

# Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) <a href="#">2007/0198(COD)</a> Regulation</p>	Procedure completed
<p>Conditions for access to the network for cross-border exchanges in electricity. Third energy package</p> <p>Repealing Regulation (EC) No 1228/2003 <a href="#">2001/0078(COD)</a> See also <a href="#">2007/0195(COD)</a> See also <a href="#">2007/0196(COD)</a> See also <a href="#">2007/0197(COD)</a> See also <a href="#">2007/0199(COD)</a> Amended by <a href="#">2011/0300(COD)</a> Repealed by <a href="#">2016/0379(COD)</a></p> <p>Subject 3.60.03 Gas, electricity, natural gas, biogas 3.60.06 Trans-European energy networks</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ITRE</b> Industry, Research and Energy	PPE-DE <a href="#">VIDAL-QUADRAS Alejo</a>	09/10/2007
	Former committee responsible	PPE-DE <a href="#">VIDAL-QUADRAS Alejo</a>	09/10/2007
	Former committee for opinion	ALDE <a href="#">BAEVA Mariela Velichkova</a>	23/10/2007
	<b>ENVI</b> Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
	<b>IMCO</b> Internal Market and Consumer Protection	UEN <a href="#">RUTOWICZ Leopold Józef</a>	31/01/2008
	Council of the European Union	Council configuration	Meeting
	<a href="#">Environment</a>	<a href="#">2953</a>	25/06/2009
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2895</a>	09/10/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2875</a>	06/06/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2854</a>	28/02/2008
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2835</a>	29/11/2007

## Key events

19/09/2007	Legislative proposal published	<a href="#">COM(2007)0531</a>	Summary
11/10/2007	Committee referral announced in Parliament, 1st reading		
29/11/2007	Debate in Council	<a href="#">2835</a>	
28/02/2008	Debate in Council	<a href="#">2854</a>	Summary
28/05/2008	Vote in committee, 1st reading		Summary
05/06/2008	Committee report tabled for plenary, 1st reading	<a href="#">A6-0228/2008</a>	
06/06/2008	Debate in Council	<a href="#">2875</a>	Summary
17/06/2008	Debate in Parliament		
18/06/2008	Decision by Parliament, 1st reading	<a href="#">T6-0295/2008</a>	Summary
09/01/2009	Council position published	<a href="#">14546/2/2008</a>	Summary
15/01/2009	Committee referral announced in Parliament, 2nd reading		
31/03/2009	Vote in committee, 2nd reading		Summary
02/04/2009	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A6-0213/2009</a>	
21/04/2009	Debate in Parliament		
22/04/2009	Results of vote in Parliament		
22/04/2009	Decision by Parliament, 2nd reading	<a href="#">T6-0243/2009</a>	Summary
25/06/2009	Act approved by Council, 2nd reading		
09/07/2009	End of procedure in Parliament		
13/07/2009	Final act signed		
14/08/2009	Final act published in Official Journal		

## Technical information

Procedure reference	2007/0198(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	<p>Repealing Regulation (EC) No 1228/2003 <a href="#">2001/0078(COD)</a></p> <p>See also <a href="#">2007/0195(COD)</a></p> <p>See also <a href="#">2007/0196(COD)</a></p> <p>See also <a href="#">2007/0197(COD)</a></p>

	See also <a href="#">2007/0199(COD)</a> Amended by <a href="#">2011/0300(COD)</a> Repealed by <a href="#">2016/0379(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/6/71701

## Documentation gateway

Legislative proposal		<a href="#">COM(2007)0531</a>	19/09/2007	EC	Summary
Document attached to the procedure		<a href="#">SEC(2007)1179</a>	19/09/2007	EC	
Document attached to the procedure		<a href="#">SEC(2007)1180</a>	19/09/2007	EC	
Committee draft report		<a href="#">PE400.681</a>	08/02/2008	EP	
Amendments tabled in committee		<a href="#">PE404.668</a>	07/04/2008	EP	
Committee opinion	IMCO	<a href="#">PE402.507</a>	09/04/2008	EP	
Committee of the Regions: opinion		<a href="#">CDR0021/2008</a>	10/04/2008	CofR	
Committee opinion	ECON	<a href="#">PE400.562</a>	08/05/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0228/2008</a>	05/06/2008	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0295/2008</a>	18/06/2008	EP	Summary
Council position		<a href="#">14546/2/2008</a>	09/01/2009	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2008)0904</a>	12/01/2009	EC	Summary
Committee draft report		<a href="#">PE421.416</a>	17/03/2009	EP	
Amendments tabled in committee		<a href="#">PE421.419</a>	25/03/2009	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A6-0213/2009</a>	02/04/2009	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T6-0243/2009</a>	22/04/2009	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2009)0317</a>	23/06/2009	EC	Summary
Commission response to text adopted in plenary		<a href="#">SP(2009)3507</a>	25/06/2009	EC	
Draft final act		<a href="#">03651/2009/LEX</a>	13/07/2009	CSL	
Follow-up document		<a href="#">C(2011)3013</a>	06/05/2011	EC	
Follow-up document		<a href="#">COM(2018)0538</a>	16/07/2018	EC	
Follow-up document		<a href="#">SWD(2018)0376</a>	16/07/2018	EC	

## Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

**PURPOSE:** to amend Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**BACKGROUND:** this proposal constitutes one element of a third package of legislative measures which aims to complement the existing rules to make the internal market work for all consumers whether large or small, and to help the EU achieve more secure, competitive and sustainable energy. The Commission is proposing a number of measures to complement the existing rules (see also [COD/2007/0195](#); [COD/2007/0196](#); [COD/2007/0197](#); [COD/2007/0199](#)).

The Commission Communication of 10 January 2007 entitled "An Energy Policy for Europe" (COM(2007)0001) highlighted the importance of completing the internal market in electricity and natural gas. It was backed by a comprehensive internal market report, the final results of the competition sector inquiry and in-depth reviews of the situation of the national electricity and gas market.

The 2007 Spring European Council invited the Commission to propose further measures, such as: i) the effective separation of supply and production activities from network operation; ii) the further harmonisation of the powers and enhanced independence of the national energy regulators; iii) the establishment of an independent mechanism for cooperation among national regulators; iv) the creation of a mechanism for transmission system operators to improve the coordination of networks operation and grid security, cross-border trade and grid operation; v) greater transparency in energy market operations. The European Council also underlined the need to strengthen security of supply in a spirit of solidarity between Member States.

In its Resolution on Prospects for the internal gas and electricity market adopted on 10 July 2007, the European Parliament expressed strong political support for a common energy policy, considering that "transmission ownership unbundling is the most effective tool to promote investments in infrastructures in a non-discriminatory way, fair access to the grid for new entrants and transparency in the market". It also underlined, however, that other measures were also necessary and that the differences between the electricity and gas markets might call for differing implementation arrangements. Parliament also called for enhanced "cooperation between national regulators at EU level, through an EU entity, as a way to promote a more European approach to regulation on cross-border issues" (see [INI/2007/2089](#)).

**CONTENT:** these following elements were taken fully into consideration in drawing up the current proposals:

**Effective separation of supply and production activities from network operations:** the concrete proposal in this respect makes it clear that the preferred option of the Commission remains ownership unbundling. Unbundling refers to the effective separation between the operation of electricity and gas transmission networks from supply and generation activities. In practice this means that Member States must ensure that the same person or persons cannot exercise control over a supply undertaking and, at the same time, hold any interest in or exercise any right over a transmission system operator or transmission system. This provision also applies vice versa, that is, control over a transmission system operator precludes the possibility of holding any interest in or exercising any right over a supply undertaking. Whilst the Commission considers that ownership unbundling remains the preferred option it does however provide an alternative option for Member States that choose not to go down this path. This option must, however, provide the same guarantees regarding independence of action of the network in question and the same level of incentives on the network to invest in new infrastructure that may benefit competitors. This option, a derogation from the basic ownership unbundling approach, is known as the "Independent System Operator". This option enables vertically integrated companies to retain the ownership of their network assets, but requires that the transmission network itself is managed by an independent system operator - an undertaking or entity entirely separate from the vertically integrated company ? that performs all the functions of a network operator. In addition, to ensure that the operator remains and acts truly independently of the vertically integrated company, regulation and permanent regulatory monitoring must be put in place. With a view to encouraging investment in new energy infrastructures by supply and production companies, the present proposal includes the possibility of a temporary derogation to ownership unbundling rules for the construction of new infrastructure. This exemption will be applied on a case by case basis, taking into account in the economics of the new investment, the internal market objectives and the security of supply objective. It should be noted that this proposal applies in the same way to publicly and privately owned companies.

**Third country aspects:** the present proposal requires the effective unbundling of transmission system operators and supply and production activities not only at national level but throughout the EU. It means in particular that no supply or production company active anywhere in the EU can own or operate a transmission system in any Member State of the EU. This requirement applies equally to EU and non-EU companies. The package contains safeguards to ensure that in the event that companies from third countries wish to acquire a significant interest or even control over an EU network, they will have to demonstrably and unequivocally comply with the same unbundling requirements as EU companies. The Commission can intervene where a purchaser cannot demonstrate both its direct and indirect independence from supply and generation activities.

