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**Conditions for access to the network for cross-border exchanges in electricity
***I**

P6_TA(2008)0295

European Parliament legislative resolution of 18 June 2008 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity (COM(2007)0531 — C6-0320/2007 — 2007/0198(COD))

(2009/C 286 E/44)

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0531),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0320/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0228/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

P6_TC1-COD(2007)0198

Position of the European Parliament adopted at first reading on 18 June 2008 with a view to the adoption of Regulation (EC) No .../2008 of the European Parliament and of the Council amending Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity

(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 ||,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

⁽¹⁾ OJ C 211, 19.8.2008, p. 23.

⁽²⁾ OJ C 172, 5.7.2008, p. 55.

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Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽¹⁾,

Whereas:

- (1) The internal market for electricity, which has been progressively implemented since 1999, aims at delivering real choice for all consumers in the Community, be they citizens or business, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices, higher standards of service, and to contribute to security of supply and sustainability.
- (2) 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 ⁽²⁾ and 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 ⁽³⁾ have made significant contributions towards the creation of **an internal market for electricity.**
- (3) **||** The right to sell electricity in any Member State on equal terms, without discrimination or disadvantage cannot, *however, currently* be guaranteed to any company in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist **and isolated markets endure.**
- (4) The Communication of the Commission of 10 January 2007 entitled 'An Energy Policy for Europe' **||** highlighted the importance of completing the internal market in electricity and to create a level playing field for all electricity *undertakings* in the Community. The Communications from the Commission of *the same date*, on prospects for the internal gas and electricity market **||** and *in relation to its inquiry* pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors **||** showed that the present rules and measures **neither** provide the necessary framework **nor provide for the creation of physical connections** to achieve the objective of a *well-functioning, efficient and open* internal market.
- (5) Regulation (EC) No 1228/2003 needs to be adapted in line with *those* communications to improve the regulatory framework of the internal market *for* electricity.
- (6) In particular, **the creation of physical connections and** increased cooperation and coordination among transmission system operators **are** required to ensure progressive compatibility of the technical and commercial codes for providing and managing effective **and transparent** access to the transmission networks across borders, **||** to ensure coordinated and sufficiently *forward-looking* planning and sound technical evolution of the transmission system in the Community, with due regard to the environment, and to promote energy efficiency and research and innovation, *in particular as regards the penetration of energy from renewable sources and the dissemination of low carbon technology.* Transmission system operators should operate their networks according to these compatible technical and market codes.
- (7) In order to ensure an optimal management of the electricity transmission network and to allow trading and supplying electricity to retail customers across borders in the Community, a European network of the transmission system operators should be established. Its tasks should be carried out in compliance with Community competition rules which remain applicable to the decisions of the European network of the transmission system operators. Its tasks should be well-defined and their working method should be such as to ensure efficiency, representativity and transparency. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with codes and investment plans at Community level. **Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market for electricity.**

⁽¹⁾ Position of the European Parliament of 18 June 2008.

⁽²⁾ OJ L 176, 15.7.2003, p. 37.

⁽³⁾ OJ L 176, 15.7.2003, p. 1.

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- (8) ***In order to ensure greater transparency regarding the entire electricity transmission network in the European Union, the Commission should draw up, publish and regularly update a road map. All feasible electricity transmission networks and possible regional connections should be included in that road map.***
- (9) Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on access to infrastructure are not sufficient ***to secure a genuine, well-functioning, efficient and open internal market.***
- (10) Equal access to information on the physical status ***and efficiency*** of the system is necessary to enable all market participants to assess the overall demand and supply situation and identify the reasons for movements in the wholesale price. This includes more precise information on electricity generation, supply and demand, network capacity, flows and maintenance, balancing and reserve capacity.
- (11) To enhance trust in the market, its participants need to be sure that abusive behaviour can be sanctioned ***effectively***. The competent authorities should be *given the competence effectively* to investigate allegations of market abuse. *To this end, access by the competent authorities to data that provides information on operational decisions made by supply undertakings is necessary.* In the electricity market, many relevant decisions are made by the generators, who should keep information in relation thereto available to ***and easily accessible by*** the competent authorities for a fixed period of time. ***The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules.*** Small generators with no real ability to distort the market should be exempt from this obligation.
- (12) Competition for household consumers requires that suppliers not be blocked when they want to enter new retail markets. The rules and responsibilities governing the supply chain *therefore* need to be known to all market participants, and ***||*** need to be harmonised with a view to enhancing Community market integration. ***The competent authorities should regularly monitor the compliance of market participants with the rules.***
- (13) Investments in major new infrastructures should be strongly promoted while ensuring the proper functioning of the internal market for electricity. In order to enhance the positive effect of exempted direct current interconnectors on competition and security of supply, market interest during the project planning phase should be tested and congestion management rules should be implemented. Where direct current interconnectors are located in the territory of more than one Member State, the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No .../2008 of the European Parliament and of the Council of ... [establishing an Agency for the Cooperation of Energy Regulators] ⁽¹⁾ should handle the exemption request in order to take better account of its cross-border implications and ***||*** facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing such major infrastructure projects it *should be possible for supply and production undertakings to be temporarily exempted from the full impact of the unbundling rules for the projects concerned.*
- (14) Regulation (EC) No 1228/2003 provides that certain measures are to 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 ⁽²⁾.
- (15) Decision 1999/468/EC has been amended by Council Decision 2006/512/EC ⁽³⁾, which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.

