

**EREG Public Consultation  
on Congestion Management Guidelines<sup>1</sup>  
- Evaluation of the Comments Received -  
18-07-2005**

**INTRODUCTION**

This document contains the evaluation by EREG of the comments received during the EREG public consultation<sup>2</sup> on Congestion Management (CM) Guidelines.

The public consultation was held between 2nd May 2005 and 24th June 2005. The purpose of the public consultation was to provide EREG with the basis for the final proposal to the European Commission of the CM Guidelines, by considering as wide as possible scope of inputs and proposals from all interested parties.

On 30. June 2005, a public hearing was held by EREG, to which all organisations and stakeholders that delivered comments during the public consultation were invited for presentation and discussion. The agenda and all presentations made are available at [www.ereg.org](http://www.ereg.org).

EREG has evaluated the comments provided in the public consultation, principally in terms of applicability and consistency. For each comment, the following evaluation template has been used:

#	CM Guidelines reference	Original text of the comment	EREG evaluation	EREG explanation
<i>No. of comment</i>	<i>CM Guidelines section/chapter to which the comment refers to</i>	<i>original comment text</i>	<i>Yes (accept) or No (reject)</i>	<i>EREG explanation (especially if rejected)</i>

The positively evaluated comments from public consultation, supplemented with additional inputs and clarifications from the public hearing, have been incorporated into the final EREG draft of the CM Guidelines. EREG has proposed this final draft to the

<sup>1</sup> Congestion Management Guidelines according to the Article 8 of the Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity

<sup>2</sup> Principles and rules for the EREG public consultations are provided at [www.ereg.org](http://www.ereg.org)

European Commission as formal advice prior to the Comitology process necessary to approve final guidelines.

Section I of this document contains the evaluation of all the comments, organised according to the above mentioned template and to the organisations and stakeholders that responded. The reference text of the CM Guidelines is the one from the ERGEG public consultation. The comments have been quoted with their original format and contents as submitted by the organisations and stakeholders. The underlined text means new text proposed to be added, the ~~crossed text~~ means text that ERGEG proposed to be deleted.

Section II presents a short summary of the highlights of the public hearing from 30. June 2005.

Section III contains the additional modifications to the CM Guidelines, proposed by ERGEG following the public consultation and hearing, that were not delivered by any organisation or stakeholder, but were instead additionally recognised as needed and justified by ERGEG.

Finally, in the Annex in Section IV, the actual ERGEG proposal for the final draft of the CM Guidelines is enclosed.

This document is published at the ERGEG website [www.ereg.org](http://www.ereg.org).

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**Section I – Evaluation of Comments received in the Public Consultation on CM Guidelines**

<b>I-1. AEP – ASSOCIATION OF ELECTRICITY PRODUCERS</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	Explanatory Note 1	A clearer definition of “secure network operation” is needed	Yes	The following definition is used: “Secure network operation is characterised by the normal operational state where the operational security criteria and constraints are met.”
2.	Guidelines 1.12	Penalties for the non-use of capacity should be proportionate	Yes	The comment will be modified into: “Any cost reflective charges for the non-use of capacity shall be justified and proportionate”
3.	1.13	The text should place more emphasis on the development of secondary trading. The TSO will not necessarily be involved in the reassignment of unused capacity, which might be sold on to another market player.	No	The Guidelines are clear here. Secondary trading should be developed by market parties and brokers.
4.	2.4	We welcome the strengthening of the obligation on TSOs to harmonise congestion management methods where trade on other interconnectors is significantly affected. An obligation should also be placed on regulators to promote such harmonisation.	Yes	It is helpful to clarify that regulators have a role here.
5.	2.5.(4)	We believe that cross-border balancing mechanisms need to be transparent and open to all market participants. The costs of post-gate-closure balancing trades between TSOs need to be made explicit.	No	The comment is indeed relevant, but primarily for balancing therefore not included at present into the Guidelines.

6.	2.5.(10)	We are opposed to the addition of the words “non-cost-reflective”. Reserve or guide prices, whatever their basis, do not represent a market-based mechanism of allocation. If capacity has been offered and bids have been received, then it must be allocated accordingly.	No	Instead of including this comment, a modification has been made: “Other than in the case of merchant lines, establishing non-cost reflective reserve prices in capacity allocation methods shall not be allowed.”
7.	2.5.(14)	We welcome the proposal to foster secondary markets, though the wording should be strengthened. One obstacle which needs to be tackled in this area is the fact that system operators have the final say in re-assignments and reallocations	Yes	Wording has been adjusted.
8.	3.8	We agree that TSOs should not tackle congestion by displacing it to the border. It is important that regulators apply the Guidelines to all congestion, whether it manifests itself at national borders or not. However, the wording should make clear that the capacity restrictions referred to are only acceptable in the short term, not “until a long-term solution is found”, which could delay progress indefinitely.	Yes	It is considered that the comment is already acknowledged by the existing text of the Guidelines
9.	4.1(1) 4.1(4)	We are concerned that the need for multiple regulatory approvals of congestion management schemes could lead to unnecessary complications and delays. ERGEG should in our view propose a simplified procedure for handling these issues.	No	Owing to the complexity and practical inputs needed, a definition of such a procedure must be postponed to the future.
10.	5.	Commercial confidentiality must be observed when, for instance, auction results are published. We suggest that section 5 includes a reference to Art. 12	No	Article 12 will in any case apply.

		of the Electricity Directive. Regulators should also have an obligation to protect commercially confidential data.		
11.	5.2.(3)	The proposed EREG amendment substantially weakens the Commission text. Weekly data give additional precision, since they provide hourly rather than seasonal information. We believe that TSOs should be required to provide week-ahead forecasts.	No	Guidelines already require this.
12.	6.	TSOs should be expressly incentivised to maximise available capacity and avoid congestion. The impact of a revenue-neutral mechanism ( <i>Introduction Para 5</i> ) is that TSOs will be inclined to “play safe” and adopt very conservative approaches to making capacity available. TSOs should be allowed to keep some proceeds from auctions, but this should be linked to a revenue mechanism which varies with the amount of interconnection made available.	Yes	Wording has been adapted accordingly.

<b>I-2. APG – Austrian Power Grid (TSO)</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	Explanatory Note	<p>Proposal to revise definition of congestion to:</p> <p>“An interconnection is to be considered as congested when the sum of demand for capacity including the forecasts for physical electric power flows resulting from transactions accepted by other TSOs at a specific allocation timeframe exceeds the capacity available at that interconnection”</p>	Yes	Included with a modification of “by other TSOs” into “by the TSOs”.
2.	Guidelines 1.5	<p>Proposed changes:</p> <p>“Coordination between TSOs shall at least include <u>the secure operation of the grids and the optimisation of the allocations</u> in view of the promotion of fair and efficient competition. This coordination shall take into account <u>the best estimate for forecasted global grid situation with physical flows resulting from all transactions accepted by other TSOs</u>”</p>	Yes	-
3.	1.8	<p>Proposed changes:</p> <p>“Co-ordinated allocation procedures for allocation of capacity to the market shall be applied <u>at least for the yearly, monthly and day-ahead allocation period</u> latest from [01. January 2007] in the following areas:”</p>	No	Coordinated intraday allocation will also be an important feature of the market.
4.	2.1.(2)	<p>Proposed changes:</p> <p>“If congestion involves at least two interconnections, i.e. if</p>	Yes	Included with a modification of “significantly affect <u>the physical flows</u> on other interconnections” into

		<p>transactions on one interconnection significantly affect <del>possible transactions</del> the <u>physical flows</u> on other interconnections (this could occur e.g. in the areas defined in these Guidelines in 1.8), the congestion management method must be coordinated. This means in particular compatibility and common approach for all the congested interconnections in terms of :”</p>		<p>“significantly affect the <u>physical flows and/or possible transactions</u> on other interconnections”</p>
5.	2.1.(2)(e)	<p>Proposed change:</p> <p>“(e) <del>Products</del> <u>Allocation periods</u> (e.g. day ahead, intra-day, long term, etc.)”</p>	No	<p>Allocation period refers only to time, whereas here many aspects are referred to, notably: time, duration of a specific product (e.g. day ahead, hour, week, etc.), amount of power in MW, etc. Therefore a modification is included:</p> <p>“<u>Products in terms of allocation periods, duration of a specific product (e.g. day, 3 hours, 1 week, etc.), amount of power in MW, MWh etc. (e.g. day ahead, intra-day, long term, etc.)</u>”</p>
6.	2.3	<p>Proposed changes:</p> <p>“In case of structural congestion, the congestion management methods shall ensure that the <u>physical</u> power flows associated with all allocated transmission capacity comply with network security standards being at an acceptable level. A particular request for transmission service shall only be denied when the <u>physical</u> power flows resulting from its acceptance, in addition to the other accepted requests, lead to <u>an expected</u> situation where secure operation of the</p>	Yes	-



		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”		
7.	2.5.(13)	Assessment of whether a contract of market actors could violate the EU Treaty cannot be task assigned to TSOs but of the responsible Authorities (e.g. Regulators) only.	Yes	- 2.5. already foresees this implicitly
8.	2.5.(14)	Two problems identified :  <i>Tracking system:</i> Who is the valid owner of the capacity in case of two parties declaring themselves to be the legal owner ?  <i>If the eligible trading partners are not limited to the energy sector,</i> this provision may increase the problem of market power abuse.	No	Secondary trading of transmission capacity rights is vital to ensure liquid and efficient pricing. It will be possible to devise procedures to facilitate this, as already happens on the England – France interconnector for example.  Any instances of market power abuse can be tackled with competition law.
9.	2.6	Propose changes:  “In cases where <u>commercial exchanges</u> nomination for an expected flow between two countries (TSOs) <u>are expected to significantly affect the physical flow</u> conditions in <u>any other third</u> country (TSO), congestion management methods shall be co-ordinated between the two countries (TSOs) concerned and the <del>third country</del> <u>other countries</u> (TSO) through a common allocation procedure. National Regulators shall ensure that no congestion management procedure with significant effects on <u>physical</u>	Yes	A modification is included, combining the text with the related proposal from VEÖ.  Add “... National Regulators and TSOs shall ensure ...”

