

**Amended proposal for a Regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity <sup>(1)</sup>**

(2002/C 227 E/20)

(Text with EEA relevance)

COM(2002) 304 final — 2001/0078(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 7 June 2002)*

<sup>(1)</sup> OJ C 240 E, 28.8.2001, p. 72.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

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

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 <sup>(1)</sup> constituted an important step in 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 to other sectors of the economy.
- (4) Fair, cost-reflective, transparent and directly applicable rules, completing 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.

- (4) Fair, cost-reflective, transparent and directly applicable rules, taking account of a comparison between efficient network operators from structurally comparable areas and completing 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.

<sup>(1)</sup> OJ L 27, 30.1.1997, p. 20. Directive as amended by Directive ...

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| <p>(5) In its Conclusions, the Energy Council of 30 May 2000 invited the Commission, Member States and national regulatory authorities/administrations to ensure a rapid introduction of a robust tarification system and methodology to allocate available interconnection capacity for the longer term.</p> <p>(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.</p> <p>(7) 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.</p> <p>(8) In an open, competitive market, transmission system operators should be compensated for costs incurred as a result of hosting transit of electricity on their networks by the operators of the transmission systems from which transits originate or and for which they are destined.</p> <p>(9) Payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs.</p> <p>(10) 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.</p> <p>(11) It would not be appropriate to apply distance-related tariffs, or, a specific tariff to be paid only by exporters or importers</p> | <p>Unchanged</p> <p></p> <p></p> <p></p> <p>(8) 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.</p> <p>Unchanged</p> <p></p> <p></p> <p>(11) 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.</p> |
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| <p>(12) Competition on the internal market can only truly develop if access to the lines interconnecting the different national systems is granted in a non-discriminatory and transparent way. The available capacities of these lines should be set at the maximum complying with the safety standards of secure network operation. Any discrimination in the allocation of available capacities should be shown not to unreasonably distort or hinder the development of trade.</p> <p>(13) There should be transparency for market actors concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities.</p> <p>(14) Of revenues flowing from congestion-management procedures, should not constitute a source of extra profit for the transmission system operators.</p> <p>(15) 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 parties and are based on market mechanisms.</p> <p>(16) 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 tariffication and capacity allocation by the Commission whilst ensuring the involvement of Member States' regulatory authorities in this process.</p> <p>(17) 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 the possibility to request relevant information directly from undertakings concerned.</p> <p>(18) National regulatory authorities should ensure compliance with the rules contained in this Regulation and the guidelines adopted on the basis of this Regulation.</p> <p>(19) 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.</p> | <p>(12) 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 complying with the safety standards of secure network operation. Any discrimination in the allocation of available capacities should be shown not to unreasonably distort or hinder the development of trade.</p> <p>Unchanged</p> <p>(14) There should be rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies a time-limited exemption from these rules</p> <p>Unchanged</p> <p>(17) 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 the possibility to request relevant information directly from undertakings concerned.</p> <p>Unchanged</p> |
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(20) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives 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 by the Community. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(21) In accordance with Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(1)</sup>, measures for the implementation of this Regulation should be adopted by use of the regulatory procedure provided for in Article 5 of Decision 1999/468/EC, or by use of the advisory procedure provided for in Article 3 of that Decision, according to the nature of the measures to be adopted,

HAVE ADOPTED THIS REGULATION:

*Article 1***Subject matter and scope**

This Regulation aims at stimulating cross-border exchanges in electricity and thus competition within the internal electricity market, through the establishment of a compensation mechanism for transit of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems.

This Regulation aims at stimulating cross-border exchanges in electricity and thus competition within the internal electricity market, through 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.

