



**Regulation (EC) 1228/2003
Compliance Monitoring
Second Report, 2008
ERREG Conclusions Paper**

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1 Introduction

1.1 Purpose of the paper

The first Monitoring Report on Compliance with Regulation 1228/2003 (the Regulation) and the Congestion Management Guidelines (CM Guidelines) prepared by ERGEG (First Compliance Report) was presented at the XIV Florence Forum in September 2007. The Forum requested that ERGEG resolve any outstanding issues regarding the interpretation of legal requirements in the Regulation and CM Guidelines, in order to enable better and more precise monitoring and reporting in the Second Compliance Report (the Report). The Forum also concluded that the Second Compliance Report should be more specific and should allow the European Commission (EC) to identify clearly to what extent the legal provisions of the Regulation and CM Guidelines have been met in Member States (MS).

The key findings of the Second Report showed that the Regulation and the CM Guidelines have not yet been fully implemented. However, it was acknowledged that much progress has been made since the First Compliance Report, especially within the realm of the Regional Initiatives. These are working to find solutions to the requirements set by the Regulation and the annexed CM Guidelines. The changes required are of a complex nature and will depend on participation and full commitment of many European stakeholders. Because of this, ERGEG concluded that it was important to develop a clear understanding of what needs to be done, how, and who is best placed to do it.

In the Report, ERGEG invited stakeholders to provide answers to the following questions:

- How can compliance be achieved where non-compliance and deviations from the legal provisions in the Regulation and the CM Guidelines have been identified?
- Are there any other areas where more precise and detailed provisions in the Regulation and the CM Guidelines, possibly beyond the findings in the Report, would be useful?

This document sets out the conclusions that ERGEG has drawn from the responses provided to the Report. The public consultation was held between 17 September 2008 and 12 November 2008. A summary table of the responses received and the viewpoints expressed by stakeholders is provided in the Annex.

1.2 Responses received

ERGEG received 15 non-confidential responses during its public consultation on the Second Compliance Monitoring Report. Ten replies were from organisations representing national, regional or European electricity market participants. Three responses were from Transmission System Operators (TSOs) or organisations including representation of TSO activities. One reply was from an organisation representing energy intensive users. The last was from an organisation mainly concerned with electricity distribution activity. Responses spanned the geographic and industrial structure of the EU electricity market.

The respondents were:

- VERBUND-Austrian Power Grid (APG)
- Centrica plc (Centrica)

- CEZ, a. s. (CEZ)
- Norwegian Electricity Industry Association (EBL)
- Edison (Edison)
- European Federation of Energy Traders – Iberian Task Force (EFET)
- Energie Baden-Württemberg AG (EnBW)
- European Transmission System Operators (ETSO)
- Union of the Electricity Industry (Eurelectric)
- Groupement Européen des entreprises et Organismes de Distribution d'Énergie (GEODE)
- International Federation of Industrial Energy Consumers – Europe (IFIIEC)
- Nordenergi (Nordenergi)
- Scottish and Southern Energy (SSE)
- Towarzystwo Obrotu Energia (toe)
- The Spanish Electricity Association (UNESA)

These responses are available on ERGEG's website (www.energy-regulators.eu). Furthermore, two confidential responses were received.

2 Consideration of responses

2.1 Introduction

Respondents to the Report commented on several of the issues raised in the report. This chapter summarises respondents' views and sets out ERGEG's actions in light of these.

Many respondents welcomed the ERGEG Report and confirmed the key findings, conclusions and recommendations stated by ERGEG in the report. This paper focuses on those respondents' views which will need further work following this public consultation.

2.2 Clarification of the Rules in EU Regulation 1228/2003 and the Congestion Management Guidelines

Responses from market participants to the Report confirmed ERGEG's opinion that more detailed provisions in EU Regulation 1228/2003 and the CM Guidelines are needed. These clarifications are not ensured by the 3rd Package¹, as it was not the scope of the 3rd Package to solve uncertainties in the Regulation or annexed CM Guidelines.