		power flows in other networks, be devised unilaterally.”		
10.	3.6	Suggestion that in some Member States the legal system is not consistent with this obligation (e.g.: availability of needed data to TSOs; data protection is a constitutional matter in Austria). In order for TSOs to fulfil this requirement, a similar obligation of all other related market actors would also be needed	No	TSOs already do this on a national level. The CM Guidelines merely seek coordination at an international level. The Regulation (EC) 1228/2003 provides the necessary legislative basis.
11.	4.1.(2)	Proposed changes:  “The access rights of long- and medium term allocations shall be transmission <u>capacity rights</u> , with no obligation to be used. It shall be subject to the use-it-or-lose-it <u>principles</u> at the time of nomination.”	No	It is important to specify the quality of transmission access rights so that, for example, market players can assess risks of trading.
12.	4.1.(4)	Proposed changes:  “ <u>Firm nomination</u> 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 thereafter. <u>Firm Nominations of transmission rights in opposite direction</u> shall be taken into account <u>as far as possible</u> for netting in order to use the interconnection to its maximum of capacity”	Yes modified	Remove the last modification “as far as possible” as it creates a room for arbitrary interpretation and discussion but does not improve the clarity. Also omit “firm” for clarity and since it is dealt with in detail in CM Guidelines 1.12.
13.	5.2.(2)	Question whether TSOs should give information to market players concerning the work of	No	Transparency of market information is paramount to efficient market functioning.

		<p>their competitors.</p> <p>Further question is that the availability of production units is in Austria a matter of the data protection law and backed by the constitution</p>		<p>Where information is available on a timely non-discriminatory basis, there should be no concerns about this occurring in a competitive market setting.</p>
14.	5.8	<p>Proposed changes:</p> <p><u>“Where required by the National regulatory authorities, the TSO shall publish also the relevant information on generation according to the timeframes defined in 5.2. and 5.3, as far as the provision of such data is compliant with commercial confidentiality.”</u></p>	No	<p>The Regulation should provide consistent treatment across all Member States.</p>
15.	6.2	<p>Proposed changes:</p> <p>“The revenues resulting from the allocation of interconnection capacity shall be used for one or more of the following purposes:</p> <p><u>(1) to cover the costs for the allocation procedures</u></p> <p>(2) Guaranteeing the actual availability ...”</p>	No	<p>The Guidelines mirror the requirement of the Regulation here.</p>

<b>I-3. EBL (Norwegian Electricity Industry Association)</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	Guidelines 1.8	Suggest coordinated allocation procedures for Northern Europe area should come into force no later than 1 January 2006	No	Guidelines foresee consistent timetable across the EU
2.	3.8	<p>Suggest that use of phrase “technical viewpoint” is unclear and imprecise, and could undermine the main intentions of the Guidelines. It could for example encourage moving internal congestions to borders.</p> <p>Propose “While defining optimal network parts for congestion management, TSOs shall be guided by cost-efficiency and the lowest negative impacts on market. In that sense, TSOs shall not restrict trade capacity on the borders of their own control area in order to prevent internal congestions. 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 for reasons of common operational security in the market area, including security in neighbouring countries. The methodology and projects to achieve solutions concerning operational security shall be described and transparently presented to all the users by the TSOs”</p>	Yes	<p>Included with modifications as discussed within EREG:</p> <p>“While defining appropriate network parts for congestion management, TSOs shall be guided by cost-effectiveness and the lowest negative impacts on the internal electricity market. In that sense, TSOs shall not limit the interconnection capacity in order to solve congestion inside their own control area except for the above mentioned and reasons of operational security. If such a situation occurs, this shall be described and transparently presented to all the users by the TSOs. Such a situation can only be tolerated until a long term solution is found. The methodology and projects to achieve the long term solution shall be described and transparently presented to all the users by the TSOs.”</p>

I-4. EFET				
No	Chapter / section	Comment	Include (Yes/No)	Explanation
1.	Explanatory Note	Proposal for inclusion in the Guidelines (and its introductory section) of an indication on how a secondary market in transmission rights could be operated and which should be the role of the market participants.	No	Although it is important that creation of secondary trading market is encouraged (cf. Par. 2.5.(14)), there is a need for a thorough discussion on which the main features of a secondary market should be, therefore this issue would be addressed in the future.
2.	Guidelines  2.5.(10)	Proposed change:  <del>Establishing non-cost reflective</del> reserve prices in capacity allocation methods shall not be allowed	No	The modification is included instead:  "Other than in case of merchant lines, establishing non-cost reflective reserve prices in capacity allocation methods shall not be allowed."
3.	3.8.	Proposed change:  "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 and for reasons of operational security. <del>Such a situation can only be tolerated until the long-term solution is found. The methodology and projects to achieve the long-term solution shall be described and transparently presented to all the users by the TSOs"</del>	Yes modified	Included with modifications as discussed within EREG:  "While defining appropriate network parts for congestion management, TSOs shall be guided by cost-effectiveness and the lowest negative impacts on the internal electricity market. In that sense, TSOs shall not limit the interconnection capacity in order to solve congestion inside their own control area except for the above mentioned and reasons of operational security. If such a situation occurs, this shall be described and transparently presented to all the users by the TSOs. Such a situation can only be tolerated until a long term solution is found. The methodology and projects to achieve the long

				term solution shall be described and transparently presented to all the users by the TSOs”
4.	5.2.(3)	Par 5.2 (3) " <del>weekly (in cases where weekly publication adds significant information quality and contents in relation to monthly publication):</del> 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"	Yes	-
5.	6.1., 6.3.-6.7.	The paragraphs must be reworded to indicate that incomes from congestion rents should revert not only on TSOs but on other market participants	No	A more general, initial formulation is left since it is considered more appropriate.
6.	Explanatory Note	Definition of congestion management provided by ERGEG only covers commercial congestion. Physical congestion should also be included.	Yes	-
7.	Explanatory Note	Transparency:  More requirements of publication of data on TSOs or market operators and its frequency	No	It is considered that the presently required data are well understood and justifiable. Any further expansion of data to be made available to all market participants need further study.
8.	Explanatory Note	Revenue Neutrality:  Mention that congestion rents	No	The formulation "... securing the reserved capacity ..."

		should be used for coordinated redispatch and counter trading		explains this.
9.	Guidelines 1.3.	Proposed change:  "...coordinated as far as possible and calculations of the capacity available to the market shall <del>take into account</del> <u>primarily be based on</u> the actual forecasted physical electric power flows."	Yes	Physical flows should be the main input for the calculation of the available capacity
10.	1.5.	EFET prefers the word maximisation rather than optimising as the goal is better understood. In addition the Regulation uses the term maximisation.	No	Any maximisation must nevertheless take into account the physical realities and operational security what is also formulated accordingly. Therefore "optimisation" is at present considered as the appropriate formulation.
11.	1.12.	A well designed secondary capacity market should avert any need for a penalty. The market price would already account for this.	Yes (N/A)	See comment to point 1 in this table.
12.	1.12.	"....shall be attributed to those who are responsible for such a failure. Where market participants fail to use <u>(or in the case of explicitly auctioned capacity, give back in due time or secondarily trade)</u> the capacity that they have committed to use, they shall be exposed to a penalty...."	YES	-
13.	1.13.	Par 1.13 "Efficient use of cross-border capacity entails that all unused and non allocated capacity will <u>either be secondary traded or</u> be made available for re-assignment"	Yes	The need for a secondary capacity market is already mentioned in par. 2.14
14.	1.14.	Par. 1.14. " Whenever necessary, re-assignment of unused capacity should take	Yes	Netting flows can facilitate optimising/ maximising capacity availability, remove

		into account also problems relevant to the degree of competition and market power issues <u>and include the obligation of netting the predicted flows as far as possible</u> "		only the last statement "as far as possible".
15.	2.3.	Par. 2.3. To stress the need to forecast capacity based on flow forecasts	Yes	-
16.	2.5.(7)	Proposed change:  " <u>Capacity allocation methods and congestion management mechanisms shall allow network operators to reveal the value placed on capacity...</u> "	Yes	-
17.	2.5.(11)	Proposed change:  "In principle, all potential network users will be permitted to participate in the allocation process without restriction. Exceptionally, restrictions may be made <u>for reasons where regulators are in possession of objective evidence of abuse of market dominance related to bidding for or hoarding of allocated capacity</u>	No	It is necessary to be able to act in an ex ante manner.
18.	3.1.	(in general the whole par. 3). The Regulation calls for maximising capacity. The Guidelines calls however for optimising	No	See the comment to the point 10 in this table
19.	3.8.	Art. 3.8. Call for using counter trade and redispatching to maximise capacity	No	The only methods which are directly mentioned in the guidelines are explicit and implicit auctions



I-5. ETSO				
No	Chapter / section	Comment	Include (Yes/No)	Explanation
1.	Guidelines, 1.	Changes: ... at an economically efficient level, for example through <u>curative</u> redispatching or countertrading <u>in case other lower cost measures cannot be applied</u> ...	Yes	-
2.	Guidelines, 1.	Changes: ... take into account the <u>best estimate</u> for forecasted physical electric power flows ...	Yes	-
3.	(NEW) 1.4 (moved to 1.15 at the end of section 1. for easier reading)	When there is no congestion, there shall be no restriction of access to the interconnection. Where this is usually the case, there need to be no permanent general allocation procedure for access to transmission service. Of course in case there is actually congestion, TSOs will manage the situation according to previously published market based rules. ...	Yes, omitting the last sentence	The last sentence shall emphasize the need to define and implement the rules accordingly and ASAP:  ... <del>Of course in case there is actually congestion, TSOs will manage the situation according to previously published market based rules.</del> <u>If congestion appears, the rules and arrangements for the appropriate dealing with it shall be agreed by all the involved parties and implemented as soon as possible by the TSOs.</u>
4.	(OLD) 1.4, 1.5, 1.7, 1.8	Minor / editorial changes	Yes	-
5.	(OLD) 1.8 (1)	Remark	N/A	This report shall be referred to in the guidelines as this will become one of the cornerstones in reaching a true compatibility between the different market regions

				in the future
6.	(OLD) 1.9 1.11	Editorial changes	Yes	-
7.	(OLD) 1.12	<p>Reformulation:</p> <p>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 the capacity that they have committed to use, they shall be exposed to <u>the loss of rights to such interconnector capacity, likewise a penalty</u> if a TSO does not fulfil the obligation it will be <u>financially liable to compensate the market participant for the loss of interconnector capacity rights, however, in all cases limited the value of the capacity right. No consequential losses shall be taken in to account for this purpose.</u> <del>for the consequences.</del> 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 <u>the liabilities that accrue upon penalties and consequences</u> 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</p>	Yes	-