*Article 2***Definitions**

1. For the purpose of this Regulation, the definitions contained in Article 2 of Directive 96/92/EC shall apply.

2. The following definitions shall also apply:

(a) means a physical flow of electricity hosted on the transmission system of a Member State, which was neither produced nor is destined for consumption in that Member State, including transit flows which are commonly denominated as 'loop-flows' or 'parallel-flows';

Unchanged

(a) 'cross-border flow' means a physical flow of electricity on a transmission network of a Member State that results from the activity of either generators or consumers outside of that Member State;

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

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- (b) 'congestion' means a situation in which an interconnection linking national transmission networks, cannot accommodate all transactions resulting from international trade by market operators, due to a lack of capacity;

*Article 3***Inter transmission system operator compensation mechanism**

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting transit flows of electricity on their network.
2. The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which transit flows originate and/or 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 actual costs incurred.

The first period of time with regard to which compensation payments shall be made shall be determined in the guidelines referred to in Article 7.

4. Acting in accordance with the procedure referred to in Article the Commission shall decide on the amounts of compensation payments payable.
5. The amounts of transit flows hosted and the amounts of flows 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 transit flows shall be established on the basis of the forward looking long-run average incremental costs (reflecting costs and benefits that a network bears from hosting transit flows compared to the costs it would bear in the absence of such flows).

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- (b) 'congestion' means a situation in which an interconnection linking national transmission networks, cannot accommodate all transactions resulting from international trade by market operators, due to a lack of capacity of the interconnectors and/or the national transmission systems concerned;
- (c) 'export' of electricity means the dispatch of electricity in one Member State with the understanding that the simultaneous corresponding take-up ('import') of electricity will take place in another Member State or a third country.

## Unchanged

1. Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their network.
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 actual costs incurred and recognised.

## Unchanged

4. Acting in accordance with the procedure referred to in Article 12(4), the Commission shall decide on the amounts of compensation payments payable.
5. The amounts of cross-border flows hosted and the amounts 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 existing infrastructure was built to transmit cross-border flows. When establishing the costs incurred, standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account.

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*Article 4*

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**Charges for access to networks**

1. Charges applied by national network-operators for access to national networks shall be reflect actual costs incurred, and shall be transparent, approximated to those of an efficient network operator and applied in a non-discriminatory manner. They shall not be distance-related.

1. Charges applied by network-operators for access to national networks shall be transparent and reflect actual costs incurred in so far as they correspond to those of an efficient and structurally comparable network operator and applied in a non-discriminatory manner. They shall not be distance-related.

2. Generators and consumers (load) may be charged for access to national networks. The proportion of the total amount of the network charges borne by generators shall be lower than the proportion borne by consumers. Where appropriate, the level of the tariffs applied to generators and/or consumers shall provide locational signals, and take into account the amount of network losses and congestion caused.

Unchanged

3. Payments and receipts resulting from the inter-transmission system operator compensation mechanism shall be taken into account when setting the charges for network access. Actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods, shall be taken into account.

4. Subject to paragraph 2, charges for access to national networks applied to generators and consumers shall be applied independently of the country of destination and respectively origin of the electricity, as specified in the underlying commercial arrangement. Exporters and importers shall not be charged any specific charge in addition to the general charge for access to national networks.

4. Providing that appropriate and efficient locational signals are in place, in accordance with paragraph 2, charges for access to national networks applied to generators and consumers shall be applied independently of the country of destination and respectively origin of the electricity, as specified in the underlying commercial arrangement. This shall be without prejudice to charges on exports and imports resulting from congestion management referred to in Article 6.

5. There shall be no specific network charge on individual transactions for transits of electricity covered by the inter-transmission system operator compensation mechanism.

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

*Article 5*

Unchanged

**Provision of information on interconnection capacities**

1. Coordination and information exchange mechanisms shall be put in place by transmission system operators to ensure the security of the networks in the context of congestion management.

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. This publication 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 national regulatory authority

2. The safety, operational and planning standards used by transmission system operators shall be made public. This publication 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 national regulatory authorities, referred to in Article 22 of Directive 96/92/EC.

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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 time intervals before the day of transport and shall include, in any case, week-ahead and month-ahead estimates. The data published shall include a quantitative indication of the expected reliability of the available capacity.

