

Basic information	
<p>2001/0078(COD)</p> <p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p>	Procedure completed
<p>Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'</p> <p>Repealed by 2007/0198(COD)</p> <p>Subject</p> <p>3.60.03 Gas, electricity, natural gas, biogas</p>	

Key players					
European Parliament	Committee responsible		Rapporteur	Appointed	
	ITRE	Industry, External Trade, Research, Energy	MOMBAUR Peter Michael (PPE-DE)	29/05/2001	
	Former committee responsible		Former rapporteur	Appointed	
	ITRE	Industry, External Trade, Research, Energy	MOMBAUR Peter Michael (PPE-DE)	29/05/2001	
	Former committee for opinion		Former rapporteur for opinion	Appointed	
	BUDG	Budgets	The committee decided not to give an opinion.		
	ECON	Economic and Monetary Affairs	RAPKAY Bernhard (PSE)	19/06/2001	
	JURI	Legal Affairs and Internal Market	BEYSEN Ward (ELDR)	10/07/2001	
	Council of the European Union	Council configuration		Meetings	Date
		General Affairs		2518	2003-06-16
Transport, Telecommunications and Energy		2465	2002-11-25		
Energy		2347	2001-05-14		
Industry		2433	2002-06-06		
European	Commission DG		Commissioner		

Commission	Energy and Transport
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Key events

Date	Event	Reference	Summary
13/03/2001	Legislative proposal published	COM(2001)0125 	Summary
14/05/2001	Debate in Council		Summary
14/05/2001	Committee referral announced in Parliament, 1st reading		
26/02/2002	Vote in committee, 1st reading		Summary
26/02/2002	Committee report tabled for plenary, 1st reading	A5-0074/2002	
12/03/2002	Debate in Parliament		
13/03/2002	Decision by Parliament, 1st reading	T5-0107/2002	Summary
06/06/2002	Debate in Council		Summary
07/06/2002	Modified legislative proposal published	COM(2002)0304 	Summary
03/02/2003	Council position published	15527/2/2002	Summary
13/02/2003	Committee referral announced in Parliament, 2nd reading		
24/04/2003	Vote in committee, 2nd reading		Summary
24/04/2003	Committee recommendation tabled for plenary, 2nd reading	A5-0134/2003	
02/06/2003	Debate in Parliament		
04/06/2003	Decision by Parliament, 2nd reading	T5-0244/2003	Summary
16/06/2003	Act approved by Council, 2nd reading		
26/06/2003	Final act signed		
26/06/2003	End of procedure in Parliament		
15/07/2003	Final act published in Official Journal		

Technical information

Procedure reference	2001/0078(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2007/0198(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/5/16092

[Documentation gateway](#)

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0074/2002	26/02/2002	
Text adopted by Parliament, 1st reading/single reading		T5-0107/2002 OJ C 047 27.02.2003, p. 0089-0379 E	13/03/2002	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0134/2003	24/04/2003	
Text adopted by Parliament, 2nd reading		T5-0244/2003 OJ C 068 18.03.2004, p. 0148-0262 E	04/06/2003	Summary

Council of the EU

Document type	Reference	Date	Summary
Council statement on its position	05595/2003	24/01/2003	
Council position	15527/2/2002 OJ C 050 04.03.2003, p. 0001-0014 E	03/02/2003	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2001)0125 	13/03/2001	Summary
Modified legislative proposal	COM(2002)0304 	07/06/2002	Summary
Commission communication on Council's position	SEC(2003)0160 	07/02/2003	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2003)0420 	23/07/2003	Summary
Follow-up document	COM(2004)0863 	05/01/2005	Summary
Follow-up document	COM(2007)0250 	15/05/2007	Summary
Follow-up document	COM(2008)0192 	15/04/2008	Summary
Follow-up document	SEC(2009)0642 	06/05/2009	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary

EESC	Economic and Social Committee: opinion, report	CES1311/2001 OJ C 036 08.02.2002, p. 0010	17/10/2001	
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Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act
Regulation 2003/1228 OJ L 176 15.07.2003, p. 0001-0010 Summary

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 07/02/2003 - Commission communication on Council's position

The Commission supports the common position of the Council, which was adopted unanimously. The main elements of the Commission proposal are retained in the common position. Furthermore, most changes introduced by the Council strengthen or clarify the Commission proposal, without changing its substance. All amendments of the European Parliament accepted by the Commission in its amended proposal are included in the common position. Of the amendment retained, there have been partial adjustments which, however, maintain in all cases the underlying objective of the European Parliament's revisions.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 04/06/2003 - Text adopted by Parliament, 2nd reading

The European Parliament passed a resolution based on the report by Michael MOMBUR (EPP-ED, Germany). Compromise amendments were agreed with the Council. These include: - with regard to cross-border flows, the regulatory authorities of the Member States concerned may decide which of the Member States concerned will be the one of whom the control block will be considered a part; - network congestion problems will preferably be solved with non-transaction based methods, that is, methods which do not involve a selection between the contracts of individual market participants.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 05/01/2005

The European Commission has published its Annual Report on the Implementation of the Gas and Electricity Internal Market.