		(together with the congestion management method) need to be approved by the involved regulatory authorities.		
8.	(OLD) 1.14	Adding text “market structure”	YES	-
9.	2.1(2)	Change:  If congestion involves at least two interconnections, i.e. if transactions on one interconnection significantly affects <del>possible transactions</del> <u>the physical flows</u> on other interconnections (this could occur e.g. in the areas defined in these Guidelines in 1.8), the congestion management method must be coordinated. This means in particular compatibility and common approach for all the congested interconnections in terms of:	Yes with modification	Modified: “... affects possible transactions and/or the physical flows”  (in any case we aim to have one stop shop)
10.	2.1.(2) (a)	Change:  <del>Use of a transmission model Calculation of capacity dealing efficiently with interdependent physical flows</del>	Yes	-
11.	2.1.(2) (b)	Change:  <u>Allocation of capacity using a consistent contractual framework with market participants</u>	Yes modified	Created a separate point for that:  2.1.(2) (f) Usage of a consistent contractual framework with market participants
12.	2.1.(2)(c)	Added:  Obligation on capacity holders to provide	Yes	-

		information on their intended use of the capacity, i.e. nomination of capacity for <u>explicit auctions</u>		
13.	2.1.(2) (e)	Change:  <del>Products</del> <u>Allocation periods</u> (e.g. day ahead, intra-day, long term, etc.)	No	Allocation period refers only to time, whereas here many aspects are referred to, notably: time, duration of a specific product (e.g. day ahead, hour, week, etc.), amount of power in [MW], etc. Therefore a modification is included:  "Products <u>in terms of allocation periods</u> , duration of a specific product (e.g. day, 3 hours, 1 week, etc.), amount of power in MW] <u>MWh etc.</u> ( <del>e.g. day ahead, intra-day, long term, etc.-</del> )"
14.	2.3	Changes:  In case of structural congestion, the congestion management methods shall ensure that the <u>physical</u> power flows associated with all allocated transmission capacity comply with network security standards <del>being at an acceptable level</del> . A particular request for transmission service shall only be denied when the <u>physical</u> power flows resulting from its acceptance, in addition to the other accepted requests, lead to <u>an expected</u> 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)	Yes	-

		lower than other request accepted under the same contractual conditions whose rejection would also secure the power system.		
15.	2.4	Change:  <u>National regulatory authorities and TSOs shall make efforts to harmonise the procedures for congestion management on different interconnections in order to facilitate efficient trade across several interconnections.</u>	No	Remove 2.4 (after discussion in ERGEG) as it is not actually useful; move a part on the efficient trade to 2.1.(1)
16.	2.5 (3)	Proposed change:  ... The allocation method may depend on the timeframe, for example long term allocation (yearly, monthly) <del>could</del> <u>will</u> require e.g. explicit auctions and short term allocation ( <del>intra-day-ahead</del> ) <del>could</del> <u>will</u> require e.g. implicit auctions.	Yes modified	-
17.	2.5(4)	Proposed change:  <u>Mechanisms for an intra-day congestion management of interconnector capacity shall be established in a coordinated way and under secure operation conditions, in order to maximize opportunities for trade and to make provisions for cross-border balancing</u>	Yes	-
18.	2.5. (5–14)	Several changes proposed	Yes	Except 2.5.(10) (if any reserve prices are established they must be cost reflective.

				<p>Except 2.5.(11) There shall be no restrictions</p> <p>Except part of 2.5.(12) Preventive action is necessary</p>
19.	2.6.	<p>Changes proposed:</p> <p>In cases where <u>commercial exchanges nomination for an expected flow</u> between two countries (TSOs) <u>are expected to significantly affects the physical flow</u> conditions in <del>the</del> 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 <u>physical power flows in other European networks</u>, be devised unilaterally.</p>	Yes	Modified
20.	3.5. (number 3.5. after EREG proposed changes)	<p>Proposed changes:</p> <p>When there is intermittent congestion, restrictions on network access shall apply only for the time when the congestion exists, or should deliver an allocation <u>via a market based mechanism free of charge in a case where there is no actual congestion</u> requests for transmission access do not exceed the available capacities.</p>	No	Leave the later formulation "where there is no actual congestion" as it is more general and adjusted to what we want to say than referring to "requests for transmission access ..."
21.	3.8 (number)	Proposed change:	Yes	(see already mentioned change to 3.8. before in other

	3.8. after the ERGEG proposed changes)	... The methodology and projects to achieve the long-term <del>solution</del> <u>alleviation of the structural congestion</u> shall be described and transparently presented to all the users by the TSOs.		tables)
22.	4.1. (2)	Proposed change:  The access rights of long- and medium term allocations shall be <del>firm</del> <u>transmission capacity</u> rights, <del>with no obligation to be used. It shall be</del> subject to the use-it-or-lose-it <u>principles</u> rule at the time of nomination.	Yes	-
23.	4.1.(4)	Proposed change:  <del>Firm</del> <u>Nominations</u> 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 thereafter <sup>1</sup> . <del>This firm nominations of transmission rights</del> <u>capacity</u> <del>in opposite directions shall be taken into account for netting in order to efficiently use the interconnection to its maximum of capacity.</del>	Yes	-

24.	4.1.(4)	<p>Proposed changes to Footnote of 4.1.(4):</p> <p>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) <u>unused long and medium term transmission capacity rights may not be nominated</u>; c) <u>firmly nominated transmission capacity rights that have been globally netted thus creating additional but non firm capacity in their opposite direction might create opposite flows in the same transmission line</u></p>	No	<p>The introduction of the changes risks implying that unused long and medium term transmission rights need not be nominated and therefore need not be used or subject to UIOLI.</p>
25.	4.1.(6)	<p>New text:</p> <p><u>Where part of the interconnection capacity is allocated through short-term implicit auctioning procedures, National regulatory authorities must pay attention that there is a fair share of capacity between forward bilateral trade and power exchange trade. 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 by implicit or explicit auctioning or implicit auctioning a combination thereof can be</u></p>	No	<p>Original text is clearer, referring to the non-discrimination and in particular, not introducing any "arbitrary" term of "fairness".</p>



		<p><del>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.</del></p>		
26.	4.1.(7)	<p>Proposed changes:</p> <p><u>In regions where forward financial energy markets are well developed and have shown their efficiency, However, the Member States National regulatory authorities may decide to allocate all the interconnection capacity through implicit auctioning. In regions where at present no market based capacity allocation procedures exist, concepts for an immediate introduction of market based congestion management shall be pursued. Striving for more sophisticated methods shall not justify a delay in the introduction of methods according to 2.5 (8) especially in regions where financial energy markets are well developed.</u></p>	Yes	-
27.	4.1.(8)	<p>Added text:</p> <p><u>For interconnections for which adjacent markets offer intra-day trading with compatible rules, successive intra-day allocations for the day D of the available transmission capacity shall take place on days D-1 and D, after the</u></p>	No	The short term intra day trade must remain the goal aimed for, as this is regarded as the key feature for a really transparent congestion management (and market ...)

		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		
28.	5.2.(3)	Proposed changes & remark:  weekly (in cases where weekly publication adds significant information quality and contents in relation to monthly publication): 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 <u>new</u> information available to the TSOs at the time of calculation of the forecast, such as weather forecast, availability of the production units, <u>maintenance and topology of the grid etc.</u> <b><i>[ETSO comment: the accuracy requested for each market time unit for week-ahead forecasts gives an impression of accuracy that does not exist in reality (e.g. if compared to monthly). This is in particular relevant if wind forecasts have to be considered.]</i></b>	Yes	Omitting "new"

29.	5.2.(7)	Proposed change:  total capacity used by market time unit <del>immediately</del> <u>as soon as possible</u> after the moment of nomination	No	It must be immediately, ASAP is too imprecise.
30.	5.3.	Proposed change:  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 <u>energy bids</u> can <del>have to be sent into power exchanges</del> <u>organised markets</u> )	No	Initial formulation is clearer and more specific.
31.	5.6	Proposed change:  The actual <u>physical flows</u> at the interconnections shall be published accordingly (e.g. on the website) by the TSOs in an appropriately timely manner	Yes	-
32.	5.7.	Proposed change:  The demand forecast information <del>for each control area</del> shall also be published by the TSO according to the timeframes defined in 5.2. and 5.3 <u>as far as such timeframes are relevant for network availability and use</u>	Yes	But not including the latest phrase – all such information is relevant and it cannot be judged on an unknown criteria.
33.	5.8.	Proposed change:  <u>Where required by the National regulatory authorities,</u> <del>the</del> TSO shall publish also the relevant information on generation according to the timeframes	No	This must remain a strong requirement throughout the IEM.

