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► **B** 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

(Text with EEA relevance)

(OJ L 176, 15.7.2003, p. 1)

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**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**

(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 ⁽¹⁾,

Having regard to the Opinion of the European Economic and Social
Committee ⁽²⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the
Treaty ⁽³⁾,

Whereas:

- (1) Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity ⁽⁴⁾ constituted an important step towards the completion of the internal market in electricity.
- (2) At its meeting in Lisbon on 23 and 24 March 2000, the European Council called for rapid work to be undertaken to complete the internal market in both the electricity and gas sectors and to speed up liberalisation in these sectors with a view to achieving a fully operational internal market in these areas.
- (3) The creation of a real internal electricity market should be promoted through an intensification of trade in electricity, which is currently underdeveloped compared with other sectors of the economy.
- (4) Fair, cost-reflective, transparent and directly applicable rules, taking account of a comparison between efficient network operators from structurally comparable areas and supplementing the provisions of Directive 96/92/EC, should be introduced with regard to cross-border tariffication and the allocation of available interconnection capacities, in order to ensure effective access to transmission systems for the purpose of cross-border transactions.
- (5) In its Conclusions, the Energy Council of 30 May 2000 invited the Commission, Member States and national regulatory authorities and administrations to ensure timely implementation of congestion management measures and, in liaison with the European Transmission System Operators (ETSO), rapid introduction of a robust tariffication system for the longer term

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 72, and OJ C 227 E, 24.9.2002, p. 440.

⁽²⁾ OJ C 36, 8.2.2002, p. 10.

⁽³⁾ Opinion of the European Parliament of 13 March 2002 (OJ C 47 E, 27.2.2003, p. 379), Council Common position of 3 February 2003 (OJ C 50 E, 4.3.2003, p. 1) and Decision of the European Parliament of 4 June 2003 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 27, 30.1.1997, p. 20.

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which provides the appropriate cost allocation signals to market participants.

- (6) The European Parliament, in its Resolution of 6 July 2000 on the Commission's second report on the state of liberalisation of energy markets, called for conditions for using networks in Member States that do not hamper cross-border trade in electricity and called on the Commission to submit specific proposals geared to overcoming all the existing barriers to intra-Community trade.
- (7) It is important that third countries that form part of the European electricity system comply with the rules contained in this Regulation and the guidelines adopted under this Regulation in order to increase the effective functioning of the internal market.
- (8) 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.
- (9) 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.
- (10) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.
- (11) 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 tarification systems applied in Member States. A certain degree of harmonisation is therefore necessary in order to avoid distortions of trade.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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.
- (16) 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.

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- (17) It should be possible to deal with congestion problems in various ways as long as the methods used provide correct economic signals to transmission system operators and market participants and are based on market mechanisms.
- (18) 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.
- (19) 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.
- (20) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted on the basis of this Regulation.
- (21) 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.
- (22) Since the objective of the proposed action, namely the provision of a harmonised framework for cross-border exchanges of electricity, cannot be achieved by the Member States and can therefore, by reason of the scale and effect of the action, 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.
- (23) 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 ⁽¹⁾,

HAS 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.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.



Article 2

Definitions

1. For the purpose of this Regulation, the definitions contained in Article 2 of 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 and repealing Directive 96/92/EC⁽¹⁾ 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 23(1) of Directive 2003/54/EC;

(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 3 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 3. 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.

Article 3

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.

⁽¹⁾ See p. 37 of this Official Journal.

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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 8.

4. Acting in accordance with the procedure referred to in Article 13 (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 4***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

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without prejudice to charges on declared exports and declared imports resulting from congestion management referred to in Article 6.

5. There shall be no specific network charge on individual transactions for declared transits of electricity.

*Article 5***Provision of information on interconnection capacities**

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.

