



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 October 2008**

**14143/08**

---

---

**Interinstitutional File:  
2007/0198 (COD)**

---

---

**ENER 326  
CODEC 1306**

**NOTE**

---

No. Cion prop. : 13048/07 ENER 224 CODEC 951

---

Subject :            Proposal for a Regulation of the European Parliament and of the Council  
                         amending Regulation (EC) No 1228/2003 on conditions for access to the network  
                         for cross-border exchanges in electricity  
                         - Draft common position of the Council

---

Delegations will find attached a revised version of the consolidated text<sup>1</sup> of the above proposal, as agreed by the TTE Council on 10 October 2008.

Text stemming from the current legislation is reflected in ordinary characters, all text stemming from the Council political agreement is in **bold characters**, including the renumbering of Articles and references in the text of the Articles and some other technical adjustments.

This document will be the basis for legal-linguistic revision in view of the common position.

---

<sup>1</sup> Consolidated text" means that the Commission proposal including preamble and Articles as amended have been integrated into the current legislative text.

**Proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on conditions for access to the network for cross-border exchanges in electricity and repealing  
Regulation (EC) No 1228/2003**

**(Text with EEA relevance)**

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,**

**Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,**

**Having regard to the proposal from the Commission<sup>1</sup>,**

**Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,**

**Having regard to the opinion of the Committee of the Regions<sup>3</sup>,**

**Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,**

**Whereas:**

- (1) The internal market in electricity, which has been progressively implemented since 1999, aims at delivering real choice for all consumers in the Community, be they citizens or business, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices, higher standards of service, and to contribute to security of supply and sustainability.**
- (2) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity<sup>5</sup> and Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity<sup>6</sup> have made significant contributions towards the creation of such an internal market for electricity.**

---

<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ L 176, 15.7.2003, p. 37.

<sup>6</sup> OJ L 176, 15.7.2003, p. 1.

- (3) However, at present, there are obstacles to sell electricity on equal terms, without discrimination or disadvantage in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision do not yet exist in each Member State.
- (4) The Communication of the Commission to the European Parliament and the Council entitled "An Energy Policy for Europe" highlighted the importance of completing the internal market in electricity and to create a level playing field for all electricity companies in the Community. The Communication from the Commission to the European Parliament and to the Council on prospects for the internal gas and electricity market and the Communication from the Commission "Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)" showed that the present rules and measures do not provide the necessary framework to achieve the objective of a well functioning internal market.
- (5) Besides thoroughly implementing the existing regulatory framework, the regulatory framework of the internal market in electricity set out in Regulation (EC) No 1228/2003 should be adapted in line with these communications .
- (6) In particular, increased cooperation and coordination among transmission system operators is required to create network codes for providing and managing effective access to the transmission networks across borders, and to ensure coordinated and sufficiently forward looking planning and sound technical evolution of the transmission system in the Community, with due regard to the environment .Network codes should adhere to framework guidelines developed by the Agency. It is considered appropriate for the Agency to have a role in reviewing draft network codes, including their compliance with framework guidelines, and it may recommend them for adoption by the Commission. It is also considered appropriate for the Agency to assess proposed modifications to the network codes and it may recommend them for adoption by the Commission. Transmission system operators should operate their networks according to these network codes.

- (7) **In order to ensure an optimal management of the electricity transmission network and to allow trading and supplying electricity across borders in the Community a European Network of the Transmission System Operators (hereinafter referred to as ENTSO) for Electricity should be established. Its tasks should be carried out in compliance with Community competition rules which remain applicable to the decisions of the ENTSO. Its tasks should be well-defined and their working method should be such as to ensure efficiency, representativity and transparency. Network codes prepared by ENTSO are not intended to replace the necessary national network codes for non-cross-border issues. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with network codes and non-binding network development plans at Community level. Cooperation within such regional structures presupposes effective unbundling of network activities from production and supply activities in the absence of which regional cooperation between transmission system operators gives rise to a risk of anti-competitive conduct.**
- (8) **All market participants have an interest in the work expected of the ENTSO for Electricity. An effective consultation process is therefore essential and existing structures that are set up to facilitate and streamline the consultation process, such as the Union for the Coordination of Transmission of Electricity (UCTE), national regulators or the Agency should play an important role.**
- (9) This Regulation should lay down basic principles with regard to tarification and capacity allocation, whilst providing for the adoption of guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances.
- (10) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting cross-border flows of electricity on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end.
- (11) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.

