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Comments on ERGEGS Public consultation Paper concerning Cross border framework for transmission network infrastructure

Introduction

The development of common European rules and regulations, to secure a common platform for trade and competition in the electricity sector, is of imperative importance. Hence, the Norwegian Electricity Industry Association, EBL, welcomes the opportunity, on behalf of our members in transmission, distribution and generation, to comment on ERGEGs public consultation paper concerning Cross border framework for transmission network infrastructure.

The ERGEG public consultation paper sets out ERGEG's view on how to develop a competitive single EU market for electricity. It considers and highlights the need to obtain authorizations and permissions for building and constructing new transmission infrastructure, particularly across borders. It makes recommendations and invites views regarding an appropriate framework for the provision of cross border transmission infrastructure, including calls for national/European legislative action as appropriate.

General comments

An overall objective of EU regulation of the energy and electricity sector is to create a well functioning pan European energy market for electricity and gas, and secure a more efficient utilisation of existing and future investments. This can only be done by developing a level playing field for all participating entities in the market and by removing significant physical congestions that obstruct free trade of electricity. To do so, common market principals and rules for participation must be established. A more common legislative and regulatory framework concerning authorisations and permissions for building and constructing new transmission infrastructure may further facilitate such a development. An absolute prerequisite for "accepting" this kind of "pan national" regulatory framework is, however, that it is perceived as fair, and truly contributes to a more competitive and efficient market.

Creating effective incentives to remove barriers and increase the coupling and trade between markets is imperative. The guidelines regulating principals for congestion management and tariffication of infrastructure are important steps in this direction. **On the other hand the proposed guidelines concerning inter TSO compensation and the suggested model for handling transit compensation, IMICA, works in the wrong direction.** In our point of view the proposed transit compensation scheme does not account for the benefits that a network or customers incur as a result of hosting cross-border flows. Transit is not accurately defined. It does not reflect how electricity is traded between the different market participants in Europe or recipients of benefits from trade. It is highly questionable if the transit scheme and IMICA model reflects the real transit flows and cost incurred in the system. We fear that the proposed scheme and model will result in an effective barrier for cross border trade. Most likely it will give economical incentives to reduce flows and future investments in cross border interconnectors, rather than the opposite. See enclosure for a more elaborate view on this matter.

We welcome the initiative to develop more common legislative and regulatory rules concerning authorizations and permissions for building and constructing new transmission infrastructure. However, the development of such common legislative and regulatory rules have no purpose if other legislative rules and mandatory mechanisms counteract the intentions of increased cross border flows. Additional legislative and regulatory rules or standards should not be implemented in order to adjust for misleading incentives given by other EU regulations. Development of new regulatory rules and regulations should be followed by developing trade mechanisms and economical incentives that promote power exchange between countries and investments in new cross border capacity, and not the opposite. It is vital to remove market hindrances and misleading incentives that can undermine competition and free trade.

The planning and authorisation processes for building and construction of new electricity infrastructures in Norway and between Norway and neighbouring countries are complex and lengthy, mainly due to an increasingly environmental focus and weak economic incentives for investors. Great emphasis is therefore laid on the environmental impacts of such projects and the cost/benefit ratio. Transit compensation schemes that dramatically increase Norwegian costs of cross border flows will therefore increasingly impede such investment processes.

Although we to a large extent favour ERGEGs recommendations in our comments given below, and second the idea of harmonising rules and regulations, the development of the inter TSO compensation scheme shows that a pan national regulation easily can give severe negative impacts, even if the initial intentions were good. If the concept of ITC as of today is driven through, this will from our point of view induce an increasingly scepticism to hand over legislative and regulatory powers to "pan national" authorities.

EBLs comments and views on Chapter 5 - Recommendations and Issues for consultation

Building and construction authorisation and permissions

93. *The process and timings for authorisations for the construction of new or additional transmission infrastructure is clearly a crucial issue for the development of the transmission infrastructure necessary for the pan-EU electricity market. The issue of building and construction authorisation and permissions is impeding a number of already recognized transmission infrastructure projects necessary to develop the single market. In ERGEG's view this issue demands immediate attention in order that immediate*

necessary progress can be made in developing the transmission network across the EU, alongside the regulatory framework themes developed below.

