



**ETSO POSITION PAPER ON THE EUROPEAN COMMISSION'S PROPOSALS FOR A DIRECTIVE AMENDING DIRECTIVES 96/92/EC AND 98/30/EC CONCERNING COMMON RULES FOR THE INTERNAL MARKET OF ELECTRICITY AND NATURAL GAS, AND A REGULATION ON CONDITIONS FOR ACCESS TO THE NETWORK FOR CROSS BORDER EXCHANGES IN THE INTERNAL ELECTRICITY MARKET.**

The Association of European Electricity Transmission System Operators ( ETSO) welcomes the European Commission's proposals concerning the internal market of electricity since they contain many elements in favour of an increased harmonisation between Member States so as to create a single European market of electricity.

The creation of a single electricity market has, since the first Regulators Forum meeting in Florence been strongly supported by ETSO. In this context, ETSO made a proposal in April 2000 to implement a transitory solution that could have been the basis for a harmonised cross border tariff in Europe.

ETSO wishes to recall that the Transmission System Operators have the responsibility to operate their network and their interconnections in a secure, reliable and efficient manner. The TSOs will also have to put in place the rules and processes for cross border exchanges that will allow the market players to trade electricity all over Europe in a simple and feasible way.

In this respect, ETSO regrets that:

- the Association has not been involved at all in the preparation of these new Commission proposals,
- the Association has not been considered as being part of the new Committee that will be put in place to create and amend the guidelines on cross-border trade.

ETSO considers that, given that the Transmission System Operators have the responsibility to: secure the electric system, propose and implement the rules for market players to access the networks in a simple way, have the expertise to design or check that the proposed methods are feasible and easy to implement, the European Commission should fully include ETSO in the proposed process that will be put in place to create and implement the guidelines.

ETSO has already shown in the past and confirms its willingness to participate in the creation of a single and liquid internal market of electricity in Europe.

**I- COMMENTS ON THE PROPOSED DIRECTIVE**

The interconnected power systems in Europe encompass several countries that are not part of the European Union. ETSO is concerned by the fact that the proposal leaves open the issue of cross border exchanges with these countries among which are Switzerland, Norway, Central countries, Slovenia and Morocco. In particular, the proposal does not state clearly how the non EU countries will compensate the costs incurred for hosting transits by EU and non EU countries.

The Directive gives to regulators a large influence over a number of areas which are also TSOs primary responsibilities, such as: condition for connection and access to the networks, rules on the management and allocation of interconnection capacity, mechanisms to deal with congested capacity

within the national electricity system. ETSO members consider that transmission system operators should be able to use their expertise to propose rules and conditions that allow them to operate their network and their interconnections in a safe, reliable and efficient manner.

The activities quoted in the previous paragraph are closely related to what a transmission system operator would normally do, and they often require a high level of technical as well as operational expertise. Should Regulators “fix” or “define” rules that have a direct or indirect influence on the operation of the electrical system, they should also be liable for the consequences of their decisions. In addition, these powers extend beyond what some current Regulatory Authorities responsibilities are.

ETSO considers that a prerequisite is that appropriate dispute mechanisms are put in place and that the liabilities of Regulators and transmission system operators in each Member State are appropriately defined.

## **II- COMMENTS ON THE PROPOSED EU REGULATION**

### **A- General comments**

ETSO members welcome the position of the Commission stating that “compensations payments are to be received by transmission system operators hosting transit flows of electricity on their network” and that “these compensations are financed through contributions of those transmission system operators causing these transit flows”. ETSO members indicate however that these flows are in reality caused by the market actors who engage in cross-border exchanges and are not “caused by the transmission system operators” as stated by the Commission in the explanatory memorandum. It therefore follows that such compensation payments will need to be recovered by TSOs from users of their system.