The new electricity and gas Directives were due to be transposed by Member States by July 2004 and the Regulation on cross border electricity exchanges also came into effect. The new rules are aimed at achieving to a competitive electricity and gas sector across the whole European Union as envisaged by the Lisbon Council objectives.

However, many aspects of implementation remain disappointing. In October 2004, eighteen Member States had to be sent a letter warning that they had still not fully notified to the Commission the legal measures taken to transpose the latest Directives. This delay is unsatisfactory since it is now clear that the provisions of the previous Directives have not been adequate to achieve the objective of competition, even for larger users. Such customers would normally be expected to negotiate with suppliers on a regular basis. However after five years of competition for electricity and over three years for gas, fewer than 50% have switched supplier in most Member States. In addition, many are unsatisfied with the range of services being offered. In many cases, customers have only been able to change to another domestic supplier with the result that penetration of national markets by foreign

companies is also disappointing in many cases, reflecting a lack of integration of markets and missing infrastructure links. In most cases, foreign suppliers represent less than 20% of market share.

Although electricity prices are lower than 1995 in real terms, they have increased in the last 18 months, partly due to increased prices for primary energy sources. At the same time, gas prices are higher than in 1995 due to the ongoing linkage with oil. Although such price fluctuations are normal, increases are unpalatable to customers where the prospects for changing supplier appear to be limited by regulatory barriers and where the negotiating power of customers is weak due to an unfavourable market structure. Particular concerns exist among the largest users that suppliers are failing to offer an adequate range of contract structures, especially longer term arrangements.

A key issue relates to the failure to fully integrate national energy supply into a wider European market. In this context it is vital for rules on cross border electricity exchanges to continue to be improved to ensure that existing infrastructure is utilised to its maximum possible extent. Likewise for gas, the adoption and implementation of the proposed Regulation is similarly important. New investment in infrastructure is also needed and progress in this regard remains slow, as was also noted in the Commission Communication on Energy Infrastructure and Security of Supply.

Secondly, Member States are still failing to deal with the issue of market structure. As has been highlighted in previous reports, the gas and electricity markets in too many Member States are dominated by one or two companies, and there is often inadequate capacity for cross border competition. It is imperative that solutions are found to such problems.

Thirdly, although much process has already been made in terms of unbundling of network operators and the introduction of regulated third party access, there are still certain aspects which remain unsatisfactory. A fully independent transmission system operator is crucial for a well functioning market. Likewise distribution system operators need to be adequately separated from supply companies to ensure cost reflective tariffs and the removal of any cross subsidies. The independence of regulators is crucial in this respect in order to ensure fair network access in terms of tariff levels and structure. In this respect the gas sector is measurably behind that for electricity.

A final group of issues which may tend to be an obstacle to the internal market is the continued existence of a regulated end user prices for electricity and gas alongside the competitive market and associated long term power purchase arrangements (PPAs). Although such controls are a valuable transitional measure during the initial phase of market opening, there are risks that such an approach will stifle competition, constrain investment and confuse and contradict unbundling measures.

The report states that Member States need to maintain their commitment to this objective in the decisions they make regarding the implementation of the Directives and restructuring of the industry. It is only by doing this that the objective of a competitive and secure market will be achieved. With this in mind, the issue of investment in infrastructure and the sound operation of networks, in support of the competitive market, remains a critical issue. Although some of these issues have been addressed the concerns which were expressed in previous Communications and the proposed Directive on Infrastructure and Security of Supply remain pertinent and progress, in some form or another, is required on this issue. The role of independent regulators remains a crucial component of the introduction of competition and their decisions relating to network tariffs and other important market rules will continue to shape the development of the market. In this context it remains important to ensure that authorities have sufficient resources and competences. Whether the improvements made under the Directives are adequate to achieve the objectives of the internal market remains to be seen, especially if Member States take a minimalist approach to the transposition of the current legislation. One thing that is certain is that in the new global environment of higher primary energy prices it is more important than ever for the Community to live up to its commitment to a competitive market.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 26/06/2003 - Final act

