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10767/08

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NOTE

from:	General Secretariat
to:	Permanent Representatives Committee/Council
Subject :	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 1228/2003 on conditions for access to the network for cross-border exchanges in electricity - Outcome of the European Parliament's first reading (Strasbourg, 16 to 19 June 2008)

I. INTRODUCTION

The Rapporteur, Mr Alejo VIDAL-QUADRAS (EPP/ED - ES), presented a report consisting of 31 amendments (amendments 1-315) to the proposal for a Regulation on behalf of the Committee on Industry, Research and Energy. In addition, the Greens/EFA political group tabled two amendments (amendments 32-33). The Rapporteur presented on behalf of the EPP/ED political group one oral amendment on Article 2d, after § 1.

II. DEBATE

The joint debate on "Energy market", which took place on 17 June 2008, covered the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1228/03 on conditions for access to the network for cross-border exchanges in electricity¹.

¹ See Chapter II of document 10766/08.

III. VOTE

The parliament adopted 32 amendments when it voted in plenary on 18 June 2008 (amendments 1-15, 17-32, oral amendment on Article 2d, after § 1.

The text of the amendments adopted and the European Parliament's legislative resolution are annexed to this note.

Conditions for access to the network for cross-border exchanges in electricity

*****I**

European Parliament legislative resolution of 18 June 2008 on the 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 (COM(2007)0531 – C6-0320/2007 – 2007/0198(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0531),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0320/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0228/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1
Proposal for a regulation – amending act
Recital 3

Text proposed by the Commission

(3) However, at present, the right to sell electricity in any Member State on equal terms, without discrimination or disadvantage cannot be guaranteed to any company in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.

Amendment

(3) However, at present, the right to sell electricity in any Member State on equal terms, without discrimination or disadvantage cannot be guaranteed to any company in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist ***and isolated markets endure.***

Amendment 2
Proposal for a regulation – amending act
Recital 4

Text proposed by the Commission

(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.

Amendment

(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 ***neither*** provide the necessary framework ***nor provide for the creation of physical connections*** to achieve the objective of a *well-functioning, efficient and open* internal market.

Amendment 3
Proposal for a regulation – amending act
Recital 6

Text proposed by the Commission

(6) In particular, increased cooperation and coordination among transmission system operators **is** required to ensure progressive compatibility of the technical and commercial 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, and promote energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology. Transmission system operators should operate their networks according to these compatible technical and market codes.

Amendment

(6) In particular, ***both the creation of physical connections and*** increased cooperation and coordination among transmission system operators ***are*** required to ensure progressive compatibility of the technical and commercial codes for providing and managing effective ***and transparent*** 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, and promote energy efficiency and research and innovation notably with respect to ensuring penetration of renewables and dissemination of low carbon technology. Transmission system operators should operate their networks according to these compatible technical and market codes.

Amendment 4
Proposal for a regulation – amending act
Recital 7

Text proposed by the Commission

(7) In order to ensure an optimal management of the electricity transmission network and to allow trading and supplying electricity to retail customers across borders in the Community a European network of the transmission system operators should be established. Its tasks should be carried out in compliance with Community competition rules which remain applicable to the decisions of the European network of the transmission system operators. Its tasks should be well-defined and their working method should be such as to ensure efficiency, representativity and transparency. 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 codes and investment 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.***

Amendment

(7) In order to ensure an optimal management of the electricity transmission network and to allow trading and supplying electricity to retail customers across borders in the Community a European network of the transmission system operators should be established. Its tasks should be carried out in compliance with Community competition rules which remain applicable to the decisions of the European network of the transmission system operators. Its tasks should be well-defined and their working method should be such as to ensure efficiency, representativity and transparency. 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 codes and investment plans at Community level. ***Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market for electricity.***

Amendment 5
Proposal for a regulation – amending act
Recital 8

Text proposed by the Commission

Amendment

(8) All market participants have an interest in the work expected of the European network of transmission system operators. The 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), should play an important role.

deleted

Amendment 6
Proposal for a regulation – amending act
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In order to ensure greater transparency regarding the entire electricity transmission network in the European Union, the Commission should draw up, publish and regularly update a road map. All feasible electricity transmission networks and possible regional connections should be included in that road map.