*Article 6***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 one or more of the following purposes:

(a) guaranteeing the actual availability of the allocated capacity;

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- (b) network investments maintaining or increasing interconnection capacities;
- (c) as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

*Article 7***New interconnectors**

1. New direct current interconnectors may, upon request, be exempted from the provisions of Article 6(6) of this Regulation and Articles 20 and 23(2), (3) and (4) 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. (a) The regulatory authority may, on a case by case basis, decide on the exemption referred to in paragraphs 1 and 2. However, Member States may provide that the regulatory authorities 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.
- (b) (i) The exemption may cover all or part of the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.
- (ii) 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.
- (iii) When deciding on the conditions in (i) and (ii) account shall, in particular, be taken of the additional capacity to be built, the expected time horizon of the project and national circumstances.

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- (c) When granting an exemption the relevant authority may approve or fix the rules and/or mechanisms on the management and allocation of capacity.
- (d) The exemption decision, including any conditions referred to in (b), shall be duly reasoned and published.
- (e) Any exemption decision shall be taken after consultation with other Member States or regulatory authorities concerned.

5. The exemption decision shall be notified, without delay, by the competent authority to the Commission, together with all the information relevant 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 regulatory authority, or Member State, granted the exemption, 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 Member States or regulatory authorities concerned;

Within two months after receiving a notification, the Commission may request that the regulatory authority or the Member State concerned amend or withdraw the decision to grant an exemption. The two months period may be extended by one additional month where additional information is sought by the Commission.

If the regulatory authority or Member State concerned does not comply with the request within a period of four weeks, a final decision shall be taken in accordance with the procedure referred to in Article 13(3).

The Commission shall preserve the confidentiality of commercially sensitive information.

Article 8

Guidelines

1. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 13(2), adopt and amend guidelines on the issues listed under paragraph 2 and 3 and relating to the inter-transmission system operator compensation mechanism, in accordance with the principles set out in Articles 3 and 4. 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 2(a) and (d), and paragraph 3.

2. The guidelines shall specify:

- (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);

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- (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.

3. The guidelines shall 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.

4. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 13(2), amend the guidelines on the management and allocation of available transfer capacity of interconnections between national systems set out in the Annex, 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.

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.

Article 9

Regulatory authorities

The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the guidelines adopted pursuant to Article 8. Where appropriate to fulfil the aims of this Regulation they shall cooperate with each other and with the Commission.



Article 10

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 3(4) and 8.

In particular, for the purposes of Article 3(4) and 3(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 3(4) and 8 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 12(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 12(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 3(4) and 8.

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



Article 11

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 12

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 10(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article 10 (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 13

Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 5 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 14

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

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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 15***Entry into force**

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

It shall apply from 1 July 2004.

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As regards interconnections between Slovenia and neighbouring Member States, Article 6(1), as well as rules 1 to 4 contained in the chapter entitled 'General' of the Annex, shall apply from 1 July 2007. This paragraph shall apply only to the interconnection capacity which is allocated by the Slovenian transmission system operator and only insofar as such capacity does not exceed half of the total available interconnection capacity.

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

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ANNEX

Guidelines on the management and allocation of available transfer capacity of interconnections between national systems**1. General Provisions**