**National regulators:** the present proposal aims to strengthen the powers of the regulatory authorities. First, they would be given a clear mandate to cooperate at European level, in close cooperation with the Agency for the Cooperation of Energy Regulators and the Commission, to ensure competitive, secure and environmentally sustainable internal electricity and gas markets within the European Union, and effective market opening for all consumers and suppliers. Second, it is proposed to strengthen their market regulation powers, in particular in the following areas: i) monitoring compliance of transmission and distribution system operators with third party access rules, unbundling obligations, balancing mechanisms, congestion and interconnection management; ii) reviewing the investment plans of the transmission system operators, and providing in its annual report an assessment of how far the transmission system operators' investment plans are consistent with the European-wide 10-year network development plan; monitoring network security and reliability, and reviewing network security and reliability rules; iii) monitoring transparency obligations; iv) monitoring the level of market opening and competition, and promoting

effective competition, in cooperation with competition authorities; and v) ensuring that consumer protection measures are effective. It is proposed that the regulatory authority be legally distinct and functionally independent of any other public or private entity, and that its staff and any member of its decision-making body act independently of any market interest and neither seek nor take instruction from any government or other public or private entity.

The Agency for the cooperation of energy regulators: The Commission believes that if an independent body should be established which can make proposals to the Commission regarding decisions that involve substantive decisions and take individual regulatory decisions which are binding on third parties concerning detailed technical issues that are delegated to them, the only solution would be to establish an Agency. The Agency would complement at European level the regulatory tasks performed at national level by the regulatory authorities by: i) providing a framework for national regulators to cooperate; ii) regulatory oversight of the cooperation between transmission system operators; iii) individual decision powers; iv) general advisory role: the Agency would in general have an advisory role vis-à-vis the Commission as regards market regulation issues and could issue non-binding guidelines to publicise good practices among the national regulators. The total annual costs of the Agency are estimated at approximately EUR 6-7 million per year.

Cooperation between transmission system operators: for market integration to take place, there also needs to be effective cooperation among transmission system operators (TSOs) and a clear and stable regulatory framework, including regulatory coordination. It is therefore proposed to task the transmission operators with strengthening their cooperation in a number of key areas, focusing on the following main issues: development of market and technical codes; research and innovation activities of common interest; coordination of grid operation and investment planning. It is important for the transmission system operators' cooperation structures to be fully recognised at European level as having the authority to carry out the above tasks. For that purpose, the Commission will formally designate the European Networks of (gas and electricity) transmission system operators in charge of these tasks. It should be noted that the network of operators can only cooperate successfully when all operators are on a level playing field. This means that all operators must be effectively unbundled.

Improving the functioning of the market: the proposed energy package also aims at improving the legislative framework to facilitate third party access to key infrastructures, to increase transparency on the market, to enhance market integration and to improve access to retail customers. With this in mind, the Commission proposes to make the good practice guidelines legally binding. The Commission also states that transparent rules on access to LNG terminals are needed. To reduce uncertainty on the market, the Commission will, in the coming months, provide guidance in an appropriate form on the compliance of downstream bilateral long-term supply agreements with EC competition law. Lastly, with a view to stimulating this process, the Commission is considering setting up a retail forum. This forum would allow to focus on specific retail issues, and it should serve as a platform for all stakeholders to promote the establishment of an EU wide retail market.

Reinforce the security of supply monitoring by transmission system operators: as a first step, the present proposals do not modify Directive 2004/67/EC and only address two issues: increased transparency obligations on the level of commercial stocks. Each storage operator would have the obligation to publish on a daily basis the amount of working gas it has in its facilities. This obligation would considerably increase mutual confidence for regional and bilateral assistance in case of severe supply disruptions. It is proposed that Member States cooperate in order to promote regional and bilateral solidarity. This cooperation is intended to cover situations which would be likely to result in severe disruptions of gas supply affecting a Member State. The Commission will adopt guidelines for regional solidarity cooperation, if needed.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The Council held a public policy debate on the internal energy market package on the basis of a presidency note.

There were different opinions voiced by delegations concerning the Commission's proposal, the proposal presented by eight Member States, the non-paper of the Commission as well as the United Kingdom contribution. During the debate, Member States showed support for further work towards a compromise solution at working group and the permanent representatives' committee level. Further work should lead to political agreement on the third package by the TTE Council in June 2008.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The Committee on Industry, Research and Energy adopted the report by Alejo VIDAL-QUADRAS (EPP-ED, ES), amending, under 1<sup>st</sup> reading of the codecision procedure, the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.

