

Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Text with EEA relevance) (repealed)

*Article 1*

**Subject-matter and scope**

This Regulation aims at:

- (a) setting fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal market in electricity, taking into account the particular characteristics of national and regional markets. This will involve the establishment of a compensation mechanism for cross-border flows of electricity and the setting of harmonised principles on cross-border transmission charges and the allocation of available capacities of interconnections between national transmission systems;
- (b) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in electricity. It provides for mechanisms to harmonise the rules for cross-border exchanges in electricity.

*Article 2*

**Definitions**

1 For the purpose of this Regulation, the definitions contained in Article 2 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity<sup>(1)</sup> apply, with the exception of the definition of ‘interconnector’ which shall be replaced by the following:

— ‘interconnector’ means a transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States.

2 The following definitions shall apply:

- a ‘regulatory authorities’ means the regulatory authorities referred to in Article 35(1) of Directive 2009/72/EC;
- b ‘cross-border flow’ means a physical flow of electricity on a transmission network of a Member State that results from the impact of the activity of producers and/or consumers outside that Member State on its transmission network;
- c ‘congestion’ means a situation in which an interconnection linking national transmission networks cannot accommodate all physical flows resulting from international trade requested by market participants, because of a lack of capacity of the interconnectors and/or the national transmission systems concerned;
- d ‘declared export’ means the dispatch of electricity in one Member State on the basis of an underlying contractual arrangement to the effect that the simultaneous corresponding take-up (declared import) of electricity will take place in another Member State or a third country;

- e 'declared transit' means a circumstance where a declared export of electricity occurs and where the nominated path for the transaction involves a country in which neither the dispatch nor the simultaneous corresponding take-up of the electricity will take place;
- f 'declared import' means the take-up of electricity in a Member State or a third country simultaneously with the dispatch of electricity (declared export) in another Member State;
- g 'new interconnector' means an interconnector not completed by 4 August 2003.

For the purpose of the inter-transmission system operator compensation mechanism referred to in Article 13 only, where transmission networks of two or more Member States form part, in whole or in part, of a single control block, the control block as a whole shall be considered as forming part of the transmission network of one of the Member States concerned, in order to avoid flows within control blocks being considered as cross-border flows under point (b) of the first subparagraph of this paragraph and giving rise to compensation payments under Article 13. The regulatory authorities of the Member States concerned may decide which of the Member States concerned shall be that of which the control block as a whole is to be considered to form part.

### *Article 3*

#### **Certification of transmission system operators**

1 The Commission shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 10(6) of Directive 2009/72/EC as soon as it is received. Within two months of the day of receipt of such notification, the Commission shall deliver its opinion to the relevant national regulatory authority as to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/72/EC.

When preparing the opinion referred to in the first subparagraph, the Commission may request the Agency to provide its opinion on the national regulatory authority's decision. In such a case, the two-month period referred to in the first subparagraph shall be extended by two further months.

In the absence of an opinion by the Commission within the periods referred to in the first and second subparagraphs, the Commission shall be deemed not to raise objections to the regulatory authority's decision.

2 Within two months of receiving an opinion of the Commission, the national regulatory authority shall adopt its final decision regarding the certification of the transmission system operator, taking the utmost account of that opinion. The regulatory authority's decision and the Commission's opinion shall be published together.

3 At any time during the procedure, regulatory authorities and/or the Commission may request from a transmission system operator and/or an undertaking performing any of the functions of generation or supply any information relevant to the fulfilment of their tasks under this Article.

4 Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

5 The Commission may adopt Guidelines setting out the details of the procedure to be followed for the application of paragraphs 1 and 2 of this Article. 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 23(2).

6 Where the Commission has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/72/EC, the Commission shall take a decision relating to certification. The regulatory authority shall comply with the Commission decision.

#### *Article 4*

### **European network of transmission system operators for electricity**

All transmission system operators shall cooperate at Community level through the ENTSO for Electricity, in order to promote the completion and functioning of the internal market in electricity and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the European electricity transmission network.

#### *Article 5*

### **Establishment of the ENTSO for Electricity**

1 By 3 March 2011, the transmission system operators for electricity shall submit to the Commission and to the Agency the draft statutes, a list of members and draft rules of procedure, including the rules of procedures on the consultation of other stakeholders, of the ENTSO for Electricity to be established.

