

EUROPEAN PARLIAMENT

2004



2009

Committee on Economic and Monetary Affairs

2007/0198(COD)

8.5.2008

OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Industry, Research and Energy

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))

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SHORT JUSTIFICATION

The proposal of the European Commission for a third legislative liberalization energy package focuses on the integration and completion of a competitive, transparent, solidarity-based and non-discriminatory single EU energy market. To achieve these goals all impediments should be approached with due care and by all stakeholders and be removed to speed up the process of integration and harmonization.

The concepts of Ownership Unbundling and Independent System Operator as an alternative are supposed to contribute to a better environment for competition and reduction of energy prices as well as easier entrance of new players on the market – this complex of factors being crucial for the benefit of consumers and economies. Solutions should be elaborated taking into consideration the availability of the current legal frameworks of 27 Member States and the obstacles stemming from this status-quo and should be based on empirically verifiable data. Vital options should furthermore be promoted for enhancing regional cooperation and investment estimations and planning. For the optimal use of the infrastructure and interconnection capacity it has to be taken into account that in some cases further network investment considerably depends on previous investment portfolio.

The proposal for a regulation of competitive energy markets should be more balanced in terms of non-infringement of the fundamental market principles and not turn out to be counter-productive and damage market liquidity as well as investment intentions. The control mechanisms are already in place considering the competition law that has been enacted by the authorities on a national and European level. The power of the regulators should be to an extent of non-intervention in market mechanisms and provide for effective control of the costs of the enterprises for the benefit of consumers. Reporting of the companies might be beneficial to further market development as well and ensure transparency.

Rules are needed for the cooperation among the national regulators and the harmonization of their powers as well as enhanced independence on a national level.

The restructuring of the energy market on a national level envisages full independence and autonomy of Transmission System Operators (TSOs) as an aspect of the process thus ensuring the free and non-discriminatory access to the grid of all market participants. Equal treatment of publicly and privately held TSOs is of considerable importance.

Furthermore, a stronger TSO cooperation is needed in the framework of the European Network of Transmission System Operators (ENTSO). The expansion or improvement of cross-border infrastructure as well as further integration of the European energy markets might be achieved via such an appropriate base for coordination of current and future network investments to make regional markets more coherent.

It has to be taken into consideration that the income from congestion management is predominately used to reduce national tariffs. Presumably, any change of this procedure might result in grid tariffs jumping up.

An important focus of decision-making should be the fact that there is a fundamental lack of

allocation of generation capacity all over Europe. If a clever allocation scheme for generation is devised, financial resources might be saved from directing them to strengthen the grid. Congestions might be solved, and national economies might enjoy a more viable development.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. The European Network of Transmission System Operators for Electricity shall **adopt**:

1. The European Network of Transmission System Operators for Electricity shall:

Justification

The Directive gives too broad powers to ENTSO in providing that it adopts technical and market codes. However before adopting them, extensive consultations have to be conducted to ensure that the positions of Market Stakeholders are duly taken into consideration.

Amendment 2

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 1 – point (a)

Text proposed by the Commission

Amendment

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

(a) **prepare and propose the** technical and market codes in the areas mentioned in

¹ Not yet published in OJ.

paragraph 3, *following consultation of the relevant stakeholders*;

Justification

The Directive gives too broad powers to ENTSO in providing that it adopts technical and market codes. However before adopting them, extensive consultations have to be conducted to ensure that the positions of Market Stakeholders are duly taken into consideration.

Amendment 3

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 1 – point (b)

Text proposed by the Commission

(b) common network operation tools and research plans;

Amendment

(b) **adopt** common network operation tools and research plans;

Justification

The Directive gives too broad powers to ENTSO in providing that it adopts technical and market codes. However before adopting them, extensive consultations have to be conducted to ensure that the positions of Market Stakeholders are duly taken into consideration.

Amendment 4

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 1 – point (c)

Text proposed by the Commission

(c) a 10-year investment plan, including a generation adequacy outlook, every two years;

Amendment

(c) **adopt and publish** a 10-year investment plan, including a generation adequacy outlook, every two years;

Justification

The Directive gives too broad powers to ENTSO in providing that it adopts technical and market codes. However before adopting them, extensive consultations have to be conducted to ensure that the positions of Market Stakeholders are duly taken into consideration.