- (12) The actual amount payable for cross-border access to the system can vary considerably, depending on the transmission system operators involved and as a result of differences in the structure of the tariffication systems applied in Member States. A certain degree of harmonisation is therefore necessary in order to avoid distortions of trade.
- (13) A proper system of long term locational signals would be necessary, based on the principle that the level of the network access charges should reflect the balance between generation and consumption of the region concerned, on the basis of a differentiation of the network access charges on producers and/or consumers.
- (14) It would not be appropriate to apply distance-related tariffs, or, provided appropriate locational signals are in place, a specific tariff to be paid only by exporters or importers in addition to the general charge for access to the national network.
- (15) The precondition for effective competition in the internal market is non-discriminatory and transparent charges for network use including interconnecting lines in the transmission system. The available capacities of these lines should be set at the maximum levels consistent with the safety standards of secure network operation.
- (16) It is important to avoid distortion of competition resulting from different safety, operational and planning standards used by transmission system operators in Member States. Moreover, there should be transparency for market participants concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities.
- (17) **Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on access to infrastructure are not sufficient.**
- (18) **Equal access to information on the physical status of the system is necessary to enable all market participants to assess the overall demand and supply situation and identify the reasons for movements in the wholesale price. This includes more precise information on electricity generation, supply and demand including forecasts, network and interconnection capacity, flows and maintenance, balancing and reserve capacity.**

- (19) **To enhance trust in the market, its participants need to be sure that abusive behaviour can be sanctioned. Competent authorities should be enabled to effectively investigate allegations of market abuse. Therefore access to data to the competent authorities is necessary that provides information on operational decisions made by supply undertakings. In the electricity market many relevant decisions are made by the generators, who should keep this information available to the competent authorities for a fixed period of time. Small generators with no real possibility to distort the market should be exempt from this obligation.**
- (20) There should be rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from these rules.
- (21) **The management of** congestion problems **should** provide correct economic signals to transmission system operators and market participants and **be** based on market mechanisms.
- (22) **Investments in major new infrastructures should be strongly promoted while ensuring the proper functioning of the internal market in electricity. In order to enhance the positive effect of exempted direct current interconnectors on competition and security of supply, market interest during the project planning phase should be tested and congestion management rules should be adopted. Where direct current interconnectors are located in the territory of more than one Member State, the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No ...<sup>1</sup> (hereinafter referred to as the "Agency") should handle as a last resort the exemption request in order to take better account of its cross-border implications and to facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing these exempt major infrastructure projects it should be made possible to temporarily derogate undertakings with supply and production interests from the full unbundling rules for the projects concerned.**
- (23) To ensure the smooth functioning of the internal market, provision should be made for procedures which allow the adoption of decisions and guidelines with regard to amongst other things tariffication and capacity allocation by the Commission whilst ensuring the involvement of Member States' regulatory authorities in this process where appropriate through their European association. Regulatory authorities, together with other relevant authorities in the Member States, have an important role to play in contributing to the proper functioning of the internal electricity market.

---

<sup>1</sup> OJ L ...

- (24) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted on the basis of this Regulation.
- (25) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission. Where necessary, the Commission should have an opportunity to request relevant information directly from undertakings concerned, provided that the competent national authorities are informed.
- (26) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (27) Since the objective of **this Regulation**, namely the provision of a harmonised framework for cross-border exchanges of electricity, cannot be **sufficiently** achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve this objective.
- (28) **The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.**
- (29) **In particular the Commission should be empowered to establish or adopt the guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.**
- (30) **Given the scope of the amendments that are being made to Regulation (EC) No 1228/2003, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be repealed and a new Regulation be adopted,**

HAVE ADOPTED THIS REGULATION:

## Article 1

### Subject-matter and scope

This Regulation aims at setting fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal electricity market, taking into account the specificities of national and regional markets. This will involve the establishment of a compensation mechanism for cross-border flows of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems.

**This Regulation also aims at facilitating the emergence of a well functioning and transparent wholesale market with a high level of security of electricity supply. It provides mechanisms to harmonise these rules for cross-border exchanges in electricity.**

## Article 2

### Definitions

1. For the purpose of this Regulation, the definitions contained in Article 2 of Directive [...]EC concerning common rules for the internal market in electricity and repealing Directive **2003/54/EC**<sup>1</sup> shall apply with the exception of the definition of "interconnector" which shall be replaced by the following:

"interconnector" means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States.

2. The following definitions shall also apply:
  - (a) "regulatory authorities" means the regulatory authorities referred to in Article **34(1)** of Directive [2003/54/EC];

