

Draft

## COMMISSION REGULATION

of [...]

**laying down guidelines establishing a mechanism for the compensation of transmission system operators for the costs of hosting cross border flows of electricity and a common regulatory approach to transmission charging**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1228/2003 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity<sup>1</sup>, and in particular Article 8 paragraph 2 and 3 thereof,

Whereas:

- (1) Regulation (EC) No 1228/2003 provides for the establishment of an inter transmission system operator compensation mechanism. In accordance with that Regulation, the Commission is to establish the guidelines specifying details of the procedure and methodology to be applied in the inter transmission system operator compensation mechanism and appropriate rules leading to a progressive harmonisation of the setting of charges under national tariff systems.
- (2) Valuable experience has been gained since the need for inter transmission system operator compensation mechanism was first recognised, in particular through voluntary mechanisms by transmission system operators. However, transmission system operators have found it increasingly difficult to reach agreement on such voluntary mechanisms.
- (3) Binding guidelines establishing an inter transmission system operator compensation mechanism should establish a stable basis for the operation of the inter transmission system operator compensation mechanism and fair compensation to transmission system operators for the costs of hosting cross border flows of electricity.
- (4) Transmission system operators from third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity should be entitled to participate in the inter transmission system compensation Mechanism on an equivalent basis to transmission system operators from Member States.

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<sup>1</sup> OJ L 176, 15.7.2003, p. 1.

- (5) It is appropriate to establish mechanisms which allow for the treatment of transmission system operators in third countries which have not concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity on a fair and equitable basis with transmission system operators in the Member States.
- (6) Transmission system operators should be compensated for energy losses resulting from hosting cross border flows of electricity. Such compensation should be based on an estimate of what losses would have been incurred in the absence of transits of electricity.
- (7) A fund should be established to compensate transmission system operators for the costs of making infrastructure available to host cross border flows of electricity. The value of this fund should be based on a Union wide assessment of the long run average incremental costs of making infrastructure available to host cross border flows of electricity.
- (8) Transmission system operators in third countries should face the same costs for using the Union transmission system as transmission system operators in Member States.
- (9) Variations in charges faced by producers of electricity for access to the transmission system should not undermine the internal market. For this reason average charges for access to the network in Member States should be kept within a range which helps to ensure that the benefits of harmonisation are realised.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 13 of Regulation 1228/2003,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Transmission system operators shall receive compensation for costs incurred as a result of hosting cross-border flows of electricity on their networks on the basis of the guidelines set out in Part A of the Annex.

#### *Article 2*

Charges applied by network operators shall be within the range set out at Part B of the Annex.

#### *Article 3*

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

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

Done at Brussels, [...]

*For the Commission*  
[...]  
*The President*

## ANNEX

### Part A

#### Guidelines on the establishment of an Inter Transmission System Operator Compensation Mechanism

##### 1. General Provisions

- 1.1. The Inter Transmission System Operator Compensation (ITC) mechanism shall provide for compensation for the costs of hosting cross-border flows of electricity including providing cross-border access to the interconnected system.
- 1.2. The European Network of Transmission System Operators for Electricity (ENTSO for Electricity) shall establish an ITC fund for the purpose of compensating transmission system operators for the costs of hosting cross-border flows of electricity.

The ITC fund shall provide for:

- (1) total compensation for losses incurred on the transmission systems of all national transmission systems as a result of hosting cross-border flows of electricity;

and

- (2) total compensation for making infrastructure available to host cross-border flows of electricity

- 1.3. Contributions to the ITC Fund shall be calculated in accordance with Section 6.

Payments from the ITC Fund shall be calculated in accordance with Section 4 and Section 5.

Contributions and payments relating to the ITC Fund shall be made for the period from **[date of entry into force]** to 31 December 2010 and on a yearly basis thereafter. ENTSO for Electricity shall be responsible for establishing arrangements for the collection and disbursement of all payments relating to the ITC Fund, and shall also be responsible for determining the timing of payments. All contributions and payments shall be made within one year of the end of the period to which they apply.