ERGEG will therefore provide a list of issues where clarification in the legal requirements are needed and submit this list, with interpretations, for public consultation. After consultation the list will be finalised and sent to the European Commission (EC), which may evaluate the need to amend the CM Guidelines accordingly. However, it is assumed that most of the

¹ Third legislative package on energy liberalisation, 19 September 2007.
http://ec.europa.eu/energy/gas_electricity/third_legislative_package_en.htm

unclear issues will be solved by explanatory remarks and guidance for interpretation and no legal actions by the EC will be needed.

Until the Rules are clarified, there is the possibility that National Regulatory Authorities (NRAs) could interpret the legal requirements differently, basing their interpretation on experience gained from the national markets.

2.3 Access to Merchant Links

ERGEG considers that it is important to continue work on ensuring Third Party Access (TPA) and providing market-based congestion management methods on the old “Merchant Links”. This approach should contribute to the efficient use of these interconnectors.

This work will be done within the ERGEG Regional Initiatives, such as the Northern region Implementation Group (IG) dedicated to the Merchant Links. Responses to the public consultation demonstrated that market participants are keen to improve conditions of access to these interconnectors.

2.4 Efficient use of cross-border capacities

ERGEG stated in the Report that it believes it is of the utmost importance to ensure the provision of intraday allocation methods on all interconnectors. While on many borders bilateral solutions are used within the regional framework, the implementation of regionally coordinated intraday allocation methods has been discussed. Furthermore, ERGEG has prepared voluntary assessment criteria on the economic efficiency of different congestion management methods.

ERGEG will actively support the work within the Regional Initiatives in order to achieve improvements on the efficiency of congestion management as soon as possible.

2.5 Firmness of capacities

Several market participants consider firmness of capacities essential.

Some market participants and TSOs required more detailed and exact provisions in the Regulation on this topic.

Market participants have pointed out that countertrading and redispatch have not yet fully developed to assist the day-to-day congestion management by managing the lack of capacity and its firmness.

2.6 Maximisation of interconnection capacity

Market participants stressed the importance of this issue and the need of regulatory support in order to ensure that the maximum level of capacity is offered.

Responses from market participants said that they want the relevant parties to ensure that the maximum level of capacity is available at cross-border interconnections. ERGEG will draft a discussion paper on incentive schemes in order to promote further discussion of this issue in 2009.

2.7 Need for clear rules on Inter TSO Compensation and Transmission Tarification

As ERGEG stated in the Report, there is a strong need for the adoption of Guidelines on Inter-TSO Compensation (ITC) and Transmission Tarification. With regard to the issue of ITC, ERGEG will provide input to the European Commission's consultation, which started the 9th December 2008 and will run until the 28th February 2009.

Some respondents also commented on the need for Transmission Tarification Guidelines in due time. They suggested that if it was likely that the discussion on ITC would delay the completion of Tarification Guidelines then the two should be dealt with separately.

2.8 Strengthening of Regulatory Powers is required

With regard to the need to harmonise regulatory powers, ERGEG stated in its report that Member States should put in place the legal framework that is necessary to create efficient cross-border electricity trade and support the implementation of the CM Guidelines. The third energy package (3rd Package) proposals will revise and improve the powers of NRAs.

Some issues relating to NRA powers are not covered by the 3rd Package but need to be adopted in the CM Guidelines. These include:

- the lack of concrete legal powers with regard to enforcement of the obligation of market participants in Point 5.5 of the CM Guidelines to provide TSOs with the necessary information. To ensure the publication of this data a clarification of this provision would be helpful, which also allows the NRA to take legal steps against the market participants.
- regulators should have clear ex-ante powers on approval of topics under congestion management. This would help ensure proper and timely implementation of the CM Guidelines.

2.9 Transparency

The issue of transparency was considered important by many respondents in order to create a level playing field in Europe. Therefore, the implementation of the publication requirements set by the regional Transparency Reports will be the key activities for the regulators, where the Transparency Reports are already adopted (Northern, Central-West, Central-East, South-West and soon Central South regions). As market participants request European-wide harmonisation, remaining regions should also proceed with the adoption of publication requirements.

Whether further harmonisation is necessary e.g. by developing a European Transparency Report, will be discussed in the medium term.