---

<sup>1</sup> OJ L



- (b) "cross-border flow" means a physical flow of electricity on a transmission network of a Member State that results from the impact of the activity of producers and/or consumers outside of that Member State on its transmission network. If transmission networks of two or more Member States form part, entirely or partly, of a single control block, for the purpose of the inter-transmission system operator (TSO) compensation mechanism referred to in Article 13 only, the control block as a whole shall be considered as forming part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows and giving rise to compensation payments under Article 13. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be the one of which the control block as a whole shall be considered to form part of;
- (c) "congestion" means a situation in which an interconnection linking national transmission networks, cannot accommodate all physical flows resulting from international trade requested by market participants, because of a lack of capacity of the interconnectors and/or the national transmission systems concerned;
- (d) "declared export" of electricity means the dispatch of electricity in one Member State on the basis of an underlying contractual arrangement to the effect that the simultaneous corresponding take-up ("declared import") of electricity will take place in another Member State or a third country;
- (e) "declared transit" of electricity means a circumstance where a "declared export" of electricity occurs and where the nominated path for the transaction involves a country in which neither the dispatch nor the simultaneous corresponding take-up of the electricity will take place;
- (f) "declared import" of electricity means the take-up of electricity in a Member State or a third country simultaneously with the dispatch of electricity ("declared export") in another Member State;
- (g) "new interconnector" means an interconnector not completed by the date of entry into force of this Regulation.
- (h) **"Agency" means the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No [...].**

## **Article 3**

### **Certification of Transmission System Operators**

- 1. (a) Where the Commission has received a notification on the certification of a TSO as laid down in Article 10(6) of Directive [2003/54], it shall examine the notification as soon as it is received. Within two months after receiving a notification, the Commission shall deliver its opinion to the relevant national regulatory authority as to its compatibility with Articles 10(2) and 11, and Article 9(1) or Article 13(ISO), or Articles 17 to 23 (ITO) of Directive [2003/54].**
  - (b) When preparing the opinion referred to in littera (a) the Commission may request the opinion of the Agency on the decision of the national regulatory authority. In such case the two-month period mentioned in littera (a) shall be extended by two months.**
  - (c) In the absence of an opinion by the Commission within this two months period, the Commission is deemed not to raise objections against the decision of the regulatory authority.**
- 2. Upon receiving the opinion of the Commission, the national regulatory authority shall, within two months, adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of the Commission opinion. The decision and the Commission's opinion shall be published together.**
- 3. At any time during the procedure regulatory authorities and the Commission may request from transmission system operators and undertakings performing any of the functions of generation or supply any information relevant for the fulfillment of their tasks under this Article.**
- 4. Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.**
- 5. The Commission may adopt guidelines setting out the details of the procedure to be followed for the application of paragraphs 1 and 2. This measure designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).**

6. Where the Commission has received a notification on the certification of a TSO under Article 9(10) of Directive [2003/54/EC], the Commission shall take a decision under this Article. The regulatory authority shall comply with the Commission decision.

#### **Article 4**

##### **European Network of Transmission System Operators for Electricity**

**All Transmission system operators shall cooperate at Community level through establishing the European Network of Transmission System Operators for Electricity in order to promote the completion of the internal market for electricity and to ensure the optimal management and sound technical evolution of the European electricity transmission network.**

#### **Article 5**

##### **Establishment of the European Network for Transmission System Operators (ENTSO) for Electricity**

1. By [date of application] at the latest the transmission system operators for electricity shall submit to the Commission and to the Agency the draft of statutes, a list of future members and draft rules of procedure, including the rules of procedures on the consultation of other stakeholders, of the European Network for Transmission System Operators for Electricity to be established.
2. Within two months from the receipt, the Agency, after consulting the organisations representing all stakeholders, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.
3. The Commission shall deliver an opinion on the draft statutes, list of members and draft rules of procedures within 3 months from the receipt of the opinion of the Agency.
4. Within 3 months from the receipt of the Commission's opinion, the transmission system operators shall establish the European Network for Transmission System Operators for Electricity, adopt its statutes and rules of procedure and publish them.

## **Article 6**

### **Establishment of Network Codes**

- 1. The Commission shall, after consulting the Agency, ENTSO and relevant stakeholders establish an annual priority list identifying the areas mentioned in Article 8 paragraph 6 to be included in the development of network codes.**
- 2. The Commission may invite the Agency to submit to it within a reasonable period of time not exceeding six months a draft non-binding framework guideline setting out clear and objective principles, in accordance with Article 8(7), for the development of each network code relating to the areas identified in the priority list. Each framework guideline shall contribute to non-discrimination, effective competition and the efficient functioning of the market. Upon a justified request from the Agency, the Commission may extend this deadline.**
- 3. The Agency shall consult ENTSO and other relevant stakeholders on the draft non-binding framework guideline, during a period of no less than two months, in an open and transparent manner.**
- 4. If the Commission considers that the draft non-binding framework guideline does not contribute to non-discrimination, effective competition and the efficient functioning of the market, it may request the Agency to review the draft non-binding framework guideline within a reasonable period of time and re-submit it to the Commission.**
- 5. If the Agency fails to submit or re-submit a draft non-binding framework guideline within the deadline set by the Commission under paragraphs 2 or 4, the Commission shall elaborate the non-binding framework guideline in question.**
- 6. The Commission shall invite ENTSO to submit a network code which adheres to the relevant framework guideline, to the Agency within a reasonable period of time not exceeding twelve months.**
- 7. Within three months after receipt of a network code, during which period the Agency may carry out a formal consultation with relevant stakeholders, the Agency shall provide a justified opinion to ENTSO on the network code.**