⁽¹⁾ OJ L ...

⁽²⁾ OJ L 184, 17.7.1999, p. 23 ***||***.

⁽³⁾ OJ L 200, 22.7.2006, p. 11.

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- (16) In accordance with the ¶ statement by the European Parliament, the Council and the Commission ⁽¹⁾ concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure referred to in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.
- (17) The Commission should be empowered to adopt the measures necessary for the implementation of Regulation (EC) No 1228/2003 in order to establish or adopt the guidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of Regulation (EC) No 1228/2003 by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (18) Regulation (EC) No 1228/2003 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1228/2003 is amended as follows:

- (1) In Article 1 the following paragraph shall be added:

‘This Regulation also aims at facilitating the emergence of a well-functioning and transparent ¶ wholesale market **with a high level of security of supply**. It provides mechanisms to harmonise ¶ rules **to this effect**.’

- (2) In Article 2(2) the following point shall be added:

‘(h) “Agency” means the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No .../2008 of the European Parliament and of the Council of ... [establishing an Agency for the Cooperation of Energy Regulators] (*).

(*) OJ L ...”

- (3) The following articles shall be inserted:

‘Article 2a

European Network of Transmission System Operators for Electricity

All transmission system operators shall cooperate at Community level through a European network of transmission system operators for electricity in order to ensure the optimal management and sound technical evolution of the European electricity transmission network **and to promote the completion of the internal market for electricity**.

Article 2b

Establishment of the European Network for Transmission System Operators for Electricity

1. By [...] at the latest the transmission system operators for electricity shall submit to the Commission and to the Agency ¶ draft ¶ statutes, a list of future members and draft rules of procedure ¶ with a view to establishing a European network of transmission system operators for electricity ¶.

2. Within six weeks from receipt, the Agency shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

⁽¹⁾ OJ C 255, 21.10.2006, p. 1.

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3. The Commission shall deliver an opinion on the draft statutes, list of members and draft rules of procedure within 3 months from the receipt of the opinion of the Agency.

4. Within 3 months from the receipt of the Commission's opinion, the transmission system operators shall establish the European Network for Transmission System Operators for Electricity, adopt its statutes and rules of procedure and publish them.

Article 2c

Tasks of the European Network of Transmission System Operators for Electricity

1. ***In order to achieve the objectives set out in Article 2a, the European Network of Transmission System Operators for Electricity shall agree and submit to the Agency, for approval, following the procedure provided for in Article 2d in conjunction with Article 6(3) of Regulation (EC) No .../2008 [establishing an Agency for the Cooperation of Energy Regulators], the following:***

- (a) ***draft network codes in the areas mentioned in paragraph 3, elaborated in cooperation with market participants and network users;***
- (b) common network operation tools and research plans;
- (c) a 10-year investment plan, including a generation adequacy outlook, every two years;
- (d) ***measures to ensure the real-time coordination of grid operation in normal and emergency conditions;***
- (e) ***guidelines on the coordination of technical cooperation between Community and third-country transmission system operators;***
- (f) an annual work programme ***based on the priorities set by the Agency;***
- (g) an annual report; *and*
- (h) annual summer and winter generation adequacy outlooks.

