
**EURELECTRIC Response to ERGEG
Consultations on “Coherence and
Convergence Report” and
“Compliance Monitoring Report”**

TF Florence Forum



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1. Introduction

- EURELECTRIC welcomes these two ERGEG consultations as a useful tool to monitor and improve the process of market integration. We believe these initiatives come at a timely moment: in the middle of the debate on the Third Energy Package and few weeks in advance of the Florence Forum.
- The work carried out by the Regulators is a thorough and detailed analysis of the current status in the different regions, countries and borders. We agree with most of the problems pointed out in the two reports; however we believe the texts may give the impression that all regions are developing at a similar pace, while it should have been pointed out that the more advanced ones (such as CWE and Northern) are progressing faster than many of the others. Moreover we believe the texts do not sufficiently explain how the numerous issues could and should be solved. The need for practical solutions is even more important now that the Third Package is likely to be finalised in the next few months. A clear vision should be developed on how regional markets will be driven forward in the new regulatory framework, with new organisations, roles and responsibilities.
- With regard to the Coherence and Convergence Report EURELECTRIC considers the document a valuable source of information on the current developments of the Electricity Regional Initiatives. We also fully support the elaboration of action plans that identify obstacles to the implementation of the congestion management “target methods” outlined in paragraph 5 of the Report. We believe these target methods should be used as guidance for regional markets to develop consistently and to identify more systematically to what extent regions are deviating from these targets.
- The findings of the Report confirm our concerns about the need for more coordination, in order to achieve more convergence, of the planned and ongoing projects in the different regions. An EU-wide implementation master plan, with concrete steps in the short and in the medium-long term is urgently needed to ensure that progress within regions is in line with the “bigger picture” of integrating markets towards a single EU market. While progress on a regional level should not be hindered, as more and more regional initiatives are being developed, we see the need for an overarching framework to ensure that regions do not diverge too far in their progress. Moreover, a stronger leadership at European and Member State level is necessary to drive the markets forward: experience shows that without political will many initiatives proceed too slowly despite efforts from regulators, TSOs and market parties.
- Looking at the Compliance Monitoring Report we believe the contents are generally correct and well explained. However, some of the data in the report may not be very relevant in showing the degree of market integration of the different markets: Regulation 1228/2003 and Congestion Management Guidelines are often too vague and leave room for differences in interpretation. In certain cases, on the same border, the competent regulatory authorities have different views on the degree of compliance with the regulation and the guidelines. While in the longer term a new, clearer and more detailed, version of the Congestion Management Guidelines is of utmost importance (following inputs and solutions proposed by market parties), we believe that in the meantime evaluation on compliance criteria should be done jointly by a college of several regulators in order to avoid inconsistent assessments and diverging action plans. Once ACER (under the rules of the third package) is established, the evaluation process should be overviewed by this Agency or its dedicated regional committees.

2. Coherence and Convergence Report – General Comments

Firstly, we would like to express our support for paragraphs 5 and 6 of the introduction to the report, referring at the ERGEG roadmaps, which we believe should form the basis for the overarching framework for regional convergence:

*“5. In order to acknowledge specific regional issues and to find appropriate solutions for each region, with a view to integrating regions, ERGEG will encourage each REM to elaborate action plans that identify obstacles **towards the implementation of the following congestion management target methods**, namely:*

- a) A common transmission model: the calculation of cross-border transmission capacity using load-flow calculations based on a common network model is an essential contribution to maximising available transmission capacity under secure network conditions and dealing efficiently with interdependent physical loop flows especially for regions with highly meshed networks (article 3.5 CM Guidelines);*
- b) A single auction platform with harmonised auction rules, IT interface and products for long and medium-term allocation;*
- c) Implicit auction model for the day-ahead timeframe (market coupling or splitting);*
- d) An intra-day mechanism, with an option for continuous trading;*
- e) Developing cross-border balancing (e.g. TSO to TSO model as a first step) aiming at balancing market integration.”*

*“6. On the basis of these identified objectives, **each RCC will complete its action plan**, with all involved parties, **explaining for each obstacle which remedies could allow for the implementation** of the targeted congestion management methods, more connected balancing markets and stronger market integration.”*

Within this context, EURELECTRIC is currently developing some regional roadmaps focussing on the main priorities for each region and how obstacles to integration should be removed. A first version of this work will be presented at the next Florence Forum.