94. *Appropriate processes are of course necessary for the proper expression of national and local concerns regarding such projects. It is not within ERGEG's remit to identify or recommend here new processes. Nevertheless, bearing in mind ERGEG's duties and interests in the appropriate development of a pan EU transmission networks, ERGEG would make the following observations :*

- *It would be helpful if authorisation and permissions processes could be expedited, with clear criteria, transparent guidelines and timelines and deadlines, and appeals mechanisms.*

EBLs view

The necessary authorisations and permissions to build and operate cross border interconnectors will involve investors, market participants, authorities and the public communities involved in both countries on each side of a interconnector. Hence, the construction and operation of cross border interconnectors can not be finalised before all authorisations and permits are in place in both countries. Different legislative frameworks and permit processes in different countries can therefore hamper and slow down the processes. Any harmonisation that can help speed up these processes is therefore in our view welcome. On the other hand, in order to reach an overarching agreement between the different countries, such harmonisation might increase the legislative and procedural requirements in some countries. This can lead to a more time consuming process and an increased risk for potential investors.

- *National regulators and ERGEG can provide an independent view of the impact of a project on competition and broader market integration. It would be helpful if authorisation and permissions processes include a possibility to seek such a view, in order that the process is fully informed.*

EBLs view

In Norway today, the regulator is responsible for the licensing process and for giving permits for building and operating transmission lines and production facilities within Norway. The Ministry of oil and energy is responsible for giving permits for physical trade of electricity to foreign countries. In this respect the Norwegian regulator and the Ministry have insight and main control of these processes. The domestic planning processes, however, are also regulated by the building and planning act. This act is jointly governed by two ministries; Ministry of Environment and Ministry of local government and regional development, bringing increased complexity into the planning and decision processes. These processes are already very time consuming and increasingly so due to an increasing focus on environmental issues. In our point of view these aspects are one of the reasons for the lack of new investments in transmission lines and production facilities, in addition to weak economic investment signals. It is not obvious that introduction of additional viewers will help to speed up these processes. However, it would be beneficiary to coordinate permission processes on both sides of a planned new interconnection in order to facilitate a smoother process.

- *It will be ultimately necessary and helpful to recognize that wider economic and security of supply benefits at a national or EU level need to be reconciled in some manner with costs at a local level.*

95. *EREGG invites views here.*

EBLs view

We agree on this view. However, in our opinion, the development of e.g. the ITC mechanism so far, does not recognize the impact of values generated by increased trade of electricity in Europe, such as increased security of supply, increased efficiency of existing infrastructure and revenues of trade, see enclosure.

Planning and Operation Standards

96. *It is clear that the requirement for TSOs to give primary regard to national planning and operation and maintenance Standards promotes, all other things being equal, the provision of national transmission infrastructure rather than that across the EU.*

97. *EREGG therefore recommends that proper processes and standards should be further developed in order to include EU or regional dimensions, such that TSOs will have the appropriate basis on which to plan and operate networks in a pan European manner. That is, EREGG favours the development of more overarching and pan European standards relating to the network elements that support cross border flows. As an intermediate step, progress may be possible at a regional level within the EREGG Electricity Regional Initiative. Such standards should also, in EREGG's view, permit a TSO to take into account the wider EU or regional interests when planning and operating its network.*

98. *In order for such Standards to be effective, it would be necessary to place an obligation on TSOs to adhere to them. That is, EREGG's initial view is that TSOs should be obliged in some joint manner to identify and regularly evaluate, build, operate and maintain an efficient and secure European transmission network.*

EBLs view

Experience in the Nordic countries shows that as long as the TSOs agree, efficient solutions are found. On the other hand, when they disagree, e.g. congestion management, good solutions are not necessarily found. In these cases a pan national authority or regulation is needed to boost further harmonisation.

Increasing TSO focus on planning and operation of networks in a more pan European manner could facilitate a better basis for the development and operation of the common European networks. However, the main focus of the national TSO is, and should be, on domestic affairs. The main obstacles and challenges concerning investment planning, construction and operations are mostly related to domestic interests and policies. An increased focus on pan European issues will, depending on how extensive the obligations will be, increase the TSOs burdens. It is therefore important to carefully consider to what extent new and detailed obligations should be put on TSOs, and in what degree these obligations will fulfil the initial intentions.