PURPOSE : to set the rules for cross-border exchanges in electricity. **COMMUNITY MEASURE** : Regulation 1228/2003/EC of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity. **CONTENT** : this Directive aims to enhance competition within the internal electricity market. This involves 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 interconnection between national transmission systems. This Regulation lays down basic principles with regard to tariffication and capacity allocation, whilst providing for the adoption of guidelines detailing further relevant principles and methodologies, in order to allow rapid adaptation to changed circumstances. The main points are as follows: - transmission system operators should be compensated for costs incurred as a result of hosting cross-border flows of electricity on their networks by the operators of the transmission systems from which cross-border flows originate and the systems where those flows end; - payments and receipts resulting from compensation between transmission system operators should be taken into account when setting national network tariffs; - charges for access to the network must be transparent and reflect actual costs incurred and be applied in a non-discriminatory manner. The charges must not be distance-related; - the precondition for effective competition in the internal market is non-discriminatory and transparent charges for network use including interconnecting lines in the transmission system. The available capacities of these lines must be set at the maximum levels consistent with the safety standards of secure network operation; - it is important to avoid distortion of competition resulting from different safety, operational and planning standards used by transmission system operators in Member States. Moreover, there must be transparency for market participants concerning available transfer capacities and the security, planning and operational standards that affect the available transfer capacities; - there are rules on the use of revenues flowing from congestion-management procedures, unless the specific nature of the interconnector concerned justifies an exemption from these rules; - methods to deal with congestion problems must provide correct economic signals to transmission system operators and market participants and be based on market mechanisms; - decisions and guidelines on tariffication and capacity allocation will be made by the Commission with the involvement of Member States' regulatory authorities. **ENTRY INTO FORCE** : 04/08/03. **DATE APPLICABLE** : 01/07/04.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 23/07/2003 - Commission opinion on Parliament's position at 2nd reading

The Commission states that it can accept all four of the Parliament's amendments since they provide helpful clarification to the text and leave the substance basically intact. The Council on 16 June 2003 adopted by unanimity all four of the amendments voted by Parliament.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 06/06/2002

The Council held a policy debate on the key elements of the proposal for a Directive aimed at accelerating the liberalisation of the electricity and gas sectors. It was informed of progress on the proposal for a Regulation on conditions for access to the network for cross-border exchanges in electricity. Following the discussion, the Council asked the Permanent Representatives Committee to examine the proposed Directive further so that it could be adopted if possible by the end of the year. The discussion also covered the following issues: - protection of final customers and universal service; - legal separation between the different activities; - activities in regard to non-eligible customers prior to total market opening; - principles relating to market opening; - regulatory tasks.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 15/05/2007 - Follow-up document

In presenting this report the Commission is fulfilling Article 14 of Regulation (EC) No1228/2003 to publish a report on the application of the Regulation. To recall, the Regulation's aim is to set fair rules for cross-border exchanges in electricity in a bid to enhance competition within the internal electricity market. In order to achieve this objective the Regulation establishes a compensation mechanism for cross-border flows of electricity, it sets harmonised principles on transmission charges and it establishes rules on the allocation of available capacities of interconnections between national transmission systems.

The development of cross-border trade volumes: Cross-border electricity flows in Europe have increased modestly year on year since market opening. On average, only 10% of electricity consumed in the EU crosses Member States' borders. Analysis indicates that there is scope for further integration of the regions towards a European market. Such a move will lead to a higher price convergence between regions with similar generation mixes and to a better use of arbitrage possibilities between regions with different generation mixes. Overall cross-border trade opportunities are far from being fully utilised.

Development of cross-border trading methods: New guidelines have split the EU into seven regions plus South East Europe. The guidelines oblige transmission system operators (TSOs) to operate a common co-ordinated capacity calculation and allocation system. A lot of effort is still needed in order to implement new arrangements, including those set out in the amended congestion management guidelines. Some progress has been made in developing access to intra-day cross-border trade. Both national regulators and the Commission will monitor closely implementation of the amended congestion management guidelines. The report also points out that the Commission is prepared to start infringement procedures in cases of non-compliance of the new guidelines.

Inter-TSO compensation mechanism: Progress on the inter-TSO compensation mechanism has been made on a voluntary basis through the Florence forum process with the first voluntary agreement being concluded in March 2002. The voluntary agreement between TSOs is based on a simplified method based on the reality of cross-border flows. The European Regulators' Group for Electricity and Gas (ERGEG) has worked on guidelines on ITC to be adopted by the Commission. However, by the end of 2006 no agreed method has been approved. The Commission is still considering whether the work of the ERGEG provides a sufficient basis to adopt guidelines with the assistance of the electricity cross-border committee.