EURELECTRIC believes that the issue of allocation of transmission rights has been debated over and over again, and market parties have expressed clearly their views in different position papers (emitted by amongst others EFET, EURELECTRIC and many other). In order to avoid a theoretical debate, and a stalling of the process in the meantime, we believe it is now time to implement some critical steps, such as a COMMON calculation model, a CONTINUOUS cross-border intraday platform, HARMONISED auction rules, FINANCIALLY firm transmission rights, at least on a “pilot” basis. Such implementation should be carefully monitored and fine-tuned where necessary.

Focusing on the analysis of the synthesis tables in section 6, EURELECTRIC is concerned about the general lack of coherence between different regional initiatives. While regions may have different priorities depending on the current status of market development, an overarching framework with the necessary leadership at EU level should ensure that the overall process does not result in divergent solutions and models, and thus require additional work to re-establish coherence.

Additionally, we believe a more stepwise approach would be a pragmatic way to ensure gradual coherence and convergence: regions should learn from experiences in other regions and follow similar, converging paths or even leap frog other regions. To give an example, the delays and complexities encountered in implementing the Flow Based model in the CWE market should serve as an “inspiration” for the CEE region and therefore suggest a more stepwise approach (ATC based followed by a parallel shadow FB implementation) in the CEE region as well in order to avoid less understood FB solution directly. Changing market rules quite abruptly (such as the implementation of flow based models when the market is clearly not yet sufficiently mature) might result in uncontrollable outcomes, and jeopardise confidence and further development of markets: if market parties feel uncomfortable with the market design, or do not understand or trust price formation, it will create additional entry barriers. We should avoid using the market as an “academic” laboratory where whatever experiment can be undertaken, without affecting the “real” world.

Looking at the single tables, we have the following comments:

2.1 Towards coordinated capacity calculation and common transmission model (page 40)

We believe regions should develop calculation models based on the same principles of capacity calculation. Once different models are in place, as it appears will be the case from the different regional initiatives, it will be more difficult to ensure that they work smoothly together later. In order to ensure convergence between the regions an appropriate common methodology should be developed.

Indeed, in our opinion, grid calculation is essentially based on load flow analysis, which is not possible without taking the whole HV grid into account.

Load flows in grids are determined by the grid topology (i) and the impedances of the grid, by the location/amount of the load (ii) and the location/amount of the injection (iii).

Grid topology (i) is in the hands of the TSOs.

Load forecast (ii) is a responsibility of TSOs.

Via communication with generators, TSOs are well informed about the availability of power plants, and in general, they should have sufficient information available to estimate expected dispatch under different circumstances and other relevant characteristics.

If TSOs share all this information, (or transmit it to an appropriate body) they should be able to make a reasonable forecast of the plants that will run and those that will remain in reserve, thus producing a reasonable view of the likely dispatch of power plants (iii).

Impact of DC interconnectors¹ has also to be taken into account: although it is possible for a TSO to “control” the flow through such an interconnector, each DC flow eventually influences the other AC flows in a meshed network. We believe that it is important that their treatment be given appropriate consideration and that they should be treated as far as possible on the same basis as AC interconnectors especially in a context where more and more DC interconnectors are being built between NordPool, CWE and Baltic and between UK and CWE.

Therefore, our recommendation would be, in a first step, to pay much more attention to developing a process for the exchange of information between TSOs, not only regarding grid topology, but also about the location of load and anticipated location of generation. The final goal should be the development of a common calculation model for each synchronous area. In doing so the regional models under development should take the necessary information from the other regions at least in the synchronous area², but also from adjacent synchronous regions (via DC links) into account.

¹ In the Nordel calculations, we observe it even stronger: TSOs put ramping limits on the variation of flows through the DC interconnectors, by doing so, they limit artificially the grid capacity and thus the potential commercial exchanges that the market would make (and thus also the associated social welfare is constrained of). In our view, the cross-border flows ramping rates will automatically be limited by the dispatch constraints of the generators (i.e. the ramp-up/down limits of the power plants): if the market estimates that generation dispatch can commit to a faster ramping (e.g. 1000 MW/hour change instead of the Nordel 600MW/hour constraint), then we see no reason why TSOs should limit this market request beforehand, subject the technical limits of the converter equipment are respected. Moreover, this practice is likely to be in conflict with article 1.7 of the EU Congestion Management Guidelines.

² In particular, Switzerland, which is in the middle of the whole synchronous area, should contribute on equal foot to this calculation process.