2 Within two months of the day of the receipt, the Agency, after formally consulting the organisations representing all stakeholders, in particular the system users, including customers, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.

3 The Commission shall deliver an opinion on the draft statutes, list of members and draft rules of procedures taking into account the opinion of the Agency provided for in paragraph 2 and within three months of the day of the receipt of the opinion of the Agency.

4 Within three months of the day of receipt of the Commission's opinion, the transmission system operators shall establish the ENTSO for Electricity and adopt and publish its statutes and rules of procedure.

#### *Article 6*

### **Establishment of network codes**

1 The Commission shall, after consulting the Agency, the ENTSO for Electricity and the other relevant stakeholders, establish an annual priority list identifying the areas set out in Article 8(6) to be included in the development of network codes.

2 The Commission shall request the Agency to submit to it within a reasonable period of time not exceeding six months a non-binding framework guideline (framework guideline) setting out clear and objective principles, in accordance with Article 8(7), for the development of network codes relating to the areas identified in the priority list. Each framework guideline shall contribute to non-discrimination, effective competition and the efficient functioning of the market. Upon a reasoned request from the Agency, the Commission may extend that period.

3 The Agency shall formally consult the ENTSO for Electricity and the other relevant stakeholders in regard to the framework guideline, during a period of no less than two months, in an open and transparent manner.

4 If the Commission considers that the framework guideline does not contribute to non-discrimination, effective competition and the efficient functioning of the market, it may request the Agency to review the framework guideline within a reasonable period of time and re-submit it to the Commission.

5 If the Agency fails to submit or re-submit a framework guideline within the period set by the Commission under paragraphs 2 or 4, the Commission shall elaborate the framework guideline in question.

6 The Commission shall request the ENTSO for Electricity to submit a network code which is in line with the relevant framework guideline, to the Agency within a reasonable period of time not exceeding 12 months.

7 Within a period of three months of the day of the receipt of a network code, during which the Agency may formally consult the relevant stakeholders, the Agency shall provide a reasoned opinion to the ENTSO for Electricity on the network code.

8 The ENTSO for Electricity may amend the network code in the light of the opinion of the Agency and re-submit it to the Agency.

9 When the Agency is satisfied that the network code is in line with the relevant framework guideline, the Agency shall submit the network code to the Commission and may recommend that it be adopted within a reasonable time period. The Commission shall provide reasons in the event that it does not adopt that network code.

10 Where the ENTSO for Electricity has failed to develop a network code within the period of time set by the Commission under paragraph 6, the Commission may request the Agency to prepare a draft network code on the basis of the relevant framework guideline. The Agency may launch a further consultation in the course of preparing a draft network code under this paragraph. The Agency shall submit a draft network code prepared under this paragraph to the Commission and may recommend that it be adopted.

11 The Commission may adopt, on its own initiative, where the ENTSO for Electricity has failed to develop a network code, or the Agency has failed to develop a draft network code as referred to in paragraph 10 of this Article, or upon recommendation of the Agency under paragraph 9 of this Article, one or more network codes in the areas listed in Article 8(6).

Where the Commission proposes to adopt a network code on its own initiative, the Commission shall consult the Agency, the ENTSO for Electricity and all relevant stakeholders in regard to the draft network code during a period of no less than two months. 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 23(2).

12 This Article shall be without prejudice to the Commission's right to adopt and amend the Guidelines as laid down in Article 18.

## Article 7

### Amendments of network codes

1 Draft amendments to any network code adopted under Article 6 may be proposed to the Agency by persons who are likely to have an interest in that network code, including the ENTSO for Electricity, transmission system operators, system users and consumers. The Agency may also propose amendments on its own initiative.

2 The Agency shall consult all stakeholders in accordance with Article 10 of Regulation (EC) No 713/2009. Following that process, the Agency may make reasoned proposals for amendments to the Commission, explaining how such proposals are consistent with the objectives of the network codes set out in Article 6(2).

3 The Commission may adopt, taking account of the Agency's proposals, amendments to any network code adopted under Article 6. 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 23(2).

4 Consideration of proposed amendments under the procedure set out in Article 23(2) shall be limited to consideration of the aspects related to the proposed amendment. Those proposed amendments are without prejudice to other amendments which the Commission may propose.

## Article 8

### Tasks of the ENTSO for Electricity

1 The ENTSO for Electricity shall elaborate network codes in the areas referred to in paragraph 6 of this Article upon a request addressed to it by the Commission in accordance with Article 6(6).