Amendment 7
Proposal for a regulation – amending act
Recital 9

Text proposed by the Commission

(9) 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.

Amendment

(9) 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 ***to secure a genuine, well-functioning, open and efficient internal market.***

Amendment 8
Proposal for a regulation – amending act
Recital 10

Text proposed by the Commission

(10) 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, network capacity, flows and maintenance, balancing and reserve capacity.

Amendment

(10) Equal access to information on the physical status ***and efficiency*** 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, network capacity, flows and maintenance, balancing and reserve capacity.

Amendment 9
Proposal for a regulation – amending act
Recital 11

Text proposed by the Commission

(11) 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 fixed period of time. Small generators with no real *possibility* to distort the market should be exempt from this obligation.

Amendment

(11) To enhance trust in the market, its participants need to be sure that abusive behaviour can be sanctioned ***effectively***. *The* competent authorities should be *given the competence effectively* to investigate allegations of market abuse. *To this end,* access ***by the competent authorities*** to data that provides information on operational decisions made by supply undertakings ***is necessary***. In the electricity market, many relevant decisions are made by the generators, who should keep information *in relation thereto* available to ***and easily accessible by*** the competent authorities for *a* fixed period of time. ***The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules.*** Small generators with no real *ability* to distort the market should be exempt from this obligation.

Amendment 10
Proposal for a regulation – amending act
Recital 12

Text proposed by the Commission

(12) Competition for household-consumers requires that suppliers not be blocked when they want to enter new retail markets. Therefore rules and responsibilities governing the supply chain need to be known to all market parties, and they need to be harmonised with a view to enhancing Community market integration.

Amendment

(12) Competition for household-consumers requires that suppliers not be blocked when they want to enter new retail markets. Therefore rules and responsibilities governing the supply chain need to be known to all market parties, and they need to be harmonised with a view to enhancing Community market integration. ***The competent authorities should regularly monitor the compliance of market participants with the rules.***

Amendment 11
Proposal for a regulation – amending act
Article 1 – point 1
Regulation (EC) No 1228/2003
Article 1

Text proposed by the Commission

This Regulation also aims at facilitating the emergence of *well functioning* and transparent ***cross-border retail market and a well functioning and transparent*** wholesale market. It provides mechanisms to harmonise these rules.

Amendment

This Regulation also aims at facilitating the emergence of *a well-functioning* and transparent wholesale market ***with a high level of security of supply***. It provides mechanisms to harmonise rules ***to this effect***.

Amendment 12
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2a

Text proposed by the Commission

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

Amendment

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

Amendment 13
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2b – paragraph 1

Text proposed by the Commission

Amendment

1. By [...] 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 procedure on the consultation of other stakeholders***, of the European Network *for* Transmission System Operators for Electricity to be established.

1. By [...] 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 of the European Network *of* Transmission System Operators for Electricity to be established.

Amendment 14
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2c

Text proposed by the Commission

Amendment

1. The European Network of Transmission System Operators for Electricity shall ***adopt***:

1. ***In order to achieve the objectives set out in Article 2a***, the European Network of Transmission System Operators for Electricity shall ***agree and submit to the Agency for approval following the procedure provided for in Article 2d in conjunction with Article 6(3) of Regulation (EC) No ... establishing the Agency for the Cooperation of Energy Regulators the following***:

(a) ***technical and market*** codes in the areas mentioned in paragraph 3;

(a) ***draft network*** codes in the areas mentioned in paragraph 3, ***elaborated in cooperation with market participants and network users***;

(b) common network operation tools and research plans;

(b) common network operation tools and research plans;

(c) a 10-year investment plan, including a generation adequacy outlook, every two years;

(d) an annual work programme;

(e) an annual report;

(f) annual summer and winter generation adequacy outlooks.