Network access tariff harmonisation: Network tariffs for accessing the transmission network vary enormously. The average network tariff for a load connected to the transmission network (the L-charge) ranges from ca. €2/MWh (in Sweden) to ca. € 27/ MWh (Denmark East). Several factors explain these differences. In addition to differing infrastructure costs, these tariffs may or may not include losses, location signals, system services or charges not directly related to TSO activities. These other charges are mostly related to public service obligations such as support to renewable energy sources and combined head and power as well as stranded costs. Further tariff harmonisation is needed in order to have a better level playing field for the electricity market and it is one of the main issues addressed by Regulation 1228/2003. The draft guideline on transmission tariffs seeks to gradually diminish the spread of the G-charge. This is because the G-charge is more important regarding the level playing field than the L-charge.

Congestion: Congestion patterns have become more volatile, even if there is no uniform method to collect and publish data on the appearance of congestion. In the past the flows, often dominated by long-term contracts, remained relatively stable. Increased volatility can be seen as a sign of a better functioning market leading to increased trade in both directions over the interconnections. According to the Regulation, congestion revenues can only be used for guaranteeing capacity, building infrastructure or lowering the network tariff. Unfortunately, lowering the tariff has been the most common use of congestion revenues. Only in some cases have network investments been preferred – as in the Nordic countries and the Netherlands.

Access to cross-border electricity to end users: Borders between countries and control areas continue to act as important obstacles to true market integration. To address this problem a medium term target has been set the aim of which is to foster regional harmonisation of the market and to ensure that any new infrastructures is built in such a way as to ensure that market participants will be less hindered by borders than they are today. One example of an integrated, wholesale market is Germany and Austria.

Security of supply: The first year in which the Regulation entered into force, namely 2003, proved to be a difficult year for the security of the electricity supply. Italy suffered a major black-out in September 2003 due to problems in the inter-connection lines with Switzerland caused by a failure to limit the spread of the fault. A major black-out also occurred in Sweden and eastern Denmark. Less far-reaching blackouts occurred in 2003 in London and in Helsinki. The most recent black-out (November 2006) affected the whole Union for the Co-ordination for the Transmission of Electricity (UCTE) synchronous area. The incident originated in northern Germany but led to the splitting of the UCTE area into three parts and to approximately 10% of load shedding in the western area in order to preserve the integrity of the transmission networks. A recent ETSO report on generation adequacy indicates that there is no major concern for most of the European network until 2012. After 2012, the situation might become critical if investments are too slow.

Conclusions: The report concludes by noting that there has been a steady but modest increase in cross-border flows. The main driver for this increase is the possibility to trade between price areas with price differentials. The capacity calculation and allocation methods have developed, with possible further improvement to come as a result of the amended guidelines for congestion management as adopted in November 2006. However, there are signs that the transmission network sometimes operates close to its physical limits. The blackout in Italy in 2003 and in UCTE in 2006 showed how costly any incident in the European-wide transmission network can be.

The European market is increasingly based on a regional concept. This first developed naturally, following the physical realities of the network. With the establishment of the regions in the amended congestion management guidelines and with the development of the Electricity Regional Initiatives by ERGEG, the regional approach has received an official status. The regional approach should be viewed as a pragmatic tool to achieve an overall European market. There is no major reason why the implementation of the electricity market should vary a lot between the regions.

On a final point the Commission lists seven of issues that need to be addressed in future:

- 1) Security and reliability rules: rules between the TSOs to ensure the safe operation of the grid.
- 2) Connection rules: governing the relationship between the TSOs and the customers (generators, distribution system operators and big end-customers).
- 3) Rules for trading electricity: harmonisation of trading arrangements, timetables and products, including intra-day trade.
- 4) Transparency rules: detailed rules on data exchange and publication between market participants. Transparency rules are already addressed in the amended congestion management guidelines.
- 5) Balancing and reserve power rules: the aim of which is to seek further integration of the balancing and reserve power markets.
- 6) Data exchange and settlement rules: the aim of which is to seek further integration of the retail market through sufficiently harmonised data exchange and settlement rules.
- 7) Investment incentive rules including location signals: providing a European framework for efficient investment signals for both generation and network investments.

The need for and the level of detail of these rules is still to be discussed and further studies are needed in order to provide the necessary input. However, it has become evident that further integration of the internal market needs a coherent set of rules. Many of these rules already exist – but on a national basis or a company basis, with a differing oversight by national regulators. The incompatibility of these rules may be one of the biggest obstacles to market integration.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 15/04/2008

The Commission presented a report on progress in creating the internal gas and electricity market.