ETSO members also need clarification about the model proposed by the Commission and described as “forward looking long-run average incremental costs that a network bears from hosting transits” before being able to provide a clear statement on this proposal. ETSO members recall their objective of being compensated for all the costs induced for hosting transits. This is an indispensable prerequisite to exclude discrimination of their local customers. As such, the possibility “to include locational signals in the tariff structure to locate new generation (e.g. in view of local circumstances with regard to network losses and network congestion)” appears in contradiction with the position taken by the Commission for cross-border exchanges. If locational signals are to be provided, they should be based on the internal electricity market and not solely based on the local power system within each Member State.

ETSO members, although not in consensus, approves a compensation mechanism that does not lead to a specific tariff paid only by exporters and/or importers. ETSO members consider, as a consequence, that economic signals for the market related to the scarcity of the transmission capacity will have to be solely provided by mechanisms put in place for the allocation of capacity and the management of congestions.

ETSO members welcome the initiative of the Commission with respect to the harmonisation of the generation and consumption charges so as to ensure a level playing field between all market actors. However, ETSO members consider that the draft Regulation will not solve the issue that has held back the implementation of the ETSO proposal for the last two years. The requirement that “basis principles should be identical in all Member States” and that “access charges should be cost-reflective, transparent, approximated to those of an efficient network operator and be applied in a non-discriminatory manner” is by no means able to ensure the absence of discrimination between market actors operating in different countries.

With the Regulation the EU Commission also strives for decision making on the EU-level regarding:

- a compensation mechanism for transit flows of electricity
- the setting of harmonised principles on cross-border transmission charges

- the allocation of available capacities of interconnectors between national transmission systems.

Strong powers are given to the Regulatory Authorities and the Commission through a "Regulatory Committee" where transmission system operators are not even represented. Some ETSO members are also concerned that specific situations, often the case given the limited transmission capacities between countries, will not be sufficiently taken into account by the Committee proposed in the Regulation. The potential lack of high level technical expertise may also lead to inefficient or even dangerous politically driven decisions for the operation of the European electrical system.

Although the explanatory memorandum indicates that "the objective of the draft Regulation is to establish a robust framework for cross-border trade in electricity", the proposed draft gives the Commission "certain regulatory competencies" such as:

- the level of compensation payments and by matter of consequence, the level of socialisation in each Member State,
- the compensation mechanism for "hosting" transits,
- the allocation of capacity,
- the handling of congestion, etc.

ETSO also points out that these powers largely extend beyond current responsibilities of Regulators in countries considered as fully open and often used as an example by the Commission as well as other market actors.

ETSO members consider as a prerequisite that appropriate dispute mechanisms are put in place and that the liabilities of the Commission, Regulators and transmission system operators are appropriately defined for each Member State.

## **B- Detailed comments**

### **Explanatory Memorandum**

In section 4 of the Explanatory Memorandum it is stated that "in the medium term, it is widely recognised that a very efficient and transparent way to deal with scarce interconnection capacity is the system of market splitting currently operated in the Nordpool. Its introduction as soon as possible should be envisaged, however adapted to the network topology and market circumstances of continental Europe". ETSO fully recognises the potential value of this method, which nevertheless needs fundamental improvements before it can be applied to the meshed networks of continental Europe. It is often considered that the main reason for difficulties in implementing market splitting outside Scandinavia is the level of maturity of Power Exchanges in continental Europe. In fact, besides market structure differences, the main reason is the high complexity of physical phenomena in meshed networks. Other methods with a high potential value should not be disregarded without even having been applied to gather the necessary experience. For example, co-ordinated auctioning mechanisms, under study by ETSO, may represent a major leap forward in moving towards the "physical path" paradigm, a strong necessity for future congestion management schemes within continental Europe.

#### **Article 3.4**

ETSO members note that the Commission will ultimately decide on the amounts of compensation payments payable and that it will use an Advisory committee to complete this task. Hence the proposed procedure does not ensure that advice from transmission system operators is taken into account.

#### **Article 3.6**

Further clarification is needed on what is meant by "forward-looking long-run average incremental costs" and how this is assumed to be calculated.