2 The ENTSO for Electricity may elaborate network codes in the areas set out in paragraph 6 with a view to achieving the objectives set out in Article 4 where those network codes do not relate to areas covered by a request addressed to it by the Commission. Those network codes shall be submitted to the Agency for an opinion. That opinion shall be duly taken into account by the ENTSO for Electricity.

3 The ENTSO for Electricity shall adopt:

- a common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents classification scale, and research plans;
- b a non-binding Community-wide ten-year network development plan, (Community-wide network development plan), including a European generation adequacy outlook, every two years;
- c recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators;
- d an annual work programme;
- e an annual report;
- f annual summer and winter generation adequacy outlooks.

4 The European generation adequacy outlook referred to in point (b) of paragraph 3 shall cover the overall adequacy of the electricity system to supply current and projected demands for electricity for the next five-year period as well as for the period between five and 15 years from the date of that outlook. The European generation adequacy outlook shall build on national generation adequacy outlooks prepared by each individual transmission system operator.

5 The annual work programme referred to in point (d) of paragraph 3 shall contain a list and description of the network codes to be prepared, a plan on coordination of operation of the network, and research and development activities, to be realised in that year, and an indicative calendar.

6 The network codes referred to in paragraphs 1 and 2 shall cover the following areas, taking into account, if appropriate, regional specificities:

- a network security and reliability rules including rules for technical transmission reserve capacity for operational network security;
- b network connection rules;
- c third-party access rules;
- d data exchange and settlement rules;
- e interoperability rules;
- f operational procedures in an emergency;
- g capacity-allocation and congestion-management rules;
- h rules for trading related to technical and operational provision of network access services and system balancing;
- i transparency rules;
- j balancing rules including network-related reserve power rules;
- k rules regarding harmonised transmission tariff structures including locational signals and inter-transmission system operator compensation rules; and
- l energy efficiency regarding electricity networks.

7 The network codes shall be developed for cross-border network issues and market integration issues and shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.

8 The ENTSO for Electricity shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission in accordance with Article 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration. The ENTSO for Electricity shall report its findings to the Agency and shall include the results of the analysis in the annual report referred to in point (e) of paragraph 3 of this Article.

9 The ENTSO for Electricity shall make available all information required by the Agency to fulfil its tasks under Article 9(1).

10 The ENTSO for Electricity shall adopt and publish a Community-wide network development plan every two years. The Community-wide network development plan shall include the modelling of the integrated network, scenario development, a European generation adequacy outlook and an assessment of the resilience of the system.

The Community-wide network development plan shall, in particular:

- a build on national investment plans, taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, 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<sup>(2)</sup>;

- b regarding cross-border interconnections, also build on the reasonable needs of different system users and integrate long-term commitments from investors referred to in Article 8 and Articles 13 and 22 of Directive 2009/72/EC; and
- c identify investment gaps, notably with respect to cross-border capacities.

In regard to point (c) of the second subparagraph, a review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices may be annexed to the Community-wide network development plan.

11 The Agency shall provide an opinion on the national ten-year network development plans to assess their consistency with the Community-wide network development plan. If the Agency identifies inconsistencies between a national ten-year network development plan and the Community-wide network development plan, it shall recommend amending the national ten-year network development plan or the Community-wide network development plan as appropriate. If such national ten-year network development plan is elaborated in accordance with Article 22 of Directive 2009/72/EC, the Agency shall recommend that the competent national regulatory authority amend the national ten-year network development plan in accordance with Article 22(7) of that Directive and inform the Commission thereof.

12 Upon request of the Commission, the ENTSO for Electricity shall give its views to the Commission on the adoption of the Guidelines as laid down in Article 18.

#### *Article 9*

### **Monitoring by the Agency**

1 The Agency shall monitor the execution of the tasks referred to in Article 8(1), (2) and (3) of the ENTSO for Electricity and report to the Commission.

The Agency shall monitor the implementation by the ENTSO for Electricity of network codes elaborated under Article 8(2) and network codes which have been developed in accordance with Article 6(1) to (10) but which have not been adopted by the Commission under Article 6(11). Where the ENTSO for Electricity has failed to implement such network codes, the Agency shall request the ENTSO for Electricity to provide a duly reasoned explanation as to why it has failed to do so. The Agency shall inform the Commission of that explanation and provide its opinion thereon.