2.10 The future Compliance Monitoring on EU Regulation 1228/2003 and Congestion Management Guidelines

In order to improve the compliance monitoring on the implementation of EU Regulation 1228/2003 and CM Guidelines, ERGEG has decided to provide from 2009 onwards a partial report with in-depth analysis of selected topics agreed beforehand with the European Commission. This would mean that the compliance monitoring report would focus annually

on only some issues. However, with regard to the status of the implementation there will be an update of the annexes which detail the requirements set in the Regulation and the CM Guidelines.

For the purpose of the 2009 compliance monitoring report, the responses to the public consultation signalled a deep interest in the following topics:

- firmness of cross-border capacities;
- maximisation of cross-border capacities;
- cross-border redispatch and countertrading;
- transparency; and
- use of congestion income.

The input from this public consultation will be considered by ERGEG when providing proposals to the EC on the subjects for in-depth analysis in the Third Compliance Monitoring Report in 2009.

Annex

Summary of responses

This summary maps responses according to the topics.

The responses received will be considered when selecting the topics for the Third Compliance Monitoring Report in 2009.

Issue	Who
Legal framework and CM Guidelines	
An appropriate nation legal framework to ensure the harmonisation should be set by the MS.	2
The legal framework to secure efficient cross border trade and the implementation of the rules in the CM Guidelines should be elaborated. However, such a legal framework must be carefully scrutinised before implementation so that rules and regulations that are not possible to fulfil e.g. the existing regulation on Inter Transmission System Operator (TSO) Compensation (ITC), are not introduced.	1
The ERGEG proposal to amend the Regulation and CM Guidelines in order to remove current ambiguities and to provide clarity on what is required is welcomed. A single, clear and transparent set of Guidelines, which are applicable and well understood by all, is strongly advocated.	1
(4.1.7) Point 1.7 of the Guidelines is one example that too much room for interpretation is left in the rules of CM Guidelines.	1
The CM Guidelines are in too vague and result in different interpretations between different countries. One example of this is the practice in Sweden of moving internal bottle-necks to the surrounding borders. Hence, the CM guidelines need to become more precise on these issues in order to omit inefficient national practices.	1
With regard to the issues of curtailment, firmness and compensation, clear and transparent requirements, agreed upon between all regulators, and outlined in the Regulation and CM Guidelines to ensure a common and well-understood standard would be welcomed.	1
There is an insufficient level of harmonisation on cross-border electricity flows. Specific rules as well as general market structure still differ to a very large extent and these differences impede a full development of cross-border electricity trading. There is a need for further coordination among Regulators and TSOs at European level, in order to develop a consistent or at least harmonised set of rules related to cross-border electricity flows between neighbouring States and, eventually, at regional and European level.	1
A new, clearer and more detailed version of the CM Guidelines is of utmost importance, as rules in the Guidelines are often too vague and leave room for different interpretations.	1
Redraft clearer and more precise CM Guidelines with the minimum amount of room for interpretation, in close cooperation with all stakeholders.	1
ERGEG should list all unclear formulations and prepare a comprehensive interpretation, which should be subject of public consultation.	1
The introduction of amendments to Regulation 1228/2003 and the CM Guidelines to improve clarity and remove interpretations ambiguities is welcomed.	1
Important steps to be followed are the enabling of access to "Merchant Links", strengthening the role of regulators in the process of implementation, detailed	1