2.2 Towards a regional single auction platform with harmonised auction rules, coordinated capacity calculation and common transmission model (page 41)

We welcome the recent progress but we believe more effort should be made to establish regional platforms and IT systems. Besides harmonisation of rules within each region it should be ensured that all common auction platforms across the EU will offer products with the same essential features³:

- duration of products (multi annual, annual, quarterly, monthly, etc ...);
- (financial) firmness of capacity rights;
- UIOSI mechanism⁴;
- secondary nomination platform in order to facilitate trade of transmission rights;
- Intraday rules (separately treated under the point 2.4 hereafter) and balancing markets (2.6)

It does not make sense to have this discussion in all regions separately: a conclusion and decision on the mentioned features is necessary, and fast regional implementation is now urgent.

Even in regions where the set up of common auction offices is advancing we have some concerns about the coherence and convergence of the ongoing processes. Some examples are described below.

We welcome the set-up of a common auction office in CWE for 2009 and the planned establishment of such in the CS region for 2010. However, we wonder why in CWE establishing a regional auction office is achievable within a little over a year whereas in CEE work has been ongoing since 2006 and the current situation is that the common Auction Office will not start operation for 2009's yearly auctions.

Similarly, EURELECTRIC has followed the debate in the FUI region on the harmonisation of the auction rules on the IFA interconnector. Market players would have expected fully harmonized allocation rules with other auction offices and practices on other borders, however IFA operators, apparently due to technical reasons, came up with still some particular rules (e.g. with relation to secondary trading in the intraday). The new rules were promised for delivery in mid 2008, but it now seems that the process will require an additional delay of one year.

These examples illustrate that the different initiatives, while they are very similar, are managed in different ways, and we question that the rules will really be coherent and consistent once these auction offices are all in place.

In the current developments of the CASC-CWE and also the new IFA allocation process, we have some doubts as to whether market requirements for a well functioning secondary⁵ market have been taken on board. Indeed, market parties have referred to the existing "DAMAS" platform that allows electronic scheduling of secondary capacity trades between the parties involved in the transaction. We regret that this model has not been taken on board from the beginning of the development of these new auction offices.

On the other hand, we welcome the fact that the IFA platform will have the ability to offer nomination services: the other regional AOs, like CASC-CWE should also gradually move towards the "one stop shop" for nominations (leading to a unique interface for nomination, not different for each TSO as it stands today).

³ These have been already described in EURELECTRIC Response to ETSO/EuroPEX consultation on Interim Report "Development and Implementation of a Coordinated Model for Regional and Inter-Regional Congestion Management" – May 2008.

⁴ Also referred to as Use It Or Get Paid For It

⁵ Further about the secondary markets (article 2.12 of the CM guidelines), we are also surprised to see that in the compliance report (page 64), the evaluation of NRAs on the Czech, Slovakian, Polish and German borders varies between 63% and 75%, while on the border between West Denmark and Germany on the Danish side a compliance of 88% is estimated. Market participants would probably have concluded a significantly different ranking whereby much higher estimation to the Eastern Europe model would have been attributed.

2.3 Towards a market coupling model for the day-ahead timeframe (page 42)

We believe regulators should not aim for highly sophisticated solutions from the start: a stepwise approach is needed focusing on quick wins first and taking further improvements later on as appropriate.

In this respect, flow-based market coupling and flow-based allocations may generally prove to be the optimal solution in the long term, despite being complex and requiring extensive development and testing. However, significant market improvement (and gain in social welfare) can already be achieved in the short and medium term through existing solutions based on ATC market coupling (see TLC, MIBEL). It should be also borne in mind that the current research for flow based allocations in CWE and CEE might require the development of different network approaches, and lead to future issues of compatibility with each other when a cross-regional integration will be at stake⁶. Withholding these intermediate steps actually results in welfare opportunity costs that should be taken into account when deciding on delays.

The temporary⁷ suspension of the EMCC market coupling system should also be considered in this perspective as it shows that the coupling of PXs is a complex matter. The process to manage the different algorithms used worked in testing but produced incorrect results in some hours when it went live.