2. The annual work programme referred to in paragraph 1(d) shall contain a list and description of the **technical and market** codes, a plan on common operation of the network and research and development activities, to be drawn up in that year and an indicative calendar.

3. The detailed **technical and market** codes shall cover the following areas, according to the priorities defined in the annual work programme:

(a) security and reliability rules;

(b) grid connection and access rules;

(c) data exchange and settlement rules;

(d) interoperability rules;

(e) operational procedures in an emergency;

(f) capacity allocation and congestion management rules;

(g) rules for trading;

(c) a 10-year investment plan, including a generation adequacy outlook, every two years;

(ca) measures to ensure the real-time coordination of grid operation in normal and emergency conditions;

(cb) guidelines on the coordination of technical cooperation between Community and third-country transmission system operators;

(d) an annual work programme **based on the priorities set by the Agency;**

(e) an annual report;

(f) annual summer and winter generation adequacy outlooks.

2. The annual work programme referred to in paragraph 1(d) shall contain a list and description of the **network** codes, a plan on common operation of the network and research and development activities, to be drawn up in that year and an indicative calendar.

3. The detailed **network** codes shall cover the following areas, according to the priorities defined in the annual work programme:

(a) security and reliability rules, **including interoperability rules and procedures for emergency situations;**

(b) grid connection and access rules;

(f) **cross-border** capacity allocation and congestion management rules;

- (h) transparency rules;
- (i) balancing rules including reserve power rules;
- (j) **rules regarding harmonised transportation tariff structures including locational signals and inter-TSO compensation rules;**
- (k) energy efficiency regarding electricity networks.

4. The **European Network of Transmission System Operators for Electricity** shall monitor the implementation of the **technical and market codes and include the results of its monitoring activities in the annual report referred to in paragraph 1(e).**

5. The European Network of Transmission System Operators for Electricity shall publish a Community-wide 10-year network investment plan every two years. The investment plan shall include the modelling of the integrated network, scenario development, a generation adequacy report and an assessment of the resilience of the system. The investment plan shall, in particular, build on national investment plans **and on** the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council²¹. The investment plan shall identify investment gaps, notably with respect to *cross border* capacities.

- (h) **network-related** transparency rules;
- (i) balancing **and settlement** rules including reserve power rules;
- (j) inter-TSO compensation rules;
- (k) energy efficiency regarding electricity networks.

4. The **Agency** shall monitor the implementation of the **network** codes **by the European Network of Transmission System Operators for Electricity.**

5. The European Network of Transmission System Operators for Electricity shall publish a Community-wide 10-year network investment plan every two years **following its approval by the Agency.** The investment plan shall include the modelling of the integrated network, scenario development, a generation adequacy report and an assessment of the resilience of the system. The investment plan shall, in particular, build on national investment plans **taking into account regional and Community aspects of network planning, including** the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council. The investment plan shall identify investment gaps, notably with respect to *cross-border* capacities **and shall include investments in interconnection and in other infrastructure necessary for effective trading and competition and for security of supply. A review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices shall be annexed to the investment plan.**

6. **Upon request of the Commission**, the European Network of Transmission System Operators for Electricity **shall advise the Commission on the adoption of Guidelines as laid down in Article 8.**

The transmission system operators shall implement the published investment plan.

6. The European Network of Transmission System Operators for Electricity, **on its own initiative, may propose to the Agency draft network codes in any area other than those listed in paragraph 3 with a view to achieving the objective set out in Article 2a. The Agency shall subsequently adopt the network codes following the procedure set out in Article 2ea (development of network codes) while ensuring that those network codes are not in contradiction to the guidelines adopted under Article 2e (development of guidelines).**

Oral amendment
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2d – paragraph 1 a (new)

Text proposed by the Commission

Oral amendment

1a. The European Network of Transmission System Operators for Electricity shall collect all relevant information regarding the implementation of the network codes and submit it to the Agency for evaluation.