99. *There may be a number of different ways of providing overarching and pan European standards. Some regional arrangements already exist, for example concerning Nordel and UCTE. Respondents' views are particularly sought concerning :*

- *the need for such a development*

EBLs view

It is not obvious for us whether ERGEG is seeking to establish standards (as developed by the European standardisation organisation CEN/CENELEC), or to establish common rules and regulations through directives and guidelines. In any case, we believe that there is a need for an overarching and pan European framework in order to facilitate a level playing field for all market participants. Today there are differences in both technical requirements and legislative obligations between different countries for the owners and operators of transmission lines and production facilities. These differences have most likely evolved through different political and cultural trends, differences in access to different energy resources, and topographical and demographic differences. When seeking to establish planning and operational standards, it is necessary to differ between the needs for standards and the need for legislative and regulator harmonisation. When developing standards, if necessary, due consideration should be taken to the physical differences in power system structure and the physical reasons thereof.

- *the extent to which these should be overarching, leaving regional groupings to develop arrangements which best suit their needs.*

EBLs view

The final goal should be an overarching pan European framework with due consideration taken to local and regional differences. Hence, we believe that a regional approach could prove to be fruitful. Many years of cooperation in Nordel confirms this view.

- *how such Standards should be made flexible to the requirements of the wider EU or regional market.*

EBLs view

The structure of the different power systems and environmental focus in Europe are different as described above. This calls to some extent for different approaches and different technical and environmental requirements when planning, building and operating existing and new transmission and production facilities. The “standards” should therefore be developed on a regional basis as minimum requirements, allowing for local and regional differences.

100. *There may be a number of ways of monitoring and enforcing such Standards. Regional or pan – EU Standards will at least for example require co-ordination between TSOs themselves, regulators themselves, and between TSOs and regulators. Views are invited concerning :*

- *how such Standards might be given a legal basis and the associated forms of cooperation*

EBLs view

In order to reach the proclaimed goal such “standards” must be given a legal basis. In order to do so common rules and regulations should be given through EU directives and guidelines. Alternatively they could be implemented through the European standardisation organisation CENELEC, and made mandatory by EU legislation.

Regulatory framework

101. *In order to extend the relevant regulatory framework, ERGEG has the initial view that it would be helpful to adjust regulatory duties and competences in some cross border or regional manner. Regulators should for example have duties :*

- *to take into account European or regional customers' interests*
- *to cooperate fully with neighbouring or regional regulators*

102. *In order to make the framework for cross border capacities and investments effective, regulators' competences would in ERGEG's view need to include :*

- *oversight of the planning and operation of transmission infrastructure on a multi-country basis – i.e. monitoring and enforcement of the pan-European or regional Standards, and any multi country groupings of TSOs*
- *appropriate cost allocation mechanisms, risk sharing, and cost efficient provision of infrastructure*
- *powers to introduce appropriate cost reflective transmission charging, with a pricing structure that reflects the needs of the wider European market. Well defined common access rights and rules might be a part of this.*
- *monitoring and information gathering powers*

103. *These duties and competences would need to be embodied in a number of institutional forms. For example, regulators might be mandated to operate jointly and have regulatory oversight across relevant Member States, but with the scope of this mandate confined to transmission infrastructure issues and TSOs.*

104. *Alternatively it might be possible to adapt existing structures, particularly ERGEG, in order that it acts as a whole to take a part of this role on a regional level. This might include some role in a process that sets Guidelines.*

EBLs view

A closer cooperation between TSOs and between Regulators is important, not only to increase the common knowledge of each countries regulatory framework and system structure, but also to boost common planning and sort out commercial beneficial cross border projects. TSOs and regulators should therefore be mandated to a closer and specified cooperation.

We have experienced obstacles that arise due to different legislative and regulatory frameworks between regulators and TSOs. In this respect it would be useful to implement common guidelines.