The last step on the road to competitive energy markets was achieved on 1 July 2007 with the full opening of national retail markets. From a legal perspective, all European consumers are now able to choose their supplier and benefit from competition. However, this report shows that, in practice, **market integration is still far from a success**. With very few exceptions, electricity and gas markets in the EU remain national in economic scope with limited competition.

Implementation of legislation: all Member States have met the deadline of 1 July 2007 for full opening of their gas and electricity markets. Restrictions to free and fair competition have, however, developed through the coexistence of open market segments and end-user supply price regulation. Some Member States have still not properly implemented the legal requirements of the Electricity and Gas Directives. This concerns, in particular, core areas of market liberalisation, such as regulatory oversight, unbundling and regulated supply tariffs as well as the communication of Public Service Obligations. ERGEG's (European Regulators Group for Electricity and Gas) monitoring, in 2007, of the implementation of the Electricity and Gas Regulation shows inadequate compliance in areas of core relevance for the development of liquid markets such as transparency and primary capacity allocation.

Market integration: market integration has still not developed to a sufficient extent. This is demonstrated by price differences, regional monopolies and persistent cross-border congestion between Member States, for example. Energy prices for industrial electricity customers in the EU are starting to converge in the Central and North Western EU areas but still differ by almost 100% in some cases. Cross-border trade is a key source of competitive pressure on prices. The lack of independence of network operators continues to be a barrier to adequate investment. Lastly, legal differences between Member States remain a barrier to market integration.

Concentration and consolidation: market structures on a national scale are still very concentrated. In addition, incumbents control essential infrastructure facilities, further increasing their market power. Between 2005 and mid-2007, the number of independent suppliers on the electricity market increased in 40% of the Member States where data was available. In 7 out of 21 Member States, no independent supplier is active on the national gas market. Retail markets are not yet well developed, mainly because of limited access to gas supplies for new entrants. Alongside highly concentrated national markets, the tendency towards consolidation and concentration continues.

Price trends: customers in the EU-15 Member States benefited from cumulative price savings from electricity liberalisation to the order of €60 billion over the period 1998 to 2004. These savings were partly countered by price increases in later periods. As competition is still limited, competitive pressures on prices are correspondingly weak. Moreover, prices mirror general trends, notably in oil prices, which increased by more than 50% between 2005 and 2007. Since market opening in 1998, Member States with ownership unbundled TSOs have experienced more positive price developments than Member States where the TSOs were and are still related to supply companies.

Independence of network operators: functional unbundling is still not effectively implemented in all Member States. This applies both to electricity and gas and to transmission and distribution system operators. Insufficient independence of network operators is reflected in underinvestment in network capacities and, in particular, in inadequate cross-border capacities. Legal unbundling has not been sufficient to cope with this effect.

Effective regulation by regulators: despite the Electricity and Gas Directives requiring regulators to hold a minimum set of powers, the unequal levels of regulatory powers across borders have not improved. Non-compliance with European legislation is often met by insufficient or ineffective penalties in national legislation. However, the "regulatory gap" remains a barrier to coordinated decision making across borders, which cannot be solved by the existing model of voluntary cooperation by ERGEG.

Customer dimension: while the rates of **switching** for larger customers continue to rise, most small business customers and households still have limited scope to exercise their right to choose. Electricity switching is at a high level in Iberian countries, the Czech Republic and Nordic countries and above average especially for large industrial customers in Germany, Austria and Luxembourg. In most other countries, the annual switching rate for households is about 1% or below. The picture is similar for gas, with the exception of Italy, where the rate is above 1%. Moreover, retail competition is distorted by regulated supply tariffs. In terms of **service quality**, market surveys have concluded that the level of satisfaction with the quality of electricity and gas services provided is generally good. Concerns that the introduction of competition would lead to a decline in service standards or problems in the provision of universal service have proved unfounded. The report notes that the coexistence of open energy markets and **regulated energy prices** is quite common among EU Member States: it exists in one third of the gas markets for at least one market segment and more than half of the electricity markets. The negative effects of regulated energy prices remain a major concern.

Security of supply: European electricity outlook reports drawn up in 2007 by the Group of European Electricity Transmission System Operators (ETSO) and European Gas Transmission System Operators suggest that no particular risk of power shortage is expected in the medium term. However, in terms of gas supply in particular, the European Union relies increasingly on imports. Therefore, the diversification of routes or sources plays a key role in reducing dependence on today's three major pipeline sources, Russia, Norway and Algeria. Electricity and gas networks are at the heart of a well-functioning European market. Obstacles still remain to the completion of the priority projects that have already been identified. For electricity, dependence on imports is lower. However, the dependence of power generation on gas, much of which is imported, is increasing.