Amendment 15
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2d – paragraph 2

Text proposed by the Commission

Amendment

2. The European Network of Transmission System Operators for Electricity shall submit the draft **technical and market codes, the draft 10-year investment plan and the draft annual work programme, including the information regarding the consultation process**, to the Agency.

2. The European Network of Transmission System Operators for Electricity shall submit draft **network codes and the documents referred to in Article 2c(1)** to the Agency **for approval.**

The Agency may provide an opinion to the European Networks of Transmission System Operators for Electricity within 3 months.

The Agency shall ***provide a duly justified opinion to the Commission where it considers that the draft annual work programme or the draft 10-year investment plan do not ensure non-discrimination, effective competition and the efficient functioning of the market.***

The Agency shall ***monitor the implementation of the network codes, the 10-year investment plan and the annual work programme and shall include the results of that monitoring in its annual report. In the event of non-compliance by the transmission system operators with the network codes, the 10-year investment plan or the annual work programme of the European Network of Transmission System Operators for Electricity the Agency shall provide information thereof to the Commission.***

Amendment 32
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2e

Text proposed by the Commission

Amendment

Establishment and evaluation of technical and market codes

Development of guidelines

1. After consulting the Agency, the Commission may invite the European Network of Transmission System Operators for Electricity, within a reasonable period of time, to prepare codes in the areas listed in Article 2c(3) where it considers that such codes are necessary for the efficient functioning of the market.

1. The Commission shall, after consulting the Agency, establish an annual priority list identifying issues of primary importance for the development of the internal market for electricity.

2. The Agency shall provide a duly justified opinion to the Commission where it considers that:

(a) a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;

(b) the European Network of Transmission System Operators for Electricity fails to agree within a reasonable period of time on a technical or market code in the areas listed in Article 2c(3);

(c) the transmission system operators fail to implement a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3);

3. The Commission may adopt, on its own initiative or upon recommendation of the Agency, guidelines on the areas listed in Article 2c(3) when it considers that:

(a) a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;

2. Having regard to that priority list, the Commission shall mandate the Agency to develop, within no more than six months, draft guidelines establishing basic, clear and objective principles for the harmonisation of rules, as set out in Article 2c.

3. In drafting those guidelines, the Agency shall formally consult the European Network of Transmission System Operators for Electricity and other stakeholders, in an open and transparent manner.

(b) the European Network of Transmission System Operators for Electricity fails to agree within a reasonable period of time on a technical or market code in the areas listed in Article 2c(3);

(c) the transmission system operators fail to implement a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3);

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 13(2).

4. Paragraphs 3 shall be without prejudice to the Commission's right to adopt and amend guidelines as laid down in Article 8.

4. The Agency shall adopt draft guidelines on the basis of that consultation. It shall specify the observations received during the consultation and explain how they were taken into account. It shall give reasons where observations have not been taken into account.

5. On its own initiative or at the request of the Agency, the Commission may initiate the same procedure to update the guidelines.

Article 2ea

Development of network codes

1. Within six months of the adoption of the guidelines by the Agency, in accordance with Article 2ea, the Commission shall mandate the European Network of Transmission System Operators of Electricity to develop draft network codes in full compliance with the principles established in the guidelines.

2. In drafting those network codes, the European Network of Transmission System Operators for Electricity shall take into consideration technical expertise from market participants and network users and shall keep them informed of progress.

3. The European Network of Transmission System Operators for Electricity shall submit the draft network codes to the Agency.

4. The Agency shall conduct a formal consultation in relation to the draft network codes in an open and transparent manner.

5. The Agency shall adopt the draft network codes on the basis of that consultation. It shall specify the observations received during the consultation and explain how they were taken into account. It shall give reasons where observations have not been taken into account.