*Article 6***General principles 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.

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.

market participants who have been allocated capacity shall be compensated for any curtailment of this capacity.

3. The maximum capacity of the interconnections shall be made available to market participants, complying with safety standards of secure network operation.

4. Any allocated capacity that will not be used shall be reattributed to the market,

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. In any event, transactions that relieve the congestion shall never be denied.

6. Any rents revenues resulting from the allocation of interconnection capacities shall be used for one or more of the following purposes:

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

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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 time 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.

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**General principles of congestion management**

Unchanged

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-majeur', market participants who have been allocated capacity shall be compensated for any curtailment.

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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 capacities which exceed a reasonable return on investment shall be used for one or more of the following purposes:

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(b) network investments maintaining or increasing interconnection capacities;

(c) reduction of network charges.

These rents may be put into a fund that is managed by transmission system operators. They shall not constitute a source of extra profit for the transmission system operators.

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7. The national regulatory authorities referred to in Article 22 of Directive 96/92/EC, of those Member States linked by any interconnector may, on a case by case basis and in common, decide that an interconnector shall be subject to a time-limited exemption from paragraph 6. The exemption shall be renewable.

An interconnector exempt from the provisions of paragraph 6 shall remain subject to the provisions of Article 22 Directive 96/92/EC and the Competition Rules of the EC Treaty.

8. In order to be eligible for an exemption referred to in paragraph 7, an interconnector must fulfil the following conditions:

- (a) it is owned by a natural or legal person which is separate at least in terms of its legal form from the transmission system operators whose systems that interconnector links;
- (b) charges are levied on specific users of the interconnector;
- (c) at no time since the implementation of Directive 96/92/EC, any 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;

An exemption shall be excluded where Community or national legislation prohibits parties, other than the two transmission and/or distribution system operators concerned, from constructing a new interconnector between the two transmission or distribution systems concerned.

An exemption shall normally only apply to direct current interconnectors.

9. The decision and the conditions relating to the award of an exemption shall be published and notified without delay to the Commission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well founded decision. Within four weeks of receipt of this notification, the Commission may request that the national regulatory authority concerned amend or withdraw the decision to grant an exemption.



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*Article 7***Guidelines**

1. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 12(2), adopt and amend guidelines on the following issues with regard to the inter-transmission system operator compensation mechanism, in accordance with the principles set out in Article 3:

- (a) details of the determination of the transmission system operators liable to pay compensations for transit flows, 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 compensations are to be paid, in accordance with the second subparagraph of Article 3(3);
- (c) details of methodologies to determine the amount of transits hosted and exports/imports of electricity made in accordance with Article 3(5);
- (d) details of the methodology to determine the costs incurred as a result of hosting transits of electricity, in accordance with Article 3(6);
- (e) the participation of national systems which are interconnected through direct current lines, in accordance with Article 3.

2. The guidelines shall also determine details of harmonisation of the charges applied to generators and consumers (load) under national tariff systems, in accordance with the principles set out in Article 4(2).

If the national regulatory authorities concerned do not comply with this request within a period of four weeks, the Commission shall expeditiously take a final decision in accordance with procedure referred to in Article 12(2) of this Regulation.

The Commission shall preserve the confidentiality of commercially sensitive information.

Unchanged

1. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 12(2), adopt and amend guidelines on the following issues relating to the inter-transmission system operator compensation mechanism, in accordance with the principles set out in Article 3:

- (a) details of the determination of the transmission system operators liable to pay compensations for cross-border flows, in accordance with Article 3(2);
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- (c) details of methodologies to determine the quantity of cross-border flows hosted and the designation of the amounts of such flows as originating and/or ending in national transmission systems of individual Member States, in accordance with Article 3(5);
- (d) details of the methodology to determine the costs 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 EEA;
- (f) the participation of national systems which are interconnected through direct current lines, in accordance with Article 3.