To conclude, the report notes that despite some encouraging improvements, notably in cross-border coordination at regional level, major barriers to the efficient functioning of the market still exist:

- The insufficient implementation of European legislation remains a crucial factor. Improvement has to be driven by the Commission, Member States, regulators and industry together;
- At the same time, national regulators must be empowered with a view to ensuring proper implementation of legislation by stakeholders;
- Regulators themselves have to act on their own responsibility to encourage implementation of legal requirements. Harmonisation of regulatory best practice models across borders is certainly needed if practical barriers to cross-border trade are to be reduced;
- The industry must observe the legal requirements without compromise. Implementation of European legislation does not allow for negotiations;
- Lastly, regulated energy prices remain a major concern.

The Commission has therefore addressed these shortcomings in a legislative package, which it presented on 19 September 2007 (see also [COD/2007/0253](#) and [COD/2007/0197](#)).

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 06/05/2009

The Commission presents a Staff Working Document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity.

Directive No 2003/55/EC and Regulation (EC) No 1228/2003 are based on the general principle of a regulated access regime to gas and electricity infrastructure. Both legal acts, however, allow for exemptions from provisions enshrining this overall rule, as well as from provisions establishing ex ante and ex post tariff regulation.

This document provides information on the Commission's assessment of exemption decisions taken by national authorities according to Article 22 of the Gas Directive and Article 7 of the Electricity Regulation. It explains the general framework and analyses the assessment criteria, the information to be provided by the relevant authorities and conditions that may be imposed.

The experience with granting exemptions for new major infrastructure has shown that the conditions of Article 22 of the Gas Directive and of Article 7 of the Electricity Regulation are not always sufficiently clear to the national authorities and market participants, in particular the interpretation of the assessment criteria, the information that needs to be submitted and the conditions that may be imposed to meet the criteria. The Commission services have therefore decided to revise the interpretative note issued in 2004, and replace it by the current one.

The present document does not modify the general exemption policy regarding Article 7 of the Electricity Regulation and Article 22 of the Gas Directive but gives better guidance in the light of the practical experience gained since the publication of the previous note. The objective is to provide transparency and guidance to national authorities and market participants and to facilitate the procedures for assessing exemptions.

This document is not intended to restrict or change the criteria for awarding exemptions. Nor is it intended to give an exhaustive interpretation of the various assessment criteria that are applied in the light of the facts and circumstances of each individual case. It applies to all types of infrastructure eligible for an exemption according to Article 22 of the Gas Directive and Article 7 of the Electricity Regulation.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 13/03/2001 - Legislative proposal

PURPOSE: to present a Commission proposal for a Regulation of the European Parliament and of the Council, on conditions for access to the network for cross-border exchanges in electricity. **CONTENT:** the ultimate objective of the Electricity Directive is the creation of a real integrated single market, as opposed to a situation characterised by 15 more or less liberalised but largely national markets. This objective has not yet been achieved. It is true that cross-border trade - in terms of physical exchanges of electricity between countries - has been progressing over time and is currently equivalent to around 8% of total electricity production. However, this figure is still relatively modest when compared to other sectors of the economy. The Electricity Directive does not contain specific rules for cross-border transactions. However, this does not mean that this issue can be solved by relying exclusively on national measures. Against this background, the proposed Regulation includes the following provisions: - with regard to tariffication, provision for compensation payments to be received by transmission system operators hosting transit flows of electricity on their network, financed through contributions of those transmission system operators (TSOs) causing these transit flows; - harmonisation of charges for access to national systems; - principles regarding the allocation of available interconnection capacity; - guidelines detailing further relevant principles and methodologies with regard to tariffication and congestion management; - empowerment of the Commission with certain regulatory competencies. In conclusion, this draft Regulation is an important part of the Commission strategy to complete the internal electricity market. The financial implications of the Regulation for the Community budget would amount to around EUR 850 000 per year. In the year 2002, these financial needs would be made available under the Energy Framework Programme (ETAP programme). As regards subsequent years, a proposal for a new Energy Framework Programme, succeeding the current one which expires in 2002, will be made in 2001, in accordance with the work programme of the Commission for 2001. This new proposal will take into account the financial needs for the action in the coming years.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 14/05/2001

