

COMMISSION REGULATION (EU) No 838/2010**of 23 September 2010****on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003⁽¹⁾, and in particular the first sentence of Article 18 (5) thereof,

Whereas:

(1) Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging⁽²⁾ establishes a mechanism for the compensation of transmission system operators for the costs of hosting cross-border flows of electricity and a common regulatory approach to transmission charging. However, that Regulation will expire on 2 March 2011.

(2) In order to ensure the continuity of implementation the inter-transmission system operator compensation mechanism, new guidelines specified in Article 18(1) and (2) of Regulation (EC) No 714/2009 of 13 July 2009 should be adopted which reflect the institutional framework established by that Regulation. In particular, the Agency for the Co-operation of Energy Regulators (hereinafter 'the Agency'), established by Regulation (EC) No 713/2009 of the European Parliament and of the Council⁽³⁾ should be responsible for monitoring the implementation of the inter-transmission system operator compensation mechanism.

(3) Binding guidelines establishing an inter-transmission system operator compensation mechanism should establish a stable basis for the operation of the inter-transmission system operator compensation mechanism and fair compensation to transmission system operators for the costs of hosting cross-border flows of electricity.

(4) Transmission system operators from third countries or from territories which have concluded agreements with

the Union whereby they have adopted and are applying Union law in the field of electricity should be entitled to participate in the inter-transmission system compensation Mechanism on an equivalent basis to transmission system operators from Member States.

(5) It is appropriate to allow transmission system operators in third countries which have not concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity to enter into multi-party agreements with the transmission system operators in the Member States which enable all parties to be compensated for the costs of hosting cross-border flows of electricity on a fair and equitable basis.

(6) Transmission system operators should be compensated for energy losses resulting from hosting cross-border flows of electricity. Such compensation should be based on an estimate of what losses would have been incurred in the absence of transits of electricity.

(7) A fund should be established to compensate transmission system operators for the costs of making infrastructure available to host cross-border flows of electricity. The value of this fund should be based on a Union-wide assessment of the long run average incremental costs of making infrastructure available to host cross-border flows of electricity.

(8) The Union-wide assessment of electricity transmission infrastructure associated with facilitating cross-border flows of electricity should be carried out by the Agency as the body responsible for coordinating the activities of regulatory authorities who must carry out a similar function at a national level.

(9) Transmission system operators in third countries should face the same costs for using the Union transmission system as transmission system operators in Member States.

(10) Variations in charges faced by producers of electricity for access to the transmission system should not undermine the internal market. For this reason average charges for access to the network in Member States should be kept within a range which helps to ensure that the benefits of harmonisation are realised.

⁽¹⁾ OJ L 176, 15.7.2003, p. 1.

⁽²⁾ OJ L 233, 3.9.2010, p. 1.

⁽³⁾ OJ L 211, 14.8.2009, p. 1.

- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 46 of Directive 2009/72/EC of the European Parliament and of the Council ⁽¹⁾,

Article 2

Charges applied by network operators for access to the transmission system shall be in accordance with guidelines set out in Part B of the Annex.

HAS ADOPTED THIS REGULATION:

Article 1

Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks on the basis of the guidelines set out in Part A of the Annex.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 3 March 2011.

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

Done at Brussels, 23 September 2010.

For the Commission
The President
José Manuel BARROSO

⁽¹⁾ OJ L 211, 14.8.2009, p. 55.

ANNEX

PART A

Guidelines on the Inter-Transmission System Operator Compensation Mechanism

1. General Provisions

- 1.1. The Inter-Transmission System Operator Compensation (ITC) mechanism shall provide for compensation for the costs of hosting cross-border flows of electricity including providing cross-border access to the interconnected system.
- 1.2. The European Network of Transmission System Operators for Electricity (ENTSO for Electricity) set up in accordance with Article 5 of Regulation (EC) 714/2009 shall establish an ITC fund for the purpose of compensating transmission system operators for the costs of hosting cross-border flows of electricity.