- 1.4. The European Regulators Group for Electricity and Gas (EREG) established by Commission Decision 2003/796/EC<sup>2</sup> shall report to the Commission each year on the implementation of the ITC Mechanism and the management of the ITC fund.

ENTSO for Electricity shall co-operate with the Commission and with EREG in this task and shall provide EREG with all information necessary for this purpose.

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<sup>2</sup> OL J 296, 14.11.2003, p. 34.

- 1.5. Each transmission system operator shall provide ENTSO for Electricity and ERGEG with all information necessary for the implementation of the ITC Mechanism.
- 1.6. Transit of electricity shall be calculated by taking the lower of the absolute value of imports and exports on interconnections where capacity is allocated in a manner compatible with the congestion management guidelines set out in Annex I of Regulation (EC) No 1228/2003.
- 1.7. For the purposes of this part of the Annex, the net flow of electricity shall mean the difference between total exports of electricity from a given transmission system and total imports of electricity to the same transmission system.
- 1.8. Until such time as ENTSO for Electricity has been established, transmission system operators shall co-operate amongst themselves to carry out the tasks assigned to ENTSO for Electricity in relation to the ITC mechanism.

## 2. Participation in the ITC Mechanism

- 2.1. Each regulatory authority shall ensure that transmission system operators in its area of competence participate in the ITC Mechanism and that no additional charges relating to the costs of hosting cross-border flows of electricity are included in charges applied by transmission system operators for access to networks.
- 2.2. Transmission system operators from third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity shall be entitled to participate in the ITC Mechanism.

In particular, the transmission system operators operating in the territories defined at Article 2, paragraph 1, first indent of Decision 2008/02 of the Ministerial Council of the Energy Community of 27 June 2008 shall be entitled to participate in the ITC Mechanism. This covers the transmission system operators of Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Kosovo pursuant to United Nations Security Council Resolution 1244.

Each transmission system operator from a third country participating in the ITC Mechanism shall be treated on an equivalent basis to a transmission system operator of a Member State.

## 3. Multi-Party Agreements

- 3.1. ENTSO for Electricity shall facilitate the conclusion of multi-party agreements relating to the compensation for the costs of hosting cross-border flows of electricity between transmission system operators participating in the ITC Mechanism and transmission system operators from third countries which have not concluded agreements with the Union whereby they have adopted and are applying Union law in the field of electricity.
- 3.2. Such multi-party agreements shall aim at ensuring that the transmission system operator from the third country be treated on an equivalent basis to a transmission system operator in a country participating in the ITC Mechanism.

- 3.3. Where necessary such multi-party agreements may recommend appropriate adjustment to total compensation for the compensation for making infrastructure available to host cross-border flows of electricity determined in accordance with Section 5. Any such adjustment shall be subject to approval by the Commission.
- 3.4. The treatment of the transmission system operator from the third country shall not be favourable to that which would apply to a transmission system operator participating in the ITC Mechanism.
- 3.5. ENTSO for Electricity shall submit all such multi-party agreements to the Commission.

#### 4. Compensation for Losses

- 4.1. Compensation for losses incurred on national transmission systems as a result of hosting cross-border flows of electricity shall be calculated separately from compensation for costs incurred associated with making infrastructure available to host cross-border flows of electricity.
- 4.2. The amount of losses incurred on a national transmission system shall be established by calculating the difference between:
  - (1) the amount of losses actually incurred on the transmission system during the relevant period;
  - and
  - (2) the estimated amount of losses on the transmission system which would have been incurred on the system during the relevant period if no transits of electricity had occurred.
- 4.3. ENTSO for Electricity shall be responsible for carrying out the calculation referred to in point 4.2. This calculation may be derived from estimates for a number of points of time during the relevant period.
- 4.4. The value of losses incurred by a national transmission system as a result of the cross-border flow of electricity shall be calculated on the same basis as that approved by the regulatory authority in respect of all losses on the national transmission systems.

Where the relevant regulatory authority has not approved a basis for the calculation of losses for a period of time for which the ITC Mechanism applies, the value of losses for the purposes of the ITC Mechanism shall be estimated by ENTSO for Electricity.

