



21 March 2008

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

The European Association of Electricity Transmission System Operators (ETSO) has a major objective facilitating the internal electricity market (IEM) and promoting the security and adequacy of supply as well as preserving the long term capacity of transmission system operators (TSOs) to invest in transmission infrastructure.

TSOs have a key role in combining these tasks, i.e.:

- to run a secure and efficient operation of power systems and networks,
- to ensure that physical reality and commodity markets operate seamlessly and reliably as if electricity could be traded as any other commodity.

The need for increased investment in electricity infrastructure is a key prerequisite for an integrated electricity market. Two main issues frustrate increased interconnectivity across the EU today:

- The increasing difficulty to obtain planning permits for both cross border and within member state infrastructure
- The so called “regulatory gap” where there is currently no requirement for member state regulators to consider issues outside their member state border.

ETSO believes the package should be accompanied by further measures to facilitate the permit procedures. The publication of a 10 year European investment plan by the new TSO body (ENTSO-E), or reviewing the investment plans of TSOs, will not be sufficient to get new lines built if permits to build these lines are not delivered rapidly.

ETSO welcomes the opportunity to contribute to the refinement of the Third Package by proposing amendments that will clarify the legislation, and, thus, enhance the prospects of its success. As for the ACER Regulation, ETSO supports the amendments proposed by Gas Transmission Europe.

We have also separately supplied detailed annotations to the Rapporteur’s report on the EC proposal for amending Regulation (EC) No 1228/2003 on conditions for access to the

network for cross-border exchanges in electricity. This document includes suggested amendments and associated rationale. Our priority amendments are grouped under the following headings:

- Scope of technical and market codes
- References to 10-years investment plans
- Clarifying roles and responsibilities of ENTSO-E, Commission and ACER

Furthermore, ETSO wants to highlight the implications of the EC proposal for an amendment to Article 6, paragraph 6 of Regulation 1228/2003. Today, congestion revenue contributes significantly to reduce network tariffs in many countries, i.e. there is a divergence between real cost of the network and the tariff. The proposal implies that TSOs shall no longer be allowed to use congestion income as means to keep network tariffs down. ETSO wants to point out that this proposal will inevitably lead to an increase of grid tariffs, which consequently will affect the consumer tariffs.



**Proposal for Amendments to the
REGULATION PROPOSAL 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**

Amendment 1
Article 2c, paragraph 1

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

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

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

- (a) technical and **network related** market codes in the areas mentioned in paragraph 3;
- (b) research plans;
- (c) a 10-year **network development** 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.

Justification

TSOs should only be responsible for the development of market codes which have relevance to network activities. To clarify this, we suggest the words network related market codes as better terminology.

The network development plan is to detail capacity, supply and demand forecasts, and identify potential capacity mismatches and bottlenecks. The network development plan will be based on regional network development plans. Specific investment should remain within the remit of individual TSOs investment plans.

The common network operation tools are part of the interoperability rules which are to defined in the technical codes according to Art. 2c(3)(d).

Amendment 2
Article 2c, paragraph 2

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.

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

Justification

Coordination of operation of the network falls under the interoperability rules which are to be defined in the technical codes according to Art. 2c(3)(d).

TSOs should only be responsible for the development of market codes which have relevance to network activities.

Amendment 3
Article 2c, paragraph 3

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;
- (h) transparency rules;
- (i) balancing rules including reserve power rules;
- (j) rules regarding harmonised

3. The detailed technical and ***network related*** 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) ***network related*** trading rules;
- (h) transparency rules;
- (i) balancing rules including reserve power rules;

transportation tariff structures including locational signals and inter-TSO compensation rules;

(k) energy efficiency regarding electricity networks.

(j) rules regarding harmonised transportation tariff structures including locational signals and inter-TSO compensation rules.

Justification

Energy Efficiency plans are prepared by Member States at the national level.

TSOs should only be responsible for the development of market codes which have relevance to network activities. Some examples of areas where network related market codes are foreseen : Cross-border capacity allocation (implicit or explicit), Congestion management, Tariffs & Inter TSO Compensation, Day ahead-, intraday- and balancing markets, Settlement codes including codes on gate closure, Secondary market for capacity and Financial Transmission rights, Transparency, Data exchange.

Amendment 4 Article 2c, paragraph 5

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, 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 Council. The **investment plan** shall identify investment gaps, notably with respect to cross border capacities.

5. The European Network of Transmission System Operators for Electricity shall publish a Community-wide 10-year **network development statement** every two years. The **network development plan** shall include the modelling of the integrated network, scenario development, generation adequacy report and an assessment of the resilience of the system. The **network development 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 Council. The **network development plan** shall identify investment gaps, notably with respect to cross border capacities.

Justification

The network development plan is to detail capacity, supply and demand forecasts, and identify potential capacity mismatches and bottlenecks. Specific investment should remain within the remit of individual TSOs investment plans.

Amendment 5
Article 2d, paragraph 1

1. The Agency shall monitor the execution of the tasks referred to in Article 2c(1) of the European Network of Transmission System Operators for Electricity.

1. The Agency shall monitor the execution of the tasks referred to in Article 2c(1) of the European Network of Transmission System Operators for Electricity, ***including the monitoring of implementation of the codes*** .

Justification

Monitoring of rules implementation is traditionally a task of the regulatory authorities.

TSOs do not contemplate to become a self-regulated industry. Neither as individual companies, since TSOs are already regulated on a national basis, nor as ENTSO-E, since the Third Package gives ACER the power to approve or reject each rule or code proposal before it is implemented by TSOs and to monitor the way the rule or code is applied.

Amendment 6
Article 2d , paragraph 2

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.

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

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

The Agency ***shall*** provide an opinion ***and, as the case may be, a recommendation for implementation***, 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 ***network development*** plan do not ensure non-discrimination,

functioning of the market.

effective competition and the efficient functioning of the market.

Such opinion shall be also communicated to the European Network of Transmission System Operators for Electricity

Justification

The network development plan is to detail capacity, supply and demand forecasts, and identify potential capacity mismatches and bottlenecks. Specific investment should remain within the remit of individual TSOs investment plans.

TSOs should only be responsible for the development of market codes which have relevance to network activities.

To ensure transparency and a stable environment for the implementation of the technical and network related market codes by TSOs, it is essential that TSOs always have knowledge of the opinion of the Agency with regard to the ENTSOE proposals. This should also ensure commitment by NRAs to enable implementation of the codes at the national level given the Agency's role with respect to NRA cooperation.

Amendment 7 Article 2g

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.

The costs related with the activities of the European Network of Transmission System Operators for Electricity, ***including, but not limited to, those incurred by the Transmission System Operators themselves in respect of its development, implementation and any monitoring activities,*** 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.

Justification

Transmission System Operators should be compensated for all activities they carry out to facilitate TSO co-operation and progress towards a single European electricity market. Participation in the European Network of Transmission System Operators for Electricity activities and the subsequent implementation of new technical and network related market codes may generate additional costs to individual TSOs.

Amendment 8
Article 2h , paragraph 1

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).

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 **network development plan** every two years, and may take investment decisions based on the regional **network development plan**.

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

Justification

The network development statement is to detail capacity, supply and demand forecasts, and identify potential capacity mismatches and bottlenecks. Specific investment should remain within the remit of individual TSOs investment plans.

Amendment 9
Article 2h, paragraph 2

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.

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

Justification

Allocation of cross-border capacity through implicit auctions and the integration of balancing mechanisms can in some circumstances (i.e. DC borders) be an expensive and complex solution compared to derived benefits. TSOs should have the possibility to promote solutions which optimise cross border arrangements.