6. On the Agency's own initiative or at the request of the European Network of Transmission System Operators for Electricity, a revision of the existing codes may be undertaken following the same procedure.

7. The Commission may, on a recommendation of the Agency, submit the network code to the Committee referred to in Article 13(1) for its final adoption in accordance with the procedure referred to in Article 13(2).

Amendment 17
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2f

Text proposed by the Commission

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 particular while preparing the technical and market codes and its annual work programme referred to in Article 2c(1) and (3), with** all appropriate market participants; the consultation shall include supply and generation undertakings, customers, system users, distribution system operators, including relevant (industry) associations, technical bodies and stakeholder platforms.

2. All documents and minutes of meetings related to the issues referred to in paragraph 1 shall be made public.

3. Before adopting the **work programme and the technical and market codes referred to in Article 2c(1) and (3), the European Network of Transmission System Operators for Electricity** shall indicate the observations received in the consultation and how *these observations are taken into consideration*. It shall give a *reasoned* opinion where observations have not been taken into account.

Amendment

1. In carrying out its tasks, the **Agency** shall **formally** consult, in an open and transparent manner, all appropriate market participants; the consultation shall include supply and generation undertakings, customers, system users, distribution system operators, including relevant (industry) associations, technical bodies and stakeholder platforms.

2. All documents and minutes of meetings related to the issues referred to in paragraph 1 shall be made public.

3. Before adopting the **guidelines and network codes, the Agency** shall *specify* the observations received *during* the consultation and *explain* how *they were taken into account*. It shall give *reasons* where observations have not been taken into account.

3a. The European Network of Transmission System Operators for Electricity shall cooperate with market participants and network users in accordance with Article 2ea(2).

Amendment 18
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2g

Text proposed by the Commission

The costs related with the activities of the European Network of Transmission System Operators for Electricity mentioned in Articles 2a to 2h shall be borne by the transmission system operators and shall be ***taken into account*** in the calculation of tariffs.

Amendment

The costs related with the activities of the European Network of Transmission System Operators for Electricity mentioned in Articles 2a to 2h shall be borne by the transmission system operators and shall be ***included*** in the calculation of tariffs. ***The regulatory authorities shall approve those costs only if they are reasonable and proportionate.***

Amendment 19
Proposal for a regulation – amending act
Article 1 – point 3
Regulation (EC) No 1228/2003
Article 2h

Text proposed by the Commission

1. Transmission system operators shall establish regional cooperation within the European Network *for* Transmission System Operators for Electricity to contribute to the tasks mentioned in Article 2c(1). In particular, they shall publish a regional investment plan every two years, and may take investment decisions based on the regional investment plan.

The regional investment plan may not be contradictory to the 10 year investment plan referred to in Article 2c(1)(c).

Amendment

1. Transmission system operators shall establish regional cooperation within the European Network *of* Transmission System Operators for Electricity to contribute to the tasks mentioned in Article 2c(1). In particular, they shall publish a regional investment plan every two years, and may take investment decisions based on the regional investment plan.

The regional investment plan may not be contradictory to the 10 year investment plan referred to in Article 2c(1)(c).

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 implicit auctions* 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. 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 13(2).

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

2. Transmission system operators shall promote operational arrangements in order to ensure optimum management of the network, and, *where efficient*, promote the development of energy exchanges, the *coordinated* allocation of cross-border capacity and the *compatibility* of *cross-border* balancing mechanisms.

Amendment 20

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2h a (new)

Text proposed by the Commission

Amendment

Article 2ha

Technical cooperation between Community and third-country transmission system operators

1. Technical cooperation between Community and third-country transmission system operators shall be monitored by the national regulatory authorities;

2. If incompatibilities with the rules and network codes adopted by the Agency come to light in the course of such technical cooperation, the national regulatory authority shall seek clarification from the Agency.

Amendment 21

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 1228/2003

Article 5 – paragraph 6

Text proposed by the Commission

Amendment

6. Generation companies which own or operate generation assets, of which one 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 time the bidding is carried out and when production takes place.