- 8. ENTSO may amend the network code in the light of the opinion of the Agency and re-submit it to the Agency.**
- 9. Once the Agency is satisfied that the network code adheres to the relevant framework guidelines, the Agency shall submit the network code to the Commission and may recommend that it be adopted.**
- 10. Where the ENTSO has failed to develop a network code within the period of time set by the Commission under paragraph 6, the Commission may invite the Agency to prepare a draft network code on the basis of the relevant framework guideline. The Agency may launch a further consultation in the course of preparing a draft network code under this paragraph. The Agency shall submit a draft network code prepared under this paragraph to the Commission and may recommend that it be adopted.**
- 11. The Commission may adopt, on its own initiative where ENTSO, or the Agency have failed to develop a network code as referred to in paragraph 10, or upon recommendation of the Agency under paragraph 9, one or more network codes in the areas listed in Article 8(6).**

**Where the Commission proposes to adopt a code of its own initiative, the Commission may consult the Agency, ENTSO and all relevant stakeholders on a draft code during a period of no less than two months.**

**These measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).**

- 12. This Article shall be without prejudice to the Commission's right to adopt and amend guidelines as laid down in Article 18.**

## **Article 7**

### **Modification of Network Codes**

- 1. Draft modifications to any network code adopted under Article 6 may be proposed to the Agency by persons who are likely to be interested in that network code, including the ENTSO, TSOs, network users and consumers. The Agency may also propose modifications of its own initiative.**
- 2. The Agency shall establish, in its Rules of Procedure, efficient processes for assessment of and thorough consultation on draft modifications, including with the ENTSO and network users. Following this process, the Agency may make justified proposals for modifications to the Commission, explaining how any proposals are consistent with the objectives of the network codes set out in Article 6(2).**
- 3. The Commission may adopt, taking account of the Agency's opinion, modifications to any code adopted under Article 6. These measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).**
- 4. Consideration of proposed modifications under the process envisaged in Article 23(2) shall be limited to consideration of the aspects related to the proposed modification. These modifications are without prejudice to other modifications which the Commission may propose.**

## **Article 8**

### **Tasks of the European Network of Transmission System Operators for Electricity**

- 1. The European Network of Transmission System Operators for Electricity shall elaborate network codes in the areas mentioned in paragraph 6 upon an invitation addressed to it by the Commission in accordance with Article 6(6);**

- 2. ENTSO may elaborate network codes in the areas mentioned in paragraph 6 where these codes do not relate to areas covered by an invitation addressed to it by the Commission. These network codes shall be submitted to the Agency for an opinion.**
- 3. ENTSO shall adopt:**
  - a) common network operation tools, including a common incidents classification scale, and research plans;**
  - b) a non-binding 10-year network development plan, including a generation adequacy outlook, every two years;**
  - c) an annual work programme;**
  - d) an annual report;**
  - e) annual summer and winter generation adequacy outlooks;**
- 4. The generation adequacy outlook shall cover the overall adequacy of the electricity system to supply current and projected demands for electricity for the next five year period as well as for the period between five and 15 years from the date of the report. This European generation adequacy outlook shall build on national generation adequacy outlooks prepared by each individual TSO.**
- 5. The annual work programme referred to in paragraph 3(c) shall contain a list and description of the network codes to be prepared, a plan on coordination of operation of the network, and research and development activities, to be realised in that year, and an indicative calendar.**
- 6. The network codes shall cover the following areas, taking into account, if appropriate, regional specificities:**
  - a) network security and reliability rules including rules for technical transmission reserve capacity for operational network security;**
  - b) grid connection rules;**
  - c) third party access rules;**

- d) data exchange and settlement rules;**
- e) interoperability rules;**
- f) operational procedures in an emergency;**
- g) capacity allocation and congestion management rules;**
- h) rules for trading related to technical and operational provision of network access services and system balancing;**
- i) transparency rules;**
- j) balancing rules including network related reserve power rules;**
- k) rules regarding harmonised transmission tariff structures including locational signals and inter-TSO compensation rules;**
- l) energy efficiency regarding electricity networks.**

- 7. The network codes shall only be developed for cross-border network issues and shall be without prejudice to the Member States' right to establish national codes for non-cross-border issues.**
- 8. The European Network of Transmission System Operators for Electricity shall monitor and analyse the implementation of the codes and the guidelines adopted by the Commission in accordance with Articles 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration. ENTSO shall report its findings to the Agency and include the results of the analysis in the annual report referred to in paragraph 3(d).**
- 9. ENTSO shall make available all information required by the Agency to fulfil its tasks under Article 9(1).**
- 10. The European Network of Transmission System Operators for Electricity shall adopt a non-binding Community-wide 10-year network development plan every two years and publish it. The network development plan shall include the modelling of the integrated network, scenario development, a generation adequacy outlook and an assessment of the resilience of the system. The network development plan shall, in particular:**