The ITC fund shall provide compensation for:

- (1) the costs of losses incurred national transmission systems as a result of hosting cross-border flows of electricity;

and

- (2) the costs of making infrastructure available to host cross-border flows of electricity.

- 1.3. Contributions to the ITC Fund shall be calculated in accordance with points 6 and 7.

Payments from the ITC Fund shall be calculated in accordance with points 4 and 5.

ENTSO for Electricity shall be responsible for establishing arrangements for the collection and disbursement of all payments relating to the ITC Fund, and shall also be responsible for determining the timing of payments. All contributions and payments shall be made as soon as possible, and at the latest within six months of the end of the period to which they apply.

- 1.4. The Agency shall oversee the implementation of the ITC mechanism and report to the Commission each year on the implementation of the ITC mechanism and the management of the ITC fund.

ENTSO for Electricity shall co-operate with the Commission and with the Agency in this task and shall provide the Agency with all information necessary for this purpose.

Each transmission system operator shall provide ENTSO for Electricity and the Agency with all information necessary for the implementation of the ITC Mechanism.

- 1.5. Until such time as ENTSO for Electricity has been established, transmission system operators shall co-operate amongst themselves to carry out the tasks assigned to ENTSO for Electricity in relation to the ITC mechanism.
- 1.6. Transit of electricity shall be calculated, normally on an hourly basis, by taking the lower of the absolute amount of imports of electricity and the absolute amount of exports of electricity on interconnections between national transmission systems.

For the purpose of calculating transits of electricity the amount of imports and the amount of exports at each interconnection between national transmission systems shall be reduced in proportion to the share of capacity allocated in a manner which is not compatible with Point 2 of the guidelines on congestion management set out in Annex I of Regulation (EC) No 714/2009.

Notwithstanding the provisions of the second subparagraph of this point imports and exports of electricity on interconnections with third countries to which the provisions of point 7.1 apply shall be included in the calculation of transit of electricity.

- 1.7. For the purposes of this part of the Annex, the net flow of electricity shall mean the absolute value of the difference between total exports of electricity from a given national transmission system to countries where the TSOs participate in the ITC Mechanism and total imports of electricity from countries where the TSOs participate in the ITC Mechanism to the same transmission system.

For ITC mechanism parties with a common border with at least one third country to which the provisions of Point 7.1 apply the following adjustments to the calculation of net flow shall be made:

- (1) if total exports of electricity to countries where the TSOs participate in the ITC Mechanism are greater than total imports of electricity from countries where the TSOs participate in the ITC Mechanism, net flows shall be reduced by the lower of:
 - (a) net import flows from those third countries; or
 - (b) net export flows to countries where the transmission system operator participates in the ITC Mechanism;
- (2) if total imports of electricity from countries where the TSOs participate in the ITC Mechanism are greater than total exports of electricity to countries where the TSOs participate in the ITC Mechanism then net flows shall be reduced by the lower of:
 - (a) net export flows to those third countries; or
 - (b) net import flows from countries where the transmission system operator participates in the ITC mechanism.

- 1.8. For the purposes of this annex load shall mean the total amount of electricity which exits the national transmission system to connected distribution systems, end consumers connected to the transmission system and to electricity producers for consumption in the generation of electricity.

2. Participation in the ITC mechanism

- 2.1. Each regulatory authority shall ensure that transmission system operators in its area of competence participate in the ITC mechanism and that no additional charges for hosting cross-border flows of electricity are included in charges applied by transmission system operators for access to networks.
- 2.2. Transmission system operators from third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity shall be entitled to participate in the ITC mechanism.

In particular, the transmission system operators operating in the territories referred to in Article 9 of the Energy Community Treaty ⁽¹⁾ shall be entitled to participate in the ITC mechanism.

Each transmission system operator from a third country participating in the ITC mechanism shall be treated on an equivalent basis to a transmission system operator of a Member State.