The Agency shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission as laid down in Article 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.

2 The ENTSO for Electricity shall submit the draft Community-wide network development plan, the draft annual work programme, including the information regarding the consultation process, and the other documents referred to in Article 8(3) to the Agency for its opinion.

Within two months from the day of receipt, the Agency shall provide a duly reasoned opinion as well as recommendations to the ENTSO for Electricity and to the Commission where it considers that the draft annual work programme or the draft Community-wide network development plan submitted by the ENTSO for Electricity do not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access.

## Article 10

### Consultations

1 While preparing the network codes, the draft Community-wide network development plan and the annual work programme referred to in Article 8(1), (2) and (3), the ENTSO for Electricity shall conduct an extensive consultation process, at an early stage and in an open and transparent manner, involving all relevant market participants, and, in particular, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 5(1). That consultation shall also involve national regulatory authorities and other national authorities, supply and generation undertakings, system users including customers, distribution system operators, including relevant industry associations, technical bodies and stakeholder platforms. It shall aim at identifying the views and proposals of all relevant parties during the decision-making process.

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

3 Before adopting the annual work programme and the network codes referred to in Article 8(1), (2) and (3), the ENTSO for Electricity shall indicate how the observations received during the consultation have been taken into consideration. It shall provide reasons where observations have not been taken into account.

## Article 11

### Costs

The costs related to the activities of the ENTSO for Electricity referred to in Articles 4 to 12 shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and proportionate.

## Article 12

### Regional cooperation of transmission system operators

1 Transmission system operators shall establish regional cooperation within the ENTSO for Electricity to contribute to the activities referred to in Article 8(1), (2) and (3). In particular, they shall publish a regional investment plan every two years, and may take investment decisions based on that regional investment plan.

2 Transmission system operators shall promote operational arrangements in order to ensure the optimum management of the network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due attention to the specific merits of implicit auctions for short-term allocations, and the integration of balancing and reserve power mechanisms.

3 For the purposes of achieving the goals set in paragraphs 1 and 2 of this Article, the geographical area covered by each regional cooperation structure may be defined by the Commission, taking into account existing regional cooperation structures. Each Member State shall be allowed to promote cooperation in more than one geographical area. The measure referred to in the first sentence, 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 23(2).

For that purpose, the Commission shall consult the Agency and the ENTSO for Electricity.

### *Article 13*

#### **Inter-transmission system operator compensation mechanism**

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

2 The compensation referred to in paragraph 1 shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end.

3 Compensation payments shall be made on a regular basis with regard to a given period of time in the past. *Ex-post* adjustments of compensation paid shall be made where necessary, to reflect costs actually incurred.

The first period of time for which compensation payments shall be made shall be determined in the Guidelines referred to in Article 18.

4 The Commission shall decide on the amounts of compensation payments payable. 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 23(2).

5 The magnitude of cross-border flows hosted and the magnitude of cross-border flows designated as originating and/or ending in national transmission systems shall be determined on the basis of the physical flows of electricity actually measured during a given period of time.

6 The costs incurred as a result of hosting cross-border flows shall be established on the basis of the forward-looking long-run average incremental costs, taking into account losses, investment in new infrastructure, and an appropriate proportion of the cost of existing infrastructure, in so far as such infrastructure is used for the transmission of cross-border flows, in particular taking into account the need to guarantee security of supply. When establishing the costs incurred, recognised standard-costing methodologies shall be used. Benefits that a network incurs as a result of hosting cross-border flows shall be taken into account to reduce the compensation received.

### *Article 14*

#### **Charges for access to networks**

1 Charges applied by network operators for access to networks shall be transparent, take into account the need for network security and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner. Those charges shall not be distance-related.

2 Where appropriate, the level of the tariffs applied to producers and/or consumers shall provide locational signals at Community level, and take into account the amount of network losses and congestion caused, and investment costs for infrastructure.

- 3 When setting the charges for network access, the following shall be taken into account:
- a payments and receipts resulting from the inter-transmission system operator compensation mechanism;
  - b actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods.
- 4 Setting the charges for network access under this Article shall be without prejudice to charges on declared exports and declared imports resulting from congestion management referred to in Article 16.
- 5 There shall be no specific network charge on individual transactions for declared transits of electricity.