The main amendments adopted are as follows:

MEPs emphasise that Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market for electricity.

In order to ensure greater transparency regarding the entire electricity transmission network in the European Union, the Commission should draw up, publish and regularly update a road map. All feasible electricity transmission networks and possible regional connections should be included in that road map.

The competent authorities should have easy access to important information from supply undertakings and shall monitor that the supply undertakings comply with the rules, in order to ensure a non-discriminatory, transparent and effective market. The competent authorities should regularly monitor the compliance of market participants with the rules.

Objective: MEPs specify that the Regulation should also aim at facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply. It should provide mechanisms to harmonise rules to this effect.

European Network of Transmission System Operators for Electricity (ENTSO): in order to ensure that Transmission System Operators will facilitate market integration, it must be established that promoting market integration is an explicit task of ENTSO.

Tasks: the European Network of Transmission System Operators for Electricity shall develop and submit to the Agency for the cooperation of Energy Regulators for approval, among others: draft network codes in the areas mentioned in the Regulation, elaborated in cooperation with market participants and network users; measures to ensure the real-time coordination of grid operation in normal and emergency conditions; guidelines on the coordination of technical cooperation between Community and third-country transmission system operators; an annual work programme based on the priorities set by the Agency.

The European Network of Transmission System Operators for Electricity shall publish a Community-wide 10-year network investment plan every two years following its approval by the Agency and shall include investments in interconnection and in other infrastructure necessary for effective trading and competition and for the security of supply. A review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices shall be annexed to the investment plan.

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

Development of guidelines: the Commission shall, after consultation with the Agency, establish an annual priority list identifying issues of primary importance for the development of the internal market in electricity. Having regard to that priority list, the Commission shall mandate the Agency to develop, within no more than six months, draft guidelines establishing basic, clear and objective principles for the harmonisation of rules, as set out in the Regulation.

In drafting those guidelines, the Agency shall formally consult the European Network of Transmission System Operators for Electricity and other stakeholders, in an open and transparent manner. The Agency shall adopt draft guidelines on the basis of that consultation. Within six months of the adoption of the guidelines by the Agency, the Commission shall mandate the European Network for Transmission System Operators of Electricity to develop draft network codes in full compliance with the principles established in the guidelines. The Agency shall conduct a formal consultation in relation to the draft network codes in an open and transparent manner.

Technical cooperation between Community and third-country transmission system operators: MEPs introduced amendments aiming to specify how cooperation with third-country TSOs at a technical level will be carried out.

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

MEPs believe that the formal approval of congestion management procedures by regulators should be clearly stated in the Regulation (EC) No 1228/2003, in order to ensure an efficient implementation. Finally, they consider that the effective use of the enforcement powers of regulators should be ensured in order to sanction non-compliance with requirements of the Regulation.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The Council discussed the third package of legislative measures for the internal energy market. This package aims to complement the existing rules in order to make the internal market work for all consumers and to help the EU achieve the objective of more secure, competitive and sustainable energy supply.

Although not all Member States could agree with all elements of the package, the President concluded that the Council reached a broad agreement on the essential elements of this internal energy market package.

The agreement was reached on the basis of the Presidency compromise proposal amended during the Council and covering in particular certain elements.

Effective separation of supply and production activities from network operation: all delegations agreed that effective separation of supply and production activities from network

operations should be achieved in accordance with the orientations defined by the 2007 spring

European Council. However, while the majority of delegations and the Commission see full ownership unbundling as the first best option, an option allowing for an independent transmission operator has been developed in order to take account of cases where arrangements are in place for a transmission system that belongs to a vertically integrated undertaking, which guarantees more effective independence of the TSO. These provisions aim at balancing concerns on the scope, timeframe and enforceability of this option with keeping it workable and preserving the financial interest of the vertically integrated undertaking.

The ITO option will be available to both gas and electricity sectors for Member States where the transmission system belongs to a vertically integrated undertaking on entry into force of the directive. This option would allow companies to retain ownership of transmission systems on condition that they are managed by an independent transmission operator. A number of provisions will ensure:

- the effective independence of the operator, its management and the supervisory body;
- that conflicts of interest are avoided;
- fair and non-discriminatory network access;
- undistorted incentives to invest and the development of investments and interconnection infrastructure;
- independent access to means and resources for TSO's work.

The Commission will carry out a specific review of the ITO-related provisions, to be conducted two years after implementation on the basis of objective criteria, leading, where appropriate, to proposals to ensure full and effective independence of the TSO.