- 1.1. TSOs shall endeavour to accept all commercial transactions, including those involving cross-border-trade.
- 1.2. When there is no congestion, there shall be no restriction of access to the interconnection. Where this is usually the case, there need be no permanent general allocation procedure for access to a cross-border transmission service.
- 1.3. Where scheduled commercial transactions are not compatible with secure network operation, the TSOs shall alleviate congestion in compliance with the requirements of grid operational security while endeavouring to ensure that any associated costs remain at an economically efficient level. Curative redispatching or countertrading shall be envisaged in case lower cost measures cannot be applied.
- 1.4. If structural congestion appears, appropriate congestion management rules and arrangements defined and agreed upon in advance shall be implemented immediately by the TSOs. The Congestion management methods shall ensure that the physical power flows associated with all allocated transmission capacity comply with network security standards.
- 1.5. The methods adopted for congestion management shall give efficient economic signals to market participants and TSOs, promote competition and be suitable for regional and communitywide application.
- 1.6. No transaction-based distinction may be applied in congestion management. A particular request for transmission service shall be denied only when the following conditions are jointly fulfilled:
 - (a) the incremental physical power flows resulting from the acceptance of this request imply that secure operation of the power system may no longer be guaranteed, and
 - (b) the value in monetary amount attached to this request in the congestion management procedure is lower than all other requests intended to be accepted for the same service and conditions.
- 1.7. When defining appropriate network areas in and between which congestion management is to apply, TSOs shall be guided by the principles of cost-effectiveness and minimisation of negative impacts on the Internal Electricity Market. Specifically, TSOs may not limit interconnection capacity in order to solve congestion inside their own control area, except for the above mentioned reasons and reasons of operational security⁽¹⁾. If such a situation occurs, this shall be described and transparently presented to all the users by the TSOs. Such a situation may be tolerated only until a long-term solution is found. The methodology and projects for achieving the long-term solution shall be described and transparently presented to all the users by the TSOs.
- 1.8. When balancing the network inside the control area through operational measures in the network and through redispatching, the TSO shall take into account the effect of these measures on neighbouring control areas.
- 1.9. By not later than 1 January 2008, mechanisms for the intra-day congestion management of interconnector capacity shall be established in a coordinated way and under secure operational conditions, in order to maximise opportunities for trade and to provide for cross-border balancing.
- 1.10. The national Regulatory Authorities shall regularly evaluate the congestion management methods, paying particular attention to compliance with the principles and rules established in the present Regulation and Guidelines and with the terms and conditions set by the Regulatory Authorities themselves under these principles and rules. Such evaluation shall include consultation of all market players and dedicated studies.

⁽¹⁾ Operational security means 'keeping the transmission system within agreed security limits'.

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2. **Congestion management methods**
- 2.1. Congestion management methods shall be market-based in order to facilitate efficient cross-border trade. For this purpose, capacity shall be allocated only by means of explicit (capacity) or implicit (capacity and energy) auctions. Both methods may coexist on the same interconnection. For intra-day trade continuous trading may be used.
- 2.2. Depending on competition conditions, the congestion management mechanisms may need to allow for both long- and short-term transmission capacity allocation.
- 2.3. Each capacity allocation procedure shall allocate a prescribed fraction of the available interconnection capacity plus any remaining capacity not previously allocated and any capacity released by capacity holders from previous allocations.
- 2.4. TSOs shall optimise the degree to which capacity is firm, taking into account the obligations and rights of the TSOs involved and the obligations and rights of market participants, in order to facilitate effective and efficient competition. A reasonable fraction of capacity may be offered to the market at a reduced degree of firmness, but the exact conditions for transport over cross-border lines shall at all times be made known to market participants.
- 2.5. The access rights for long- and medium-term allocations shall be firm transmission capacity rights. They shall be subject to the use-it-or-lose-it or use-it-or-sell-it principles at the time of nomination.
- 2.6. TSOs shall define an appropriate structure for the allocation of capacity between different timeframes. This may include an option for reserving a minimum percentage of interconnection capacity for daily or intra-daily allocation. This allocation structure shall be subject to review by the respective Regulatory Authorities. In drawing up their proposals, the TSOs shall take into account:
 - (a) the characteristics of the markets,
 - (b) the operational conditions, such as the implications of netting firmly declared schedules,
 - (c) the level of harmonisation of the percentages and timeframes adopted for the different capacity allocation mechanisms in place.
- 2.7. Capacity allocation may not discriminate between market participants that wish to use their rights to make use of bilateral supply contracts or to bid into power exchanges. The highest value bids, whether implicit or explicit in a given timeframe, shall be successful.
- 2.8. In regions where forward financial electricity markets are well developed and have shown their efficiency, all interconnection capacity may be allocated through implicit auctioning.
- 2.9. Other than in the case of new interconnectors which benefit from an exemption under Article 7 of the Regulation, establishing reserve prices in capacity allocation methods shall not be allowed.
- 2.10. In principle, all potential market participants shall be permitted to participate in the allocation process without restriction. To avoid creating or aggravating problems related to the potential use of dominant position of any market player, the relevant Regulatory and/or Competition Authorities, where appropriate, may impose restrictions in general or on an individual company on account of market dominance.
- 2.11. Market participants shall firmly nominate their use of the capacity to the TSOs by a defined deadline for each timeframe. The deadline shall be set such that TSOs are able to reassign unused capacity for reallocation in the next relevant timeframe — including intra-day sessions.
- 2.12. Capacity shall be freely tradable on a secondary basis, provided that the TSO is informed sufficiently in advance. Where a TSO refuses any secondary trade (transaction), this must be clearly and transparently communicated and explained to all the market participants by that TSO and notified to the Regulatory Authority.
- 2.13. The financial consequences of failure to honour obligations associated with the allocation of capacity shall be attributed to those who are responsible for such a failure. Where market participants fail to use the capacity that they have committed to use, or, in the case of explicitly