105. *Views are sought on the extent to which the regulatory framework might need to be amended in order to accommodate and oversee the necessary further development of the EU transmission network. In particular respondents are asked for their views on :*

- *to what extent should each national regulator be given new or explicit duties in relation to the interests of EU customers as a whole?*

EBLs view

In order to do so, at least in Norway, this will require legislative alterations in our Energy Act and provisions thereof. In our opinion the major driving force for increased cooperation and pan European electricity trade is first and foremost through establishing well functioning economic incentives and not by increasing regulatory powers to overrule market player decisions.

- *to what extent are new, revised, or cross border competences required?*

EBLs view

The need for increased cross border competence is first and foremost needed to speed up the legislative harmonisation process in Europe and further elaborate necessary details in rules and regulations that will facilitate increased cross border trade.

- *What regulatory framework or cooperation might best accommodate these?*

EBLs view

In our point of view, the process of developing more detailed and sustainable common rules and regulations concerning congestion management and tariffication is important. The direction and development of the inter TSO compensation scheme should be re-evaluated in order to seek solutions that will remove distorting incentives and include all benefits for market participants. It is important to coordinate all directives and guidelines in order to avoid adverse regulation and secure a common pull in the right direction. Development of a common framework through EU directives and binding guidelines, giving both the right incentives and Regulators and TSOs the obligation to facilitate cooperation, is a fruitful way to go.

Transmission System Operators

106. *The move towards a more pan European or regional treatment of transmission issues and standards naturally points to the need for TSOs to collaborate more intensively to reflect this treatment, subject of course to the necessary oversight by regulators. The introduction of more overarching planning and operation standards, and cross country regulatory arrangements for example would necessitate TSOs acting jointly to plan and operate networks, exchange data and to respond accordingly to the regulatory mandate.*
107. *More intensive co-operation between TSOs concerning emergency planning, connection and outage planning, and information of management to the market would also tend to support this more pan EU focus. Data regarding available transmission capacity should for example be made available on a non-discriminatory basis, in any case in accordance with the Congestion Management Guidelines given under Regulation 1228/2003.*
108. *ERGEG has the initial view therefore that it would be helpful for TSOs to be given a remit to take into account consumers on a regional or pan EU basis, so that they have a duty and mandate to act in this cross country regulatory environment. ERGEG would also stress that such remits and roles can only be effectively and efficiently taken on where TSOs are properly and effectively unbundled, and where any duties and joint activities are subject to oversight by regulators.*

109. *Any new institutional arrangement involving national regulators and TSOs should therefore reflect the established regulatory relationship between regulator and regulated entity.*

EBLs view

In our point of view, TSO neutrality is of imperative importance. Strict unbundling¹ of TSOs should therefore be given priority when elaborating new rules and regulations within the energy sector. This matter is also a prerequisite when TSO duties and mandate are considered extended. A well functioning cooperation between TSOs is best facilitated by harmonising and developing common rules and regulations for the electricity sector in Europe. This is an ongoing process in Europe that in our view should be speeded up. Increased TSO obligations for cooperation will not be effective unless the fundamental framework for their business activities are harmonised.

Further more, article 6 of the security of supply and infrastructure directive already regulates some of these issues.

Member States are obliged to establish a regulatory framework that;

- *provides investment signals for both the transmission and distribution system network operators to develop their networks in order to meet foreseeable demand from the market.*
- *facilitate maintenance and, where necessary, renewal of their networks.*

Without prejudice to Regulation (EC) No 1228/2003, Member States may also allow for merchant investments in interconnection. Member States shall ensure that decisions on investments in interconnection are taken in close cooperation between relevant transmission system operators.

Due consideration should be taken to already existing directives and regulation to avoid legislative contradictions.

Respondents' views are sought concerning :

- *The need for revised liaison arrangements for TSOs, bearing in mind the other recommendations – in particular the need for TSOs to cooperate closely.*

EBLs view

A balanced and well functioning cooperation between the TSOs in Europe is important. Today this cooperation is organised through ETSO. We have no indications that ETSO is not a well functioning organisation and that revised liaison arrangements are necessary.

- *The form such arrangements might best take.*

EBLs view

We see no need for further arrangements.

- *The need for further legislation and regulatory oversight to mandate such roles.*

¹ by separation of companies. Organising monopoly and market exposed businesses separately.

EBLs view

We see no need for further legislative or regulatory oversight.