Amendment 5

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 1 – point (d)

Text proposed by the Commission

(d) an annual work programme;

Amendment

(d) ***adopt*** an annual work programme;

Amendment 6

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 1 – point (e)

Text proposed by the Commission

(e) an annual report;

Amendment

(e) ***adopt*** an annual report;

Amendment 7

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 1 – point (f)

Text proposed by the Commission

(f) annual summer and winter generation adequacy outlooks.

Amendment

(f) ***adopt*** annual summer and winter generation adequacy outlooks.

Amendment 8

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 3 – point (g)

Text proposed by the Commission

Amendment

(g) rules for trading;

(g) ***adopt*** rules for trading ***as far as the grid is concerned***;

Justification

It is not the task of ENTSO to develop e.g. standardised trading contracts.

Amendment 9

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2c – paragraph 5

Text proposed by the Commission

5. The European Network of Transmission System Operators for Electricity shall publish a Community-wide 10-year network investment plan every two years. 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 and on 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.

Amendment

5. The European Network of Transmission System Operators for Electricity shall publish a Community-wide 10-year network investment plan every two years. 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, ***at least***, build on national investment plans, ***on regional investment plans pursuant to Article 2h(1)*** and on 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.

Justification

The Community-wide 10-year network investment plan to be published by ENTSO should include the regional dimension of the market.

Amendment 10

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2e – paragraph 1

Text proposed by the Commission

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.***

Amendment

1. ***On advice of*** the Agency, ***which will have consulted relevant stakeholders,*** the Commission ***shall draw up strategic guidelines for*** the European Network of Transmission System Operators for Electricity ***covering the issues listed in Article 2c(1)(c) and Article 2c(3), from which the European Network of Transmission System Operators for Electricity will*** prepare codes in the areas listed in ***Article 2c(1)(c) and Article 2c(3).***

Justification

In the interests of competition (to ensure non-discrimination, effective competition and the efficient functioning of the single market), the Agency should be given more power to regulate ENTSO. To achieve this aim, the Agency should provide formal advice to the Commission at the beginning of the regulatory process in the form of strategic guidelines, on which the ENTSO may prepare technical codes. This process will avoid the possibility of the TSOs being self-regulated. The same process should also apply for the 10-year investment plan (Article 2c(1c)).

Amendment 11

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2e – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) The European Network of Transmission System Operators for Electricity shall develop the detailed codes pursuant to paragraph 1, and submit these for approval to the Agency.

Justification

In the interests of competition (to ensure non-discrimination, effective competition and the

efficient functioning of the single market), the Agency should be given more power to regulate ENTSO. To achieve this aim, the Agency should provide formal advice to the Commission at the beginning of the regulatory process in the form of strategic guidelines, on which the ENTSO may prepare technical codes. This process will avoid the possibility of the TSOs being self-regulated. The same process should also apply for the 10-year investment plan (Article 2c(1c)).

Amendment 12

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2e – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(1b) The Agency shall verify that the codes submitted by the European Network of Transmission System Operators for Electricity are in line with the strategic guidelines set out in paragraph 1.

Justification

In the interests of competition (to ensure non-discrimination, effective competition and the efficient functioning of the single market), the Agency should be given more power to regulate ENTSO. To achieve this aim, the Agency should provide formal advice to the Commission at the beginning of the regulatory process in the form of strategic guidelines, on which the ENTSO may prepare technical codes. This process will avoid the possibility of the TSOs being self-regulated. The same process should also apply for the 10-year investment plan (Article 2c(1c)).

Amendment 13

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2e – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(3a) The Agency shall monitor the implementation of such codes by the European Network of Transmission System Operators for Electricity and report any contravention to the

Commission, which shall take the necessary action to ensure correct implementation.