2. The guidelines shall also determine the appropriate rules leading to a progressive harmonisation of the charges applied to generators and consumers (load) under national tariff systems, including the reflection of the inter-TSO compensation mechanism in national network charges, in accordance with the principles set out in Article 4.

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3. Where appropriate, the Commission shall, acting in accordance with the procedure referred to in Article 12(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. 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.

*Article 8***National regulatory authorities**

National regulatory authorities and methodologies for congestion management are set and applied in accordance with this Regulation and the guidelines adopted pursuant to Article 7.

*Article 9***Provision of information and confidentiality**

1. Member States and national regulatory authorities, shall, on request, provide to the Commission all information necessary for the purpose of Articles 3(4) and 7.

In particular, for the purpose of Article 3(4) national regulatory authorities shall provide on a regular basis costs actually incurred by national associated with hosting transit flows as well as the amount of exports and imports made in a given period. They shall also provide the relevant data and information used for the calculation of those figures.

2. Member States shall ensure that national regulatory authorities and administrations are able and entitled to provide the information required pursuant to paragraph 1.

3. The Commission may also request all information necessary for the purpose of Article 3(4) and 7 directly from undertakings and associations of undertakings.

When sending a request for information to an undertaking or an association of undertakings, the Commission shall at the same time forward a copy of the request to the regulatory authority, established pursuant to Article 22(1) of Directive 96/92/EC, of the Member State in whose territory the seat of the undertaking or the association of undertakings is situated.

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National regulatory authorities, referred to in Article 22 of Directive 96/92/EC <sup>(1)</sup>, shall have the responsibility that tariffs for the access to the network and methodologies for congestion management are set and applied in accordance with this Regulation and the guidelines adopted pursuant to Article 7.

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1. Member States and national regulatory authorities, referred to in Article 22 of Directive 96/92/EC <sup>(1)</sup>, shall, on request, provide to the Commission all information necessary for the purpose of Articles 3(4) and 7.

In particular, for the purpose of Article 3(4) and 3(6), national regulatory authorities shall provide on a regular basis costs actually incurred by national data and all relevant information relating to the physical flows in transmission system operators' networks and the cost of the network.

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3. The Commission may also request all information necessary for the purpose of Article 3(4) and 7 directly from undertakings concerned and associations of undertakings.

When sending a request for information to an undertaking or an association of undertakings, the Commission shall at the same time forward a copy of the request to the national regulatory authorities, established pursuant to Article 22(1) of Directive 96/92/EC, of the Member State in whose territory the seat of the undertaking or the association of undertakings is situated.

<sup>(1)</sup> Directive as amended by Directive ...

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4. 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 11(2) for supplying incorrect, incomplete and misleading information.

5. The owners of the undertakings or their representatives and, in the case of legal persons, companies of firms, or of associations having no legal personality, the persons authorised to represent them by law or by their constitution, 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.

6. Where an undertaking or association of undertakings does not provide the information requested within the time-limit fixed by the Commission or supplies incomplete information, the Commission shall 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 11(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 authority referred to in the second subparagraph of paragraph 3 of the Member State within the territory of which the residence of the person or the seat of the undertaking or the association of undertakings is situated.

7. Information collected pursuant to this Regulation shall be used only for the purposes of Articles 3(4) and 7.

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

*Article 10***Right of Member States to provide for more detailed measures**

This Regulation 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 7.

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4. 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 11(2) for supplying incorrect, incomplete and 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.

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The Commission shall at the same time send a copy of its decision to the national regulatory authorities referred to in Article 22(1) of Directive 96/92/EC of the Member State within the territory of which the residence of the person or the seat of the undertaking or the association of undertakings is situated.

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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 7.

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*Article 11*

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**Penalties**

1. 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 [indicate date] at the latest and shall notify it without delay of any subsequent amendment affecting them.

2. The Commission may by decision impose on undertakings or associations of 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 9(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article 9(6).