At the moment we see two ways forward: horizontal expansion or coupling between regions. We believe the decision needs to be a pragmatic one:

- Horizontal expansion appears to be the most pragmatic step when integrating single countries (that are not yet part of another MC project) to an already existing MC procedure because of the limited number of parties involved. To proceed this way some intermediate steps are needed first: establishment of a PX if not existing already, harmonising of gate closures, products, trading days, etc.
- Having different ongoing Market Coupling initiatives at the same time a pragmatic approach is to couple regions via a “dome coupler”. Differences in algorithms have to be treated in an appropriate way, while in the long run, we believe that harmonisation of market coupling algorithms should be considered in order to reduce additional delays in the calculation processes. Generally, the concept of a dome coupler could be a preparatory step for a full integration with full harmonisation in a later stage.

In regions that are less advanced (like CS or CEE) it would not be so harmful for the market if MC were delayed as all resources should be concentrating on more urgent priorities such as establishing common harmonised auction procedures, setting up power exchanges and developing intraday markets. In some markets, we see also other hurdles to the development of efficient wholesale markets, like cross-border transaction fees, price regulation and other restrictions on cross-border competition such as non market based curtailments. These need to be tackled first, or they will hamper market coupling projects. We therefore believe that the first priority in CEE should be the development of functioning wholesale markets with liquid PXs.

With regard to the Baltic Region we believe the table should be updated with the following text “NordPool price area Estlink to be established Q3/2009”.

⁶ EURELECTRIC Position Paper “Flow-Based Allocation of Transmission Capacity – May 2007

⁷ At the moment of writing, a re-launch of EMCC in Q1 2009 has been indicated.

2.4 Towards an intraday mechanism, possibly based on continuous trading (page 43)

Looking at the table we see a developing patchwork of different solutions, where we would prefer more coordinated and pragmatic solutions. For example the ELBAS model (with some adaptations to allow also OTC trading with obligatory use of cross-border capacity) could be implemented very quickly in CWE and then expanded to other neighbouring regions.

Market parties have expressed clearly that the continuous trading model is the preferred one to meet market needs: (see EFET and EURELECTRIC Position Papers)⁸. We therefore don't see the need to debate alternatives like MC solutions or explicit auctions; market parties have clearly stated that such models are not appropriate to operational constraints which arise as we get closer to real time whereby there is a need to cross several borders with "one mouse click" and straight through processing in order to simplify the administrative scheduling process associated with such a long-distance shipping.

Intraday markets as such are a kind of last resort market, where in principle only unforeseen or unmanageable deviations will be traded; liquidity in these markets will in most cases be limited, so it is paramount that liquidity is concentrated as much as possible. Any intraday bid at any price area should be made available to any other market party, wherever he is located, provided there is still cross-border capacity available, and all players on this market adhere to the "take it and use it principle" (i.e. the obligatory shipping of the energy for all bids they make on such a platform).

Moreover, we believe that explicit auctions are not an appropriate tool for intraday trading. Explicit auction are a too slow allocation process for intraday, taking into account the bidding process before the gate closure, the time needed for calculation and publication of results and subsequently the time needed for scheduling. Moreover, it is necessary to be successful on several borders at the same moment in order to ship energy through different borders, whereby at the moment of the bidding in the explicit auction, it is not yet sure that a counterpart will be found for delivering the energy.

We would also like to point out that the OMEL proposal to mix implicit auctions with continuous intraday is not feasible (a generator can only commit himself once, so during the time span of the implicit auction (from the gate closure until the results are published), all his bids on the continuous trading platform have to be withdrawn).

Intraday allocations (via the continuous trading platform) make use of capacity that is still available, because it was not used in the day-ahead process, or because it is capacity in the opposite direction of the congestion; for that reason, this capacity should be allocated free of charge. However, we would like to reiterate our vision that there should not be capacity reserved for intraday (and balancing) markets.

Finally we would like to stress again that intraday should already be in place on all borders: now urgent actions are needed regardless of any anticipated Flow Based implementation. Further improvements could be developed at a later stage.

2.5 Integration of transparency requirements (page 44)

Within the ambit of the ERGEG electricity regional initiatives there has been lengthy discussion on the scope and content of market transparency which has led to the publication of a number of detailed transparency reports. Although it has been admitted, amongst others in the ERGEG/CESR reports that these transparency reports are not legally binding, we believe that these initiatives – together with EURELECTRIC's market transparency proposals – now provide a sufficient basis for the development of a European market transparency framework. It is now time to implement such a framework, which should be completed without delay.