Justification

The proposed Directive gives too much power to ENTSO.. The monitoring of the above mentioned codes need to be fair and objective, to ensure non-discrimination, effective competition and the efficient functioning of the market. Therefore, it cannot be entrusted to the TSOs themselves but should constitute a task of the Agency.

Amendment 14

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2h – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Transmission system operators shall establish regional cooperation within the European Network for 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 on the regional investment plan.

Amendment

1. Transmission system operators shall establish regional cooperation within the European Network for Transmission System Operators for Electricity to contribute to the tasks mentioned in article 2c(1). In particular, they shall ***provide information on their development plans, submit them for consideration to the Agency***, publish a regional investment plan every two years, and may take investment decisions based on the regional investment plan.

Justification

For proper unbundling, Transport System Operators should be able to take investment decisions. For a functional energy market, coordination should be ensured at the European level.

Amendment 15

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2h – paragraph 2

Text proposed by the Commission

2. Transmission system operators shall promote operational arrangements in order to ensure optimum management of the network, and promote the development of energy exchanges, the allocation of cross-border capacity through implicit auctions and the integration of balancing and reserve power mechanisms.

Amendment

2. Transmission system operators shall promote **common services and** operational arrangements in order to **ease the proper functioning and** ensure optimum management of the network, and promote the development of energy exchanges, the allocation of cross-border capacity **as well as future electricity exports** through implicit **and explicit** auctions **open to all eligible market players** and the integration of balancing and reserve power mechanisms.

Justification

Access to interconnection capacity should be optimized via yearly, monthly and daily capacity tenders on borders. This should be done in order to tackle the limitations due to high transit flows through the interconnections.

Amendment 16

Proposal for a regulation – amending act

Article 1 – point 3

Regulation (EC) No 1228/2003

Article 2h – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. The geographical area covered by each regional cooperation structure **may be** defined by the Commission. That measure, 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).

Amendment

3. **Regional cooperation should not be limited to** the geographical area covered by each regional cooperation structure defined by the Commission. That measure, 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).

Justification

Access to interconnection capacity should be optimized via yearly, monthly and daily capacity tenders on borders. This should be done in order to tackle the limitations due to high transit flows through the interconnections. Limiting the geographical scope might set barriers to free

electricity trade within the sought-for integrated electricity market.

Amendment 17

Proposal for a regulation – amending act

Article 1 – point 4 – point (b)

Regulation (EC) No 1228/2003

Article 5 – paragraph 4

Text proposed by the Commission

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.

Amendment

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. ***However, individual data concerning generators and loads shall be kept confidential. Data relating to the transmission grid shall not be published if the protection of Critical Infrastructure so requires. Information shall be communicated at Community level to be used (only) for the purpose of ensuring the coordinated and effective protection of critical infrastructure.***

Justification

It is practically impossible to keep all information needed to verify all operational dispatching decisions and bidding behaviour at power exchanges. Furthermore, the proposed provision would treat generation companies and independent traders differently in requesting only from generation companies to keep at the disposal of regulators necessary information for the verification of their bidding behaviour and of operational dispatching decisions. This asymmetric treatment does not appear to be justified. Confidentiality of restricted information has to be considered.

Amendment 18

Proposal for a regulation – amending act

Article 1 – point 4 – point (b)

Regulation (EC) No 1228/2003

Article 5 – paragraph 6

Text proposed by the Commission

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 national regulatory authority, the national competition authority and the Commission, 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***.

Amendment

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 national regulatory authority, the national competition authority and the Commission, for five years all hourly data ***for all plants which have an installed capacity of at least 250 MWe***. The per plant and per hour information to be stored includes data on available generation capacity and committed reserves.

Justification

It is practically impossible to keep all information needed to verify all operational dispatching decisions and bidding behaviour at power exchanges. Furthermore, the proposed provision would treat generation companies and independent traders differently in requesting only from generation companies to keep at the disposal of regulators necessary information for the verification of their bidding behaviour and of operational dispatching decisions. This asymmetric treatment does not appear to be justified. Confidentiality of restricted information has to be considered.