Third country clause: irrespective of the option retained to achieve effective separation, the text needs to ensure that the issue of third country control of networks is addressed in a non-protectionist way which guarantees that these companies respect the same rules that apply to EU undertakings and addresses Member State concerns about third country control. It also needs to address concerns about potential

implications on Community competence and the handling of existing investment as well as provide the criteria against which investment from third country would be assessed, in particular the EU security of supply.

Derogations: the Council agreed on derogations for small or isolated systems, with nominative derogations for Cyprus, Luxembourg and Malta for both gas and electricity sectors as well as derogation for Estonia, Finland and Latvia regarding gas until any of these Member States is directly connected to the system of other Member State than these countries.

Market functioning including retail markets: the texts will include provisions on extended record keeping (supply undertakings need to keep at the disposal of regulators the relevant data relating to transactions in supply contracts and gas/electricity derivatives) and on consumers' rights (guaranteeing that customers are properly informed on their energy consumption and costs frequently enough to regulate their electricity/gas consumption, give them the right to change supplier at any time and require energy companies that bills are sent within three months after a consumer switches supplier).

Agency for the Cooperation of Energy Regulators: the regulatory Agency to be established will be independent from the Member States and the Commission and will have well circumscribed tasks. It will focus on issues involving more than one Member State as far as binding decision-making is concerned. Its involvement in technical matters has been strengthened, but is still of an advisory nature; it generally allows for the national levels to play their parts. In all these tasks, market participants and authorities at national level are duly consulted and due account is taken of the outcomes of regional cooperation between TSOs and between regulators.

Other elements, which form part of the package, are the following: minority shareholding, public ownership, certification or designation of transmission systems operators, adoption of network codes, regulatory authorities, handling of cross-border cases, guidelines to be adopted through comitology, regional cooperation and gas specific issues.

This will be the basis for further work at working party and Coreper level.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The European Parliament adopted, by 574 votes to 34 and 36 abstentions, a legislative resolution, making some amendments to the Commission proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) 1228/2003 on conditions for access to the network for cross-border exchanges in electricity. The report had been tabled for consideration in plenary by Alejo VIDAL-QUADRAS (EPP-ED, ES), on behalf of the Committee on Industry, Research and Energy.

The main amendments- adopted in 1<sup>st</sup> reading of codecision - are as follows:

-new recitals state that, in order to ensure greater transparency regarding the entire electricity transmission network in the EU, the Commission should draw up, publish and regularly update a road map. All feasible electricity transmission networks and possible regional connections should be included in that road map. The competent authorities should regularly monitor the compliance of market participants with the rules.

Objective: MEPs specify that the Regulation should aim at facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply.

Increased powers for the Agency for the Cooperation of Energy Regulators: the Commission proposal had created the European Network of Transmission System Operators for electricity (ENTSOE) with power to adopt network codes, a 10-year investment plan, an annual work programme and research plans. Parliament, however, felt that the Agency should have increased powers. Accordingly, it stipulated that ENTSOE shall agree and submit to the Agency for approval, following the procedure provided, the following, inter alia: draft network codes in the areas mentioned in the text, elaborated in cooperation with market participants and network users; a 10-year investment plan, including a generation adequacy outlook, every two years; measures to ensure the real-time coordination of grid operation in normal and emergency conditions; guidelines on the coordination of technical cooperation between Community and third-country transmission system operators; an annual work programme based on the priorities set by the Agency. The Agency shall monitor the implementation of the network codes by ENTSOE.

ENTSOE: ENTSOE must publish a Community-wide 10-year network investment plan every two years following its approval by the Agency. The investment plan shall identify investment gaps, notably with respect to cross-border capacities and shall include investments in interconnection and in other infrastructure necessary for effective trading and competition and for security of supply. A review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices shall be annexed to the investment plan.

ENTSOE must collect all relevant information regarding the implementation of the network codes and submit it to the Agency for evaluation.

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

Development of guidelines: the Commission shall, after consultation with the Agency, establish an annual priority list identifying issues of primary importance for the development of the internal market in electricity. Having regard to that priority list, the Commission shall mandate the Agency to develop, within no more than six months, draft guidelines establishing basic, clear and objective principles for the harmonisation of rules, as set out in the Regulation.

In drafting those guidelines, the Agency shall formally consult ENTSOE and other stakeholders, in an open and transparent manner. The Agency shall adopt draft guidelines on the basis of that consultation. It shall specify the observations received during the consultation and explain how they were taken into account. It shall give reasons where observations have not been taken into account.

Development of network codes: Parliament added a new Article stating that within six months of the adoption of the guidelines by the Agency, the Commission shall mandate ENTSOE to develop draft network codes in full compliance with the principles established in the guidelines.