- (a) build on national investment plans, regional investment plans as referred to in Article 12(1), and, if appropriate, on the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council<sup>1</sup>;
  - (b) regarding cross-border interconnections, also build on the reasonable needs of different network users and integrate long-term commitments from investors referred to in Article 8 and Articles 13 and 22 of Directive [2003/54/EC];
  - (c) identify investment gaps, notably with respect to cross border capacities.
11. Upon request of the Commission, the European Network of Transmission System Operators for Electricity shall give its views to the Commission on the adoption of the Guidelines as laid down in Article 18.

## **Article 9**

### **Monitoring by the Agency**

1. The Agency shall monitor the execution of the tasks referred to in Article 8(1) of the European Network of Transmission System Operators for Electricity, and report to the Commission.

The Agency shall monitor the implementation by the European Network of Transmission System Operators of network codes elaborated under Article 8(2) and network codes which have been established in accordance with Article 6(1) to (10) but which have not been adopted by the Commission under Article 6(11). The Agency shall provide a duly justified opinion to the Commission where the European Network of Transmission System Operators has failed to implement any such network codes.

---

<sup>1</sup> OJ L 262, 22.9.2006, p.1.

**The Agency shall monitor and analyse the implementation of the codes and the guidelines adopted by the Commission as laid down in Articles 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.**

- 2. The European Network of Transmission System Operators for Electricity shall submit the draft non-binding 10-year network development plan and the draft annual work programme, including the information regarding the consultation process, to the Agency for its opinion.**

**Within two months from receipt, the Agency shall provide a duly justified opinion as well as recommendations to ENTSO and to the Commission where it considers that the draft annual work programme or the draft non-binding 10-year network development plan submitted by ENTSO do not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third party access.**

## **Article 10**

### **Consultations**

- 1. In carrying out its tasks, the European Network of Transmission System Operators for Electricity shall consult extensively, at an early stage and in an open and transparent manner, in accordance with the rules of procedure referred to in Article 5 paragraph 1, while preparing the network codes, the draft non-binding 10-year network development plan and its annual work programme referred to in Article 8(1) and (6), with all appropriate market participants, and in particular with the organisations representing all stakeholders. The consultation shall include national regulatory authorities and other national authorities, supply and generation undertakings, customers, system users, distribution system operators, including relevant (industry) associations, technical bodies and stakeholder platforms, and shall aim at identifying the views and proposals of all relevant parties in the decision-making process.**

2. All documents and minutes of meetings related to the issues referred to in paragraph 1 shall be made public.
3. Before adopting the annual work programme and the network codes referred to in Article 8(1) and (6), the European Network of Transmission System Operators for Electricity shall indicate the observations received in the consultation and how these observations have been taken into consideration. It shall provide reasons where observations have not been taken into account.

## **Article 11**

### **Costs**

The costs related with the activities of the European Network of Transmission System Operators for Electricity mentioned in Articles 4 to 12 shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve these costs only if they are reasonable and proportionate.

## **Article 12**

### **Regional cooperation of transmission system operators**

1. Transmission system operators shall establish regional cooperation within the European Network of Transmission System Operators for Electricity to contribute to the activities mentioned in Article 8(1). In particular, they shall publish a regional investment plan every two years, and may take investment decisions based on the regional investment plan.

2. **Transmission system operators shall promote operational arrangements in order to ensure optimum management of the network, and promote the development of energy exchanges, the allocation of cross-border capacity through non-discriminatory market based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.**
3. **The geographical area covered by each regional cooperation structure may be defined by the Commission, taking into account existing regional cooperation structures. Each Member State is allowed to promote cooperation in more than one geographical area. That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).**

**For that purpose, the Commission may consult the European Network of Transmission System Operators for Electricity and the Agency.**

### **Article 13**

#### **Inter transmission system operator compensation mechanism**

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks.
2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.
3. Compensation payments shall be made on a regular basis with regard to a given period of time in the past. Ex-post adjustments of compensation paid shall be made where necessary to reflect costs actually incurred.

The first period of time for which compensation payments shall be made shall be determined in the guidelines referred to in Article 18.

4. Acting in accordance with the procedure referred to in Article 23(2), the Commission shall decide on the amounts of compensation payments payable.
5. The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured in a given period of time.
6. The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward looking long-run average incremental costs, taking into account losses, investment in new infrastructure, and an appropriate proportion of the cost of existing infrastructure, as far as infrastructure is used for the transmission of cross-border flows, in particular taking into account the need to guarantee security of supply. When establishing the costs incurred, recognised standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account to reduce the compensation received.