The Council held a debate on completing the internal markets for electricity and gas. The Presidency concluded the debate by noting the following : - there is broad consensus that the market opening concerning both gas and electricity should be actively pursued and accelerated. To this end, the Swedish Presidency, in consultation with the incoming Belgian and Spanish Presidencies, will take initiatives to find ways and means within the existing Council framework to accelerate this process and will come back with appropriate ideas to be presented to the Council; - quantitative measures related to market opening (such as thresholds) and qualitative aspects (such as unbundling, Third Party Access and regulators, potential socio-economic impact) are interdependent; - as always, when deciding on measures to be taken at Community level, the cost of the various options needs to be assessed; - the principle of unbundling meets general agreement, whereas its concrete modalities still have to be clarified; unbundling of the gas sector may not necessarily follow the same model/approach as for electricity; - non discriminatory third party access to the grid without transparent and published tariffs is not feasible; public service obligations need to be taken into account when defining the practical modalities of tariffication systems; - to ensure improved security of supply through further integration at Community level, infrastructure requirements need to be carefully assessed, with particular regard to the revised TEN programme; - benchmarking and monitoring are useful tools for ensuring a proper assessment of progress and follow-up, in particular with respect to public service obligations and security of supply and congestion management, which can be facilitated by increasing the transparency on available interconnection capacity; - a fully functioning integrated single market for gas and electricity cannot be achieved without efficient cross-border trade. Rules to that effect should be sought at an appropriate level, which are based on simplicity, non-discrimination, transparency and effective reflection of costs, allowing for proper allocation signals and ensuring adequate reciprocity; -

when deciding on the most appropriate way to deal with trade (in electricity) with third countries proper consideration should be given to environmental aspects, reciprocity and legal implications; - although a legally binding regulatory framework is required to address several of the issues raised by the achievement of the internal market, the Florence and Madrid processes have demonstrated their usefulness and we expect them to continue to do so.

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2001/0078(COD) - 13/03/2002 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the report by Mr Peter Michael Mombauro (EPP-ED, D) on the conditions for access to the network for cross-border exchanges of energy. In order to avoid distortions in cross-border trade in electricity, the charges imposed on generators by the relevant system operators for access to the transmission system should be harmonised. The charges for access to the networks should be neither distance-related nor transaction-based. It would not be appropriate to apply a specific tariff to be paid only by exporters or importers in addition to the general charge for access to the national network. In order to avoid distortions in the cross-border trade in electricity, the charges imposed on generators by the relevant systems operators for access to the transmission system shall be harmonised. In addition, the Committee of European Energy Regulators shall have advisory status and act independently. The Commission shall monitor the implementation of this Regulation. It shall submit to the European Parliament and the Council no more than three years after the entry into force of this Regulation a report on the experience gained in the application of the regulation, to enable the European Parliament and the Council to examine whether provisions should be adopted for the further improvement of trading in electricity.

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2001/0078(COD) - 03/02/2003 - Council position

All amendments of the European Parliament accepted by the Commission in its amended proposal are included in the common position. The main changes made by the Council are as follows: 1) Recitals : the Council added two recitals, one on the importance of third countries complying with the rules of the Regulation, the other outlining the basic principle of locational signals; 2) Subject-matter and scope : the Council has slightly changed the description of the subject and scope of the text. This Regulation shall apply to cross-border flows of electricity (instead of transit flows). This definition applies to physical flows on a transmission network of a member State resulting from the impact of the activity of generators and/or consumers outside of that Member State on its transmission network. The Council also adds that the specificities of national and regional markets shall be taken into account; 3) Definitions : the common position brings more precision to the definitions, without changing their substance, and includes a few further definitions in order to bring greater clarity to the text. Furthermore, it has complemented the definition of "cross-border-flows" by adding the possibility of an exemption to be applicable in case the transmission networks of two or more Member States form part of a single control block; 4) Compensation mechanism : the Council considered necessary to provide for payments to be made by both exporting and importing TSOs. The common position stipulates that compensations for cross-border flows, which transmission system operators will receive, shall be calculated on the basis of the costs of the infrastructure "used" for cross-border flows. The Commission had proposed "build" for cross-border flows; 5) Charges for access to networks : access charges shall be transparent and reflect the costs incurred in so far as corresponding to an efficient and structurally comparable network which notably reflect amendment made by the European Parliament. The provisions of this Article are not substantially changed, except for some useful clarification with regard to the provision of locational signals by network access charges. In particular, the text makes it clear that, firstly, the Regulation only deals with signals "at the European level" and, secondly, the principle of locational signals shall not prevent Member States from applying charges on consumers which are identical throughout the country; 6) Principles of congestion management : - curtailment procedures have to be applied in a non-discriminatory manner; - market participants must inform the relevant TSOs a reasonable time ahead of the operational period whether they intend to use allocated capacity and allocated capacity not used shall be reattributed to the market in an open, transparent and non-discriminatory manner; - transactions that relieve the congestion shall be taken under due consideration of security of supply. 7) New interconnectors : in order to facilitate new infrastructure investments, the Council made clear, by analogy with the relevant provisions of the common position on the (new) Gas Directive (see COD/2001/0077A), that the new direct current interconnectors may, under certain strict conditions, be granted exemptions from Article 6, paragraph 6, from the requirements of third party access and the fixing of tariffs/methodologies by regulatory authorities. The provision also strengthens the Commission's role in vetting Member States' decisions on exemptions. The restrictive way of interpreting these provisions is confirmed by a Commission statement; 8) Guidelines : - details of methodologies have to be set as regards the quantity of cross-border flows hosted and the designation of the amounts of such flows; - details of the treatment in the context of the inter-TSO compensation mechanism of electricity flows originating or ending in countries outside the EEA have to be set; - they shall make provision for appropriate and efficient harmonised locational signals at European level. 9) Provision of information and confidentiality : the only change in substance concerns the right of the Commission to seek necessary information directly from undertakings concerned: the Council felt that the Commission should have this right only in case the Member State concerned, or its regulatory authority, fails to provide the information in a time limit fixed by the Commission. Furthermore, the Council limits the possible addressee of a request for information to "undertakings" only, whilst the Commission proposal included also "associations of undertakings" It should also be noted that : - the Council has clarified the role of Member States in the further development of the Regulation by retaining a regulatory procedure for the adoption and amendment of various guidelines, related to the mechanism of compensation between TSOs, capacity allocation, harmonisation of the principles for the setting of charges; - the Commission shall monitor closely the implementation of this Regulation, in particular as regards non-discriminatory and cost-reflective network access conditions and the putting into place of effective locational signals; - this Regulation shall apply from the same date as the first stage of market opening provided for in the common position on the Gas and Electricity Directives, i.e. 1 July 2004.