Technical cooperation between Community and third-country transmission system operators: a new Article states that this shall be monitored by the national regulatory authorities. If incompatibilities with the rules and network codes adopted by the Agency come to light in the course of

such technical cooperation, the national regulatory authority shall seek clarification from the Agency.

**Congestion management:** transmission system operators shall submit their congestion management procedures including capacity allocation for approval to the regulatory authorities. The regulatory authorities may request amendments to those procedures before approving them.

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

**Penalties:** Member States shall ensure that national regulatory authorities have the competence effectively to ensure compliance with the Regulation by providing them, or other bodies, with the legal competence to issue compliance orders and to impose effective, dissuasive and proportionate penalties. The Member States shall inform the Commission thereof by 1 January 2010.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The Council unanimously adopted its common position in the form of a recast of Regulation (EC) No 1228/2003 (the current legislative act will therefore be repealed). To the extent possible the Council has followed the Commission's approach regarding an identical treatment of the electricity and gas sectors.

Concerning the 32 amendments adopted by the European Parliament at first reading, the Council has followed the Commission in accepting, in part or in full, 7 amendments and in rejecting 6 other amendments.

Regarding the European Parliament amendments where the Council has deviated from the Commission position, the Council accepted, in part, one amendment, and rejected 18.

The Council also introduced the following modifications to the Commission proposal:

**Certification of Transmission System Operators (TSOs):** the Council considered it appropriate to transfer the part of the certification procedure which sets out the role of the Commission in this procedure from the Electricity Directive to the new Regulation.

**Establishment and modification of network codes:** the common position sets out more in detail the procedure for the establishment of network codes and another - shorter - procedure for the modification of network codes. It has given a clear role to the Agency which should develop non-binding framework guidelines as a basis for the network codes to be established by the European Network of Transmission System Operators (ENTSO), review the draft network codes and assess proposed modifications to the network codes. If necessary, the Commission may adopt those codes through the committee procedure in order to make them binding.

**Monitoring by the Agency:** the Council introduced two paragraphs setting out the monitoring role of the Agency in relation to the implementation of the network codes by ENTSO.

**Exemptions for new interconnectors:** with regard to granting exemptions for new interconnectors between Member States, the Council considered it appropriate to involve the Agency only in those cases where the national regulatory authorities concerned do not find an agreement or submit a joint request to the Agency. Moreover, Member States should have the possibility to provide, if they so wish, that the formal decision on the exemption is taken by another relevant body of the Member State, on the basis of the opinion of the regulator.

**Retail markets:** the Council considered it appropriate to take out the cross-border reference, and transfer it from the Regulation to the electricity Directive.

**Other issues:** the Council considered it appropriate to use the term "network development plan" instead of "investment plan" and to clarify that these plans are of a non-binding nature.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The common positions adopted by the Council on the five texts that make up the Third Package contain all the essential components of the Commission's proposal that are needed to ensure the proper functioning of the internal gas and electricity market. They can therefore be generally supported by the Commission.

The Commission recalls that the first reading focused on obtaining agreement within the Council. The amendments adopted by the European Parliament were therefore not formally incorporated into the common position. Negotiations to this end will take place during the second reading.

Some amendments adopted by the European Parliament are taken into account in the common position concerning the Electricity Regulation:

**Power of the Agency to develop framework guidelines and codes:** both the common position of the Council and the amendments by the European Parliament change the Commission proposal regarding the process of establishing network codes. They introduce a new concept of framework guidelines, prepared by the Agency, which have to be applied by the TSOs when drafting European network codes.

**Consultation and monitoring by the European Network of Transmission System Operators (ENTSO):** the Common position clarifies the role of ENTSO compared to consultation and monitoring by the Agency. Parliament's amendments are in the same direction but are too restrictive to maintain sufficient scope for ENTSO consultation and monitoring.

**Costs of ENTSO:** both the common position and the amendments of the European Parliament add the requirement that the regulatory authorities must approve the costs of ENTSO provided they are reasonable and proportionate.

**Use of congestion rents:** the common position reintroduces the possibility of using congestion rents to reduce tariffs. However, the common



position establishes a clear priority for the use of congestion rents for confirming cross-border capacity or for network investment over a reduction in network tariffs.

The Commission also considers that a number of EP amendments that are not covered should be taken into account in the second reading. These amendments are on the following points:

Power of the Agency regarding investment plans: the European Parliament proposes that the Agency should adopt a binding network investment plan, to be prepared by ENTSO. The Commission cannot agree to the Agency's being granted discretionary power to adopt a binding investment plan. The Commission could however support the Agency's adopting a non-binding investment plan, or playing a role in monitoring consistency between the national investment plans as approved by the national regulators and the 10-year network development plan of ENTSO.