#### Article 14

##### Charges for access to networks

1. Charges applied by network-operators for access to networks shall be transparent, take into account the need for network security and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and applied in a non-discriminatory manner. Those charges shall not be distance-related.
2. Producers and consumers ("load") may be charged for access to networks. The proportion of the total amount of the network charges borne by producers shall, subject to the need to provide appropriate and efficient locational signals, be lower than the proportion borne by consumers. Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at European level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure. This shall not prevent Member States from providing locational signals within their territory or from applying mechanisms to ensure that network access charges borne by consumers ("load") are uniform throughout their territory.

3. When setting the charges for network access the following shall be taken into account:
  - Payments and receipts resulting from the inter-transmission system operator compensation mechanism;
  - Actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods.
4. Providing that appropriate and efficient locational signals are in place, in accordance with paragraph 2, charges for access to networks applied to producers and consumers shall be applied regardless of the countries of destination and, origin, respectively, of the electricity, as specified in the underlying commercial arrangement. This shall be without prejudice to charges on declared exports and declared imports resulting from congestion management referred to in Article 16.
5. There shall be no specific network charge on individual transactions for declared transits of electricity.

### Article 15

#### Provision of information

1. Transmission system operators shall put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management.
2. The safety, operational and planning standards used by transmission system operators shall be made public. The information published shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to the approval of the regulatory authorities.

3. Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. These publications shall be made at specified intervals before the day of transport and shall include, in any case, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity.
4. **Transmission system operators shall publish relevant data on aggregated forecast and actual demand, on availability and actual use of generation and load assets on availability and use of the networks and interconnections, and on balancing power and reserve capacity. For availability and actual use of small generation and load units, aggregated estimate data may be used.**
5. **The market participants concerned shall provide the transmission system operators with the relevant data.**
6. **Generation companies which own or operate generation assets, of which one generation asset has an installed capacity of at least 250 MW, shall keep at the disposal of the national regulatory authority, the national competition authority and the Commission, for five years all hourly data per plant that is necessary to verify all operational dispatching decisions and the bidding behaviour at power exchanges, interconnection auctions, reserve markets and OTC markets. The per plant and per hour information to be stored includes, but is not limited to, data on available generation capacity and committed reserves, including allocation of these committed reserves on a per plant level, at the times the bidding is carried out and when production takes place.**

## Article 16

### General principles of congestion management

1. Network congestion problems shall be addressed with non-discriminatory market based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market participants.

2. Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and redispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner.  
Except in cases of "force-majeure", market participants who have been allocated capacity shall be compensated for any curtailment.
3. The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.
4. Market participants shall inform the transmission system operators concerned a reasonable time ahead of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.
5. Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use this line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall never be denied.
6. Any revenues resulting from the allocation of interconnection shall be used for the following purposes:
  - i. (a) guaranteeing the actual availability of the allocated capacity;
  - (b) network investments maintaining or increasing interconnection capacities, **in particular through new interconnectors,**



or, if the revenues cannot be efficiently used for the purposes set out in point i. of the first subparagraph, they can be used for the purpose set out in point ii. at a maximum amount to be decided by the regulatory authorities concerned:

- ii. subject to approval by the regulatory authorities of the Member States concerned, as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or network tariffs fixing.

The rest of revenues shall be placed on a separate internal account line until such time as it can be spent on the purposes set out in point i.

### Article 17

#### New interconnectors

1. New direct current interconnectors **between Member States** may, upon request, be exempted, **for a limited period of time**, from the provisions of Article 16(6) of this Regulation and Articles 9, 13, 31 and 36(6) and (8) of Directive [2003/54/EC] under the following conditions:
  - (a) the investment must enhance competition in electricity supply;
  - (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;
  - (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;
  - (d) charges are levied on users of that interconnector;

- (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector;
  - (f) the exemption is not to the detriment of competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked.
2. Paragraph 1 shall apply also, in exceptional cases, to alternating current interconnectors provided that the costs and risks of the investment in question are particularly high when compared with the costs and risks normally incurred when connecting two neighbouring national transmission systems by an alternating current interconnector.
  3. Paragraph 1 shall apply also to significant increases of capacity in existing interconnectors.
  4. The **decision** on the exemption referred to in paragraphs 1, 2 and 3 shall be taken on a **case-by-case basis by the regulatory authorities of the Member States concerned**. An exemption may cover all or part of, the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.

In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the interconnector. When deciding on **those** conditions account shall, in particular, be taken of the additional capacity to be built **or the modification of existing capacity**, the time horizon of the project and national circumstances.

**Before granting an exemption, the regulatory authorities of the Member States concerned shall decide upon the rules and mechanisms for management and allocation of capacity. Congestion management rules shall include the obligation to offer unused capacity on the market, and users of the facility shall be entitled to trade their contracted capacities on the secondary market. In the assessment of the criteria referred to in paragraph 1(a), (b) and (f) of this Article, the results of the capacity allocation procedure shall be taken into account.**

The exemption decision, including any conditions referred to in **the second subparagraph**, shall be duly reasoned and published.