and precise determination of conditions on practising countertrading and redispatching.	
The formalisation of new Guidelines would be beneficial, adding to the CM Guidelines already in place. By consulting in preparation, ERGEG can help ensure the applicability in market operations.	1
On occasion there is too much room for interpretation given in the present legal framework. It would be beneficial to see ERGEG's interpretation of these areas and a consultation with market participants to engage on how to address these issues.	1
As priorities, encourage the development of explanatory notes and guidelines for transparency and firmness of capacity (building on work done by ERGEG). Other areas of advice are curtailment and flow management rules.	1
ERGEG's advice to the EC: capacity firmness and maximisation issues are to be supported; general framework should be developed to harmonise countertrading; present three alternatives are sufficient for use of congestion income	1
ERGEG's advice to the EC: supports all four topics (firmness, maximisation, countertrading/redispatching and use of congestion income)	1
In some instances it is stated that National Regulatory Authorities (NRAs) do not consider legal text to be applicable. It would be beneficial to understand the reason behind such a statement. Any such statement should be justified by the NRA and/or TSO. Where an element is not applicable, tables in annex should state 'NA' rather than 0%, which would also be the statement for non-compliance where it is legally required.	1
General comments	
In general, respondent agrees with most of the findings of ERGEG's Report and with the proposed solutions.	1
A European vision and a set of priorities are necessary on a bottom-up approach.	1
The ERGEG conclusion to define and put in place concrete measures to speed-up the implementation process of CM Guidelines is welcome. In order to do so regional cooperation and harmonisation of legislation and regulation between NRAs should be increased. In these processes it is important to establish good information processes and dialog with TSOs and Stakeholders within the region.	1
In some instances, projects may already be in place through which compliance will be improved or even ensured. This is not reflected in the report.	1
Section 6.1.11 Why are areas such as curtailment, firmness and compensation included as areas of 'critical non-compliance' when the requirements for compliance have yet to be clearly defined?	1
Other issues are also of great importance, e.g. EU – non EU regional contacts.	1
From a socioeconomic point of view, the most important issue regarding "old merchant interconnections" is whether the utilisation is efficient or not, and not who is receiving the congestion rent. If TPA is considered necessary to ensure efficient utilisation, one option could then be to demand that current owners arrange for implicit or explicit auctions.	1
The current incentives for TSOs for investments are too weak and too uncertain.	1
Cross-border investment incentives: start working on a system of harmonisation of incentives given to TSOs carrying out investments, especially when these investments have an impact on cross-border transmission capacities.	1
Congestion Management – Methods	
Support was expressed for the development towards more and firm capacities being made available to the market. The security of supply issue has to be respected and regional dimensions and influence have to be taken into account.	1

Maximisation of capacity is the core of Regulation 1228/2003. It should be more clearly explained why NRAs cannot enforce this provision and what should be improved to ensure this provision. The respondent wants to participate in the drafting of ERGEG's advice on how to maximise capacity.	1
Technical conditions necessary for the maximisation of available transmission capacities must be determined.	1
Netting is an issue that can be implemented relatively easy.	1
The Polish TSO has been very conservative as regards offering cross-border capacity and acting in the scope of developing additional export and import opportunities. In the last 3 years, commercial exchange has been gradually capped up to a total lack of capacities at yearly and monthly auctions. This is in contradiction to the EU policy and the creation of regional markets.	1
Reservation of cross-border capacities causes unequal treatment of sellers and increases the risk related to the execution of the concluded contracts for the international sale of energy.	1
Efficiency calls for a thorough review of "European" market design. A comparison with the "US" market design could be a starting point for such a review. Characteristic of the former is zonal prices and sequential clearing of submarkets (transmission market, day-ahead market and market for ancillary services), whereas the latter is characterised with nodal pricing and simultaneous clearing of several such submarkets. The choice of sequential before simultaneous clearing leads to a less complex market design, but more complex coordination measures and (presumably) less efficient market outcomes.	1
Countertrade and redispatch is not yet fully developed at a level which is sufficient for day-to-day operation. The introduction of a redispatching mechanism to manage the lack of capacity in the interconnectors is suggested as an incentive to avoid congestions. Cooperation should be enhanced.	1
With regard to the change of market conditions not Market Coupling but a cross border intraday trade is the best way to achieve an optimal social welfare equilibrium as market players need to adapt their positions constantly.	1
Efficient use of cross border capacities should be achieved for every allocation timeframe (long term, day-ahead or intraday).	1
Section 3.1: Provision of Information on Interconnection capacities: Has there been any consultation/explanation by the NRAs where information differs on different sides of the border?	1
The creation of a common and shared updated database describing the real physical network of large and consistent parts of the European system should be used as a joint model by all involved TSOs to calculate more precisely the cross influence of transactions and/or network conditions on physical power flow (coordinated load flow calculations). A preliminary necessity (which should be carried out before market coupling is introduced) is to identify the existing loop flows and maximised allocated capacity through a state estimation with real data (productions, lines availability, loads, etc) and in real time.	1
A basic rule is that the country from where the power is flowing is the authoriser and the country of import should accept the decision on flow management. This does not always work in practice. Examples exist where the importing TSO has rejected a flow without providing any reason to the exporting TSO or the rest of the market. This occurs despite there being available capacity and a price spread which showed that the flow direction was optimal. At the very least, the basic premise of authorisation of flows should be agreed upon between TSOs and that, where flows are rejected, reasons for this should always be provided.	1
Restriction of market participants: an exceptional process resulting from ex-post analysis from relevant authorities on a case by case basis. Adoption of Guidelines: public consultation foreseen including right of appeal.	1