Contract or 'Merchant' model

110. *Electricity interconnectors may be provided through a 'Merchant' model, according to the exemptions regime of EU law, although only one actual example – Estlink – presently exists. Nevertheless such provision in principle could supplement the existing EU network, particularly where DC interconnectors (where access to and use of them can be controlled) across borders are possible. ERGEG therefore suggests that it will be helpful for the exemptions regime, and the regulatory processes accompanying it, to be made clear for all potential investors. Such clarity would include a description of the process, the way in which criteria for exemptions might be assessed, the circumstances where exemptions might expect to be accompanied by additional criteria, and the prospect of obtaining a full or partial exemption. ERGEG has already made a move in this direction with the CEER's publication of its paper C05-EWG-22-04 "Criteria for exemptions" referred to in footnote 2 above.*

EBLs view

We share ERGEGs view on this matter and any other actions that can promote interconnection investments between systems that increase the utilisation and efficiency of existing electricity markets.

111. *Views are invited concerning how ERGEG might contribute to clarifying the expected regulatory treatment of transmission infrastructures built under the contract or 'merchant' approach, for example concerning guidance on how applications for exemptions will be processed.*

EBLs view

Regulators can be given an obligation to elaborate and distribute all necessary information to all potential investors (e.g. by the use of WWW) regarding guidance on how to apply for an exemption for the construction and operation of merchant lines.

This concludes our comments and views on the public consultation paper concerning cross border framework for transmission network infrastructure. If we in any way can further elaborate our views, please do not hesitate to contact us.

Best regards

EBL - The Norwegian Electricity Industry Association



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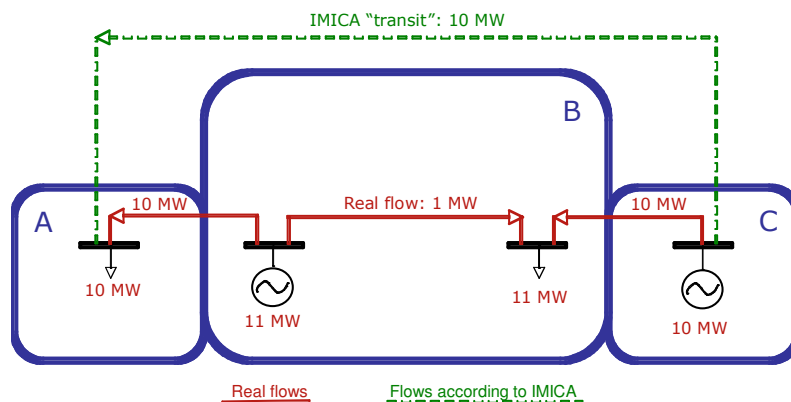
Ministry of Petroleum and Energy, Norwegian Water Resources and Energy Directorate

Why the (current) ITC models and proposals are unacceptable

The current and last few years debate over alternative ITC models relate to the Regulation 2003/1228 EC. The debate has focused on which approach should be taken to calculate the size or volumes of transits, and whether cost calculations should be based on historical or reinvestment costs. When the regulation states that benefits of transits should be considered when necessary compensations are calculated, the debate has focused on whether transits can reduce (domestic) grid losses or not.

From a Norwegian perspective the outcome of these discussions are simply not acceptable. This memo explains very shortly why this is the case. Our main concerns are as follows:

1. **No appropriate definition of transits.** Several more or less complex models for calculating the amount of transit are proposed, with IMICA as the latest attempt to establish a consensus model. However, there seems to be a fundamental flaw in all these proposals: There is a complete lack of discussion about a proper definition of transit. From both a physical (electromechanical) and economic point of view, it is far from obvious how transit of electricity should be defined. If country A imports 10 units from country B, which imports 10 units from country C, it appears that B is transiting 10 units from C to A. But most likely, there is less use of B's domestic infrastructure due to the two cross-border flows. In fact it might be there was no domestic grid in B at all – only two nodes connected with the neighbours A and C respectively.