- 5. The decisions referred to in paragraph 4 shall be taken by the Agency only**
- a) where the regulatory authorities concerned have not been able to reach an agreement within six months from the date the exemption was requested before the last of these regulatory authorities, or**
  - b) upon a joint request from the regulatory authorities concerned.**

**The Agency shall** consult with **the** regulatory authorities concerned.

- 6. Notwithstanding paragraphs 4 and 5, Member States may provide that the regulatory authority or the Agency, as the case may be, shall submit, for formal decision, to the relevant body in the Member State its opinion on the request for an exemption. This opinion shall be published together with the decision.**
- 7. A copy of every request for exemption shall be transmitted for information without delay to the Agency and to the Commission as of its receipt. The decision shall be notified, without delay, by the regulatory authorities concerned or by the Agency (hereinafter the notifying bodies) to the Commission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:**

- the detailed reasons on the basis of which the exemption **was granted**, including the financial information justifying the need for the exemption;
- the analysis undertaken of the effect on competition and the effective functioning of the internal electricity market resulting from the grant of the exemption;
- the reasons for the time period and the share of the total capacity of the interconnector in question for which the exemption is granted;
- the result of the consultation with the regulatory authorities concerned;

**8.** Within two months after receiving a notification, the Commission may **take a decision requesting the notifying bodies to** amend or withdraw the decision to grant an exemption. **That period shall begin on the day following the receipt of the notification.** The two months period may be extended by **two** additional months where additional information is sought by the Commission. **That period shall begin on the day following the receipt of the complete information. The two month period can also be extended with the consent of both the Commission and the notifying bodies. When the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period has been extended with the consent of both the Commission and the notifying bodies, or the notifying bodies, in a duly reasoned statement, have informed the Commission that they consider the notification to be complete.**

**The regulatory authorities or the Agency shall comply with the Commission decision to amend or withdraw the exemption decision within a period of four weeks and shall inform the Commission accordingly.**

The Commission shall preserve the confidentiality of commercially sensitive information.

**The Commission's approval of an exemption decision shall lose its effect after two years from its adoption if construction of the interconnector has not yet started, and after five years if the interconnector has not become operational.**

9. **The Commission may adopt Guidelines for the application of the conditions mentioned in paragraph 1 and set out the procedure to be followed for the application of paragraph 4 and 7. This measure designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).**

## Article 18

### Guidelines

1. **Where appropriate, guidelines relating to the inter-transmission system operator compensation mechanism shall specify** in accordance with the principles set out in Articles 13 and 14:
- (a) details of the procedure for determining which transmission system operators are liable to pay compensation for cross-border flows including as regards the split between the operators of national transmission systems from which cross-border flows originate and the systems where those flows end, in accordance with Article 13(2);
  - (b) details of the payment procedure to be followed, including the determination of the first period of time for which compensation is to be paid, in accordance with the second subparagraph of Article 13(3);
  - (c) details of methodologies for determining the cross-border flows hosted for which compensation is to be paid under Article 13, in terms of both quantity and type of flows, and the designation of the magnitudes of such flows as originating and/or ending in transmission systems of individual Member States, in accordance with Article 13(5);

- (d) details of the methodology for determining the costs and benefits incurred as a result of hosting cross-border flows, in accordance with Article 13(6);
  - (e) details of the treatment in the context of the inter-TSO compensation mechanism of electricity flows originating or ending in countries outside the European Economic Area;
  - (f) the participation of national systems which are interconnected through direct current lines, in accordance with Article 13.
2. Guidelines **may** also determine appropriate rules leading to a progressive harmonisation of the underlying principles for the setting of charges applied to producers and consumers (load) under national tariff systems, including the reflection of the inter-TSO compensation mechanism in national network charges and the provision of appropriate and efficient locational signals, in accordance with the principles set out in Article 14.

The guidelines shall make provision for appropriate and efficient harmonised locational signals at European level.

Any harmonisation in this respect shall not prevent Member States from applying mechanisms to ensure that network access charges borne by consumers (load) are comparable throughout their territory.

3. **Where appropriate, guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation shall also specify:**
- a) **details on provision of information, in accordance with the principles set out in Article 15;**
  - b) **details of rules for the trading of electricity;**

- c) **details of investment incentive rules for interconnector capacity including locational signals.**
- d) **details on the topics listed in Article 8(6).**

**4. Guidelines on the management and allocation of available transmission capacity of interconnections between national systems are laid down in the Annex.**

**5. The Commission may adopt guidelines on the issues listed in paragraphs 1 to 3. It may amend the guidelines referred to in paragraph 4, in accordance with the principles set out in Articles 15 and 16, in particular so as to include detailed guidelines on all capacity allocation methodologies applied in practice and to ensure that congestion management mechanisms evolve in a manner compatible with the objectives of the internal market. Where appropriate, in the course of such amendments common rules on minimum safety and operational standards for the use and operation of the network, as referred to in Article 15(2) shall be set.**

**Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(2).**

When adopting or amending guidelines, the Commission shall ensure that they provide the minimum degree of harmonisation required to achieve the aims of this Regulation and do not go beyond what is necessary for that purpose.

