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Committee on Industry, Research and Energy

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*****I**

DRAFT REPORT

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))

Committee on Industry, Research and Energy

Rapporteur: Alejo Vidal-Quadras

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(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 Articles 251(2) and 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, the opinion of the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0000/2008),
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 Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1

ARTICLE 1, POINT 3

Article 2c, paragraph 1, point (a) (Regulation (EC) No 1228/2003)

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

a) opinions and recommendations on draft guidelines and draft codes referred to in Article 2e;

Justification

See justification for the proposed articles 2e, 2ea and 2eb. This amendment is to adjust the text to the new procedure.

Amendment 2
ARTICLE 1, POINT 3
Article 2c, paragraph 2 (Regulation (EC) No 1228/2003)

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

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

Justification

See justification for the proposed articles 2e, 2ea and 2eb. This amendment is to adjust the text to the new procedure.

Amendment 3
ARTICLE 1, POINT 3
Article 2c, paragraph 3 (Regulation (EC) No 1228/2003)

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

deleted

- a) security and reliability rules;**
- b) grid connection and access rules;**
- c) data exchange and settlement rules;**
- d) interoperability rules;**
- e) operational procedures in an emergency;**
- f) capacity allocation and congestion management rules;**
- g) rules for trading;**
- h) transparency rules;**
- i) balancing rules including reserve power rules; balancing rules including reserve power rules;**
- j) rules regarding harmonised transportation tariff structures including locational signals and inter-TSO compensation rules;**

k) energy efficiency regarding electricity networks.

Justification

See justification for the proposed articles 2e, 2ea and 2eb. This amendment is to adjust the text to the new procedure.

Amendment 4
ARTICLE 1, POINT 3
Article 2c, paragraph 6 (Regulation (EC) No 1228/2003)

6. Upon request of the Commission, the European Network of Transmission System Operators for Electricity shall advise the Commission on the adoption of the Guidelines as laid down in Article 8. *deleted*

Justification

See justification for the proposed articles 2ba new, 2bb new, 2bc new. This amendment is to adjust the text to the new procedure.

Amendment 5
ARTICLE 1, POINT 3
Article 2d, paragraph 2 (Regulation (EC) No 1228/2003)

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

2. The European Network of Transmission System Operators for Electricity shall submit ***its opinions and recommendations on the guidelines and*** the draft codes, ***and shall submit*** the draft 10-year investment plan and the draft annual work programme, including the information regarding ***the related*** consultation ***processes***, to the Agency.

Justification

See justification for the proposed articles 2e, 2ea and 2eb. This amendment is to adjust the text to the new procedure.

Amendment 6
ARTICLE 1, POINT 3
Article 2e (Regulation (EC) No 1228/2003)

Establishment and evaluation of technical and market codes

- 1. After consulting the Agency, the Commission may invite the European Network of Transmission System Operators for Electricity, within a reasonable period of time, to prepare codes in the areas listed in Article 2c(3) where it considers that such codes are necessary for the efficient functioning of the market.***
- 2. The Agency shall provide a duly justified opinion to the Commission where it considers that:***
 - a) the European Network of Transmission System Operators for Electricity fails to agree within a reasonable period of time on a technical or market code in the areas listed in Article 2c(3);***
 - b) a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;***
 - c) the transmission system operators fail to implement a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3);***
- 3. The Commission may adopt, on its own initiative or upon recommendation of the Agency, guidelines on the areas listed in Article 2c(3) when it considers that:***
 - a) a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3) does not ensure non-discrimination, effective competition and the efficient functioning of the market;***
 - b) the European Network of Transmission System Operators for Electricity fails to***

Guidelines and codes

- 1. The Commission may mandate the Agency to develop guidelines and adopt codes to harmonise technical and market rules with the view to facilitating market integration.***
- 2. The guidelines and codes may in particular cover the following areas:***
 - (a) security and reliability rules;***
 - (b) grid connection and access rules;***
 - (c) data exchange and settlement rules;***
 - (d) interoperability rules;***
 - (e) operational procedures in an emergency;***
 - (f) capacity allocation and congestion***

agree within a reasonable period of time on a technical or market code in the areas listed in Article 2c(3);

c) the transmission system operators fail to implement a technical or market code adopted by the European Network of Transmission System Operators for Electricity in the areas listed in Article 2c(3);

Those 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).