Energy: internal market in electricity, cross-border exchanges, access to network. 'Electricity Regulation'

2001/0078(COD) - 07/06/2002 - Modified legislative proposal

The European Parliament agrees with the main elements of the Commission's proposal but has formulated a number of amendments. Out of the 34 amendments adopted, the Commission has accepted 6 in the form proposed by the Parliament or with some redrafting. Two amendments were accepted in part. The remaining 16 were rejected. A large number of the changes made to the initial text to reflect developments in the Council are clarification of or additions to the wording of provisions, without changing their substance. More substantial changes are, however, the following: - in the initial Commission proposal the inter transmission system operator compensation mechanism (Article 3) was based on the concept of "transit flows" of electricity, whereas in the amended proposal the concept is "cross-border flows". Work undertaken in the context of the European Electricity Regulator Forum has demonstrated that this concept is likely to produce results that are more cost-reflective. - article 3 (2) provided for compensation payments to be made by exporting and/or importing transmission system operators. This has been changed to exporting and importing transmission system operators. - in Article 3(6) the description of the method to calculate "costs of transits" (now: costs of cross-border flows, see above) has been further detailed. This changes reflects the outcome of the 8th European Electricity Regulatory Forum. - in Article 4(4) it is now stated clearly that export /import tariffs are excluded, provided that appropriate and efficient locational signals are in place. In the initial proposal the concept of locational signals formed already part of the provision, through a reference to paragraph 2 of Article 4. The substance of the two Articles dealing with Comitology Committees (Articles 12 and 13) has remained unchanged. However, the two Articles have merged into one Article 12. Among the amendments accepted in part or in principle by the Commission, these: - concern the recital stating that there should be no specific network access charges on exporters and importers and suggests some clearer wording; - concern the treatment of so-called "merchant interconnectors" in the Regulation; - setting up a Committee of European Energy Regulators, which would have an advisory status and would have respective advisory competencies; - this amendment suggests a monitoring and reporting requirement for the Commission and can be accepted in substance. Finally, the Commission rejects the amendments relating to: - the amendments seeking to take out all references to "national regulatory authorities" in the Regulation, suggesting to chose a more neutral terminology, such as "competent authority"; - the exemption of embedded generation, i.e. generation directly connected to the distribution network, from certain network charges under national tariffication systems; - allowing operators of interconnectors to use rents resulting from the allocation of interconnector capacities to compensate market operators for capacity curtailments; - the amendment that suggests that the regulatory committee procedure foreseen in the Regulation would be applicable only for four years and that after this period the issue would be reconsidered by Parliament and Council, on the basis of a Commission proposal; - the amendment suggests linking the entry into force of the Regulation to the entry into force of the directive amending the existing gas and electricity directives.