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

3. The detailed ***network*** codes shall cover the following areas, according to the priorities defined in the annual work programme:

- (a) security and reliability rules, ***including interoperability rules and procedures for emergency situations;***
- (b) grid connection and access rules;
-
- (c) ***cross-border*** capacity allocation and congestion management rules;
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- (d) ***network-related*** transparency rules;
- (e) balancing ***and settlement*** rules including reserve power rules;

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- (f) **|** inter-TSO compensation rules;
- (g) energy efficiency regarding electricity networks.

4. The **Agency** shall monitor the implementation of the **network codes by the European Network of Transmission System Operators for Electricity**.

5. The European Network of Transmission System Operators for Electricity shall publish a Community-wide 10-year network investment plan every two years **following its approval by the Agency**. The investment plan shall include the modelling of the integrated network, scenario development, a generation adequacy report and an assessment of the resilience of the system. The investment plan shall, in particular, build on national investment plans **taking into account regional and Community aspects of network planning, including** the Guidelines for Trans-European energy networks in accordance with Decision No 1364/2006/EC of the European Parliament and of the Council (*). The investment plan shall identify investment gaps, notably with respect to cross border capacities, **and shall include investments in interconnection and in other infrastructure necessary for effective trading and competition and for security of supply. A review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices shall be annexed to the investment plan.**

The transmission system operators shall implement the published investment plan.

6. **|** The European Network of Transmission System Operators for Electricity, **on its own initiative, may propose to the Agency draft network codes in any area other than those listed in paragraph 3 with a view to achieving the objective set out in Article 2a. The Agency shall adopt the network codes following the procedure set out in Article 2f while ensuring that those network codes are not in contradiction to the guidelines adopted under Article 2e.**

Article 2d

Monitoring by the Agency

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

2. **The European Network of Transmission System Operators for Electricity shall collect all relevant information regarding the implementation of the network codes and submit it to the Agency for evaluation.**

3. The European Network of Transmission System Operators for Electricity shall submit the draft **network codes and the documents referred to in Article 2c(1)** to the Agency **for approval**.

|

The Agency shall **monitor the implementation of the network codes, the 10-year investment plan and the | annual work programme and shall include the results of that monitoring in its annual report. In the event of non-compliance by the transmission system operators with the network codes, the 10-year investment plan or the annual work programme the Agency shall provide information thereof to the Commission.**

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Article 2e

Development of guidelines

1. *The Commission shall, after consulting the Agency, establish an annual priority list identifying issues of primary importance for the development of the internal market for electricity.*
2. *Having regard to that priority list, the Commission shall mandate the Agency to develop, within no more than six months, draft guidelines establishing basic, clear and objective principles for the harmonisation of rules, as set out in Article 2c.*
3. *In drafting those guidelines, the Agency shall formally consult the European Network of Transmission System Operators for Electricity and other stakeholders, in an open and transparent manner.*
4. *The Agency shall adopt draft guidelines on the basis of that consultation. It shall specify the observations received during the consultation and explain how they were taken into account. It shall give reasons where observations have not been taken into account.*
5. *On its own initiative or at the request of the Agency, the Commission may initiate the same procedure to update the guidelines.*

Article 2f

Development of network codes

1. *Within six months of the adoption of the guidelines by the Agency and in accordance with Article 2e, the Commission shall mandate the European Network of Transmission System Operators of Electricity to develop draft network codes in full compliance with the principles established in the guidelines.*
2. *In drafting those network codes, the European Network of Transmission System Operators for Electricity shall take into consideration technical expertise from market participants and network users and shall keep them informed of progress.*
3. *The European Network of Transmission System Operators for Electricity shall submit the draft network codes to the Agency.*
4. *The Agency shall conduct a formal consultation in relation to the draft network codes in an open and transparent manner.*
5. *The Agency shall adopt the draft network codes on the basis of that consultation. It shall specify the observations received during the consultation and explain how they were taken into account. It shall give reasons where observations have not been taken into account.*
6. *On the Agency's own initiative or at the request of the European Network of Transmission System Operators for Electricity, a revision of the existing codes may be undertaken following the same procedure.*
7. *The Commission may, on a recommendation of the Agency, submit that network code to the Committee referred to in Article 13(1) for its final adoption in accordance with the procedure referred to in Article 13(2).*

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Article 2g

Consultations

1. In carrying out its tasks, the **Agency** shall **formally** consult **■**, in an open and transparent manner, **■** all appropriate market participants; the consultation shall include supply and generation undertakings, customers, system users, distribution system operators, including relevant (industry) associations, technical bodies and stakeholder platforms.