4. Paragraphs 3 shall be without prejudice to the Commission's right to adopt and amend guidelines as laid down in Article 8.

management rules;

(g) rules for cross-border intra-day markets with harmonised gate closures;

(h) rules for trading, ensuring in particular the development of secondary markets for cross-border transmission rights and the security of transmission rights;

(i) transparency rules;

(j) balancing rules including reserve power rules;

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

(l) energy efficiency regarding electricity networks.

Justification

Guidelines and codes should facilitate the development of competitive markets and ensure market integration through the harmonisation of technical and market rules. These rules must serve market interests by the optimisation of capacity allocation, the development of day-ahead market coupling/splitting, the existence of cross-border day-ahead and intra-day markets etc. High-level rules and principles should first be laid down in guidelines then codes should provide more details on these principles.

Amendment 7
ARTICLE 1, POINT 3
Article 2e a (new) (Regulation (EC) No 1228/2003)

Article 2ea

Development of guidelines

1. The Commission shall, after

consultation with the Agency, establish an annual priority list identifying issues of prime importance for the development of the internal market in electricity.

2. Having regard to the priority list, the Commission may mandate the Agency to develop within no more than six months draft guidelines setting basic, clear and objective principles for the harmonisation of rules such as will enable the development of a competitive, integrated market.

3. In the drafting of these guidelines, the Agency shall consult extensively, for a period of no less than two months, in an open and transparent manner and shall keep ENTSO and other relevant stakeholders informed.

4. The Agency shall finalise the draft guidelines on the basis of the consultation results no later than two months after the end of the consultation period. It shall make public all observations received and explain how they have been taken into consideration in the final draft of the guidelines or justify their rejection.

5. The Agency shall submit the final draft guidelines to the Commission and to ENTSO and other relevant stakeholders for their opinion, which shall be submitted no later than one month after receipt of the draft guidelines. If any such opinion is negative, the Agency shall submit the final draft guidelines to its Board of Regulators, which shall provide duly substantiated reasons for accepting or rejecting the opinion in question.

6. The Commission shall assess whether the final draft guidelines set basic, clear and objective principles for the harmonisation of rules governing the development of a competitive and integrated market, and the fairness of the consultation process.

7. If the Commission concludes that the final draft guidelines presented by the

Agency constitute an appropriate basis, it shall submit them to the Committee referred to in Article 13(1) for their final adoption in accordance with the procedure referred to in Article 13(2).

Justification

To decide of the priorities for market developments, it is critical that a list of priorities be established by the Commission further to consultation with the Agency. As further to this list, guidelines should be drafted to establish key principles on the concerned issues with the view to harmonise the applicable rules. It is only if the list of priorities and the guidelines are established in a sound basis that codes could then be developed appropriately.

This amendment would replace the text of Article 2e of Regulation 1228/2003.

Amendment 8
ARTICLE 1, POINT 3
Article 2e b (new) (Regulation (EC) No 1228/2003)

Article 2eb

Development of codes

- 1. On adoption of the guidelines in accordance with Article 2ea, the Commission shall mandate ENTSO to develop within six months draft codes, fully complying with the principles established in the guidelines.***
- 2. In the drafting of these codes ENTSO shall consult extensively, at an early stage and in an open and transparent manner with all appropriate market participants and shall keep informed and fully involve in the drafting process all relevant stakeholders..***
- 3 ENTSO shall submit the draft codes to the Agency for further consultation***
- 5. The Agency shall consult on the draft codes extensively for a period of no less than two months in an open and transparent manner.***
- 6. On the basis of the consultation, the Agency shall finalise the draft codes no later than two months after the end of the***

consultation period. It shall make public all observations received and explain how they have been taken into consideration in the final draft codes or justify their rejection. .

7. The Agency shall submit the final draft codes to the Commission for its assessment of their compatibility with the guidelines

8. The Commission shall assess the compliance of the draft code with the principles of the guidelines adopted accordance with Article 2ea.

8. The Commission shall also assess, whether the codes are such as will assist the development of a competitive and integrated market. If the Commission forms a negative opinion it shall mandate ENTSO to amend the draft codes.

9. The Commission shall assess the application of codes on its own initiative, on request from the Agency or on a recommendation from the relevant market stakeholders. Where the Commission identifies that an adopted code is not applied, it shall submit the code to the committee referred to in Article 13(1) for its review in accordance with the procedure referred to in Article 13(2).

10. The same procedure shall apply for updating codes.

Justification

See justification for the proposed article 2ea.