6. Generation companies which own or operate generation assets, of which one has an installed capacity of at least 250 MW, shall keep at the disposal of the national regulatory authority, the national competition authority, ***the Agency*** 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 time the bidding is carried out and when production takes place.

Amendment 22

Proposal for a regulation – amending act

Article 1 – point 4 a (new)

Regulation (EC) No 1228/2003

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(4a) In Article 6(1), the following subparagraphs shall be added:

"The regulatory authorities shall monitor congestion management within national electricity systems and on interconnectors.

Transmission system operators shall submit their congestion management procedures including capacity allocation for approval to the regulatory authorities. The regulatory authorities may request amendments to those procedures before approving them."

Amendment 23
Proposal for a regulation – amending act
Article 1 – point 5
Regulation (EC) No 1228/2003
Article 6 – paragraph 6

Text proposed by the Commission

Amendment

6. Any *revenues* resulting from the allocation of interconnection shall be used for the following purposes ***in the order of priority***:

- (a) guaranteeing the actual availability of the allocated capacity;
- (b) network investments maintaining or increasing interconnection capacities;

If the revenue cannot be used for the purposes set out in points (a) or (b) of the first subparagraph, the revenue shall be placed on a separate account until such time as it can be spent on those purposes.

In the case of an independent system operator any income remaining after applying points (a) and (b) shall be held by the Independent System Operator on a separate account until such time as it can be spent on the purposes set out in the points (a) and (b) of the first subparagraph.

6. Any *revenue* resulting from the allocation of interconnection shall be used for the following purposes :

- (a) guaranteeing the actual availability of the allocated capacity;
- (b) network investments maintaining or increasing interconnection capacities;

If the revenue cannot be used for the purposes set out in points (a) or (b) of the first subparagraph, the revenue shall be placed on a separate account until such time as it can be spent on those purposes.

In such a case, the regulatory authorities, with the approval of the Agency, may take the amount available into account when approving the methodology for calculating the network tariffs, in assessing whether tariffs should be modified on the one hand and/or in deciding whether to set up locational signals and/or demand-side measures such as load-shifting or counter-trading on the other.

Amendment 24
Proposal for a regulation – amending act
Article 1 – point 6
Regulation (EC) No 1228/2003
Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. New direct current interconnectors between Member States may, upon request, be exempted, for a limited period of time, from the provisions of Article 6(6) of this Regulation and **Articles 8, 20 and 23(2), (3) and (4)** of Directive 2003/54/EC under the following conditions:

1. New direct current interconnectors between Member States may, upon request, be exempted, for a limited period of time, from the provisions of Article 6(6) of this Regulation and **Articles 8, 10, 20 and Article 22c(4), (5) and (6)** of Directive 2003/54/EC under the following conditions:

Amendment 25
Proposal for a regulation – amending act
Article 1 – point 6
Regulation (EC) No 1228/2003
Article 7 – paragraph 6 – subparagraph 4

Text proposed by the Commission

Amendment

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.

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, ***unless the Commission decides that any delay is due to major administrative obstacles or any other cause relevant to the decision but not within the control by the applicant.***

Amendment 26
Proposal for a regulation – amending act
Article 1 – point 6
Regulation (EC) No 1228/2003
Article 7 – paragraph 7

Text proposed by the Commission

Amendment

7. The Commission may **adopt** guidelines for the application of the conditions mentioned in paragraph 1 and to set out the procedure to be followed for the application of paragraphs 4 and 5. 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 13(2).

7. The Commission may **amend existing** guidelines for the application of the conditions mentioned in paragraph 1 and to set out the procedure to be followed for the application of paragraphs 4 and 5. 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 13(2).

Amendment 27
Proposal for a regulation – amending act
Article 1 – point 6
Regulation (EC) No 1228/2003
Article 7 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Derogations granted pursuant to Article 7 of this Regulation and applicable at the date of entry into force of Regulation [...] shall automatically continue to apply.