#### *Article 15*

#### **Provision of information**

- 1 Transmission system operators shall put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management.
- 2 The safety, operational and planning standards used by transmission system operators shall be made public. The information published shall include a general scheme for the calculation of the total transfer capacity and the transmission reliability margin based upon the electrical and physical features of the network. Such schemes shall be subject to the approval of the regulatory authorities.
- 3 Transmission system operators shall publish estimates of available transfer capacity for each day, indicating any available transfer capacity already reserved. Those publications shall be made at specified intervals before the day of transport and shall include, in any event, week-ahead and month-ahead estimates, as well as a quantitative indication of the expected reliability of the available capacity.
- 4 Transmission system operators shall publish relevant data on aggregated forecast and actual demand, on availability and actual use of generation and load assets, on availability and use of the networks and interconnections, and on balancing power and reserve capacity. For availability and actual use of small generation and load units, aggregated estimate data may be used.
- 5 The market participants concerned shall provide the transmission system operators with the relevant data.
- 6 Generation undertakings which own or operate generation assets, where at least one generation asset 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 over-the-counter-markets. The per-plant and per hour information to be stored shall include, but shall not be limited to, data on available generation capacity and committed reserves, including allocation of those committed reserves on a per-plant level, at the times the bidding is carried out and when production takes place.

## Article 16

### General principles of congestion management

1 Network congestion problems shall be addressed with non-discriminatory market-based solutions which give efficient economic signals to the market participants and transmission system operators involved. Network congestion problems shall preferentially be solved with non-transaction based methods, i.e. methods that do not involve a selection between the contracts of individual market participants.

2 Transaction curtailment procedures shall only be used in emergency situations where the transmission system operator must act in an expeditious manner and re-dispatching or countertrading is not possible. Any such procedure shall be applied in a non-discriminatory manner.

Except in cases of force majeure, market participants who have been allocated capacity shall be compensated for any curtailment.

3 The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.

4 Market participants shall inform the transmission system operators concerned a reasonable time in advance of the relevant operational period whether they intend to use allocated capacity. Any allocated capacity that will not be used shall be reattributed to the market, in an open, transparent and non-discriminatory manner.

5 Transmission system operators shall, as far as technically possible, net the capacity requirements of any power flows in opposite direction over the congested interconnection line in order to use that line to its maximum capacity. Having full regard to network security, transactions that relieve the congestion shall never be denied.

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

- a guaranteeing the actual availability of the allocated capacity; and/or
- b maintaining or increasing interconnection capacities through network investments, in particular in new interconnectors.

If the revenues cannot be efficiently used for the purposes set out in points (a) and/or (b) of the first subparagraph, they may be used, subject to approval by the regulatory authorities of the Member States concerned, up to a maximum amount to be decided by those regulatory authorities, as income to be taken into account by the regulatory authorities when approving the methodology for calculating network tariffs and/or fixing network tariffs.

The rest of revenues shall be placed on a separate internal account line until such time as it can be spent on the purposes set out in points (a) and/or (b) of the first subparagraph. The regulatory authority shall inform the Agency of the approval referred to in the second subparagraph.

## Article 17

### **New interconnectors**

1 New direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article 16(6) of this Regulation and Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/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 of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity<sup>(3)</sup>, 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 must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.

2 Paragraph 1 shall also apply, 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 also apply to significant increases of capacity in existing interconnectors.

4 The decision on the exemption under paragraphs 1, 2 and 3 shall be taken on a case-by-case basis by the regulatory authorities of the Member States concerned. An exemption may cover all or part of the capacity of the new interconnector, or of the existing interconnector with significantly increased capacity.

Within two months from the date on which the request for exemption was received by the last of the regulatory authorities concerned, the Agency may submit an advisory opinion to those regulatory authorities which could provide a basis for their decision.

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

Before granting an exemption, the regulatory authorities of the Member States concerned shall decide upon the rules and mechanisms for management and allocation of capacity. Congestion-management rules shall include the obligation to offer unused capacity on the market and users of the facility shall be entitled to trade their contracted capacities on the secondary market. In the assessment of the criteria referred to in

points (a), (b) and (f) of paragraph 1, the results of the capacity-allocation procedure shall be taken into account.

Where all the regulatory authorities concerned have reached agreement on the exemption decision within six months, they shall inform the Agency of that decision.

The exemption decision, including any conditions referred to in the second subparagraph of this paragraph, shall be duly reasoned and published.