Compensation for non-executed trades on interconnectors where the fault is proven to lie: there have been some instances of TSOs refusing to acknowledge errors in their operations that have led to trades not being executed. These issues are beyond those of unexpected capacity reductions and are due to operational mistakes and failures such as the TSO not processing a trader's schedule or bid properly. One could question the right of a TSO to refuse compensation for direct damages and opportunity costs in such an instance.	1
Currently TSOs only have to reimburse to a value of 100% or 110% in case of curtailment. It could be argued that this should be more punitive and should increase closer to the nomination day to incentivise TSOs to reduce and plan outages in advance and cover the cost of un-hedging positions by market participants. It could also be argued that a figure of 110% does not fully reflect the opportunity costs to the supplier.	1
Financial consequences in case of failure to honour obligations: TSOs in case of curtailment are liable to compensate market participants except under force majeure. Firmness should be defined in the same way, at least on a regional level. There is an unsolved regulatory issue on how TSOs are allowed to refinance the risk. One could use congestion rents to refinance compensations (transitory period an upper limit on total compensation per month)	1
(4.2.13) One respondent reimburses market participants 100% of the auction price in the case of unscheduled maintenance work. the respondent informs market participants about reductions and curtailment due to maintenance during the bidding process and announced maintenance are not reimbursed	1
ERGEG documents do not make any references to the prohibitions on some Spanish players to import electricity from France. This situation hinders efficient use of the interconnection, because it reduces competition, and it is difficult to understand considering the publication of the CNE report on VPP and CESUR in which the CNE admits that the rule applied to define the agents subject to this prohibition, "the 10% rule", is not the right way to assess a potential abuse of a dominant position.	1
The establishment of secondary trading for transmission capacity, ensuring that each TSO allows secondary trading of capacity and information requirements are fulfilled, is supported.	1
In some instances, national rules may limit the TSOs' allowed revenues, via a price control process. In the absence of such limitations - where prices are determined via auctions - NRAs should not be allowed to intervene unless it has proof that the auction itself was flawed. Thus, a NRA should not be permitted to take any 'corrective' action; if it merely considers the auction price to be too high (or low).	1
Point 2.10. On interconnections between the Nordic market and adjacent markets (e.g. Norway – Holland, Sweden-Poland etc.), where explicit auctioning at the moment is being used, it is important to secure that the capacity allocation and most importantly the use of capacity is carried out efficiently. The proposal of explicitly assigning the responsibility of imposing restrictions to the energy regulators should be supported.	1
There is a need to assess the economic efficiency of the existing congestion management methods, in particular those cases where explicit auctions are in use.	1
(4.2.12) Point 2.12 of the Guidelines: a compliance assessment of market participants would have brought different results.	1
Congestion Management – regional issues	
Point 2.10. The prohibition on Spanish Market Agents being allowed to import electricity from France when their domestic market share exceeds 10% should be eliminated.	1