In setting the amount of a fine, regard shall be had both to the gravity and to the duration of the infringement.

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

*Article 12***Regulatory Committee****Committee**

1. The Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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2. Where reference is made to this paragraph, the regulatory procedure laid down in Articles 5 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

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.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be two months.

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

4. 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.

*Article 13***Advisory committee***Article 13***Commission report**

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

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

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## Article 14

Unchanged

**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 Communities*.

It shall apply from [indicate date].

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

## ANNEX

**GUIDELINES ON THE MANAGEMENT AND ALLOCATION OF AVAILABLE TRANSFER CAPACITY OF INTERCONNECTIONS BETWEEN NATIONAL SYSTEMS**

**General**

Unchanged

1. Congestion management method(s) implemented by Member States should deal with short-run congestion in an economically efficient manner whilst simultaneously providing signals or incentives for efficient network and generation investment in the right locations.

2. In order to minimise the negative impact of congestion on trade, the current network should be used at the maximum capacity that complies with the safety standards of secure network operation.

3. The TSOs should provide non-discriminatory and transparent standards, which describe which congestion management methods they will apply under which circumstances. These standards, together with the security standards, should be described in open and publicly available documents.

4. Different treatment of the different types of cross-border transactions, whether they are physical bilateral contracts or bids into foreign organised markets, should be kept to a minimum when designing the rules of specific methods for congestion management. The method for allocating scarce transmission capacity must be transparent. Any differences in how transactions are treated must be shown not to distort or hinder the development of competition.

5. Price signals that result from congestion management systems should be directional.

6. Every effort should be made to net the capacity requirements of any power flows in opposite direction over the congested tie line in order to use the congested tie line to its maximum capacity. In any adopted congestion management scheme, transactions that relieve the congestion should never be denied.

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2. The TSOs should provide non-discriminatory and transparent standards, which describe which congestion management methods they will apply under which circumstances. These standards, together with the security standards, should be described in open and publicly available documents.

3. Different treatment of the different types of cross-border transactions, whether they are physical bilateral contracts or bids into foreign organised markets, should be kept to a minimum when designing the rules of specific methods for congestion management. The method for allocating scarce transmission capacity must be transparent. Any differences in how transactions are treated must be shown not to distort or hinder the development of competition.

4. Price signals that result from congestion management systems should be directional.

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## INITIAL PROPOSAL

## AMENDED PROPOSAL

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| <p>7. Any unused capacity must become available to other agents (the use-it-or-lose-it principle). This may be implemented by devising notification procedures.</p> <p>8. Any rents resulting from the allocation of interconnection capacities may be used for redispatching or counter trading in order to comply with the firmness of the capacity that was allocated to market parties. In principle, any remaining rents should be spent on network investments for relieving the congestion or on reducing the total network tariff. TSOs may manage these funds, but cannot retain them.</p> <p>9. TSOs should offer transmission capacity to the market as 'firm' as possible. A reasonable fraction of the capacity may be offered to the market under condition of decreased firmness, but at all times the exact conditions for transport over cross-border lines should be made known to market parties.</p> <p>10. Considering the fact that the European continental network is a highly meshed network and that the use of interconnection lines has an effect on the power flows on at least two sides of a national border, national Regulators shall ensure that no congestion management procedure with significant effects on power flows in other networks, be devised unilaterally.</p> | <p>5. TSOs should offer transmission capacity to the market as 'firm' as possible. A reasonable fraction of the capacity may be offered to the market under condition of decreased firmness, but at all times the exact conditions for transport over cross-border lines should be made known to market parties.</p> <p>6. Considering the fact that the European continental network is a highly meshed network and that the use of interconnection lines has an effect on the power flows on at least two sides of a national border, national Regulators shall ensure that no congestion management procedure with significant effects on power flows in other networks, be devised unilaterally.</p> |
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**Position of long-term contracts**

Unchanged

1. Priority access rights to an interconnection capacity can not be assigned to those contracts which violate Articles 81 and 82 of the EC Treaty.
2. Existing long-term contracts shall have no pre-emption rights when they come up for renewal.