- 5 The decision referred to in paragraph 4 shall be taken by the Agency:
- a where all the regulatory authorities concerned have not been able to reach an agreement within six months from the date the exemption was requested before the last of those regulatory authorities; or
  - b upon a joint request from the regulatory authorities concerned.

Before taking such a decision, the Agency shall consult the regulatory authorities concerned and the applicants.

6 Notwithstanding paragraphs 4 and 5, Member States may provide for the regulatory authority or the Agency, as the case may be, to submit, for formal decision, to the relevant body in the Member State, its opinion on the request for an exemption. That opinion shall be published together with the decision.

7 A copy of every request for exemption shall be transmitted for information without delay by the regulatory authorities to the Agency and to the Commission on receipt. The decision shall be notified, without delay, by the regulatory authorities concerned or by the Agency (notifying bodies), 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 exemption was granted or refused, 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 market in electricity 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; and
- d the result of the consultation of the regulatory authorities concerned.

8 Within a period of two months from the day following receipt of notification under paragraph 7, the Commission may take a decision requesting the notifying bodies to amend or withdraw the decision to grant an exemption. That two-month period may be extended by an additional period of two months where further information is sought by the Commission. That additional period shall begin on the day following receipt of the complete information. The initial two-month period may also be extended by consent of both the Commission and the notifying bodies.

When 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 is extended by consent of both the Commission and the notifying bodies, or the notifying bodies, in a duly reasoned statement, inform the Commission that they consider the notification to be complete.

The notifying bodies shall comply with a Commission decision to amend or withdraw the exemption decision within one month 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 expire two years after the date of its adoption in the event that construction of the interconnector has not yet started by that date, and five years after the date of its adoption if the interconnector has not become operational by that date, unless the Commission decides that any delay is due to major obstacles beyond the control of the person to whom the exemption has been granted.

9 The Commission may adopt Guidelines for the application of the conditions laid down in paragraph 1 of this Article and set out the procedure to be followed for the application of paragraphs 4, 7 and 8 of this Article. 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 23(2).

### *Article 18*

#### **Guidelines**

1 Where appropriate, Guidelines relating to the inter-transmission system operator compensation mechanism shall specify, in accordance with the principles set out in Articles 13 and 14:

- 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 13(2);
- b details of the payment procedure to be followed, including the determination of the first period for which compensation is to be paid, in accordance with the second subparagraph of Article 13(3);
- c details of methodologies for determining the cross-border flows hosted for which compensation is to be paid under Article 13, 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 13(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 13(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 13.

2 Guidelines 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 14.

The Guidelines shall make provision for appropriate and efficient harmonised locational signals at Community level.

Any such harmonisation 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, Guidelines providing the minimum degree of harmonisation required to achieve the aim of this Regulation shall also specify:

- a details relating to provision of information, in accordance with the principles set out in Article 15;
- b details of rules for the trading of electricity;
- c details of investment incentive rules for interconnector capacity including locational signals;
- d details of the areas listed in Article 8(6).

For that purpose, the Commission shall consult the Agency and the ENTSO for Electricity.

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

5 The Commission may adopt Guidelines on the issues listed in paragraphs 1, 2 and 3 of this Article. It may amend the Guidelines referred to in paragraph 4 of this Article, in accordance with the principles set out in Articles 15 and 16, in particular so as to include detailed Guidelines on all capacity-allocation methodologies applied in practice and to ensure that congestion-management mechanisms evolve in a manner compatible with the objectives of the internal market. Where appropriate, in the course of such amendments common rules on minimum safety and operational standards for the use and operation of the network, as referred to in Article 15(2) shall be established. 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 23(2).

When adopting or amending Guidelines, the Commission shall:

- a ensure that the Guidelines provide the minimum degree of harmonisation required to achieve the aims of this Regulation and do not go beyond what is necessary for that purpose; and
- b indicate what actions it has taken with respect to the conformity of rules in third countries, which form part of the Community electricity system, with the Guidelines in question.

When adopting Guidelines under this Article for the first time, the Commission shall ensure that they cover in a single draft measure at least the issues referred to in points (a) and (d) of paragraph 1 and in paragraph 2.

#### *Article 19*

### **Regulatory authorities**

The regulatory authorities, when carrying out their responsibilities, shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 18. Where appropriate to fulfil the aims of this Regulation the regulatory authorities shall cooperate with each other, with the Commission and the Agency in compliance with Chapter IX of Directive 2009/72/EC.