The approval of the IPE rules, for the regulation of explicit auctions in the Spanish/Portuguese border, is urgently needed. This decision cannot be postponed due to the establishment of the common auction platform in the region supported by the regulators.	1
Triad system: this system should be reviewed and removed as it works against market competition and reduces market efficiency. For the whole Triad period, regardless of actual market conditions between France and the UK, no-one will risk any flows out of the UK in block 5 in order to avoid the triad cost.	1
Powernext and OMEL should agree on a timetable for the implementation of market coupling.	1
Point 1.10 The auction rules for explicit auctions between Spain and Portugal have to be approved urgently and cannot be postponed due to the establishment of a common auction platform in the region supported by the regulators.	1
A pragmatic implementation master plan for the establishment of Market Coupling in the different regions should be provided, taking into account the question of integration of the regions, too.	1
Current ongoing Market Coupling efforts: the cooperation especially between TSOs as well as in cooperation with the PXs is fruitful.	1
The Central Western European Electricity (CWE) region: implementation of mechanism for intra-day congestion management (having the same method on both sides of the interconnection): no agreement exists but negotiations are ongoing, a consultation could be held to achieve agreement.	1
There also exist certain limits in the regional co-operation like unharmonised market models, different approaches to Renewable Energy Strategy (RES) policies and cross-border transmission functions. These issues need to be tackled as well.	1
The day-ahead market coupling between the Iberian Electricity Market (MIBEL) and CWE should be a priority for both market operators (Powernext and OMEL) and system operators (RTE and REE). It is necessary to have the timetable for its implementation as soon as possible.	1
One respondent has commented on and updated regional developments on congestion management and transparency in its response.	1
Transparency	
Solutions should build on existing policies and processes; e.g. regional transparency based on Guidelines for Good Practice (GGP) on Information Transparency. Whilst information is often published, it is not necessarily always correct or placed in an accessible location in a user friendly format. It is essential that websites are clearly identified and navigable. Compliance should also assess how accurate data is and how often it is updated.	1
TSOs held much of the information needed by market participants. A quick solution is to require the TSOs and their associated auction bodies to make the information public. The manner and method as well as the timetable for publication should also be set out.	1
Once rules for publication of information are approved, it is imperative they are published and market participants made aware of the new conditions under which they must operate.	1
There are still differences in interpretation and in implementation of the CM Guidelines and a lack of transparency on important issues in the system. ERGEG's proposal to complement the CM Guidelines with legally binding and detailed provisions on information management and transparency is supported. Some basic requirements regarding the transparency and information disclosure: a) Development of transparency should be in line with the integration and maturity of the market, focusing on timely publication of essential price drivers. b) When two markets are coupled, equal transparency	1

and information disclosure requirements must be applied for both markets. c) Implementation of transparency needs strong coordination and enforcement from the involved regulators.	
Transparency concerning the fundamentals in the evaluation of future grid investments is important in order to secure a proper development of the system and should be improved.	1
Point 5.5h of CM Guidelines: one should introduce a general obligation for the TSOs to report on corrective actions taken, as well as where there was no corrective action taken.	1
Regional transparency reports are currently sufficient for the problems stated in the Report. It is not recommendable to complement the existing general provisions on transparency; rather it would be better to use the existing regional transparency reports and implement them throughout all MS to achieve a level-playing field.	1
Although the CM Guidelines introduced a minimum legal level of data provision, they also introduced ambiguity in terms of who is responsible for the publication of certain types of data. It is essential that these provisions clearly outline the responsibilities for third party data provision and fully acknowledge that TSOs cannot be held accountable for inaccuracies or omissions in data over which they have no control.	1
The regional transparency report is welcomed. However, the new definitions in this report have the potential to delay the implementation of the current transparency provisions deriving from the CM Guidelines.	1
A number of improvements on transparency have to be made.	1
As proposed by ERGEG, it is of vital importance that legally binding and detailed provisions on information management and transparency exist.	1
Transparency is also needed to monitor possible abuse of market power by dominant players.	1
Publication requirements shall be harmonised in terms of uniform format, common language, and internet based publication.	1
Transparency requirements shall be well balanced not to leave out data but requirements should also not be too far reaching.	1
Similar transparency requirements must be applied in all integrated markets in order to avoid distortions in competition between market players.	1
The existing general provisions on Transparency in Section 5 of the CM Guidelines should be complemented by with legally binding and detailed provisions on information management and transparency.	1
Congestion Income	
The report sets out the ratio chosen for each of the options (ways of using income) by each NRA. It would be interesting to understand the reasons behind these ratios and in particular whether they are kept constant for each interconnector. Given that assuring firmness of capacity is considered such an important issue, it could be seen as surprising that only 3 regulators allocate any portion of revenues to ensuring firmness of capacity (awarding only 2% of revenue)	1
Section 4.6: There are still ongoing European discussions on how to cover costs for guaranteeing firmness. An amendment of the CM Guidelines shall clarify this issue.	1
It is not in the remit of NRAs to judge if congestion income is excessive but only investigate if any illicit behaviour occurred.	1
The triad system at the Interconnector France-Angleterre (IFA) leads to distorted nominations on the IFA.	1
The congestion rents should be used prior to network investments to increase interconnector capacities.	1
Regulators should strictly enforce the Regulation on this issue, as in the	1