		defined in 5.2. and 5.3, <u>as far as the provision of such data is compliant with commercial confidentiality.</u>		
34.	6.1.	Proposed changes:  Congestion management procedures may generate revenue for TSOs <u>via market based mechanisms only</u> in cases <u>where <del>of congestion</del> requests for transmission access exceeding the available capacity.</u> 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 <u>increase</u> the amount of <u>available transmission capacity</u> <del>congestion</del>	No	More general, initial formulation is left since considered more appropriate.
35.	6.2.	Added text:  <u>In addition to covering the costs of the allocation procedures.</u> <del>†</del> The revenues resulting from the allocation of interconnection capacity shall be used for one or more of the following purposes ...	No	The use of congestion revenues in the Guidelines is defined in line with the Regulation.
36.	6.4., 6.5., 6.6.	Minor editorial changes.	Yes	-
37.	6.6	Remark by ETSO – to be explained what is unclear	Yes	Better explanation included on what is meant by “on top of ...”
38.	6.7	Proposed changes:  The use of congestion	Yes	-

		<p><del>incomerents</del> for investments in maintaining or increasing the interconnection capacity shall preferably be assigned to specific predefined projects contributing to relieving the existing <del>associated congestion and</del> 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 or in ownership of a state 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 <del>an interconnector (or part thereof) operating as a merchant line lines</del>, the Regulator shall decide on whether or not <del>there is adequate business separation between it and other an affiliates</del> carrying out <del>merchant line activities</del> is <del>sufficiently separated from</del> any other market activities</p>		
39.	7.1	<p>There shall be open access to both regulated and merchant <del>business model</del> network facilities on non-discriminatory conditions. unless exempted according to Article 7 of the Regulation. <del>Any network charges or</del> Collection of congestion <del>incomerents</del> must be set - or determined <del>via by</del> market <del>based</del> mechanisms - in a non-discriminatory and transparent manner. The regulatory authorities must</p>	Yes partly	Omitting the last sentence in order to retain clarity.

		<p>have the responsibility for ensuring this. <u>For the avoidance of doubt, paragraph 6.1 of these Guidelines shall not apply to interconnectors (or part thereof) operating on the basis of a merchant business model.</u><del>merchant facilities</del></p>		
40.	7.3	<p>Proposed changes:</p> <p>The remuneration of the owner of an <u>interconnector (or part thereof) operating on the basis of a merchant business model</u> <del>merchant network facility would</del> may not be regulated on the same basis as adjoining TSO(s) or subject to the provisions of section 6, 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 an <u>interconnector (or part thereof) operating on the basis of a merchant business model</u> <del>network facility</del> shall be based on the congestion <del>incomes</del> 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</p>	Yes	-

		<p>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.</p>		
41.	7.4	<p>Changes:</p> <p>Since there is no regulated remuneration there is no regulated cost to be allocated for <u>interconnectors (or part thereof) operating on the basis of a the merchant business model lines</u>. The remuneration of the merchant investment is obtained <u>solely</u> from congestion <u>incomerents</u> and long-term contracts</p>	No	<p>The initial text is more general in its nature and allows for practical usability for real projects (based on the current experiences with the merchant lines in the EU)</p>

I-6. EURELECTRIC				
No	Chapter / section	Comment	Include (Yes/No)	Explanation
1.	General	<p>General comment in the beginning of Guidelines:</p> <p>The guidelines set very ambitious targets (see e.g. point 1.8: coordinated allocation methods by 1.1.2007). To ensure that these goals can be met, EURELECTRIC calls upon stronger coordination between TSOs and between Regulators, taking care however that such coordination does not result in additional regulation.</p>	N/A	Coordination between TSOs and between Regulators will be stronger without any additional regulation
2.	Guidelines 1.8.(2)	Proposed changes: In the meantime Regulators and TSOs shall take specific measures to mitigate any restrictive impact of differences in congestion management between different areas.	Yes	If needed, TSOs can provide their technical expertise to solve the issue and they should therefore be involved as well.
3.	1.11.	Proposed changes: Where organised wholesale electricity markets exist special attention must be paid to non-discrimination regarding bilateral transactions. <u>This rule should however not preclude wholesale markets to be essentially "power-exchange based".</u>	No	1.11. does not preclude wholesale market organisation as it is originally formulated. Moreover, it helpfully stresses the need for non-discrimination
4.	1.12.	Proposed changes: 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	Yes	Accepted with added text at the end: "...and shall be proportionate to the financial consequences"



		<p>market participants fail to use the capacity that they have committed to use, they shall be exposed to a penalty. If a TSO does not fulfil the obligation, it will be financially liable for the consequences. The method for the determination of this liability shall be set out in advance <u>in proportion of the financial consequences</u>, 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.</p>		
5.	1.13.	<p>Proposed changes: Efficient use of cross-border capacity entails that all unused and non allocated capacity will be made available for re-assignment and that the allocation procedure shall take into account different time horizons. In order to allow <del>the TSO to</del> <u>the re-assignment of</u> the unused capacity, market participants shall inform the TSO <u>just before the closing time of the day-ahead market</u> <del>within a reasonable time ahead</del> of the relevant operational period on whether they intend to use allocated capacity.</p>	Yes modified	<p>TSOs shall not necessarily intervene in the re-assignment of unused capacity. The stakeholder to whom capacity is allocated shall be entitled to sell it to another stakeholder with the TSO being informed. Informing the TSO just before the closing time of the day-ahead market appears to be “a reasonable time ahead”.</p> <p>Re-assignment of unused capacity can be made firstly by the owner of capacity, but at the latest before the closing time of day-ahead market the market participants have to inform the TSO whether they intend to use the allocated</p>

				<p>capacity.</p> <p>Modified text:</p> <p>“Efficient use of cross-border capacity entails that all unused and non allocated capacity will be made available for re-assignment and that the allocation procedure shall take into account different time horizons. <u>Re-assignments can be made either by owner of the capacity, before the relevant nomination deadline, or by the TSO after the relevant nomination deadline</u> In order to allow the TSO to re-assign the unused capacity, market participants shall inform the TSO <u>before the closing time of the day-ahead market within a reasonable time ahead of the relevant operational period</u> on whether they intend to use allocated capacity.”</p>
6.	2.4.	Proposed changes: TSOs and <u>Regulators</u> shall harmonise the procedures for congestion management on different interconnections in order to facilitate efficient trade across several interconnections.	Yes	Harmonisation of congestion management procedures should not be of the sole responsibility of TSOs.
7.	2.5.(11)	Proposed changes: In principle, all potential network users will be permitted to participate in the allocation process without restriction. Exceptionally, restrictions may be made for reasons of <u>market dominance proven abuse of dominant position in accordance with article 82 of the EC Treaty.</u>	No	See explanation to the comment 6 in this table.
8.	2.5.(12)	Proposed changes: In order not to risk creating or	No	It is necessary to be able to act

		aggravating problems related to <u>any proven abuse of dominant position of market player(s)</u> , the relevant regulatory authorities, if appropriate, may impose restrictions in general or on individual company for reasons of market dominance.		in a preventive manner.
9.	3.8.	Proposed changes: While defining optimal network parts for congestion management, TSOs shall be guided by cost-effectiveness and the lowest negative impacts on market. In that sense, TSOs shall not restrict their attention only to the borders of their own control area in order to prevent internal congestion and 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 and for reasons of operational security. Such a situation can only be tolerated <u>for a short period of time and until a the long-term solution is found.</u> The methodology and projects to achieve the long-term solution shall be described and transparently presented to all the users by the TSOs.	Yes modified	Included with modifications as discussed within ERGEG:  <u>While defining appropriate network parts for congestion management, TSOs shall be guided by cost-effectiveness and the lowest negative impacts on the Internal Electricity Market. In that sense, TSOs shall not limit</u> the interconnection capacity in order to solve congestion inside their own control area, except for the above mentioned reasons and reasons of operational security. If such a situation occurs, this shall be described and transparently presented to all the users by the TSOs. Such a situation can only be tolerated until a long-term solution is found. The methodology and projects to achieve the long-term solution shall be described and transparently presented to all the users by the TSOs.
10.	4.1.(2)	Proposed changes: The access rights of long- and medium term allocations shall be firm transmission rights, with no obligation to be used.	Yes	-

		It shall be subject to the use-it-or-lose-it <u>or use-it-or-sell-it</u> rule at the time of nomination.		
11.	5.2.(3)	Proposed changes: <del>weekly (in cases where weekly publication adds significant information quality and contents in relation to monthly publication):</del> 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.;	Yes	Weekly publication is an important of information for market participants.
12.	5.7.	Proposed changes: The demand forecast information for each control area shall also be published by the TSO according to the timeframes defined in 5.2. and 5.3. <u>and as required by national Regulators.</u>	No	This must remain a general requirement at the EU (Regulation) level.
13.	5.8.	Proposed changes: <del>The TSO shall publish also the relevant information on generation according to the timeframes defined in 5.2. and 5.3.</del> <u>Where required by national Regulators and under their control, relevant information on available generation and consumption shall be made public to market participants by the TSOs in a way that ensures equal and non-discriminatory access to information.</u>	No	See the explanation to the comment 12. in this table.