2. **Commercial trades are mainly domestic or cross-border, not "channel based".** The inappropriate definition of transit currently applied, relies on a view that commercial trades are normally agreed between countries and are dedicated across several countries. That is no longer the case. Trades are concluded between traders (market participants) – not between states, are mostly domestic, and only in a few cases cross borders. When market splitting or coupling is applied, it is impossible for both traders and the TSO of e.g. country C to arrange for a transit through B to A. Whether an export from C to B is followed (simultaneously) by an export from B to A solely depends on actions taken in country B and A. Thus the amount of transit is to a large extent decided by market participants and TSOs of the transit countries, whereas traders in the net export or net import countries only respond on price signals from neighbouring countries.

3. **Benefits triggering cross border trades are mostly ignored.** There are two fundamental reasons why TSOs arrange for cross-border exchange with their neighbouring countries. These reasons provide benefits for all TSOs, market participants and states involved, and are generally larger than the costs, in particular *ex ante*. In the discussions so far, we can see no trace of such benefits:
- a. **Cost optimisation.** With interconnections between countries, it is possible to utilise generation capacity in a more efficient manner. With appropriate organisation of cross border trade, e.g. market coupling, it is easy to arrange for an international merit order dispatch. Thus countries with ample hydro resources will tend to export during peak load and import during off peak – as this is more efficient for both hydro countries and their neighbours with few or none hydro resources. These benefits are reflected in the (hourly) prices in each country or sub-market, and in the sharing of congestion rent when cross-border capacity is scarce, and accrues to both transit countries and net export or net import countries.
 - b. **Security of supply.** The security of supply for any electricity system depends on the availability of fast and slow reserves to cope with sudden and mostly unexpected loss of generation or transmission lines. Interconnected countries can share reserves, so that each country can hold less reserve capacity than it would have done under autarchy. Interconnections make it possible for e.g. Jutland and Germany to develop their wind resources without simultaneously building flexible (reserve) generation plants in the same magnitude. It is simply not possible to imagine how Sweden could have dealt with the nuclear outages this year without interconnection, or how Germany could develop its off-shore wind resources without interconnections to its neighbours. The security of supply benefits are reflected in significantly lower costs for reserves than what otherwise would have been the case.

Furthermore, we have serious doubts about whether it is possible at all to develop any kind of mechanical ITC mechanism without creating serious inefficiencies. In particular, we note that all the ITC models proposed so far can have serious impacts.

4. **ITC mechanisms distort incentives for TSOs.** Despite the aim to avoid cross border tariffs, which evidently provide wrong incentives, any ITC mechanism will have a similar effect, but at a higher level of aggregation. Substantial ITC payments will force TSOs to consider options to reduce these payments. But TSOs in net importing or net exporting countries do not decide whether to transit or not – a TSO can only influence whether to import or export.
- a. In a short-term perspective, TSOs are given incentives to reduce ITC payments by means of
 - i. Reducing the ATC, justified as system security, and thereby reducing the exchange generating transit compensation.
 - ii. Extending maintenance periods. The cost of an outage is effectively reduced when ITC depends heavily on aggregated flow.
 - b. Significant ITC payments will also distort investment signals for TSOs. For a country like Norway, the ITC payments might be the difference that makes direct lines to e.g. the Netherlands or England more attractive than stronger connections to Sweden and Denmark. It is not a mechanism that ensures optimal investment signals to TSOs neither at national nor at a European level.

Thus from an operational and investment point of view, the ITC-proposal appear as virtual cross border tariffs, with almost the same characteristics as real cross border tariffs.

5. **ITC mechanisms distort incentives for generation and load.** The ITC signals will come on top of already existing market signals, such as geographical differences in market prices, and national differences in grid tariffs. Failure to i) maximise the utilisation of all physical available cross border capacity and ii) make the optimal capacity expansions, will inevitably lead to less efficient electricity generation, on both a short and a long term horizon. Vertically integrated companies, such as the German big four, are likely to have incentives to schedule generation between existing power plants in a manner that maximises the transit income – at the expense of minimising generation costs and emissions. This is of course the reason why the Regulation focuses on “intensification of trade” and bans cross border tariffs. The economic and environmental impact of such distortions is substantial.

Consequently, we think it is vital for the further development and integration of the European electricity market(s), that the ITC discussions are viewed from a completely new angle. Norway can not accept to compensate costs in “transit” countries, when all the benefits from cross border exchange in these countries are neglected.