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auctioned capacity, fail to trade on a secondary basis or give the capacity back in due time, they shall lose the rights to such capacity and pay a cost-reflective charge. Any cost-reflective charges for the non-use of capacity shall be justified and proportionate. Likewise, if a TSO does not fulfil its obligation, it shall be liable to compensate the market participant for the loss of capacity rights. No consequential losses shall be taken into account for this purpose. The key concepts and methods for the determination of liabilities that accrue upon failure to honour obligations shall be set out in advance in respect of the financial consequences, and shall be subject to review by the relevant national Regulatory Authority or Authorities.

3. **Coordination**

3.1. Capacity allocation at an interconnection shall be coordinated and implemented using common allocation procedures by the TSOs involved. In cases where commercial exchanges between two countries (TSOs) are expected to significantly affect physical flow conditions in any third country (TSO), congestion management methods shall be coordinated between all the TSOs so affected through a common congestion management procedure. National Regulatory Authorities and TSOs shall ensure that no congestion management procedure with significant effects on physical electric power flows in other networks is devised unilaterally.

3.2. A common coordinated congestion management method and procedure for the allocation of capacity to the market at least yearly, monthly and day-ahead shall be applied by not later than 1 January 2007 between countries in the following regions:

- (a) Northern Europe (i.e. Denmark, Sweden, Finland, Germany and Poland),
- (b) North-West Europe (i.e. Benelux, Germany and France),
- (c) Italy (i.e. Italy, France, Germany, Austria, Slovenia and Greece),
- (d) Central Eastern Europe (i.e. Germany, Poland, Czech Republic, Slovakia, Hungary, Austria and Slovenia),
- (e) South-West Europe (i.e. Spain, Portugal and France),
- (f) UK, Ireland and France,
- (g) Baltic states (i.e. Estonia, Latvia and Lithuania).

At an interconnection involving countries belonging to more than one region, the congestion management method applied may differ in order to ensure the compatibility with the methods applied in the other regions to which these countries belong. In this case the relevant TSOs shall propose the method which shall be subject to review by the relevant Regulatory Authorities.

3.3. The regions referred to in 2.8. may allocate all interconnection capacity through day-ahead allocation.

3.4. Compatible congestion management procedures shall be defined in all these seven regions with a view to forming a truly integrated Internal European Electricity Market. Market parties shall not be confronted with incompatible regional systems.