<b>I-7. EuroPEX<sup>3</sup></b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	General and referring particularly to 4.1.(2)	Propose to enable the possibility of offering forward contracts with “use-it-or-sell-it” rights as an alternative to “use-it-or-lose-it”.	Yes	Included in section 4.1.(2) and generally as an alternative.
2.	General and referring particularly to 5.1., 5.2., 5.4.	Propose to add a general statement “Tasks or responsibilities assigned to TSOs under these Guidelines can equally be assigned by individual Member States to Power Exchanges or another nominated entity where this better reflects local arrangements.” and to change accordingly 5.1., 5.2., 5.4.	No	Whereas it is acknowledged that the Power Exchanges play a significant role, especially in implicit auctions, it is presently considered to be too early to put such a strong emphasis on this role. This might be subject to future development.
3.	General	Propose to include a requirement: “Congestion management at the day-ahead stage should involve an implicit auction method based on the coupling of power exchange day-ahead markets, respecting the real network constraints and flows as provided by the TSOs”	Yes modified	A related statement is included in 4.1.(9). More emphasis on practical details is not possible now, but it might be subject to future development.
4.	General	Expressed concern that the Guidelines do not recognise the desirability of eventually achieving a mature financial market.	Yes, not directly related	The future evolution towards financial markets is mentioned in the Explanatory note, further details on that issue might be subject to future development.
5.	General, and in particular	EuroPEX is concerned over the proposed regional approach, in particular the number of pre-defined	Yes	Explanation and statement of an indicative and flexible character of the areas

<sup>3</sup> The EuroPEX comments were not addressing the Congestion Management Guidelines text from the EREG public consultation directly but were provided in a descriptive manner. Therefore only that comments which were possible to be interpreted in a directly applicable way for the Guidelines text have been evaluated.

	referring to the article 1.8.	areas each responsible for implementing a single multilateral allocation procedure. ...		(Mini Fora regions) is included in 1.8.
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<b>I-8. Finnish Energy Industries</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
6.	Guidelines 1.9	Proposal : TSOs shall endeavour to <u>maximise</u> 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	No	The word optimize allows appropriate trade offs.
7.	1.11	Proposal to delete this paragraph.	No	No rationale provided for its deletion
8.	2.1(1)	Proposal to add underlined text “Congestion management method must be market based. For this purpose allocation of capacity shall be made only by explicit (capacity) or implicit (capacity and energy) auctions. Both methods can coexist on the same interconnection. <u>Implicit auction must be used where preconditions for it exist. Counter trading is a market based method and can be used in order to secure and maximize the available interconnection transmission capacity (firm capacity).</u> ”	No	Not clear what these preconditions are or that implicit auctions are always appropriate.
9.	2.5(2)	Proposal to add underlined text “Methods for congestion management adopted shall give efficient economic signals <u>to the market participants and TSOs</u> , promote competition and be suited for regional application”	Yes	Useful clarification
10.	2.5(3)	Proposed changes:  Add words “Implicit auction allocation methods must be prioritised.” to end of section.	No	Not clear what these preconditions are or that implicit auctions are always appropriate.
11.		Proposed changes:  “When there is <u>temporary</u>	No	Intermittent congestion has been defined earlier.

		congestion, restrictions on network access shall apply only for the time when the congestion exists, or should deliver an allocation free of charge in case there is no actual congestion. <u>Counter trading is a market based method for temporary congestion management.</u>		
12.	4.1(1)	Proposal to add underlined text "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. <u>Implicit auction based allocation methods must be prioritised.</u> "	No	Not clear what these preconditions are or that implicit auctions are always appropriate.
13.	4.1(3)	Propose add at end "TSOs must manage planned interruptions in a way that market distortion is as little as possible. TSOs should use counter trading in guaranteeing the availability of interconnection capacity (firm capacity)."	No	Too high level a statement
14.	6.2	Propose "The revenues resulting from the allocation of interconnection capacity shall be used for the following, prioritised purposes	No	The wording in the Guidelines already reflects the Regulation



<b>I-9. GEODE</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	General	<ul style="list-style-type: none"> <li>- CM very important</li> <li>- Explicit auctions should only be a temporary solution</li> <li>- Implicit auctions provide solution to structural bottlenecks</li> <li>- Counter trading should be used as a standard method</li> </ul>	N/A	-
2.	Explanatory note Section 3	<p>The electricity system should be managed by a European body joining all TSO's, with total independence of the commercial interest.</p> <p>The function of the TSO's is to make any agreed transaction feasible. The total cost to keep the system going should be charged to all consumers, through transmission tariffs</p>	No	This idea is outside the scope of the powers of the Regulation
3.	Explanatory note Section 4	Transparency - TSO's shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved with for cost horizon of at least one week.	Yes	This is implicitly included in 5.2(3)
4.	Explanatory note Section 5	Suggestion: Implement a system of counter-trading or redispatching, to provide a real incentive to the TSO's and permit fulfilment of transactions between players. This would give a signal to the TSO's putting pressure on them to solve congestions. The TSO's also should publicly guarantee a certain minimum transmission	No	See merit in idea but not necessarily within scope of Regulation - up to national regulators

		<p>capacity, that would be reached with counter-trading.</p> <p>Regulators should recognise total counter-trading costs and include them into the transmission tariffs.</p>		
5.	Guidelines 2	<p>Only under exceptional circumstances a transaction could be denied. This would be reached by using counter-trading or redispatching mechanisms.</p> <p>The costs of using counter-trading or redispatching mechanisms, should not be carried by the parties involved in the transaction, but by all consumers</p>	No	Already largely reflected in Guidelines. Transmission costs subject to national regulators.
6.	Guidelines 2	<p>Long term contracts :</p> <ul style="list-style-type: none"> <li>- a party of such a contract should have no pre-emption rights when a contract expires</li> <li>- capacities not being used, and covered by long term contracts, should be available to other market players, based on the principle of use-it-or-lose-it</li> </ul>	<p>Yes</p> <p>Yes</p>	<p>Already covered by 2.5(13)</p> <p>Already covered by 1.13</p>

<b>I-10. NGT – National Grid Transco (Electricity &amp; Gas TSO of GB)</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.		Support ETSO response.  Purpose of response is to make some UK specific comments	N/A	-
2.	Explanatory note  Introduction	Proposal to modify first two sentences of paragraph 5 to state that where congestion exists it shall be resolved by market based allocation procedure	No	This point already made further on in section 2 of the Explanatory Note
3.	Explanatory note  Introduction 1.2	Propose delete “Intermittent congestions require the establishment of allocation procedures for congestion management, but these procedures should provide allocation free of charge in case there is no actual congestion.”	Yes	Modified to “Intermittent congestions require the establishment of allocation procedures for the pricing of congestion management.” Where there is no congestion, prices will fall to near zero.
4.	Explanatory note  6	Proposal to change first sentence to “In the case of Interconnectors operating on a merchant business model...”	Yes	Useful clarification
5.	Guidelines 7.5	Would prefer to see a clearer distinction between roles and ownership of interconnectors, and suggest 3 categories :  1. Regulated assets owned and operated by a TSO  2. Merchant assets owned and operated by a TSO  3. Merchant assets owned and operated by an independent investor	No	NGT make the point that the guidelines are to apply to all interconnectors, regardless of whether owned and operated by TSOs or merchants, that some duties and tasks related to congestion management may therefore fall to parties that are not TSOs, and that the present guidelines are inconsistent because they generally only give tasks and responsibilities to TSOs. The following wording is made as it addresses the point in a broad manner:

			<p>“4. References to “TSO” in the text of this guideline shall be interpreted to encompass, as appropriate, the following entities:</p> <p>(i) - An interconnector owned and operated by a TSO.</p> <p>(ii) - An interconnector owned and operated as a legally separate and independent entity to a TSO. Including but not limited to a TSO affiliates and merchant investors.”</p> <p>In addition, the Regulation provides for 2 types of approach, rTPA, and exemption from rTPA. It will help understanding if the Guidelines reflect more clearly that merchant lines are defined as those benefiting from an exemption, even where owned and operated by a TSO. Hence 7.5 is amended:</p> <p>“Future Interconnections that are exempted from Article 7 of the Regulation will be considered as merchant lines.”</p>
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<b>I-11. SCOTTISH AND SOUTHERN ENERGY, GB</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	Guidelines 2.5.(10)	Prefer retention of idea that merchant lines can set reserve prices	Yes	Included modification:  "Other than in case of merchant lines, establishing non-cost reflective reserve prices in capacity allocation methods shall not be allowed."
2.	Guidelines 6.	Believe the TSO should be incentivised to maximise available capacity by being allowed to keep a proportion of such revenues and exposed to symmetrical penalties if the congestion charges exceed pre-defined levels	Yes	Section 6 modified accordingly

<b>I-12. SFOE - Swiss Federal Office for Energy</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	General	Switzerland has strong interest in physical loop flows and for these to be considered in any market based European electricity system and its legislation	N/A	-
2.	General	Proposal, wherever subject deals with physical flow and security of supply, the term "Member State" be replaced with "Member states and third countries connected to Member States"	No	The Guidelines apply only to EU and relevant EEA countries
3.	General	Proposal, replace term "regulator" with "national regulatory authority"	No	EREG considers that the more concrete term regulator makes it clear that the sector specific regulator should be the responsible party
4.	General and 1.5	Proposal, replace "coordination of TSOs" with "coordination of TSOs and responsible national authorities"	No	This remark seems to apply only to paragraph 1.5 of the Guidelines. At that point in the text it is more appropriate for TSOs to coordinate with each other.
5.	General	Proposal, replace "power flow" by "physical power flow", in order to make clear difference between "power trade between parties" and "physical power flows in the network between parties"	Yes	Useful clarification
6.	Guidelines 7.	Suggest the text should clearly distinguish between :  - the access to a merchant line (e.g. initial exemption from non-discriminatory access by allowing long-term contracts or	Yes	It is useful to provide further clarification of what merchant facilities are. Accordingly, modifications have been done in the section 7.

		<p>other priority based access)</p> <ul style="list-style-type: none"> <li>- the cost basis of a merchant line (e.g. initial exemption from regulated cost principles, initial exemption from ITC mechanisms)</li> <li>- the income related to the use of a merchant line (e.g. initial exemption from non-discriminatory network capacity auctioning)</li> </ul>		
7.	Guidelines 7.	Suggest that from a security point of view, all transmission lines must be fully controllable by the TSOs independent from the fact that they are "merchant lines" or "regular regulated transmission lines"	No	Such topics are a matter for national rules relating to secure operation of the network

<b>I-13. Stattnet (TSO)</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.		See higher merit for implicit auctions. Explicit auctions do not, Statnett argue, guarantee efficient energy related exchange. Suggest movement to implicit auctions as soon as possible.	N/A	-
2.	Guidelines 3.8	A long-term investment plan can, however, only be an acceptable answer to a congestion problem in the time scale of several years. In the short- and medium-term, other market based congestion management methods must be used until the investment is in place. It should therefore in this paragraph more clearly be distinguished between short- and medium-term congestion management methods that can be used to solve the problem of limiting interconnection capacity due to internal control area congestions, and the ultimate long-term solution of investment in new transmission capacity	Yes	Wording is modified
3.	4.1	Firm transmission rights are described in paragraph 4.1. If the intention here is physical transmission rights, our opinion is that these FTRs are contradictory to the principles listed for the congestion management guidelines. FTRs are counterproductive with respect to the development of an efficient Internal Electricity Market. In situations where FTRs could be used, the problems are better be solved by financial products.	Yes	Clarification is included on what is meant by "firm".