Amendment 28
Proposal for a regulation – amending act
Article 1 – point 6 a (new)
Regulation (EC) No 1228/2003
Article 7-a (new)

Text proposed by the Commission

Amendment

(6a) The following Article 7-a shall be inserted:

"Article 7-a

Removal of administrative barriers to increase capacity

Member States shall review their procedures with the aim of identifying and removing any administrative barriers to increasing the amount of interconnection capacity. Member States shall identify the grid segments that need to be reinforced in order to increase the overall level of cross-border interconnection capacity in line with the objective of broad market integration."

Amendment 29
Proposal for a regulation – amending act
Article 1 – point 7
Regulation (EC) No 1228/2003
Article 7 a

Text proposed by the Commission

In order to facilitate the emergence of *well functioning* and transparent **cross border retail** markets on a regional and Community scale, Member States shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market participants are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

These rules shall be made public, **be designed with the aim of harmonising access to customers across borders** and be subject to review by the regulatory authorities.

Amendment

In order to facilitate the emergence of *well-functioning, effective* and transparent markets on a regional and Community scale, Member States shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and if necessary other market participants are defined **in detail** with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

Those rules shall be made public and **shall** be subject to review by the regulatory authorities.

Amendment 30
Proposal for a regulation – amending act
Article 1 – point 8
Regulation (EC) No 1228/2003
Article 8

Text proposed by the Commission

Amendment

Guidelines

Guidelines *relating to inter-transmission
system operator compensation
mechanisms*

1. Where appropriate, guidelines relating to the inter-transmission system operator compensation mechanism shall specify, in accordance with the principles set out in Articles 3 and 4:
- (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 3(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 3(3);
 - (c) details of methodologies for determining the cross-border flows hosted for which compensation is to be paid under Article 3, 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 3(5);

1. Where appropriate, ***the Commission may adopt*** guidelines relating to the inter-transmission system operator compensation mechanism ***that*** shall specify, in accordance with the principles set out in Articles 3 and 4:
- (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 3(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 3(3);
 - (c) details of methodologies for determining the cross-border flows hosted for which compensation is to be paid under Article 3, 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 3(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 3(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 3.

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 4.

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:

(d) details of the methodology for determining the costs and benefits incurred as a result of hosting cross-border flows, in accordance with Article 3(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 3.

2. Guidelines *on inter-transmission system operator compensation mechanisms* 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 4.

The guidelines *on inter-transmission system operator compensation mechanisms* 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, *the Commission may propose additional guidance* providing the minimum degree of harmonisation required to achieve the aim of this Regulation.

(a) details on provision of information, in accordance with the principles set out in Article 5;

(b) details on the retail market issues covered by Article 7a;

(c) details of connection rules governing the relation between the transmission system operators and connected customers;

(d) details of rules for interoperability;

(e) details of rules for the trading of electricity;

(f) details of balancing and reserve power rules aiming at further integration of the balancing and reserve power markets;

(g) details of investment incentive rules including locational signals;

(h) details on the topics listed in Article 2c(3).

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

4. Guidelines on the management and allocation of available transfer 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 5 and 6, 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 5(2) shall be set. Those measures designed to amend non-essential elements of this Regulation inter alia by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 13(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.

Amendment 31
Proposal for a regulation – amending act
Article 1 – point 8 a (new)
Regulation (EC) No 1228/2003
Article 12 – paragraph 1

Text proposed by the Commission

Amendment

(8a) Article 12(1) shall be replaced by the following:

"1. Without prejudice to paragraph 2, the Member States shall ensure that national regulatory authorities have the competence effectively to ensure compliance with this Regulation by providing them, or other bodies, with the legal competence to issue compliance orders and to impose effective, dissuasive and proportionate penalties. The Member States shall inform the Commission thereof by 1 January 2010 and shall inform it without delay of any subsequent amendment [...]."