⁸ EURELECTRIC Position Paper "Towards European Intra-Day and Balancing Markets", November 2006, EFET Position Paper

In terms of how the information provided for in these reports could be made available, we agree that this data should be disclosed in (i) an equal and timely manner and (ii) on a standardised basis. In addition, while this information could be published on a single information platform (if practical), it could also be delivered via a more market-driven solution, whereby information services are developed to meet market needs. Nonetheless, EURELECTRIC does see the need for a European-level harmonised list of 'fundamental' data. As energy wholesale markets are becoming increasingly European in nature, we feel that purely individual approaches on the national level would not provide for a level playing field, would increase costs and encourage regulatory arbitrage. Indeed, regional and European wide market integration will be hampered if a fair level playing field in transparency is not put in place.

Overall, the level of detail should be sufficient to ensure consistent implementation among Member States. Disclosure should encompass generation, network and demand data and specific deadlines should be included. In terms of whether a list should be exhaustive or not, we would argue that any harmonised list should in itself be complete and transparent, and should not be ad hoc. This would provide the necessary regulatory certainty.

2.6 Integration of balancing markets (page 45)

EURELECTRIC has recently come up with a proposed model for balancing markets⁹.

As a general principle, agreement on a target model (as for instance proposed in the EURELECTRIC paper) should be reached, and once there is agreement, pilot areas (two or more markets) where fast progress is possible (where there is already sufficient harmonization) should be identified, a common prequalification methodology should be developed, and finally full harmonisation. The aim should be to have some pilot projects to be started in 2010.

3. Compliance Monitoring Report – General Comments

3.1 What are the most effective and rapid actions to achieve compliance?

We believe the Report is lacking some conclusions, where major problems are clearly addressed and explained. Although a monitoring exercise is needed to assess where we stand, it loses much of its use if it does not explain for what reasons there is often no compliance and how this can be solved. Moreover, some of the most essential elements have not been tackled in the report: in particular "financial firmness", maximisation of capacity rights, "UloSI vs. UloLI principles".

In our view, several actions are needed to achieve fast and effective compliance:

- Redraft clearer and more precise Congestion Management Guidelines reducing to the minimum the room for different interpretation. This should be done in close consultation with all stakeholders who are in a position to suggest improvements to the current Regulation 1228/2003 and related CM Guidelines;
- A European vision and a set of priorities are necessary: the market needs a leadership with the authority to decide on and plan different projects. In the current development, we see too many initiatives which are sometimes overlapping (like the EMCC and the CWE market coupling), going in different directions (like different cross-border intraday initiatives) or not fully compatible (like the calculation processes, or different approaches to cross-border allocation - ATC vs. FB - in CWE and CEE).¹⁰ However, a bottom-up approach should continue to be supported, especially in those markets where it is delivering fast and effective solutions.

⁹ EURELECTRIC Position Paper Towards Market Integration of Reserves & Balancing Markets – July 2008

¹⁰ As we have stated in our previous comments to the Coherence and Convergence Report.

- A pragmatic implementation master plan should be put in place for the establishment of market coupling in the different regions; this master plan should also integrate the different issues in each market (like gate closure time, the need to establish power exchanges, etc.) EURELECTRIC made some suggestions in the comments it provided to the ETSO/Europex interim report.¹¹

3.2 How could Regulation and CM Guidelines be made more precise and detailed?

We understand that it is not an easy task to analyse compliance with Regulation 1228/2003 and the Congestion Management Guidelines due to overlapping topics in both legislations and some unclear or rather vaguely formulated requirements.

In our opinion, as a first recommendation, ERGEG should list all the unclear articles and those that leave (too much) room for interpretation and invite market parties to provide input.

As a second stage, comprehensive interpretation could be prepared by ERGEG and submitted to market participants for consultation, ultimately leading to an update of the existing legislation.

EURELECTRIC suggests organising a public hearing or similar form of consultation on these issues. This will enable market participants, TSOs and regulators to share views constructively on how to improve the Regulation and the CM Guidelines.

To explain our views on the assessment methods, some examples are provided in Annex 1. In Annex 1, a detailed explanation is provided of the main shortcomings: among these we believe the most critical one is the excessive room for interpretation left to TSOs by the CM Guidelines regarding article 1.7.