I-14. UCTE				
No	Chapter / section	Comment	Include (Yes/No)	Explanation
1.	Explanatory Note, 1.	<p>Change in 4<sup>th</sup> para:</p> <p><del>Security and reliability rules will be proposed in separate guidelines</del>            (Explanation: to be deleted because TSOs and their associations have to have the only right to set rules within their synchronous zone. Regulators and/or the EU-Commission should not get involved in technical issues as their main focus is rather economical and concentrated on market issues.)</p>	No	The security and reliability guidelines will not interfere with the technical issues in the sight of the TSOs and their associations, but will instead supplement the existing/planned works (for example, as the Operational Handbook) with the more firm framework for liabilities, responsibilities, roles, etc.
2.	Explanatory Note, 1.	<p>Proposed changes in 7<sup>th</sup> para, 2<sup>nd</sup> sentence:</p> <p>Where <u>and when</u> there is no congestion, there shall be <u>in general</u> no restriction of access to the interconnection (proposed to delete the last part of the sentence in order to clarify the phrase).</p>	Yes	-
3.	Explanatory Note, 4.	<p>Proposed changes:</p> <p>last line of 1st para: "and information on the installed generation capacity." to be deleted.            (Justification: Bearing in mind art. 5(3) of 1228/2003 TSOs shall only publish data of the network and not those of the generation sector;</p>	No	Generation information is crucial.

		see 5.7 + 5.8 too)		
4.	CM Guidelines 1.2.	<p>Proposed changes:</p> <p>Sentence should end after "efficient level". Additional sentence should be inserted: "In that sense and under the priority of operational security TSOs shall choose non-cost measures first." (Justification: The rationale behind this is that according to the concept of economic efficiency cost-free measures should be given priority.)</p>	No	The operational security is already considered in the present formulation. The cost has been now considered in the related modification in the text
5.	1.8.	<p>Proposed changes:</p> <p>end of 2nd para after the word "authorities": To be inserted: "However, it should be avoided that one or more countries are confronted to incompatible different sub-regional systems." (Justification: This idea has been expressed several times during the mini-fora and is of great importance for large countries interconnected to more than one regional market.)</p>	Yes	-
6.	1.12.	<p>Proposed changes:</p> <p>3rd sentence: Inserting: "...liable for the consequences in cases of gross negligence and premeditation." Inserting into the 5th sentence: "The key concepts of penalties in cases of gross negligence and</p>	No	It is understandable that operational security has a priority, but curtailment of commercial flows makes only sense where they impact actual physical flows. However, for that a coordinated congestion management is a must and exact procedures for that need to be discussed with

		premeditation and consequences failure ..." (Justification: The TSOs' first priority is to operate the interconnected grid in a secure manner. Penalties therefore only make sense if interconnector capacity is not available for reasons of gross negligence and premeditation. Nevertheless it must be possible to shorten capacities if TSOs face operational risks from high trade flows.)		EREG and UCTE (and Nordel, UKTSOA, ITSOA)
7.	1.13.	Proposed change:  end of para: ...allocated capacity (to be inserted: or not).	Yes	-
8.	2.4.	Proposed change:  1st sentence: The expression "make efforts to..." should not be deleted as the guideline in itself harmonises the procedures for congestion management. TSOs (and Regulatory Authorities) are only the executing entities and therefore can only "make efforts" to facilitate this harmonization.	Yes	-
9.	2.5.(4)	Proposed change:  The establishment of intra-day allocation mechanisms should be subject to their technical feasibility as stated in Article 4.1 (9) of the same guidelines.	No	Whenever it is not possible for technical/operational reasons, this will in any case be explained by the TSOs and if justified must also be accepted as a valid argument.

		Therefore, the expression “If operational problems can be overcome...” should be put before the paragraph.		
10.	2.5.(12)	Proposed changes:  end of para: Depending on the legal situation in each country the regulatory authority might not be the institution in charge of market power monitoring (competition authorities might also carry out this task). For this reason, the word “regulatory” in the second line should be deleted.	Yes	Added “competition authorities”
11.	2.6.	Proposed changes:  end of para: The establishment of a coordinated allocation mechanism could be hindered if one or more parties affected are not obliged to comply with EU legislation. Therefore, the following statement should be amended at the end of the paragraph:  It is also the task of National Regulators to take efforts on a political level that an appropriate co-operation with non-EU countries will be ensured.	No	Regulators cannot take efforts on a political level.
12.	3.2.	Proposed changes  To be replaced: The	No	See comment to point 6. in this table

		operational security standards should form an ... (deleting of the 2nd sentence; Justification: Regulators and/or the EU-Commission should not get involved in technical issues as their main focus is rather economical and concentrated on market issues.)		
13.	3.6.	Proposed Changes:  end of para: Inserting: in line with the rules for safe grid operation	Yes	Only say "secure" instead of "safe"
14.	3.8.	Proposed deleting:  2nd sentence: If the last part of the sentence ("and shall avoid limiting interconnection capacity in order to solve congestion inside their own control area.") would be deleted this could help to clarify the whole paragraph.  Justification: TSOs permanently observe their grids and operate them as efficiently as possible without jeopardizing operational security. If congestions inside their control areas limit the interconnection capacity, it must be only to the extent that is justifiable from the technical viewpoint and for reasons of operational security as the third sentence expresses very well.	Yes modified	<u>While defining appropriate network parts for congestion management, TSOs shall be guided by cost-effectiveness and the lowest negative impacts on the Internal Electricity Market. In that sense, TSOs shall not limit the interconnection capacity in order to solve congestion inside their own control area, except for the above mentioned reasons and reasons of operational security. If such a situation occurs, this shall be described and transparently presented to all the users by the TSOs. Such a situation can only be tolerated until a long-term solution is found. The methodology and projects to achieve the long-term solution shall be described and transparently presented to all the users</u>

		For that reason, the part, which should be deleted, gives no additional information and is not necessary in that sense.		by the TSOs.
15.	3.8.	Proposed to insert new text:  end of para: Inserting: If congestions with cross-border relevance occur by conflicting requirements of national legislation and of these guidelines, National Regulators ensure that any conflict is solved in a compromise way.	No	The Regulation 1228/2003 and Guidelines have priority over national legislation
16.	4.1.(7)	Proposed to delete the point  Explanation: because (6) covers its objective and from an economic viewpoint and as stated by several mini-fora explicit and implicit auctions should be evaluated equally.	No	No actual recommendation on detailed dealings with different market based methods.
17.	5.2. (8), (9)	Proposed to delete the points  Explanation: The publication (asap after real-time) of corrective measures taken by TSOs in order to solve system problems are not information which should be distributed to market participants. It is rather preferable that regulators receive those information in case they ask specifically for them. Otherwise it will be a	No	All requested information, including also that concerning corrective action is important and shall be made available

		<p>huge burden and it will cause administrative costs for TSOs to provide information in all cases of corrective actions. Concerning (9) it doesn't seem possible that TSOs know each outage of lower voltage grid infrastructure or small generation units just on the next day</p>		
18.	5.5	<p>Proposed change:</p> <p>The para should end after "information shall be published." (Justification: If this information is published too early the danger of large flows caused by intraday trading activities become true. That makes the coordinating business of TSOs much more complicated and the number of corrective actions - non-cost and cost measures - might increase.)</p>	No	-
19.	5.7., 5.8.	<p>Remarks:</p> <p>The information requirements on TSOs seem far too high and will most likely cause excessive administrative expenses. Additionally, bearing in mind art. 5(3) of 1228/2003 TSOs shall only publish data of the network and not those of the generation sector and that forecasting the overall electricity demand is not straightforward especially in countries with significant</p>	No	See comment to the point 3. in this table.

		decentralized production. Therefore, both paragraphs 5.7. and 5.8. should be deleted		
20.	6.1.	2nd sentence: ...will be established (to be inserted: by the involved TSOs and be approved) by the Regulatory Authorities ...	No	Regulatory authorities will establish and approve any revenue distribution procedures.



<b>I-15. Vattenfall (TSO)</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	Guidelines 1.14	It is said that re-assignment of unused capacity should take into account also problems relevant to the degree of competition and market power issues". We assume that it is not a question of reversed discrimination of dominant actors, since that could mean a very arbitrary handling of the different actors.	Yes	In principle this is true, however regulators may act in an ex ante manner if this is necessary and justified.