3.5. With a view to promoting fair and efficient competition and cross-border trade, coordination between TSOs within the regions set out in 3.2. above shall include all the steps from capacity calculation and optimisation of allocation to secure operation of the network, with clear assignments of responsibility. Such coordination shall include, in particular:

- (a) Use of a common transmission model dealing efficiently with interdependent physical loop-flows and having regard to discrepancies between physical and commercial flows,
- (b) Allocation and nomination of capacity to deal efficiently with interdependent physical loop-flows,
- (c) Identical obligations on capacity holders to provide information on their intended use of the capacity, i.e. nomination of capacity (for explicit auctions),
- (d) Identical timeframes and closing times,

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- (e) Identical structure for the allocation of capacity among different time-frames (e.g. 1 day, 3 hours, 1 week, etc.) and in terms of blocks of capacity sold (amount of power in MW, MWh, etc.),
 - (f) Consistent contractual framework with market participants,
 - (g) Verification of flows to comply with the network security requirements for operational planning and for real-time operation,
 - (h) Accounting and settlement of congestion management actions.
- 3.6. Coordination shall also include the exchange of information between TSOs. The nature, time and frequency of information exchange shall be compatible with the activities in 3.5 and the functioning of the electricity markets. This information exchange shall in particular enable the TSOs to make the best possible forecast of the global grid situation in order to assess the flows in their network and the available interconnection capacities. Any TSO collecting information on behalf of other TSOs shall give back to the participating TSO the results of the collection of data.
- 4. Timetable for market operations**
- 4.1. The allocation of the available transmission capacity shall take place sufficiently in advance. Prior to each allocation, the involved TSOs shall jointly publish the capacity to be allocated, taking into account where appropriate the capacity released from any firm transmission rights and, where relevant, associated netted nominations, along with any time periods during which the capacity will be reduced or not available (for the purpose of maintenance, for example).
- 4.2. Having full regard to network security, the nomination of transmission rights shall take place sufficiently in advance, before the day-ahead sessions of all the relevant organised markets and before the publication of the capacity to be allocated under the day-ahead or intra-day allocation mechanism. Nominations of transmission rights in the opposite direction shall be netted in order to make efficient use of the interconnection.
- 4.3. Successive intra-day allocations of available transmission capacity for day D shall take place on days D-1 and D, after the issuing of the indicated or actual day-ahead production schedules.
- 4.4. When preparing day-ahead grid operation, the TSOs shall exchange information with neighbouring TSOs, including their forecast grid topology, the availability and forecasted production of generation units, and load flows in order to optimise the use of the overall network through operational measures in compliance with the rules for secure grid operation.
- 5. Transparency**
- 5.1. TSOs shall publish all relevant data related to network availability, network access and network use, including a report on where and why congestion exists, the methods applied for managing the congestion and the plans for its future management.
- 5.2. TSOs shall publish a general description of the congestion management method applied under different circumstances for maximising the capacity available to the market, and a general scheme for the calculation of the interconnection capacity for the different timeframes, based upon the electrical and physical realities of the network. Such a scheme shall be subject to review by the Regulatory Authorities of the Member States concerned.
- 5.3. The congestion management and capacity allocation procedures in use, together with the times and procedures for applying for capacity, a description of the products offered and the obligations and rights of both the TSOs and the party obtaining the capacity, including the liabilities that accrue upon failure to honour obligations, shall be described in detail and made transparently available to all potential network users by TSOs.
- 5.4. The operational and planning security standards shall form an integral part of the information that TSOs publish in an open and public document. This document shall also be subject to review of national Regulatory Authorities.
- 5.5. TSOs shall publish all relevant data concerning cross-border trade on the basis of the best possible forecast. In order to fulfil this obligation the market participants concerned shall provide the TSOs with the relevant

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data. The way in which such information is published shall be subject to review by Regulatory Authorities. TSOs shall publish at least:

- (a) annually: information on the long-term evolution of the transmission infrastructure and its impact on cross-border transmission capacity;
 - (b) monthly: month- and year-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSO at the time of the forecast calculation (e.g. impact of summer and winter seasons on the capacity of lines, maintenance on the grid, availability of production units, etc.);
 - (c) weekly: week-ahead forecasts of the transmission capacity available to the market, taking into account all relevant information available to the TSOs at the time of calculation of the forecast, such as the weather forecast, planned maintenance works of the grid, availability of production units, etc.;
 - (d) daily: day-ahead and intra-day transmission capacity available to the market for each market time unit, taking into account all netted day-ahead nominations, day-ahead production schedules, demand forecasts and planned maintenance works of the grid;
 - (e) total capacity already allocated, by market time unit, and all relevant conditions under which this capacity may be used (e.g. auction clearing price, obligations on how to use the capacity, etc.), so as to identify any remaining capacity;
 - (f) allocated capacity as soon as possible after each allocation, as well as an indication of prices paid;
 - (g) total capacity used, by market time unit, immediately after nomination;
 - (h) as closely as possible to real time: aggregated realised commercial and physical flows, by market time unit, including a description of the effects of any corrective actions taken by the TSOs (such as curtailment) for solving network or system problems;
 - (i) ex-ante information on planned outages and ex-post information for the previous day on planned and unplanned outages of generation units larger than 100 MW.
- 5.6. All relevant information shall be available for the market in due time for the negotiation of all transactions (such as the time of negotiation of annual supply contracts for industrial customers or the time when bids have to be sent into organised markets).
 - 5.7. The TSO shall publish the relevant information on forecast demand and on generation according to the timeframes referred to in 5.5 and 5.6. The TSO shall also publish the relevant information necessary for the cross-border balancing market.
 - 5.8. When forecasts are published, the ex post realised values for the forecast information shall also be published in the time period following that to which the forecast applies or at the latest on the following day (D+1).
 - 5.9. All information published by the TSOs shall be made freely available in an easily accessible form. All data shall also be accessible through adequate and standardised means of information exchange, to be defined in close cooperation with market parties. The data shall include information on past time periods with a minimum of two years, so that new market entrants may also have access to such data.
 - 5.10. TSOs shall exchange regularly a set of sufficiently accurate network and load flow data in order to enable load flow calculations for each TSO in their relevant area. The same set of data shall be made available to the Regulatory Authorities and to the European Commission upon request. The Regulatory Authorities and the European Commission shall ensure the confidential treatment of this set of data, by themselves and by any consultant carrying out analytical work for them on the basis of these data.
6. **Use of congestion income**
 - 6.1. Congestion management procedures associated with a pre-specified timeframe may generate revenue only in the event of congestion which arises for that timeframe, except in the case of new interconnectors which benefit from an exemption under Article 7 of the Regulation. The procedure for the distribution of these revenues shall be subject to review by the Regulatory Authorities and shall neither distort the allo-

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ation process in favour of any party requesting capacity or energy nor provide a disincentive to reduce congestion.

- 6.2. National Regulatory Authorities shall be transparent regarding the use of revenues resulting from the allocation of interconnection capacity.
- 6.3. The congestion income shall be shared among the TSOs involved according to criteria agreed between the TSOs involved and reviewed by the respective Regulatory Authorities.
- 6.4. TSOs shall clearly establish beforehand the use they will make of any congestion income they may obtain and report on the actual use of this income. Regulatory Authorities shall verify that this use complies with the present Regulation and Guidelines and that the total amount of congestion income resulting from the allocation of interconnection capacity is devoted to one or more of the three purposes described in Article 6(6) of Regulation.
- 6.5. On an annual basis, and by 31 July each year, the Regulatory Authorities shall publish a report setting out the amount of revenue collected for the 12-month period up to 30 June of the same year and the use made of the revenues in question, together with verification that this use complies with the present Regulation and Guidelines and that the total amount of congestion income is devoted to one or more of the three prescribed purposes.
- 6.6. The use of congestion income for investment to maintain or increase interconnection capacity shall preferably be assigned to specific predefined projects which contribute to relieving the existing associated congestion and which may also be implemented within a reasonable time, particularly as regards the authorisation process.