Netherlands, part of these funds was used to finance the purchase id APX spot market. More transparency and certainty is needed on the use of congestion incomes.	
Inter-TSO compensation and tariffication	
It is good that discussion on transmission tariffication is linked to the ITC. ITC is seen as an international tariff and ITC needs to be implemented in a technically more complex way than the national tariffication schemes, but its results have to be an integral part of those national tariffication schemes.	1
ITC solutions that have been implemented, past and present, do not sufficiently comply with the Regulation. In a voluntary agreement a consensus is needed which, in the case of ITC, leads to a weak implementation of the rationale of the Regulation. An ITC scheme that appropriately reflects the wording and meaning of Regulation 1228 accordingly is of utmost importance. There has not been a sufficiently equal treatment of national and international users in any of the past voluntary ITC agreements.	1
ITC distorts operational efficiency and gives clear disincentives for several TSOs in developing new cross-border capacity. ITC will thus decrease international trade and the economic benefits from such trade. Following the main rule in paragraphs 2 and 5 /1228/03 art.3) has proved impossible, and further attempts to do so should be avoided. Congestion revenues and trading incomes now logically replace such tariffs many times over.	1
There is a need to harmonise tariffication principals in Europe. The tariffication Guidelines are important in order to level the playing field for the market players.	1
ERGEG's view on the need to develop an ITC system able to determine TSOs responsible for the origin and end of flows in the meshed network and suggests the creation of a common and shared update database to address this is welcome. Such a data base would solve the problem of quantifying and attributing the network losses, mitigating the possibility of discriminative behaviours. The cost of losses should be equally charged to the operators really assigning the exporting and importing cross border transit capacity.	1
Examples of lack of harmonisation: network losses related to electricity traded across borders are treated differently by the different TSOs in the MSs. Some TSOs provide for procurement of electricity due to network losses themselves, while others deem energy trading companies responsible for procurement of the losses related to their own flows. Furthermore, harmonisation and convergence of the different level of network utilisation fees applied in the different MSs is a pre-requisite for enhanced cross-border flows of electricity, and to a more integrated European market.	1
The proposal to adopt and implement ITC and Tariffication Guidelines is supported.	1
Current EU legislation does not provide sufficient investment incentives for cross border interconnections. The ITC mechanism in particular was not supporting investments.	2
Requirements of Art. 3 EU Regulation 1228/2003 for ITC are unclear and hard to fulfil.	1
There is a special need for quick clarification of the Guidelines on ITC and transmission tariffication. If necessary the Guidelines should be separated.	1
Clarification of the "maximum average G-charge" is needed, in particular a prescriptive limit on the permitted variation from the average would provide greater certainty for new generators.	1
A clear prohibition of "pancaking" of charges at national or TSO boundaries such as is currently practiced by National Grid in the UK is needed.	1
Section 6.2: ERGEG calls on the EC/MS to adopt and implement the ITC and Transmission Tariffication Guidelines as soon as possible. However, there is no	1