Amendment 19

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 1228/2003

Article 6 – paragraph 6 – introductory part

Text proposed by the Commission

"6. Any revenues resulting from the allocation of interconnection shall be used for the following purposes ***in the*** order of priority:

Amendment

6. Any revenues resulting from the allocation of interconnection shall be used for the following purposes ***without any*** order of priority:

Justification

Currently Transmission System Operators use the income from congestion management predominately to reduce national tariffs. Any change of this procedure will result in grid tariffs jumping up.

Additionally, obligating Transmission System Operators to finance new interconnection capacities by auction income will hinder them to receive an adequate return on investment. Otherwise, Transmission System Operators have no incentive to build new interconnection capacities. That would be contradictory to Directive 2005/89 (Security of Supply), Art. 6 (1(a)).

Amendment 20

Proposal for a regulation – amending act

Article 1 – point 5

Regulation (EC) No 1228/2003

Article 6 – paragraph 6 – point (b a) (new)

Text proposed by the Commission

Amendment

(ba) as an income to be taken into account by regulatory authorities when approving the methodology for calculating network tariffs, and/or in assessing whether tariffs should be modified.

Justification

Currently Transmission System Operators use the income from congestion management predominately to reduce national tariffs. Any change of this procedure will result in grid tariffs jumping up.

Additionally, obliging Transmission System Operators to finance new interconnection capacities by auction income will hinder them to receive an adequate return on investment. Otherwise, Transmission System Operators have no incentive to build new interconnection capacities. That would be contradictory to Directive 2005/89 (Security of Supply), Art. 6 (1(a)).

Amendment 21

Proposal for a regulation – amending act

Article 1 – point 6

Regulation (EC) No 1228/2003

Article 7 – paragraph 1 – point (a a) (new)

Text proposed by the Commission

Amendment

(aa) It should also contribute where possible to enhancing regional stability by providing new transportation options for either growth markets or markets with deficits to be served with secure energy supplies. Transmission constraints might be due to specific grid configuration that should be taken into account as important for development and/or better maintenance;

Justification

Balancing of the power and investment portfolio.

Amendment 22

Proposal for a regulation – amending act

Article 1 – point 7

Regulation (EC) No 1228/2003

Article 7a – paragraph 1

Text proposed by the Commission

In order to facilitate the emergence of well functioning and transparent cross-border retail markets on a regional and Community scale, 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 with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.

Amendment

In order to facilitate the emergence of well functioning and transparent cross-border retail markets on a regional and Community scale, 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 with respect to contractual arrangements, ***including offtake agreements, lease or rent of the transmission system, uniform form of trading, strategic alliances among neighbouring countries***, commitment to customers, ***including possible forecasts of price variations in the event of closure of plants or units thereof***, data exchange and settlement rules, data ownership and metering responsibility.

Justification

The methods are market-based, flexible to be tailor-made to specific market situations and envisaged perspectives, contribute to the security of supply, transparency of activity and accountability of the stakeholders. Alternative utilization of resources of other facilities should be envisaged in order to ensure efficient and secure electricity supplies during peak demand periods.

PROCEDURE

Title	Conditions for access to the network for cross-border exchanges in electricity		
References	COM(2007)0531 – C6-0320/2007 – 2007/0198(COD)		
Committee responsible	ITRE		
Opinion by Date announced in plenary	ECON 11.10.2007		
Drafts(wo)man Date appointed	Mariela Velichkova Baeva 23.10.2007		
Discussed in committee	29.1.2008	26.2.2008	1.4.2008
Date adopted	6.5.2008		
Result of final vote	+: 36 -: 1 0: 0		
Members present for the final vote	Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, Jonathan Evans, Elisa Ferreira, Jean-Paul Gauzès, Robert Goebbels, Donata Gottardi, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Florencio Luque Aguilar, Gay Mitchell, John Purvis, Alexander Radwan, Bernhard Rapkay, Antolín Sánchez Presedo, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser		
Substitute(s) present for the final vote	Valdis Dombrovskis, Harald Ettl, Ján Hudacký, Alain Lipietz, Diamanto Manolakou, Gianni Pittella, Bilyana Ilieva Raeva, Andreas Schwab		