The assessment of real compliance is not only made difficult by the room for interpretation left by current legislation. Whilst we believe ERGEG has done its utmost in preparing this report, we think NRAs assessments:

- may sometimes not be detailed enough for the reader to understand what the table represents,
- or may be affected by additional criteria (we refer to the criteria paper that attempts to make the assessment more quantitative) not mentioned in the Regulation or in the CM guidelines. These additional criteria have often been introduced to ensure that regulators can monitor or approve some of the required information before TSOs publish them on their website (see for example last bullet point in ERGEG compliance criteria for Article. 1.7, as described in Annex 1).

Although EURELECTRIC is convinced that all regulators aimed at an objective evaluation of compliance, some of the evaluation seems to be based on subjective visions of certain NRAs. In fact, there are examples where the same service offered on both sides of a border has been assessed differently by the respective NRAs¹². To avoid inconsistencies we believe that the judgment of certain issues should not be in the hands of one single NRA, but of a group of NRAs from different regions who will bring different perspectives.

¹¹ EURELECTRIC Response to ETSO/EuroPEX consultation on Interim Report: “Development and Implementation of a Coordinated Model for Regional and Inter-Regional Congestion Management” - May 2008.

¹² For example the already described paragraph 1.7 of CM Guidelines, where the appreciation on the German-Dutch border is quite different on both sides of the border (100% compliant on German side, while appreciated 60% compliant on Dutch side)

We regret that not all detailed NRA input has been made available; this would have allowed TSOs and market parties to have a better understanding on how results were obtained and therefore evaluate what degree of progress a certain percentage of compliance corresponds to. With regard to transparency for example (article 5.5, table page 67), we find it difficult to comprehend the level of compliance with 47 different criteria (some of which may have much more importance than others, and we also are surprised that even two markets here reach a level of 100 % compliance on this 47 criteria)¹³. Without information about the detailed responses some percentages shown in the tables raise some doubts about their accuracy¹⁴.

4. Annex 1 – Specific Examples of Compliance Monitoring Report

Different interpretation of legislation

With the following example (referred to article 1.7 of the congestion management guidelines, treated in the paragraph 4.1.7 of the Compliance Report) we would like to illustrate how the assessment of compliance may be affected by excessive room for interpretation or by criteria which may not be so relevant.

Point 1.7 of the CM Guidelines requires that TSOs shall be guided by principles of cost-effectiveness and minimisation of negative impacts on the IEM when defining appropriate network areas in which to apply congestion management. TSOs may not limit interconnection capacity in order to resolve congestion inside their control area, except for reasons of operation security and reasons of cost-effectiveness and minimisation of negative impacts on IEM. If such a situation occurs, it shall be described transparently to all users by the TSOs and such a situation may be tolerated until a long-term solution is found. Furthermore, the methodology and plan for achieving the long-term solution shall be described and transparently presented to all users by the TSOs.

NRAs have tested compliance with article 1.7, based on the following set of criteria (included in ERGEG paper “Criteria for Compliance”):

- *The reasons explaining the limitations of transmission capacity on interconnectors emerging from internal congestions have been described and transparently presented at website of TSO or power exchange (at time of capacity publication).*
- *TSO has found a long-term solution to solve the internal congestions and their impact on interconnection capacity.*
- *TSO has described and transparently presented (at the website) the methodology and projects with time table for achieving long-term solution to solve the problem of limiting interconnection capacity in order to solve congestions inside their control area.*
- *TSO has sent the description to solve the problem with timetable to NRA.*
- *NRA has ensured that TSO complies with this Article.*

Except for the Finnish regulator on the Finnish/Swedish border, the information on page 61 of the Compliance Report indicates that all NordPool borders (Norway-Sweden-Finland-Denmark-Germany) are 100% compliant with article 1.7.

Market participants however have repeatedly commented that in the Nordic area congestion has been (and still is) moved to the borders.

¹³ As another example, it is difficult to understand why the Greek NRA still sees some compliance with Articles 6.4-6.6 of the Congestion Management Guidelines where market participants believe the compliance is not evidenced.

¹⁴ For instance we doubt whether the assessment on intraday on the Dutch borders (article 1.9 of the CM Guidelines, page 61) is accurate.

There seems thus a different perception between the reported compliance in this report and the opinion that the market has on this particular problem.

Moreover, the five criteria used to draw the Regulators' conclusion do not seem appropriate. Indeed, point 1.7 of the Congestion Management Guidelines states that *"in order to accept a limitation of cross-border capacity, TSOs should have made transparent (to all users) that there are problems of operational security, or that there reasons of cost-effectiveness"*. As far as we are aware, such a business case has never been presented, not in the Northern region, or elsewhere. Therefore, we regret that there is no criterion on the list to evaluate whether such a business case has been made or not.

