



**COUNCIL OF  
THE EUROPEAN UNION**

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**DRAFT STATEMENT OF THE COUNCIL'S REASONS**

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Subject : Common position adopted by the Council on ... with a view to the adoption of 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  
Regulators  
- Draft statement of the Council's reasons

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**DRAFT STATEMENT OF THE COUNCIL'S REASONS**

## DRAFT STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 19 September 2007, the Commission presented a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 1228/2003 on conditions for access to cross-border exchanges in electricity, based on Article 95 of the Treaty, together in a package with four other proposals concerning the internal energy market.
2. The Committee of the Regions and the European Economic and Social Committee delivered their opinions on the complete package on 10<sup>1</sup> and 22 April 2008<sup>2</sup> respectively.
3. The European Parliament adopted its Opinion<sup>3</sup> at first reading on 18 June 2008, approving 32 amendments. The Commission did not present a modified proposal.
4. On , the Council adopted its Common Position in accordance with Article 251 of the Treaty, in the form of a recast Regulation.

### II. OBJECTIVE OF THE PROPOSAL

5. The proposal is part of the third internal energy market package, together with the Directive concerning common rules for the internal market in electricity, the Regulation on conditions for access to the natural gas transmission networks, the Directive concerning common rules for the internal market in natural gas, and the Regulation establishing an Agency for the Cooperation of Energy Regulators. It aims at contributing to achieving the objective of a well functioning internal electricity market by introducing in particular:

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<sup>1</sup> OJ C 172, 5.7.2008, p. 55.

<sup>2</sup> OJ C 211, 19.8.2008, p. 23.

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

- provisions aiming at an increased cooperation and coordination among transmission system operators, *inter alia* through the establishment of a European Network of the Transmission Operators for Electricity (ENTSO for Electricity);
- improved transparency requirements.

### III. ANALYSIS OF THE COMMON POSITION

#### 6. General Remarks

6.1. The Council has considered it more effective, more transparent and coherent with Regulation (EC) N° 1228/2003 as well as more reader friendly to recast the provisions of the Regulation. However, in doing this, the Council has as a general principle fully respected the amending proposal of the Commission in the sense that it has not opened any other provision not being part of the Commission proposal, unless changes were necessary following from the changes introduced by the Council to the proposal, changed references resulting from the renumbering of the Articles etc. To the extent possible, the Council has followed the Commission's approach regarding an identical treatment of the electricity and gas sectors.

The Commission has accepted all the changes introduced by the Council to its proposal.

6.2. Concerning the *32 amendments adopted by the European Parliament including one oral amendment*, the Council has followed the Commission in

- accepting the following seven amendments
  - fully: 12;
  - partly/in principle: 11, 15, 18, 24, 29, and 32;
- and
- rejecting the following six amendments: 5, 13, 19, 26, 27 and 30, on grounds of substance, consistency or form.

6.3. The Council has deviated from the Commission's position in

- accepting one amendment: 23 (partially)

and

- rejecting the following 18 amendments: 1, 2, 3, 4, 6, 7, 8, 9, 10, 14, 17, 20, 21, 22, 25, 28, 31, and the oral amendment.

## 7. Specific Remarks:

7.1. Regarding the *EP amendments* where the Council has deviated from the *Commission position*:

- a) The Council has accepted amdt 23 partially because it considers that on certain conditions and with certain limits, it should be possible to take congestion revenues into account when network tariffs are calculated.
- b) The Council has rejected the 18 amendments listed above (point 6.3.) on the following grounds:
  - i) The amendments are not necessary or do not have added value, mainly because the issues are partly/sufficiently covered by other parts of the text, or the wording as proposed by the Commission is sufficient: amdts 1, 2, 3, 4; amdts 7 and 8 are redundant; the issue of the oral amdt is already covered by Art. 8(8+9).
  - ii) The amendment is introducing text which is not appropriate regarding the role of the regulatory authorities, *i.a.* because the tasks and powers of these authorities are set in the electricity Directive: amdt 9; amdt 10 (in addition, the Council has transferred the Article on retail markets to the electricity Directive); amdts 20, 31.
  - iii) Amdt 6 because it is not for the Commission to draw up roadmaps regarding the transmission network.
  - iv) Amendments 14 and 21 introduce text which does not correspond to the role which the Council is giving to the Agency; moreover, it is, for legal reasons, not appropriate that the Agency adopts or approves network codes or takes decisions with a general scope.
  - v) Amdt 17 because the consultations (Art. 10) should be carried out by ENTSO; consultation which the Agency has to do is covered by Art. 6.
  - vi) Amdt 22 is not appropriate because overregulation should be avoided.
  - vi) Amdt 25 because parallelism with the exemption procedure foreseen for gas (Art. 35 gas Directive) should be kept.

vii) Amdt 28 goes beyond the scope of the Regulation and provides tasks for Member States which should be the task of TSOs.

7.2 Concerning the *Commission proposal*, the Council has introduced certain other modifications (of substance and/or of form); the main ones are set out below.

a) *Certification of TSOs:*

The Council has considered it appropriate to transfer the part of the certification procedure which sets out the role of the Commission in this procedure from the electricity Directive to a new Article 3 of this Regulation.

b) *Establishment and modification of network codes:*

The Council has considered it appropriate to set out more in detail the procedure for the establishment of network codes (Art. 6) and another - shorter - procedure for the modification of network codes (Art. 7). These Articles have replaced Art. 2e of the Commission proposal. The Council has given a clear role to the Agency which should develop non-binding framework guidelines as a basis for the network codes to be established by ENTSO, review the draft network codes and assess proposed modifications to the network codes. If necessary, the Commission may adopt those codes through the committee procedure in order to make them binding (see also recital 6).

c) *Monitoring by the Agency*

The Council has introduced two paragraphs setting out the monitoring role of the Agency with respect to the implementation of the network codes by ENTSO (Art. 9(1)(subparas 2+3)).

d) *Exemptions for new interconnectors*

In regard to granting exemptions for new interconnectors between Member States (Art. 17), the Council has considered it appropriate to involve the Agency only in those cases where the national regulatory authorities concerned do not find an agreement or submit a joint request to the Agency (para 5). Moreover, Member States should have the possibility to provide, if they so wish, that the *formal* decision on the exemption is taken by another relevant body of the Member State, on the basis of the opinion of the regulator (para 6).

e) *Retail markets:*

The Council has considered it appropriate to redraft the Article on retail markets, taking *i.a.* out the cross-border reference, and transfer it from the Regulation (Art. 7a of the Commission proposal) to the electricity Directive (new Article 40).

f) *Other points:*

- The Council has considered it appropriate to use the term "*network development plan*" instead of "investment plan" and to clarify that these plans are of a *non-binding* nature (Art. 8(3)(b)).
  - In line with the recast format, the Council has introduced a new Article to *repeal* the current legislative act (Art. 25).
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