Technical cooperation with third countries: Parliament's amendments propose monitoring of technical cooperation with third-country transmission system operators by the national regulatory authorities and the Agency.

Removal of administrative barriers to increase capacity: Parliament's amendments propose that Member States should review their procedures for the removal of administrative barriers to increase interconnection capacity.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The Committee on Industry, Research and Energy adopted the recommendation for second reading by Alejo VIDAL-QUADRAS (EPP-ED, ES) modifying the Council's common position for adopting a regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

The amendments are the result of an informal compromise negotiated by the committee responsible with the Council Presidency on the package of energy market legislation.

The compromise gives Member States the possibility to choose between three options for separating supply and production activities from network operations - both for gas and electricity markets: (a) full ownership unbundling; (b) the independent system operator (ISO); (c) the independent transmission operator (ITO).

The main amendments are as follows:

Cooperation at regional level: Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in electricity.

Network development plan: in order to ensure greater transparency regarding the entire electricity transmission network in the Community, the European Network of Transmission System Operators (ENTSO) for Electricity should draw up, publish and regularly update a network development plan. Viable electricity transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.

Establishment of the ENTSO for Electricity: 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.

Establishment of network codes: 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 setting out clear and objective principles 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.

Once the Agency is satisfied that the network code is in line with the relevant non-binding framework guidelines, the Agency shall submit the network code to the Commission and may recommend that it be adopted within a reasonable time period. If the Commission does not adopt the code, it shall state the reasons why.

Modification of Network Codes: the Agency shall consult all stakeholders in accordance with the Regulation establishing an Agency for the Cooperation of Energy Regulators.

Tasks of the ENTSO for Electricity: the ENTSO for Electricity shall adopt, inter alia: (i) common network operation tools to ensure co-ordination of network operation in normal and emergency conditions; (ii) recommendations on the coordination of technical cooperation between Community and third-country transmission system operators.

The ENTSO for Electricity shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with the Regulation, 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 include the results of the analysis in the annual report.

The Agency shall also provide an opinion on the national 10-year network development plans to assess their consistency with the non binding Community wide 10-year network development plan. If the Agency identifies inconsistencies between a national 10-year network development plan and the non binding Community wide 10-year network development plan, it shall recommend to amend the national network development plan or the non binding Community wide 10-year network development plan as appropriate.

Monitoring by the Agency: where the ENTSO for Electricity has failed to implement any 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 this explanation and provide its opinion thereon.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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The European Parliament approved as amended, under the second reading of the codecision procedure, the Council's common position for adopting a regulation of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

The amendments are the result of a compromise negotiated with the Council on the package of energy market legislation.

The compromise gives Member States the possibility to choose between three options for separating supply and production activities from network operations - both for gas and electricity markets: (a) full ownership unbundling; (b) the independent system operator (ISO); (c) the independent transmission operator (ITO).

The main amendments are as follows:

Cooperation and coordination among transmission system operators: increased cooperation and coordination among transmission system operators is required to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward-looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment. Those network codes should be in line with framework guidelines which are non-binding by nature.

Cooperation at regional level: Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in electricity.

Network development plan: in order to ensure greater transparency regarding the entire electricity transmission network in the Community, the European Network of Transmission System Operators (ENTSO) for Electricity should draw up, publish and regularly update a network development plan. Viable electricity transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan.

Establishment of the ENTSO for Electricity: 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.

Establishment of network codes: 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 setting out clear and objective principles 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. The Agency shall formally consult the ENTSO for Electricity and the other relevant stakeholders in regard to the framework guideline.

Once the Agency is satisfied that the network code is in line with the relevant non-binding framework guidelines, the Agency shall submit the network code to the Commission and may recommend that it be adopted within a reasonable time period. If the Commission does not adopt the code, it shall state the reasons why.

Modification of Network Codes: the Agency shall consult all stakeholders in accordance with the Regulation establishing an Agency for the Cooperation of Energy Regulators.

Tasks of the ENTSO for Electricity: the ENTSO for Electricity shall adopt, inter alia: (i) common network operation tools to ensure co-ordination of network operation in normal and emergency conditions; (ii) recommendations on the coordination of technical cooperation between Community and third-country transmission system operators.

The ENTSO for Electricity shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with the Regulation, 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 include the results of the analysis in the annual report.

The Agency shall also provide an opinion on the national 10-year network development plans to assess their consistency with the non binding Community wide 10-year network development plan. If the Agency identifies inconsistencies between a national 10-year network development plan and the non binding Community wide 10-year network development plan, it shall recommend amending the national network development plan or the non binding Community wide 10-year network development plan as appropriate.