It is essential that codes fully comply with the rules and principles established in guidelines. In addition, extensive consultation and close involvement of market participants to the process is critical to ensure that codes are sensible. Updating of already existing codes due to technological changes, improved processes, should follow the same process (see § 10).

Amendment 9
ARTICLE 1, POINT 3
Article 2f, paragraph 1 (Regulation (EC) No 1228/2003)

1. In carrying out its tasks, the **European Network of Transmission System Operators for Electricity** shall consult extensively, **at an early stage and** in an open and transparent manner, **in particular while preparing the technical and market codes and its annual work programme referred to in Article 2c(1) and (3)**, with 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.

1. In carrying out its tasks, the **Agency** shall consult extensively in an open and transparent manner with 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.

Justification

See justification for the proposed articles 2e, 2ea and 2eb. This amendment is to adjust the text to the new procedure.

Amendment 10

ARTICLE 1, POINT 3

Article 2f, paragraph 3 (Regulation (EC) No 1228/2003)

3. Before adopting the **work programme and the technical and market codes referred to in Article 2c(1) and (3), the European Network of Transmission System Operators for Electricity** shall indicate the observations received in the consultation and how these observations are taken into consideration. It shall give a reasoned opinion where observations have not been taken into account.

3. Before adopting the **guidelines and codes, the Agency** shall indicate the observations received in the consultation and how these observations are taken into consideration. It shall give a reasoned opinion where observations have not been taken into account.

Justification

See justification for the proposed articles 2e, 2ea and 2eb. This amendment is to adjust the text to the new procedure.

Amendment 11

ARTICLE 1, POINT 5

Article 6, subparagraph 2a (new) (Regulation (EC) No 1228/2003)

The revenue may be taken into account by regulatory authorities when approving the

methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

Justification

Reinstating a provision, which was deleted from Regulation 1228/2003.

Amendment 12
ARTICLE 1, POINT 8
Article 8, title (Regulation (EC) No 1228/2003)

Guidelines

Guidelines relating to the inter-transmission system operator compensation mechanism

Justification

Modification of the title to avoid confusion with the guidelines referred to in Article 2e.

Amendment 13
ARTICLE 1, POINT 8
Article 8, paragraph 3, point (h) (Regulation (EC) No 1228/2003)

h) details on the topics listed in Article 2c(3).

h) details on the topics listed in Article 2e

Justification

See justification for the proposed articles 2e, 2ea, 2eb. This amendment is to adjust the text to the new procedure.

EXPLANATORY STATEMENT

Introduction

1. The Rapporteur welcomes the third liberalisation package for the European Union's energy markets as it offers, in his opinion, a complete and coherent legislative proposal in which the majority of the recommendations adopted by the European Parliament in June 2007 have been included in the proposals.
2. In this sense, he agrees with the inclusion of stronger and more independent powers for the regulators, the increased requirements for transparency in the market, the improved framework for cooperation at European level between national regulators as well as between Transmission Systems Operators, the emphasis given to the further development of interconnection capacity between Member States and the proposal of ownership unbundling as the most effective, but not the only, mean to encourage investments and avoid discrimination towards new entrants.
3. He also shares the proposed creation of an Agency of European Regulators although he has reservations on the present structure and decision-making power of this new body.
4. Regarding the Regulation on the electricity cross-border exchanges, the Rapporteur thinks that the main problem with the legislative proposal lies in the current division of competences between the different actors which leads to a confused and somehow cumbersome decision-making process. This document will highlight the main concerns of the Rapporteur with regards to this particular proposal.

Structure of responsibilities

5. As stated above, the Rapporteur considers that the key problem in this dossier is that the current structure of responsibilities presented in the Commission's proposal for a Regulation on the electricity cross-border exchanges does not correspond to the actual and natural division of competences at national level as the Transmission System Operators are given a quasi-regulatory status while the Regulatory Agency seems to be reduced to the role of an advisory body.
6. In particular, he believes that several of the eleven tasks that Transmission System Operators (TSOs) have to fulfil should be in the hands of the regulatory authorities instead.
7. Indeed, while the Rapporteur shares the Commission's idea of establishing a bottom-up approach in what regards the development of technical codes since the TSOs are best suited to do so and have a direct interest in simplifying and harmonising such rules at European level, he believes that other codes such as those relating to trading and market transparency should follow a different approach where the Agency, as an independent authority, should be responsible for drafting the guidelines in close cooperation with market participants and, needless to say, TSOs, and for adopting them.