3. Multi-Party Agreements

- 3.1. ENTSO for Electricity shall facilitate the conclusion of multi-party agreements relating to the compensation for the costs of hosting cross-border flows of electricity between transmission system operators participating in the ITC mechanism and those transmission system operators from third countries which have not concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity, and which, on 16 December 2009, signed the voluntary agreement between transmission system operators on inter-transmission system operator compensation.
- 3.2. Such multi-party agreements shall aim at ensuring that the transmission system operator from the third country be treated on an equivalent basis to a transmission system operator in a country participating in the ITC Mechanism.

⁽¹⁾ OJ L 198, 20.7.2006, p. 18.

- 3.3. Where necessary such multi-party agreements may recommend appropriate adjustment to total compensation for the compensation for making infrastructure available to host cross-border flows of electricity determined in accordance with point 5. Any such adjustment shall be subject to approval by the Commission, taking account of the opinion of the Agency.
- 3.4. The treatment of the transmission system operator from the third country shall not be more favourable in comparison to that which would apply to a transmission system operator participating in the ITC Mechanism.
- 3.5. ENTSO for Electricity shall submit all such multi-party agreements to the Commission for its opinion as to whether continuation of the multi-party agreement promotes the completion and functioning of the internal market in electricity and cross-border trade. The opinion of the Commission shall address in particular:
 - (1) whether the agreement relates only to compensation between transmission system operators (TSOs) for the costs of hosting cross-border flows of electricity;
 - (2) whether the requirements of points 3.2 and 3.4 are respected.
- 3.6. In preparing the opinion referred to in point 3.5 the Commission shall consult all the Member States, taking particular account of the views of those Member States sharing a border with the relevant third country.

In preparing its opinion the Commission may consult the Agency.

4. Compensation for Losses

- 4.1. Compensation for losses incurred on national transmission systems as a result of hosting cross-border flows of electricity shall be calculated separately from compensation for costs incurred associated with making infrastructure available to host cross-border flows of electricity.
- 4.2. The amount of losses incurred on a national transmission system shall be established by calculating the difference between:
 - (1) the amount of losses actually incurred on the transmission system during the relevant period;and
 - (2) the estimated amount of losses on the transmission system which would have been incurred on the system during the relevant period if no transits of electricity had occurred.
- 4.3. ENTSO for Electricity shall be responsible for carrying out the calculation referred to in point 4.2 and shall publish this calculation and its method in an appropriate format. This calculation may be derived from estimates for a number of points of time during the relevant period.
- 4.4. The value of losses incurred by a national transmission system as a result of the cross-border flow of electricity shall be calculated on the same basis as that approved by the regulatory authority in respect of all losses on the national transmission systems. The Agency shall verify the criteria for the valuation of losses at national level taking particular account that losses are valued in a fair and non-discriminatory way.

Where the relevant regulatory authority has not approved a basis for the calculation of losses for a period of time for which the ITC mechanism applies, the value of losses for the purposes of the ITC mechanism shall be estimated by ENTSO for Electricity.

5. Compensation for provision of infrastructure for cross-border flows of electricity

- 5.1. Following a proposal from the Agency made in accordance with point 5.3, the Commission shall determine the annual cross-border infrastructure compensation sum which shall be apportioned among TSOs as compensation for the costs incurred as a result of making infrastructure available to host cross-border flows of electricity. If the Commission disagrees with the proposal of the Agency, it shall ask the Agency for a second opinion.

5.2. The annual cross-border infrastructure compensation sum shall be apportioned amongst transmission system operators responsible for national transmission systems in proportion to:

- (1) transit factor, referring to transits on that national transmission system state as a proportion of total transits on all national transmission systems;
- (2) load factor, referring to the square of transits of electricity, in proportion to load plus transits on that national transmission system relative to the square of transits of electricity in proportion to load plus transit for all national transmission systems.

The transit factor shall be weighted 75 % and the load factor 25 %.

5.3. The Agency shall make the proposal on the annual cross-border infrastructure compensation sum referred to in point 5.1 based on a Union-wide assessment of the infrastructure of electricity transmission associated with facilitating cross-border flows of electricity. The Agency shall undertake its best endeavours to carry out an assessment within two years of the date of application of this Regulation. ENTSO for Electricity shall provide the Agency with all assistance necessary for the purposes of carrying out this assessment.