<b>I-16. VDEW – German Association of Electricity Industry</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	Explanatory note, 1.	Proposal to remove 4 <sup>th</sup> para.	No	The security and reliability guidelines will not interfere with the technical issues in sight of the TSOs and their associations, but will instead supplement the existing/planned works (like e.g. OH) with the more firm framework for liabilities, responsibilities, roles, etc.
2.	Explanatory note, 1.	Proposal to remove text in 7 <sup>th</sup> para second section after “and no specific procedure” - explaining that it is obsolete after the ERGEG formulation in Article 3.5. of the Guidelines	No	The information that there is no congestion is a cornerstone in the transparent communication to all grid users and must be communicated appropriately.
3.	Explanatory note, 4.	Proposal to delete “and information on the installed generation capacity”	No	This must remain a strong requirement throughout the IEM, applied through Regulation (Guidelines) in a uniform and consistent manner.
4.	Guidelines 1.2.	Proposal to add “In that sense and under the priority of operational security TSOs shall choose non-cost measures first” at the end of the text.	Yes	-
5.	1.8. (related to it propose change in Explanatory note)	Proposal to add additional explanation: “Regarding the time limit provided for the application of co-ordinated allocation procedures for allocation of capacity to the market, the European Commission is aware of the special status of Switzerland as to its geographical position and the applicability of this	Open	Can be decided by the European Commission (if it is considered useful it can be included)

		Guideline, which may potentially lead to a delay of the introduction of coordinated procedures in those areas where Switzerland needs to be incorporated. The European Commission therefore commits for a close co-operation with Switzerland regarding the realisation of the implementation of co-ordinated allocation procedures within the time limit provided for by the Guideline”		
6.	1.8.(2)	Proposal of change: “In the meantime Regulators <u>of countries belonging to more than one area</u> shall in cooperation with TSOs take specific measures, <u>e.g. timetables and gateclosures</u> , to mitigate any <u>substantial</u> restrictive impact of differences in congestion management between different areas <u>on their markets.</u> ”	Yes modified	Included with modifications, omitting first and last changes because the original meaning is clearer and the strength of the initial statement higher – in this way it refers to all countries and all areas in all markets.
7.	1.10.	Proposal: “TSOs shall endeavour to optimise the extent to which capacity is firm – having regard to the obligations <u>and the rights</u> of the TSOs involved and the rights of market parties – in order to facilitate effective and efficient competition.”	Yes	Remark: incorrect reference, this comment refers to the Article 1.9. of the Guidelines and has been included there
8.	1.12.	Proposal: <del>2The financial consequences of failure...who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, they shall be exposed to a penalty.</del> <u>If market participants commit to use their capacity rights (reservation), this shall be considered binding. Electricity transfers amounting to the capacity that was committed to be used shall be carried out compulsorily. If a TSO does not fulfil an the obligation it has entered into, it will be financially liable for the consequences in cases of gross negligence and premeditation and compensate the market participant for the loss of firm</u>	Yes modified	Modified accordingly to comply with the key objective of the article and incorporate comments by other organisations and stakeholders concerning this article.

		<p><u>interconnector capacity rights. No consequential losses shall be taken into account for this purpose.</u></p> <p>The method for the determination...Regulator or Regulators. The key concepts <u>of the liabilities that accrue upon penalties and consequences</u> on failure to honour obligations <u>in cases of gross negligence and premeditation</u> shall be described in detail within the description of the actual congestion management method that will be made available transparently to all users.”</p>		
9.	2.1.(1)	<p>Proposal: “Both methods can coexist on the same interconnection. <u>Any market dominance related to the allocation of transport capacity, which may result from the exclusive application of implicit auctions, must be avoided.</u>”</p>	No	This statement would not clarify the initial purpose of the article, moreover, it is not about market dominance but because of the short term intra-day trade why the implicit auctions are important.
10.	2.4.	<p>Proposal: “<u>National regulatory authorities and TSOs shall make efforts to</u> harmonise the procedures for congestion management on different interconnections in order to facilitate efficient trade across several interconnections.”</p>	Yes	-
11.	2.5.(4)	<p>Proposal: “<u>Where and when operationally possible,</u> <del>M</del>mechanisms for an intra-day congestion management of interconnector capacity shall be established in order to maximise <u>cost-effective</u> opportunities for trade and to make provisions for cross-border balancing <u>that support operational security</u>”</p>	Yes modified	The comment has been included in the sense that the secure operation is emphasized and is in line and compatible with related comments from other organisations and stakeholders.
12.	2.5.(6)	<p>Proposal: “The operational conditions, such as the implications of <u>netting of the schedules firmly declared</u>”</p>	Yes	-

13.	2.5.(10)	Remark (in German) that market oriented instead of “cost reflective” prices shall be referred to.	N/A	Whereas it is true that market prices must be referred to, the purpose of this article is to address reserve (in the case of a non-merchant model based interconnection)
14.	2.5.(12)	Proposal: “In order not to risk creating or aggravating problems related to any dominant position of market player(s) the <u>competent relevant regulatory authorities</u> may, <u>if appropriate and proven by well-founded facts</u> , impose restrictions in general or on individual company for reasons of market dominance”	Yes modified	Omitting the proposal for the second change proposal, since preventive action must be possible.
15.	2.6.	Proposal: “In cases ... be devised unilaterally. <u>It is also the task of national regulators to take efforts on a political level in order to ensure an appropriate co-operation with non-EU countries.</u> ”	No	Regulators cannot make efforts on a political level.
16.	3.2.	Proposal: “The <u>operational security standards</u> <del>and the operational and planning standards</del> should form an integral part...” and to remove the 2 <sup>nd</sup> sentence.	Yes modified	Omitting the second change proposal – it is clear that the responsibility for operational and planning security standards proposals and implementation lies with the TSOs, it is however also mandatory that any impacts of these standards (and these could obviously be very significant) be evaluated by the independent Regulatory Authorities.
17.	3.6.	Proposal to make it coherent with the point 3.2.: “When preparing the ... <u>through operational measures in line with the rules for secure grid operation</u> ”	Yes	-
18.	3.8.	Proposal to delete “and shall avoid limiting interconnection capacity in	No	This is a fundamental requirement from the Guidelines and from the

		order to solve congestion inside their own control area”		point of view of a broader IEM. Whereas it is understandable that the congestions within the control areas cause significant problems and that, furthermore, that limiting interconnection capacity at the TSO or political border might be often the only (or the simplest) “solution” to these within area congestions,, this is by no means any kind of target situation in the IEM. Moreover, such a limitation (if tolerated) could in any case only be applicable if the capacity calculation were to be based on a fully-fledged, dynamically updated, physical load-flows based (de facto real time) capacity calculation and allocation. By no means can this apply in case of purely bilateral (between two TSOs) capacity calculation/determination.
19.	4.1.(7)	Proposal (in German) to delete 4.1.(7) because it is considered redundant with respect to the 4.1.(6)	No	The articles are not redundant.
20.	4.1.(8)	Proposal (in German) to delete 4.1.(9) because it is considered redundant with respect to the 4.1.(9)	No	The articles are not redundant
21.	5.2.(8)	Proposal: “ <u>on request by the competent authority</u> , as soon as possible after real-time, aggregated realised commercial <del>and physical</del> flows <u>on interconnectors</u> 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”	No	This must remain a general requirement (not on request by the authorities).

22.	5.2.(9)	Proposal: “aggregated information for the previous day on planned and forced <u>interconnector</u> outages”	No	All unplanned outages at the transmission level (i.e. lines/circuits, transformers, generators) must be published.
23.	5.5.	Proposal: “When forecasts are published, the ex post realised values of the forecast information shall also be published <u>on the following working day (D+1)</u> , <del>in the time period following that to which the forecast applies</del> ”	Yes modified	Following day (independently whether working or not) is acceptable as the maximum delay.
24.	5.7.	Proposal: “The demand forecast information for each control area shall also be published by the TSO according to the timeframes defined in 5.2. and 5.3., <u>if technically feasible and economically justifiable and if the necessary data is available.</u> <u>TSOs are not considered liable for the demand forecast</u> ”	No	Demand forecast information is considered to be crucial information – even in the case of distributed generation, it can and needs to be provided at least in the “best effort” manner.
25.	5.8.	Proposal to delete 5.8.	No	This is a strong requirement that must remain.
26.	6.1.(2)	Proposal: “The procedure for the distribution of these revenues will be established <u>by the involved TSOs and approved</u> by the Regulatory Authorities”	No	Regulatory authorities will establish and approve any revenue distribution procedures.

I-17. VEÖ – Austrian Association of Electricity Industry				
No	Chapter / section	Comment	Include (Yes/No)	Explanation
27.	Explanatory note	<p>Proposal to revise definition of congestion to :</p> <p>“An interconnection is to be considered as congested when the sum of demand for capacity including the forecasts for physical electric power flows resulting from transactions accepted by other TSOs at a specific allocation timeframe exceeds the capacity available at that interconnection”</p>	Yes	Sensible clarification of definition
28.	1.8	<p>Propose change to <i>“Co-ordinated allocation procedures for allocation of capacity to the market shall be applied at least for the yearly, monthly and day-ahead allocation period latest from [01. January 2007] in the following areas: ...”</i></p>	No	Coordinated intraday allocation will be an important feature of the market. It may however perhaps be appropriate to amend the timetable here.
29.	2.1(e)	Propose reduction to <i>“Products”</i>	No	<p>Allocation period refers only to time, whereas here many aspects are referred to, notably: time, duration of a specific product (e.g. day ahead, hour, week, etc.), amount of power in MW, MWh etc. Therefore a modification is included:</p> <p><u>“Products in terms of allocation periods, duration of a specific product (e.g. day, 3 hours, 1 week, etc.), amount of power in MW, MWh etc. (e.g. day ahead, intra-day, long term, etc.)”</u></p>
30.	2.3	Propose modification/completion to <i>“In case of structural congestion, the</i>	Yes modified	Change “expectable” to “expected”, but leave “security standard” since



		<p><i>congestion management methods shall ensure that the power flows associated with all allocated transmission capacity comply with network security specifications being at an acceptable level. A particular request for transmission service shall only be denied when the power flows resulting from its acceptance, in addition to other accepted requests, lead to an <u>expectable</u> 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.</i></p>		<p>this is the common and understandable terminology.</p>
31.	2.5.(13)	<p>Assessment of whether a contract of market actors could violate the EU Treaty cannot be task assigned to TSOs but of the responsible Authorities (e.g. Regulators) only.</p>	Yes	<p>2.5(13) has already be ammended accordingly to “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.”</p>
32.	2.5.(14)	<p>Two problems foreseen :</p> <p><u>Tracking system</u>: Who is the valid owner of the capacity in case of two parties declaring as being the legal owner ?</p> <p><u>If the eligible trading partners are not limited to the energy sector</u>, this provision may increase the problem of market power abuse.</p>	No	<p>Secondary trading of capacity rights by all parties is vital to ensure liquid and efficient pricing. It will be possible to devise procedures to facilitate this, as already happens on the England – France interconnector for example.</p> <p>Any instances of market power abuse can be tackled with competition law.</p>
33.	2.6.	<p>Propose modification to “In cases where nomination for an expected</p>	Yes	<p>Sensible clarification of</p>