8. Furthermore, the voluntary nature of the implementation of the above mentioned codes and rules raises some questions as to whether there is any added value to the current system of TSO cooperation at European level. The Rapporteur firmly believes that some rules and codes that will derive from the implementation of this Regulation should have a compulsory nature.
9. Finally, the Rapporteur thinks that, in line with the attribution to the Agency of drafting and adopting market codes, this regulatory authority should be in charge of carrying out the stakeholder consultation instead of the TSOs, according to the process carried out at national level.

The Agency

10. The Rapporteur is aware of the limitations the Commission's legal service opinion has placed on the powers given to the Agency of European Regulators. However, he is of the opinion that most of the uncertainties and confusion in the structure of powers derives precisely from this lack of competences. For this reason, the Rapporteur would like the Committee to ask the Parliament's legal service to study whether the Agency's powers could be extended to be able to deliver final regulatory decisions, in accordance with the European Parliament's resolution of June 2007 on the liberalisation of the energy markets.
11. Should that not be possible, then the Rapporteur believes that Parliament should reflect on whether the proposed model would answer the problems to reach a common view that arise at present between national regulators and if it could be acceptable as an intermediary step towards a true European Regulator.
12. The European Parliament expressed in the recent past its wish to establish a European body of national regulators that would be granted decision-making powers for cross-border issues between Member States while the national regulators would remain responsible for decisions of matters within their national territory. The Parliament's position intended to put an end to the situations of deadlock between national regulators we see at the present time; that is why the Commission's proposal as it stands today does give the Agency the competence of solving this current and potential difficulties. The Rapporteur believes that an independent Agency, with the adequate competences for cross border issues, would promote the development of a true EU energy regulation, more efficiently and with more transparency.
13. The Rapporteur is also concerned by the dissolution of the existing ERGEG and the implications it might have in terms of independence since the Agency as currently proposed will be excessively dependent on the European Commission.

Unbundling requirements under the European Network of Transmission System Operators

14. The Rapporteur welcomes the Commission's proposal to formalise the existing cooperation framework of Transmission System Operators so as to promote integration at European level and to develop full harmonisation of technical rules between the 27 Member States.

15. In order to make the ENTSO model work properly, and regardless of the level of unbundling required in each Member State – that is, unbundled TSO or ISO -, the Rapporteur believes that every Transmission System Operator within ENTSO should be treated equally in what concerns their obligations as system operator and in ensuring non-discriminatory access to the grid.

Investments

16. The Commission's proposals for the presentation of a 10 year investment plan by TSOs is in accord with already existing obligations at Member State level, so the Rapporteur welcomes the objective of adding a European dimension to it, in particular regarding the upgrading and improvement of transmission capacity between Member States.
17. However, it is important that this plan is adopted by the regulatory body and not just submitted for review.

Transparency

18. The Rapporteur is convinced that rules on transparency should be developed, in consultation with the TSOs, by the regulatory body and not only reviewed by the Agency. While he welcomes the development of guidelines at EU level, he would prefer to see these guidelines become binding on the most important elements.
19. He would also like to point out that in some parts of the Regulation, transparency seems to be mistaken with monitoring and reporting, so he would like to differentiate these parts accordingly in his report.

Harmonisation

20. The Rapporteur believes that harmonisation is not being put at the forefront of the proposal. The existence of 27 different regulatory frameworks is one of the main obstacles to integration of the energy markets. Therefore, the Rapporteur believes that the voluntary nature of the harmonisation of technical and market rules will not be sufficient to overcome the existing barriers to cross-border trade between Member States derived from insufficient integration. For this reason, he thinks that harmonisation of technical codes as well as of the regulatory framework should be one of the core objectives of the package.

Regional markets

21. The Rapporteur welcomes the inclusion in the Regulations and Directives of the development of regional markets as a positive step towards integration. Indeed, the recent progress in this field, as well as already well established ones such as the Nordic market, could provide a solid basis to compare different models and to possibly extrapolate some of these experiences at an EU level.

Interconnection levels

22. The Rapporteur welcomes the appointment of special Coordinators to speed the development of the main four interconnection projects between Member States that have been stalling. He believes that they can have a positive influence in speeding up these processes by mediating between all actors and interested parties.
23. However, these individual cases, while important in nature, are only a small part of the problem and many political, technical and administrative obstacles still remain throughout the European Union to increasing interconnection capacity between Member States even where these projects are economically and technically viable.