regarding the provision of cross-border transmission infrastructure. These have been developed in the light of respondents' views and discussion given in chapter 2.

#### 3.2 Building and Construction Authorisations and Permissions

128. ERGEG recommends that:

- Processes for building and construction authorisations and permissions, including land planning, should be expedited, with the introduction of clear criteria, transparent guidelines and deadlines, with appropriate appeals mechanisms and with the consistent and transparent definition of roles either side of a border.
- Processes for obtaining BCAPs should include the possibility for national regulators and where appropriate ERGEG to provide an independent view or endorsement regarding a project's impact or importance for the secure and effective functioning of the electricity market.
- An independent third party is needed to provide a neutral opinion on the wider benefits of any project against any local costs and concerns.

129. In addition, ERGEG would note that :

- Clear political support is needed at both EU and national level in order to achieve the above.

130. ERGEG intends to pursue these matters at the national level with relevant ministries, and will monitor developments and report to a further 'Infrastructure Workshop' in early 2008.

#### 3.3 Regulatory process and framework

##### Overall

131. ERGEG recommends that a comprehensive EU-level regulatory framework should be put in place that will obligate and allow the relevant actors – particularly TSOs and regulators – to pursue the development of transmission network infrastructure across and between national markets in order to underpin the emergence of the single market. The role of regulators and TSOs will need to be defined further under an overall legal and regulatory framework.

##### Operating and Security Standards

132. Such a framework should in ERGEG's view include the introduction of pan-EU Operating and Security Standards. High level standards should be set across the EU, underpinned by legislation. Detailed standards or rules should be developed at a local or regional level by TSOs, in order to allow the reflection of physical differences

and needs. Regulators would maintain oversight, approval and enforcement of such standards or rules.

#### Cost allocation

133. ERGEG confirms its view that issues of cost allocation and risk bearing are a particularly significant issue in terms of the further development of cross border infrastructure development, and so require attention. The legal and regulatory framework will need to be appropriately given for example such that customers in one country can finance transmission investment in another, where it benefits them. Clearly the ITC scheme and tariffication models are elements of this and will need to be developed.

#### Incentives on TSOs

134. ERGEG retains the present view that providing with incentives TSOs to plan and build transmission infrastructure can be one way of promoting the efficient identification and provision of such infrastructure. ERGEG recalls, however, that the effectiveness of such incentives depends among other things on their careful design and an effective separation of transmission network and other electricity market activities.

### **3.4 Role of regulators**

135. ERGEG is of the view that a regulatory relationship and competence needs to be created at an EU level, in order to oversee and enforce TSO's obligations and duties. Hence ERGEG recommends that :
- A broader remit for ERGEG should be developed for the oversight of the European collective obligations of the TSOs so that the EU-level regulatory organisation has duties and competences to oversee, approve and enforce standards and rules on TSOs in respect of the EU grid. National regulators will retain oversight and enforcement of such standards and rules at the national level.
  - Regulatory competences at the EU level will need to include :
    - Approval of the European security and operating standards which the European Grid must meet;
    - Monitoring the compliance European security and operating standards within the EU;
    - Approvals of the methodology for appropriately allocating the costs and, risks of investment in the EU grid and where appropriate investment proposals;
    - Powers to introduce appropriate cost reflective transmission charging methodologies, with a pricing structure that reflects the needs of the wider European market;
    - Powers and resources to enforce oversight and decisions;

- Monitoring and information gathering powers; and
  - Accountability of regulators, as appropriate to national parliaments and EU institutions.
136. Equally, national regulatory authorities should have sufficient competences, independence and resources.

### **3.5 Role of TSOs**

137. ERGEG recommends that :

- National TSOs continue to be responsible for management and operation of their own networks.
- Each TSO is also given a collective responsibility to develop, operate and maintain the EU grid in a way which meets requirements to be established in EU legislation.
- TSOs should collectively develop and maintain the European standards, develop and maintain approved methodologies for charging and allocating the cost of the EU grid under a new institutional basis to undertake these roles. They should be given a legal obligation to cooperate and to act jointly in order to fulfil their collective responsibilities. TSOs will therefore be collectively subject to regulatory oversight by ERGEG.

138. A prerequisite for this will be that TSOs are effectively unbundled.

### **3.6 Merchant interconnectors**

139. ERGEG recommends that ERGEG works to clarify the criteria to be applied to, and the regulatory process for, the exemptions regime. Such clarity should provide an input for investors and serve to reduce uncertainty faced by them in planning investments, including setting the question of the risk criterion within the overall context of the exemptions criteria.