2. All documents and minutes of meetings related to the issues referred to in paragraph 1 shall be made public.

3. Before adopting the **guidelines and network codes**, the **Agency** shall specify the observations received *during* the consultation and *explain* how they were taken into account. The Agency shall provide reasons where observations have not been taken into account.

4. The European Network of Transmission System Operators for Electricity shall cooperate with market participants and network users in accordance with Article 2f(2).

Article 2h

Costs

The costs related to the activities of the European Network of Transmission System Operators for Electricity referred to in Articles 2a to 2j shall be borne by the transmission system operators and shall be **included** in the calculation of tariffs. **The regulatory authorities shall approve those costs only if they are reasonable and proportionate.**

Article 2i

Regional cooperation of transmission system operators

1. Transmission system operators shall establish regional cooperation within the European Network of Transmission System Operators for Electricity to contribute to the tasks mentioned in Article 2c(1). In particular, they shall publish a regional investment plan every two years, and may take investment decisions based *thereon*.

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

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

■

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Article 2j

Technical cooperation between Community and third-country transmission system operators

1. Technical cooperation between Community and third-country transmission system operators shall be monitored by the national regulatory authorities;

2. If incompatibilities with the rules and network codes adopted by the Agency come to light in the course of such technical cooperation, the national regulatory authority shall seek clarification from the Agency.

(*) OJ L 262, 22.9.2006, p. 1.'

(4) Article 5 shall be amended as follows:

(a) the title shall be replaced by the following: "Provision of information";

(b) the following paragraphs shall be added:

'4. Transmission system operators shall publish relevant data on forecast and actual demand, on availability and actual use of generation and load assets, on availability and use of the network and interconnectors, and on balancing power and reserve capacity.

5. The market participants concerned shall provide the transmission system operators with the relevant data.

6. Generation companies which own or operate generation assets, of which one has an installed capacity of at least 250 MW, shall keep at the disposal of the Commission, the national regulatory authority, the national competition authority, **and the Agency**, for five years all hourly data per plant that is necessary to verify all operational dispatching decisions and the bidding behaviour at power exchanges, interconnection auctions, reserve markets and OTC markets. The per plant and per hour information to be stored includes, but is not limited to, data on available generation capacity and committed reserves, including allocation of these committed reserves on a per plant level, at the time the bidding is carried out and when production takes place.'

(5) Article 6 shall be amended as follows:

(a) in paragraph 1, the following subparagraphs shall be added:

'The national regulatory authorities shall monitor congestion management within national electricity systems and on interconnectors.

Transmission system operators shall submit their congestion management procedures including capacity allocation for approval to the national regulatory authorities. The national regulatory authorities may request amendments to those procedures before approving them.'

(b) ¶ paragraph 6 shall be replaced by the following:

'6. Any revenues resulting from the allocation of interconnection shall be used for the following purposes ¶:

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

(b) network investments maintaining or increasing interconnection capacities.

If the revenue cannot be used for the purposes set out in points (a) or (b) it shall be placed on a separate account until such time as it can be spent on those purposes. **In such a case, the national regulatory authorities, with the approval of the Agency, may take the amount available into account when approving the methodology for calculating the network tariffs, in assessing whether tariffs should be modified on the one hand and/or in deciding whether to set up locational signals and/or demand-side measures such as load-shifting or counter-trading on the other.'**

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(6) Article 7 shall be replaced by the following:

‘Article 7

New interconnectors

1. New direct current interconnectors between Member States may, upon request, be exempted, for a limited period of time, from the provisions of Article 6(6) of this Regulation and **Articles 8, 10, 20 and Article 22c(4), (5) and (6)** 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; *and*
- (f) the exemption is not to the detriment of competition or the effective functioning of the internal market for electricity 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. The Agency may, on a *case-by-case* basis, decide on the exemptions referred to in paragraphs 1, 2 and 3. An exemption may cover all or part of the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.

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. When deciding on those conditions account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.

Before granting an exemption, the Agency shall decide upon the rules and mechanisms for management and allocation of capacity. The Agency shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the facility to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in paragraph 1(a), (b) and (f), the Agency shall take into account the results of that capacity allocation procedure.

The exemption decision, including any conditions referred to in the second subparagraph, shall be duly reasoned and published. The Agency shall consult with the regulatory authorities concerned.