Monitoring by the Agency: where the ENTSO for Electricity has failed to implement any 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 this explanation and provide its opinion thereon.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy package

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At its Plenary Session of 22 April 2009, the European Parliament adopted a compromise package which had been agreed with the Council in view of reaching a second reading agreement.

These amendments concern essentially:

- the limited strengthening of the role of the agency in the process of making codes and guidelines and overseeing the work of the European Network of Transmission Operators for Electricity (ENTSO-E);
- provisions strengthening of the role of the agency in the process of establishing a 10-year network development plan;
- role of the ENTSO-E regarding third countries.

The Commission accepts the compromise package as it is in line with the overall purpose and the general characteristics of the proposal.

## Conditions for access to the network for cross-border exchanges in electricity. Third energy

# package

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**PURPOSE:** to provide a harmonised framework for cross-border exchanges of electricity (third package of legislative measures concerning the internal energy market).

**LEGISLATIVE ACT:** Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003.

**CONTENT:** the Council unanimously adopted the package of legislative measures concerning the internal energy market, approving all of the European Parliament's second-reading amendments. The legislative package also includes: (i) a [Directive](#) concerning common rules for the internal market in electricity; (ii) a [Regulation](#) establishing an Agency for the Cooperation of Energy Regulators; (iii) a [Directive](#) concerning common rules for the internal market in natural gas; and (iv) a [Regulation](#) on conditions for access to the natural gas transmission networks.

The third package of legislative measures on the internal energy market aims to:

- supplement the existing rules so as to ensure that the internal market operates smoothly for all consumers and to enable the EU to achieve a more secure, competitive and sustainable energy supply;
- give energy consumers more protection and the benefit of the lowest possible energy prices;
- promote sustainability by stimulating energy efficiency and guaranteeing that small companies, too, in particular those investing in renewable energy, will have access to the energy market;
- ensure fair competition between EU companies and third country companies.

This Regulation aims at:

- 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;
- 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.

The main provisions of the Regulation are as follows:

**Establishment of the European network of transmission system operators for electricity (ENTSO):** 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.

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. 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.

**Cooperation and coordination among transmission system operators:** increased cooperation and coordination among transmission system operators is provided for to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward-looking planning and sound technical evolution of the transmission system in the Community, including the creation of interconnection capacities, with due regard to the environment.

Those network codes should be in line with framework guidelines, which are non-binding in nature (framework guidelines) and which are developed by the Agency for the Cooperation of Energy Regulators. The Agency should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. The Agency should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.

**Tasks of the ENTSO for Electricity:** the ENTSO for Electricity shall elaborate network codes in the areas referred to in the Regulation upon a request addressed to it by the Commission. 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.

The ENTSO for Electricity shall adopt:

- common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents classification scale, and research plans;
- a non-binding Community-wide ten-year network development plan, (Community-wide network development plan), including a European generation adequacy outlook, every two years. Viable electricity transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan;
- recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators;
- an annual work programme and an annual report;
- annual summer and winter generation adequacy outlooks.

The ENTSO for Electricity shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with the Regulation, 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 include the results of the analysis in the annual report.

The Agency shall also provide an opinion on the national 10-year network development plans to assess their consistency with the non binding Community wide 10-year network development plan. If the Agency identifies inconsistencies between a national 10-year network development plan and the non binding Community wide 10-year network development plan, it shall recommend amending the national network development plan or the non binding Community wide 10-year network development plan as appropriate.

Monitoring by the Agency: the Agency shall monitor the execution of the tasks of the ENTSO for Electricity and report to the Commission. Where the ENTSO for Electricity has failed to implement any 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 this explanation and provide its opinion thereon.

Inter-transmission system operator compensation mechanism: transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks. The compensation shall be paid by the operators of national transmission systems from which cross-border flows originate and the systems where those flows end. 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 Commission shall decide on the amounts of compensation payments payable.

Charges for access to networks: 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.

When setting the charges for network access, the following shall be taken into account:

- payments and receipts resulting from the inter-transmission system operator compensation mechanism;
- actual payments made and received as well as payments expected for future periods of time, estimated on the basis of past periods.

Provision of information: 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. They 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.

Penalties: the Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation. The penalties provided for must be effective, proportionate and dissuasive.

Commission report: the Commission shall monitor the implementation of this Regulation. In its report referred to in Directive 2009/72/EC, the Commission shall also report on the experience gained in the application of this Regulation.

ENTRY INTO FORCE: 03/09/2009.

APPLICATION: from 03/03/2011.