#### *Article 20*

### **Provision of information and confidentiality**

1 Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Article 13(4) and Article 18.

In particular, for the purposes of Article 13(4) and (6), regulatory authorities shall, on a regular basis, provide information on the actual costs incurred by national transmission system operators, as well as data and all relevant information relating to the physical flows in transmission system operators' networks and the cost of the networks.

The Commission shall fix a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.

2 If the Member State or the regulatory authority concerned does not provide the information referred to in paragraph 1 within the given time-limit pursuant to paragraph 1 of this Article, the Commission may request all information necessary for the purpose of Article 13(4) and Article 18 directly from the undertakings concerned.

When sending a request for information to an undertaking, the Commission shall at the same time forward a copy of the request to the regulatory authorities of the Member State in whose territory the seat of the undertaking is situated.

3 In its request for information under paragraph 1, the Commission shall state the legal basis of the request, the time-limit within which the information is to be provided, the purpose of the request, and the penalties provided for in Article 22(2) for supplying incorrect, incomplete or misleading information. The Commission shall fix a reasonable time-limit taking into account the complexity of the information required and the urgency with which the information is needed.

4 The owners of the undertakings or their representatives and, in the case of legal persons, the persons authorised to represent them by law or by their instrument of incorporation, shall supply the information requested. Where lawyers duly authorised so to act supply the information on behalf of their clients, the client shall remain fully responsible in the event that the information supplied is incomplete, incorrect or misleading.

5 Where an undertaking does not provide the information requested within the time-limit fixed by the Commission or supplies incomplete information, the Commission may by decision require the information to be provided. That decision shall specify what information is required and fix an appropriate time-limit within which it is to be supplied. It shall indicate the penalties provided for in Article 22(2). It shall also indicate the right to have the decision reviewed by the Court of Justice of the European Communities.

The Commission shall, at the same time, send a copy of its decision to the regulatory authorities of the Member State within the territory of which the person is resident or the seat of the undertaking is situated.

6 The information referred to in paragraphs 1 and 2 shall be used only for the purposes of Article 13(4) and Article 18.

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

#### *Article 21*

#### **Right of Member States to provide for more detailed measures**

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out herein or in the Guidelines referred to in Article 18.



## Article 22

### Penalties

1 Without prejudice to paragraph 2, the Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that those provisions are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify the Commission by 1 July 2004 of those rules corresponding to the provisions laid down in Regulation (EC) No 1228/2003 and shall notify the Commission without delay of any subsequent amendment affecting them. They shall notify the Commission of those rules not corresponding to the provisions laid down in Regulation (EC) No 1228/2003 by 3 March 2011 and shall notify the Commission without delay of any subsequent amendment affecting them.

2 The Commission may, by decision, impose on undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently, they supply incorrect, incomplete or misleading information in response to a request made pursuant to Article 20(3) or fail to supply information within the time-limit fixed by a decision adopted pursuant to the first subparagraph of Article 20(5).

In setting the amount of a fine, the Commission shall have regard to the gravity of the failure to comply with the requirements of the first subparagraph.

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

## Article 23

### Committee procedure

1 The Commission shall be assisted by the committee set up by Article 46 of Directive 2009/72/EC.

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 24

### Commission report

The Commission shall monitor the implementation of this Regulation. In its report under Article 47(6) of Directive 2009/72/EC, the Commission shall also report on the experience gained in the application of this Regulation. In particular the report shall examine to what extent this Regulation has been successful in ensuring non-discriminatory and cost-reflective network access conditions for cross border exchanges of electricity in order to contribute to customer choice in a well-functioning internal market in electricity and to long-term security of supply, as well as to what extent effective locational signals are in place. If necessary, the report shall be accompanied by appropriate proposals and/or recommendations.

*Article 25***Repeal**

Regulation (EC) No 1228/2003 shall be repealed from 3 March 2011. References made to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

*Article 26***Entry into force**

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

It shall apply from 3 March 2011.

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

Done at Brussels, 13 July 2009.

*For the European Parliament*

*The President*

H.-G. PÖTTERING

*For the Council*

*The President*

E. ERLANDSSON

- (1) See page 55 of this Official Journal.
- (2) [OJ L 262, 22.9.2006, p. 1.](#)
- (3) [OJ L 27, 30.1.1997, p. 20.](#)