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5. The Agency shall transmit to the Commission, without delay, a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the Agency to the Commission, together with all the relevant information with respect to the decision. *That* 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:

- (a) the detailed reasons on the basis of which the Agency, granted the exemption, including the financial information justifying the need for the exemption;
- (b) the analysis undertaken of the effect on competition and the effective functioning of the internal electricity market resulting from the grant of the exemption;
- (c) the reasons for the *time-period* and the share of the total capacity of the interconnector in question for which the exemption is granted;
- (d) the result of the consultation with the *national* regulatory authorities concerned.

6. Within two months after receiving a notification, the Commission may take a decision requiring the Agency to amend or withdraw the decision to grant an exemption. *Where the Commission has sought additional information, it may take its decision within two months of the day following the receipt of the complete additional information. The two-month period can* ¶ be extended with the consent of both the Commission and the Agency. Where the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period has been extended with the consent of both the Commission and the Agency, or the Agency, in a duly reasoned statement, has informed the Commission that it considers the notification to be complete.

The Agency shall comply with the Commission decision to amend or withdraw the exemption decision within a period of four weeks and shall inform the Commission accordingly.

The Commission shall preserve the confidentiality of commercially sensitive information.

The Commission's approval of an exemption decision shall *lapse* two years *after its adoption in the event that the construction of the interconnector has not yet started, and* ¶ five years *after its adoption in the event that the interconnector has not become operational unless the Commission decides that any delay is due to major administrative obstacles or any other cause relevant to the decision but outside the control of the applicant.*

7. The Commission may **amend existing** guidelines for the application of the conditions *referred to in paragraph 1 and to set out the procedure to be followed for the application of paragraphs 4 and 5. Such measures, designed to amend non-essential elements of this Regulation by supplementing, it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 13(2).*

8. **Exemptions granted pursuant to this Article and applicable at the date of entry into force of Regulation (EC) No. .../2008 of the European Parliament and of the Council of ... [amending Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity] (*) shall automatically continue to apply.**

(*) OJ L ...'

(7) **The following articles shall be inserted:**

'Article 7a

Removal of administrative barriers to increase capacity

Member States shall review their procedures with the aim of identifying and removing any administrative barriers to increasing the amount of interconnection capacity. Member States shall identify the grid segments that need to be reinforced in order to increase the overall level of cross-border interconnection capacity in line with the objective of broad market integration.

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|| Article 7b

Retail markets

In order to facilitate the emergence of *well-functioning, efficient* and transparent ■ markets at a regional and Community level, Member States shall ensure that the roles and responsibilities of transmission system operators, distribution system operators, supply undertakings and customers and, if necessary, other market participants are defined **in detail** with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

Those rules shall be made public ■ and shall be subject to review by the *national* regulatory authorities.'

- (8) Article 8 shall be replaced by the following:

'Article 8

Guidelines **relating to inter-transmission system operator compensation mechanisms**

1. Where appropriate, **the Commission may adopt** guidelines relating to the inter-transmission system operator compensation mechanism **that** shall specify, in accordance with the principles set out in Articles 3 and 4:

- (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);
- (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-transmission system operator* compensation mechanism of electricity flows originating or ending in countries outside the European Economic Area; *and*
- (f) the participation of national systems which are interconnected through direct current lines, in accordance with Article 3.

2. Guidelines **on inter-transmission system operator compensation mechanisms** may 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-transmission system operator* 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 **on inter-transmission system operator compensation mechanisms** shall make provision for appropriate and efficient harmonised locational signals at *Community* level.

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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.

3. Where appropriate, **the Commission may propose additional guidance** providing the minimum degree of harmonisation required to achieve the aim of this Regulation ▯.

4. Guidelines on the management and allocation of available transfer capacity of interconnections between national systems are laid down in the Annex.

▯

(9) *Article 12(1) shall be replaced by the following:*

'1. Without prejudice to paragraph 2, the Member States shall ensure that national regulatory authorities have the competence effectively to ensure compliance with this Regulation by providing them, or other bodies, with the legal competence to issue compliance orders and to impose effective, dissuasive and proportionate penalties. The Member States shall inform the Commission thereof by 1 January 2010 and shall inform it without delay of any subsequent amendment.'

(10) *Article 13(2) shall be replaced by the following:*

'2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.'

Article 2

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

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

Done at ▯

For the European Parliament
The President

For the Council
The President