		<i>flow between two countries (TSOs) significantly affects conditions in <u>any other</u> country (TSO), congestion management shall be coordinated between the two countries (TSOs) concerned and the <u>other</u> countries (TSOs) 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"</i>		original intention
34.	3.6	Suggest that in some Member States the legal system is not consistent with this obligation (e.g.: availability of needed data to TSOs; data protection is a constitutional matter in Austria). In order for TSOs to fulfil this requirement, a similar obligation of all other related market actors would also be needed	No	TSOs already do this on a national level. The Guidelines merely seek coordination at an international level.
35.	4.1.(2)	Propose reduction, by deleting the term "firm" to <i>"The access rights of long- and medium term allocations shall be 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</i>	No	It is important to specify the quality of transmission access rights so that market players can assess risks of trading.
36.	4.1.(4)	Propose completion of the third sentence to <i>"This nominated capacity shall be taken into account <u>as far as possible</u> for netting in order to use the interconnection to its maximum of capacity."</i>	N/A	The formulation has been changed according to other relevant comments.
37.	5.5.(2)	Two question arise : <ul style="list-style-type: none"> <li>- It is to be doubted whether it were appropriate for the TSOs to provide information to market players concerning the work of their competitors (availability of generation units).</li> </ul>	No	Transparency of market information is paramount to efficient market functioning. Where information is available on a timely non-discriminatory basis, there should be no concerns about this

		- Is the availability of all information needed for congestion management to TSOs ensured ?		occurring in a competitive market setting.  May be worth considering whether Guidelines need to be supplemented with obligations on other market players to provide necessary information
38.	5.8.	As for 5.5.(2)	No	As for 5.5(2)
39.	6.2.	Propose completion to : <i>"The revenues resulting from the allocation of interconnection capacity shall be used for one or more of the following purposes:</i>  <i>(1) <u>To cover the costs for the allocation procedures</u></i> <i>(2) <u>Guaranteeing the actual availability ...</u></i>	No	The Guidelines mirror the requirement of the Regulation here.

<b>I-18. VIK - German Association of Industrial Energy Users and Self-Generators</b>				
<b>No</b>	<b>Chapter / section</b>	<b>Comment</b>	<b>Include (Yes/No)</b>	<b>Explanation</b>
1.	General	No effective generation competition, CM methods key to help this, for efficient allocation of capacity	N/A	-
2.	General	Management of congestion – priority should be given to “switching operations”	Yes	Already implicitly included as TSOs should maximize capacity available
3.	General	Where auctions used, terms and conditions should be transparent	Yes	Already included in Transparency section
4.	General	CM revenues use should be transparent	Yes	Already provided for in section 6.2
5.	General	CM revenues should be solely assigned to reinforce existing interconnectors or to build new ones	No	The Regulation provides for 3 uses of CM revenues. High CM revenues are not always a signal to reinforce interconnectors.
6.	Explanatory note 1.	Delete ‘largely’	No	It might be appropriate to let TSOs keep some proportion of revenues as part of an incentive mechanism
7.	Explanatory note 1.	State more clearly long term aim is to overcome congestions, not just manage them	No	It will not necessarily be economically efficient to eliminate all congestions
8.	Explanatory note 5.	The statement that new capacity should be accomplished in ‘reasonable time’ is too strong a constraint and may deter investment which take longer to complete	No	Use of the word ‘reasonable’ permits suitable flexibility according to each case
9.	Guidelines 1.8	European co-ordination should be possible from 2010 onwards	No	Difficult to determine this timetable before the foreseen regional integration has been demonstrated
10.	1.14	Market power issues	No	Market power issues are not

		emphasized		everywhere prevalent
11.	2.1.2	In view of the need to coordinate auctions in case of congestions involving at least two interconnections the restriction “significantly” could be defined more precisely	No	The nature of “significantly affect” will vary from situation to situation and should be assessed by the competent authority
12.	4.1.(9)	Suggest 2010 deadline to deal with short term intra-day allocations	No	It should be up to the TSOs, regulators and other market participants to decide relevant timetable
13.	6.2.	Add the following before the last sentence in 6.2.: “Revenues resulting from the allocation of interconnection capacity primarily have to be used for increasing the interconnection capacities. Only in case a TSO proves that this is not feasible due to technical reasons one of the other options may be used.”  In the last sentence the words “priority in the” should not be deleted	No  No	The Regulation provides for 3 uses of CM revenues. CM revenues are not always a signal to reinforce interconnectors.  Regulators may choose to shift or combine priorities
14.	6.7.	The statement that maintaining or increasing interconnection capacity should be accomplished in ‘reasonable time’ is too strong a constraint and may deter investment which take longer to complete	No	Use of the word ‘reasonable’ permits suitable flexibility according to each case

## **SECTION II – SUMMARY OF HIGHLIGHTS FROM THE PUBLIC HEARING ON 30. JUNE 2005**

The public hearing on comments from the ERGEG public consultation on the CM Guidelines, was held on 30<sup>th</sup> June 2005. All the participants of the public hearing expressed their agreement with the general goals and direction of the CM Guidelines and in particular their satisfaction that the public consultation and public hearing were organised in an open, transparent and productive way.

Several organisations and stakeholders that provided comments during the public consultation presented their comments and focus points in detail:

- ETSO emphasized that publication of generation data needs to be regulated appropriately since the present data protection regimes differ throughout the Member States. Regarding the generation data, ERGEG confirms that this issue needs to be positively defined in the CM Guidelines (i.e. Regulation). Furthermore, ETSO stressed the need for harmonization of the legal and regulatory frameworks.
- UCTE explained that security and reliability standards are set by the TSOs and that it shall remain so. Also, they explained that not all cross-border issues, including here congestion management, are dealt with by regulators in all Member States, but instead sometimes ministries or other bodies are involved.
- Eurelectric urged the introduction of explicit and/or implicit auctions on all congested interconnections. Furthermore, the maximization of capacity use was emphasized. Finally, it was mentioned that the generation and consumption information needs to be published in a non-discriminatory manner.
- EFET indicated the importance of more appropriate capacity calculation instead of the present, long-term, status and and inaccurate (one value for a long time period) methods. Furthermore, EFET stressed the need to address congestions where they appear instead of “exporting” them to the TSO borders.
- EuroPEX (no comments submitted in the public consultation) advised avoiding rigid definitions of geographic regions. Furthermore, EuroPEX proposed minimizing European harmonization in order to allow for free and decentralised implementation at the different interconnections.
- IFIEC (no comments submitted in the public consultation) stressed that generation and supply needs to be focused on, instead of trading and grids (operation). It was further emphasized that the grid must serve the market and not the other way round.
- GEODE proposed putting an emphasis on counter trade or redispatch instead of auctions. Regarding that, ERGEG considers explicit and implicit auctions as the only methods to be addressed directly in the CM Guidelines at present.

The full presentation by the organisations mentioned above are available at the ERGEG website, [www.ergg.org](http://www.ergg.org).

The discussion at the public hearing which followed the detailed presentations addressed among other things, the issues of congestion income, coordination and coexistence of the explicit and implicit auctions on the same interconnection, information exchange and transparency, obligations to use capacity and procedures in specific cases, etc.

All the related results from the discussions during the public hearing, together with the detailed explanations and clarifications from the actual presentations of the organisations mentioned above, have been analyzed and included in the final evaluation of all the comments in the Section I of this document.

### SECTION III – ADDITIONAL MODIFICATIONS TO THE CM GUIDELINES

In this Section, additional modifications (marked light blue in Section I) to the CM Guidelines are listed that were not proposed by any organisation or stakeholder in the public consultation, but that have instead been recognised as necessary and justified during the discussions and public hearing, are described as follows:

1. General: Whenever the gross income from congestion management is referred to, it is denoted as “revenue” (as it is the case in the Regulation). If the term “income” is used, it refers to the net amount that remains after deducting the administrative costs, possible costs for securing the assigned capacity (e.g. re-dispatch in case of explicit auctions), etc.
2. CM Guidelines, 1.3.: remove the whole article 1.3. as it is fully redundant to the article 2.1.(2)
3. CM Guidelines, 2.1.: reformulated in line with the Article 5 of the Regulation.
4. CM Guidelines, 2.4.: remove the whole article 2.4. as it is fully redundant to the article 2.1.(2)
5. CM Guidelines, 2.5.(10): modified text is included: “Other than in the case of merchant lines, establishing non-cost reflective reserve prices in capacity allocation methods shall not be allowed.”
6. CM Guidelines, 2.5.(11) and 2.5.(12) merge together since they are interrelated .
7. CM Guidelines, 2.5.(13): include a reference to the Competent Authorities who need to decide on whether priority access rights violate Articles 81 and 82 of the EC Treaty.
8. CM Guidelines, 2.1.(2)(e): modified text is included: “... Products in terms of allocation periods, duration of a specific product (e.g. day, 3 hours, 1 week, etc.), amount of power in MW,MWh etc. ...”
9. CM Guidelines, 3.5.: remove the whole article 3.5. as it is redundant now and has been covered also in the Explanatory Note.
10. CM Guidelines, 4.1.(9): deleted “Liquid, intra-day allocations promise significant benefits if the operational problems can be overcome.” as it has only an explanatory character not actually relevant for the effects of the guidelines.
11. CM Guidelines 6.2.: delete text which was exactly repeated from the Regulation, adding instead only a reference to the Regulation.



12. CM Guidelines 7.3: delete text "... but, in principle, it shall follow the same rules on open access, transparency and non-discrimination that apply to regulated facilities. ..." because it is redundant to 7.1.
13. CM Guidelines 7.4.: remove the whole article 7.4. since it is redundant to the explanation on remuneration of merchant lines in 7.3.

These additional modifications have been included in the final CM Guidelines draft text in Section IV.

## **SECTION IV – ANNEX – ERGEG PROPOSAL OF THE FINAL CM GUIDELINES**

*[here, the final Guidelines Draft proposed by ERGEG to the EC will be included]*