When adopting or amending guidelines, the Commission shall indicate what actions it has taken with respect to the conformity of rules in third countries, which form part of the European electricity system, with the guidelines in question.

**When adopting these guidelines for the first time the Commission shall ensure that they cover in a single draft measure at least the issues referred to in paragraph 1(a) and (d), and paragraph 2.**

#### Article 19

##### Regulatory authorities

The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the guidelines adopted pursuant to Article 18. Where appropriate to fulfil the aims of this Regulation they shall cooperate with each other and with the Commission.

#### Article 20

##### Provision of information and confidentiality

1. Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Articles 13(4) and 18.

In particular, for the purposes of Article 13(4) and 13(6), regulatory authorities shall provide on a regular basis information on costs actually incurred by national transmission system operators, as well as data and all relevant information relating to the physical flows in transmission system operators' networks and the cost of the network.

The Commission shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

2. If the Member State or the regulatory authority concerned does not provide this information within the given time-limit pursuant to paragraph 1, the Commission may request all information necessary for the purpose of Article 13(4) and 18 directly from the undertakings concerned.



When sending a request for information to an undertaking, the Commission shall at the same time forward a copy of the request to the regulatory authorities of the Member State in whose territory the seat of the undertaking is situated.

3. In its request for information, the Commission shall state the legal basis of the request, the time-limit within which the information is to be provided, the purpose of the request, and also the penalties provided for in Article **22**(2) for supplying incorrect, incomplete or misleading information. The Commission shall fix a reasonable time limit taking into account the complexity of the information required and the urgency with which the information is needed.
4. The owners of the undertakings or their representatives and, in the case of legal persons, the persons authorised to represent them by law or by their instrument of incorporation, shall supply the information requested. Lawyers duly authorised to act may supply the information on behalf of their clients, in which case the client shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
5. Where an undertaking does not provide the information requested within the time-limit fixed by the Commission or supplies incomplete information, the Commission may by decision require the information to be provided. The decision shall specify what information is required and fix an appropriate time-limit within which it is to be supplied. It shall indicate the penalties provided for in Article **22**(2). It shall also indicate the right to have the decision reviewed by the Court of Justice of the European Communities.

The Commission shall at the same time send a copy of its decision to the regulatory authorities of the Member State within the territory of which the residence of the person or the seat of the undertaking is situated.

6. Information collected pursuant to this Regulation shall be used only for the purposes of Articles **13**(4) and **18**.

The Commission shall not disclose information acquired pursuant to this Regulation of the kind covered by the obligation of professional secrecy.

## Article 21

### Right of Member States to provide for more detailed measures

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out in this Regulation and the guidelines referred to in Article 8.

## Article 22

### Penalties

1. Without prejudice to paragraph 2, the Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by [1 July 2004] at the latest and shall notify it without delay of any subsequent amendment affecting them.
2. The Commission may by decision impose on undertakings fines not exceeding 1% of the total turnover in the preceding business year where, intentionally or negligently, they supply incorrect, incomplete or misleading information in response to a request made pursuant to Article 20(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article 20(5).

In setting the amount of a fine, regard shall be had to the gravity of the failure to comply with the requirements of the first subparagraph.

3. Penalties provided for pursuant to paragraph 1 and decisions taken pursuant to paragraph 2 shall not be of a criminal law nature.

## Article 23

### Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles **5a(1) to (4)**, and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
4. The Committee shall adopt its own rules of procedures.

## Article 24

### Commission Report

The Commission shall monitor the implementation of this Regulation. It shall submit to the European Parliament and the Council no more than three years after the entry into force of this Regulation a report on the experience gained in its application. In particular the report shall examine to what extent the Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for cross border exchanges of electricity in order to contribute to customer choice in a well functioning internal market and to long-term security of supply, as well as to what extent effective locational signals are in place. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

## **Article 25**

### **Repeal**

**Regulation (EC) N° 1228/2003 shall be repealed from [date of application]. References made to the repealed Regulation shall be construed as being made to this Regulation and should be read in accordance with the correlation table in Annex B.**

## **Article 26**

### **Entry into force**

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

**It shall apply from [18 months after entry into force].**

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels

For the European Parliament  
The President

For the Council  
The President

---

**The updated version of this Annex, adopted by Commission decision of 9.11.06 (OJ L 312 of 11.11.06, p. 59-65), will be added at a later stage by the lawyer-linguists.**

---