**Provision of information**

1. TSOs should implement appropriate coordination and information exchange mechanisms to guarantee security of the network.
2. TSOs should publish all relevant data concerning the cross-border total transfer capacities. In addition to the winter and summer ATC values, estimates of transfer capacity for each day should be published by the TSOs at several time intervals before the day of transport. At least accurate week-ahead estimates should be made available to the market and the TSOs should also endeavour to provide month-ahead information. A description of the firmness of the data should be included.

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3. The TSOs should publish a general scheme for calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical realities of the network. Such a scheme should be subject to approval by the regulators of the involved Member States concerned. The safety standards and the operational and planning standards should form an integral part of the information that TSOs should publish in open and public documents.

**Preferred methods for congestion management**

1. Network congestion problems should in principle be addressed with market-based solutions. More specifically, congestion management solutions are preferred which give appropriate price signals to the market parties and the TSOs involved.
2. Network congestion problems should preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market parties.
3. The system of market splitting, as used in the Nordpool area, is the congestion management procedure that, in principle, best meets this requirement.
4. In the short term, however, methods for congestion management in Continental Europe that may be used are implicit and explicit auctions and cross-border coordinated redispatching.
5. Cross-border coordinated redispatching or counter trading may be used jointly by the concerned TSOs. The costs that TSOs incur in counter-trading and redispatching must, however, be at an efficient level.
6. Transaction curtailment, following pre-established priority rules, should be left only for emergency situations where the TSOs must act in an expeditious manner and redispatching is not possible.
7. The possible merits of a combination of market splitting for solving 'permanent' congestion and counter trading for solving temporary congestion should be immediately explored as a more permanent approach to congestion management.

**Guidelines for explicit auctions**

1. The auction system must be designed in such a way that all available capacity is being offered to the market. This may be done by organising a composite auction in which capacities are auctioned for differing duration and with different characteristics (e.g. with respect to the expected reliability of the available capacity in question).

## AMENDED PROPOSAL

**Principles governing methods for congestion management**

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1. Network congestion problems should preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market parties.
2. The system of market splitting, as used in the Nordpool area, is the congestion management procedure that, in principle, best meets this requirement.
3. In the short term, however, methods for congestion management in Continental Europe that may be used are implicit and explicit auctions and cross-border coordinated redispatching.
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## INITIAL PROPOSAL

## AMENDED PROPOSAL

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2. Total interconnection capacity should be offered in a series of auctions, which, for instance, might be held on a yearly, monthly, weekly, daily and intra-daily basis, according to the needs of the markets involved. Each of these auctions should allocate a prescribed fraction of the available transfer capacity plus any remaining capacity that was not allocated in previous auctions.
  3. The explicit auction procedures should be prepared in close collaboration between the national regulatory authority and the TSO concerned and designed in such a way as to allow bidders to participate also in the daily sessions of any organised market (i.e. power exchange) in the countries involved.
  4. The power flows in both directions over congested tie lines should in principle be netted in order to maximise the transport capacity in the direction of the congestion. However, the procedure for netting of flows should comply with safe operation of the power system.
  5. In order to offer as much capacity to the market as possible, the financial risks related to the netting of flows, should be attributed to those parties causing those risks to materialise.
  6. Any auction procedure adopted should be capable of sending directional price signals to market participants. Transports in a direction opposite the dominant power flow relieve the congestion and should therefore result in additional transport capacity over the congested tie line.
  7. In order not to risk creating or aggravating problems related to any dominant position of market player(s), capping of the amount of capacity that can be bought/possessed/used by any single market player in an auction should be seriously considered by the competent regulatory authorities in the design of an auction mechanisms.
  8. To promote the creation of liquid electricity markets, capacity bought at an auction should be freely tradeable before the moment of notification. until it is notified to the TSO that the capacity bought will be used.
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