This assessment shall consist of a technical and economic assessment of the forward-looking long-run average incremental costs on an annual basis of making such electricity transmission infrastructure available for cross-border flows of electricity over the relevant period, and shall be based on recognised standard-costing methodologies.

Where infrastructure is financed by sources other than charges for access to networks applied in accordance with Article 14 of Regulation (EC) No 714/2009 the assessment of costs of making infrastructure available for cross-border flows of electricity shall be appropriately adjusted to reflect this.

This Union-wide assessment of the electricity transmission infrastructure shall include infrastructure in all Member States and third countries participating in the ITC mechanism and in systems operated by transmission system operators who have concluded multi-party agreements referred to in point 3.

5.4. Until such time as the Agency has carried out the assessment referred to in point 5.3 and the Commission has determined the annual cross-border infrastructure compensation sum in accordance with point 5.1, the annual cross-border infrastructure compensation sum shall be EUR 100 000 000.

5.5. When making the proposal referred to in point 5.1, the Agency shall also provide its opinion to the Commission as to suitability of using long run average incremental costs for the assessment of the costs of making infrastructure available for hosting cross-border flows of electricity.

6. Contributions to the ITC Fund

6.1. The transmission system operators shall contribute to the ITC fund in proportion to the absolute value of net flows onto and from their national transmission system as a share of the sum of the absolute value of net flows onto and from all national transmission systems.

7. Transmission system use fee on third country imports and exports of electricity.

7.1. A transmission system use fee shall be paid on all scheduled imports and exports of electricity from all third countries where:

- (1) that country has not concluded agreement with the Union whereby it has adopted and is applying Union law in the field of electricity;

or

- (2) the transmission system operator responsible for the system from which electricity is imported or to which electricity is exported has not concluded a multi-party agreement referred to in point 3.

This fee shall be expressed in Euros per megawatt hour.

- 7.2. Each participant in the ITC Mechanism shall levy the transmission system use fee on scheduled imports and exports of electricity between the national transmission system and the transmission system of the third country.
- 7.3. The transmission system use fee for each year shall be calculated in advance by ENTSO for Electricity. It shall be set at the estimated contribution per megawatt hour transmission system operators from a participating country would make to the ITC Fund based on projected cross-border flows of electricity for the relevant year.

PART B

Guidelines for A Common Regulatory Approach to Transmission Charging

1. Annual average transmission charges paid by producers in each Member State shall be within the ranges set out in point 3.
2. Annual average transmission charges paid by producers is annual total transmission tariff charges paid by producers divided by the total measured energy injected annually by producers to the transmission system of a Member State.

For the calculation set out at Point 3, transmission charges shall exclude:

- (1) charges paid by producers for physical assets required for connection to the system or the upgrade of the connection;
 - (2) charges paid by producers related to ancillary services;
 - (3) specific system loss charges paid by producers.
3. The value of the annual average transmission charges paid by producers shall be within a range of 0 to 0,5 EUR/MWh, except those applying in Denmark, Sweden, Finland, Romania Ireland, Great Britain and Northern Ireland.

The value of the annual average transmission charges paid by producers in Denmark, Sweden and Finland shall be within a range of 0 to 1,2 EUR/MWh.

Annual average transmission charges paid by producers in Ireland, Great Britain and Northern Ireland shall be within a range of 0 to 2,5 EUR/MWh, and in Romania within a range of 0 to 2,0 EUR/MWh.

4. The Agency shall monitor the appropriateness of the ranges of allowable transmission charges, taking particular account of their impact on the financing of transmission capacity needed for Member States to achieve their targets under the Directive 2009/28/EC ⁽¹⁾ of the European Parliament and of the Council and their impact on system users in general.
5. By 1 January 2014 the Agency shall provide its opinion to the Commission as to the appropriate range or ranges of charges for the period after 1 January 2015.

⁽¹⁾ OJ L 140, 5.6.2009, p. 16.