mention of the important role of TSOs with regard to ITC and Tariffs?	
Governance issues	
Which methods have been successfully used by NRAs to ensure/speed up compliance, where they have not been used and why should be evaluated in the text.	1
Regulatory issues like regulators powers in dispute settlement, responsibilities of authorities in each country for cross border trading and the NRAs' responsibility for the evaluation of the efficiency of the use of cross-border capacity should be harmonised.	1
ERGEG should put in place concrete measures to speed-up the implementation process of the CM Guidelines.	1
Criteria which are beyond the legal framework should be excluded from the Report until the Regulation and CM Guidelines have been amended.	1
Great attention should be devoted to the need for correct and harmonised implementation, and the ways for national legislative and regulatory frameworks on electricity interconnection to converge.	1
It is essential that governance is harmonised between NRAs in order that they can jointly address concerns and other issued on interconnectors. Small improvements in this area could lead to substantial benefits.	1
The additional duties and powers envisaged for NRAs through the 3 rd package will greatly assist the monitoring and enforcement of compliance with legislation. It is likely that some non-compliance currently exist due to the low level of regulatory powers. It is hoped that NRAs and TSOs are being encouraged by the 3 rd package to address problem areas in advance of formal implementation of the package.	1
A report should be published on which TSOs do not comply with which provision, setting a tight deadline for TSOs to ensure compliance. If the compliance is not ensured after this deadline, NRAs should open formal cases against the non-compliant TSOs.	2
ERGEG/NRAs should assess economic efficiency of CM methods. Progress on implicit daily auctions can be observed.	1
There is opposition to the suggestion to recommend to the EC that the TSOs shall report on all relevant descriptions, documents etc. so that it becomes an "inherent" and "self-explanatory" duty of TSOs. This as task of NRAs, who shall monitor and report on the current developments and check the documents of all TSOs.	1
It is important that compliance is assessed on a regular basis by the NRAs and that the lessons learned are shared between them in the interest of developing a consistent implementation of the European legislation and regulation, and facilitating the development of the single energy market.	1
There is a need to harmonise key regulatory issues of governance. In particular appropriate legislation at EU level should be developed to allow investments from a regional perspective. Member States should harmonise their regulatory framework to enhance market integration by: <ul style="list-style-type: none"> • Implementing regional committees that decide on cross-border related issues; • Oblige TSOs to plan cross-border related investments from a regional perspective; • Develop a common model for evaluating regional socio economic benefits; • Assess and prioritise investment plans according to the result of a regional model and positive socio economic welfare; • Ensuring transparency and appropriate involvement of market stakeholders through early and extensive consultations; and • Implementing legal and regulatory instruments that can ensure that 	1

transmission investments with socio economic welfare gain are made and an appropriate cost allocation between TSOs is achieved. This distribution should be based on the expected benefits from a regional perspective in a way that makes it attractive to invest. In practice, it could mean that a third country TSO, not involved in the construction of the transmission line, but which would benefit from increased socio economic welfare due to increased cross-border capacities, could take part in financing the investment	
Compliance monitoring report	
It is not clear, which method ERGEG used to assess compliance, therefore more information on the auditing method is necessary.	1
The Report is not detailed enough to explain the information in the tables.	1
It would be helpful if the Report was more specific in terms of names of projects which should be completed, assignment of responsibilities for achievement of described criteria and assigning assessment criteria to the regions.	1
Report transparency: it is unclear what criteria NRAs have used; explanation of variations in values on different sides of the border would be helpful.	1
Inconsistent assessments from regulators at two sides of the border should be avoided by joint work. The compliance work should be overseen by the Agency for the Cooperation of Energy Regulators (ACER), once it is established.	1
The method by which the percentage figure has been arrived at for each interconnector is unclear. Neither are there any explanations of what particular aspects are deemed non-compliant, nor potential reasons for this. Without this it is difficult to comment on the most effective and rapid actions for achieving compliance.	1
There is a lack of detail on the basis by which NRAs have made their assessments. How the individual percentage terms have been arrived at is unclear. Each individual item is not likely to merit the same weighting when assessing the overall compliance of an interconnector. It would be beneficial to understand the reasons behind any weighting calculation carried out.	1
Where interpretation difficulties occur between two NRAs, a college of regulators could be used to carry out the interpretation and monitoring. Such a college should include the regulators of the countries involved but also at least one independent regulator.	1