#### **Article 4.1**

This paragraph seems inconsistent. Should charges made by TSOs reflect actual costs or an approximation of those of an efficient network operator? What is the definition of an efficient network operator?

#### **Article 4.2**

ETSO members believe it will be important, to ensure a level playing field, that a harmonisation on the level of national charges is made. This paragraph therefore should be more specific and define, at least, a level of generation charges rather than a percentage between generation and consumption charges.

In paragraph 5 of III.2 of the explanatory memorandum it is stated that: "On the other hand, the specific circumstances prevailing in each national system need to be taken into account. Therefore complete harmonisation would not be appropriate". This seems at odds with the previous statement in paragraph 3 of III.2 which notes that the ratio and/or absolute level of the network charges applied to generation need to be harmonised in order to ensure competitive neutrality.

#### **Article 4.5**

ETSO members, although not in consensus, approve a compensation mechanism that will not lead to a specific tariff to be paid only by exporters and/or importers.

#### **Article 5.2**

In order to ensure a level playing field, ETSO members believe that, if the "general scheme for the calculation of the total transfer capacity and the transmission reliability margin" is subject to the approval of the national regulatory agencies, the approval is to be achieved on the basis of well defined and harmonised criteria for all Member States.

#### **Article 6.2**

The use by transmission system operators of redispatching or counter trading should be limited to those circumstances where it is technically feasible and economically acceptable by the concerned transmission system operators. Curtailment of registered cross border trade will only occur in case unforeseeable events cause violation of security limitations. Thus, a compensation of market participants would force TSOs to keep up higher security margins that consequently would decrease market liquidity. In case a compensation for curtailment is considered despite of this fact, it should, at the minimum, be a function of the firmness of the allocated capacity, which depends itself on the way the corresponding financial risk is hedged by all contracting parties.

#### **Article 6.5**

ETSO members consider that the sentence "In any event, transactions that relieve the congestion shall never be denied" has to be clarified with respect to the firmness given by the concerned market actor and the related liability if the related transaction is not realised.

#### **Article 7**

This article and its Guidelines, will be critical in determining the precise nature of the inter TSO compensation mechanism, liabilities, receipts and treatment of peripheral countries.

ETSO members note that the Commission, with the help of a Regulatory Committee, is given unilateral powers for creating and amending the Guidelines.

ETSO members will have no formal role in this process. It is not clear how non Member States will be covered, as the Regulation provides that only Member States shall be represented in the Committee.

The Commission installs a "Regulatory Committee" (Committee), chaired by the representative of the Commission, which takes decisions based on the majority laid down in Article 205(2) of the Treaty.

The Regulation provides that only the Commission shall be authorised to forward proposals towards the Committee, while it is not provided that a Member State can forward proposals to the Committee. If the Committee does not agree, the issue is forwarded directly to the Council, which shall act by qualified majority on the proposal. Thus the approach to set up proposals by transmission system operators under the subsidiarity principle (ETSO/ Florence Forum) would become obsolete.

As ETSO members include all 17 countries (EU as well as Norway and Switzerland), the association is in a good position to deliver statements that balance the needs and arguments of peripheral and of transit countries. ETSO members are also concerned by the fact that the Commission has the right to change the rules and conditions that are part of the contracts between a market actor and a transmission system operator. The commercial and legal consequences of this position should be carefully analysed.

ETSO members consider as a prerequisite that appropriate dispute mechanisms are put in place and that the liabilities of the Commission, Regulators and transmission system operators are appropriately defined for each Member State.

ETSO members also note there is no description of how non-EU countries are treated.

### **Articles 12 & 13**

ETSO members note that these articles do not define the role of transmission system operators with respect to the Regulatory and Advisory Committee.

### **Annex “Guidelines on the management and allocation of available transfer capacity of interconnections between national systems”**

Besides the ETSO position paper on congestion management, ETSO is working on these subjects and will give further comments on more specific details.