#### 5. Compensation for provision of infrastructure for cross-border flows of electricity

- 5.1. The Commission shall determine total compensation for making infrastructure available to host cross-border flows of electricity.
- 5.2. For the purposes of determining total compensation for making infrastructure available to host cross-border flows of electricity ERGEG shall assist the

Commission to undertake a Union-wide assessment of the infrastructure associated with facilitating cross-border flows. ENTSO for Electricity shall provide the Commission and ERGEG with all assistance necessary for the purposes of carrying out this assessment.

This assessment shall consist of a technical and economic assessment of the forward-looking long-run average incremental costs on an annual basis of making such electricity transmission infrastructure available for cross-border flows of electricity over the relevant period, and shall be based on recognised standard-costing methodologies.

The assessment of costs of making infrastructure available for cross-border flows of electricity, shall also account for revenues from the allocation of interconnection capacities.

This Union-wide assessment shall include infrastructure in all Member States and third countries participating in the ITC Mechanism and in systems operated by transmission system operators who have concluded multi-party agreements referred to in section 3.

- 5.3. Until such time as Commission has carried out the assessment referred to in point 5.2, the total compensation for making infrastructure available to host cross-border flows of electricity shall be set at EUR 100 000 000 per annum.
- 5.4. Total compensation for the costs of making infrastructure available to host cross-border flows of electricity shall be apportioned among transmission system operators responsible for national transmission systems in proportion to:
  - (1) transit factor referring to transits on that national transmission system state as a proportion of total transits on all national transmission systems;
  - (2) load factor referring to transits of electricity as a proportion of load on that national transmission system relative to transits of electricity as a proportion of load for all national transmission systems.

The transit factor shall be weighted 75% and the load factor 25%.

## 6. Contributions to the ITC Fund

- 6.1. The transmission system operators shall contribute to the ITC fund in proportion to the absolute value of net flows onto and from their national transmission system as a share of the sum of the absolute value of net flows onto and from all national transmission systems.
- 6.2. This calculation shall also take into account imports and exports of electricity covered by the provisions of section 7.

## 7. Transmission system use fee on third country imports and exports of electricity

- 7.1. A transmission system use fee shall be paid on all imports and exports of electricity from all third countries where:

- (1) that country has not concluded agreement with the Union whereby it has adopted and is applying Union law in the field of electricity;

and

- (2) the transmission system operator responsible for the system from which electricity is imported or to which electricity is exported has not concluded a multi-party agreement referred to in Section 3.

This fee shall be expressed in Euros per megawatt hour.

- 7.2. Each participant in the ITC Mechanism shall levy the transmission system use fee on scheduled imports and exports of electricity between the national transmission system and the transmission system of the third country.
- 7.3. The transmission system use fee for each year shall be calculated in advance by ENTSO for Electricity. It shall be set at the estimated contribution per megawatt hour transmission system operators from a participating country would make to the ITC Fund based on projected cross-border flows of electricity for the relevant year.



## **Part B**

### **GUIDELINES FOR A COMMON REGULATORY APPROACH TO TRANSMISSION CHARGING**

1. Annual average transmission tariff charges paid by producers in each Member State shall be within the ranges set out in point 3.
2. Annual average transmission tariff charges paid by producers is annual total transmission tariff charges paid by producers divided by the total measured energy injected annually by producers to the transmission system of a Member State.

The calculation of total transmission tariff charges paid by producers shall exclude:

- (1) charges paid by producers for physical assets required for connection to the system or the upgrade of the connection;
  - (2) charges paid by producers related to ancillary services;
  - (3) specific system loss charges paid by producers.
3. The value of the annual average transmission tariff charges paid by producers shall be within a range of 0 to 0.5 €/MWh, except those applying in Denmark, Sweden, Finland, Ireland, Great Britain and Northern Ireland.

The value of the annual average transmission tariff charges paid by producers in Denmark, Sweden and Finland shall be within a range of 0 to 0.7 €/MWh.

Annual average transmission tariff charges paid by producers in Ireland, Great Britain and Northern Ireland shall be within a range of 0 to 2.5 €/MWh.