As a conclusion, for this particular example, and although the table page 61 might suggest the opposite, EURELECTRIC believes that the situation is much less "green" than presented in the table.

The main reason however why EURELECTRIC comes to a different conclusion than the regulators is probably the concrete understanding of the current article 1.7 of the Congestion Management Guidelines. Due to its rather vague wording, some of the elements of article 1.7 are not easy to assess against clear criteria. Like many others, article 1.7, will need much more clarification in order to decide how it should be interpreted and how the criteria to evaluate compliance with it should be formulated.

Additional criteria

As another example of where regulators apparently use a less than ideal set of criteria, we refer to Chapter 4.2.12 which states that *"Almost all (approximately 93%) responses where explicit auctions are in place, indicate compliance [with the requirements of secondary trade of capacity rights]."* but *"In summary, at about 52% of the interconnectors, compliance is observed **with criteria set by the regulators** to fulfil requirements set under Point 2.12, where applicable."*

Moreover, when we go more into detail in the table on page 64, it looks like the analysis of article 2.12 of the congestion management guidelines leads to reasonable compliance on the Norwegian/Swedish and Finnish/Swedish borders (as an example), while on these borders there is no long-term allocation of capacity rights, so, actually the secondary markets are then by definition superfluous, thus the case should not be "green" but "not applicable".¹⁵

As already mentioned, we are also surprised to see that in the compliance report (page 64), the evaluation of NRAs of the secondary markets on the Czech, Slovakian, Polish and German borders varies between 63% and 75%, while on the border between West Denmark and Germany on the Danish side a compliance of 88% is estimated. Market participants would probably have concluded a significantly different ranking whereby much higher estimation to the Eastern Europe model would have been attributed

¹⁵ This does not mean that EURELECTRIC is fully in line with the lack of long-term rights. At least between the regions CWE and NE, on all borders (like the NorNed cable), long-term (financial) transmission rights should be allocated. Such financial rights will allow market participants to hedge positions they take between both regions. It is not necessary to activate such long-term rights physically via scheduling in the Day Ahead phase, these rights should be returned to the market coupling, and paid back to the longer-term owners via the UIOSI mechanism.

5. Annex 2 – Specific Comments on the two Reports

Reference: point 203 of the Coherence and Convergence Report

Even if some measures to reduce cross-border market power can be understood, they should be implemented only where there is a proven abuse of a dominant position, and it should be for the competition authority responsible to impose such measures. If any anti-competitive behaviour cross border (as in any other market) is detected by energy regulators, they should investigate and communicate it to the competition authority and not impose measures against collusion, which could overlap their jurisdiction with that of the competition authorities.

Reference: paragraph 4.6.1 of the Compliance Monitoring Report

We do not believe that it is within the remit of a regulator to judge if congestion income is excessive. Indeed, explicit auctions determine the value of the cross border capacity given by the market. A regulator should only investigate whether any illicit behaviour occurred in the auction process by participants.

Moreover, we would like to highlight that the Triad system sometimes leads to distorted nominations on the IFA interconnector (in order to avoid the triad cost), therefore adversely affecting the efficiency of the market.

Reference: paragraph 5.3 of the Compliance Monitoring Report

We believe the current EU energy legislation does not provide for sufficient investment incentives for cross border interconnectors. With specific regard to Regulation 1228/03, the ITC mechanisms so far have sometimes given disincentives for new investments for several TSOs. Furthermore it seems that the requirements in Regulation 1228/03 concerning ITC are unclear and hard to fulfil. The time consuming process in complying with the regulation is putting the guidelines for tariffication on hold and delaying the harmonisation of charging methodologies across Europe.

Reference: paragraph 6.1.4 of the Compliance Monitoring Report

“Efficient use of cross-border capacity” is associated in this paragraph with maximisation of social welfare. However we would like to emphasise that such maximisation should be achieved for every allocation timeframe, be it long-term, day-ahead or intraday.

The Report suggests that Market Coupling is the only efficient allocation mechanism, however, we would like to emphasise that Market Coupling represents only a snap shot of a certain moment. As time goes on and market conditions change, the system deviates from the optimal social welfare equilibrium: market players need to constantly adapt their positions and the best way to achieve this is via cross border intraday markets.