

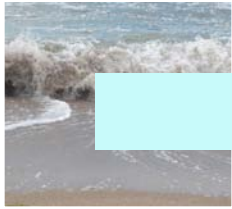
Executive Exchange on Coordinated Cross Border Transmission of Electricity – an Examination of the European Union

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European Union: current legislation (2nd package) and legally non-binding initiatives



Directive 54/2003

promotes the separation of the network operation activities by the purely commercial as the generators and suppliers are performing, as well as the competition in generation and supply provides for regulation of monopolistic activities as transmission and distribution.

- fair and transparent conditions for access to the networks,
- fair, equidistant, transparent and nondiscriminatory market mechanisms,
- the freedom of the consumer to choose its supplier,
- fair and non-discriminatory treatment of the consumer,
- calendar for market opening: 1.07.2004 for industrial customers and 1.07.2007 for household consumers

Regulation 1228/2003

aims to ensure the harmonized principles able to support fair rules for cross-border exchanges in electricity, therefore to enhance the competition within the Internal Electricity Market.

- a compensation mechanism for cross border flows of electricity is established,
- harmonized principles on transmission charges and
- rules on allocation of available capacities of interconnections between national transmission systems.

Guidelines on Congestion Management

Regulators Group for Electricity and Gas) proposed guidelines on congestion management for cross border electricity exchanges as a basis for the updated annex 1 of the 1228/2003 Regulation adopted and entered in force 1.12.2006.

Electricity Regional Initiative

to support the regional integration, ERGEG launched in February 2006 the **(ERI)** to deploy efforts in areas as transparency, access to capacity, market integration.

The main principle of the regional initiative was to gather in the perimeter of each region defined by the annex 1 of the 1228 regulation the main stakeholders (regulators, TSOs, PXs, market participants) under the coordination of the RCC (Regional Coordination Committee) chaired by a lead regulator. It is a voluntary framework, non-legally binding.



European Union. Review of implementation.



Stage of the Directive (EC) 54/2003 implementation

January 2007, set of conclusions on the progress registered, provided by the Commission (“An energy policy for Europe”): positive results and required further efforts for improvement.

Reference made to the results of the inquiry process deployed throughout 2005 – 2006 in the electricity sector in terms of competition.

“Meaningful competition does not exist in all Member States”

The outstanding issues:

- ensuring non-discriminatory access to networks, by providing stronger **unbundling requirements**;
- creating a framework to support the **co-ordination between transmission system operators**;
- improvement of the **regulation of network access** at national and EU level,
- enhancing the **role of the national regulators** and implementing a framework to support the **co-ordination of regulators at EU level**;
- reducing the scope for unfair competition, improving the **requirements for transparency**;
- providing a **clear framework for investment** in generation plant / gas import and transmission infrastructure;
- efficiently approaching several aspects related to the **households and smaller commercial customers**, as **DSO unbundling**;
- the household market segment (**consumer protection and energy poverty**).

The major coordinates of the action plan

- to further unbundling;
- to ensure effective regulation;
- to accelerate the harmonization of the technical standards necessary to enable cross border trade to work effectively;
- to establish a new single body at EU level or, at a minimum, through a European network of independent regulators;
- to establish a new Community mechanism and structure for Transmission System Operators, responsible for co-ordination.

Stage of the Regulation (EC) No 1228/2003 implementation

Communication from the Commission to the Council and the European Parliament. Report on the experience gained in the application of the Regulation (EC) No 1228/2003. "Regulation on Cross-Border Exchanges in Electricity". 15 May 2007.

- Not all covered countries are having **reliable price signals**.
- The actual status is influenced by the **lack of integration** of the wholesale and balancing markets.

The regional integration is awaited to lead to a **higher price convergence** between the regions with various generation structures. Improvement is expected to be generated related to the use of the opportunities for cross-border trade,



The third package of legislative proposals (1)



Amendments to the (EC) 54/2003 Directive

- separation of production and supply from the transmission networks activities;
two options:
 - ownership unbundling (one company can not own both the transmission and generation and/or supply activities),
 - “independent system operator” (for existing vertically integrated companies to keep the networks ownership but to provide for the assets operated by a completely independent company or body).
- facilitation of the cross-border trade;
- new provisions as safeguards for EU network companies in relation with acquisition by third countries;
- enhancement of effectiveness of national regulators;
- promotion of the cross border collaboration and investment;
- greater transparency;
- increased solidarity.

Amendments to the Regulation (EC) No 1228/2003

- Facilitation of the emergence of well functioning and transparent cross-border retail market and a well functioning and transparent wholesale market;
- Establishment of the European Network of Transmission System Operators for Electricity to ensure
 - the optimal management and
 - sound technical evolution of the European electricity transmission network through the cooperation of the all transmission system operators at Community level;
- Main tasks of ENTSO:
 - draft of technical and market (?) codes,
 - common network operation tools and research plans,
 - 10-year investment plan;
 - The monitoring of the implementation of the technical and market codes by ENTSO;
- Establishment of the regional cooperation within the European Network for Transmission System Operators for Electricity;

“Provision of information” article is amended to provide a broader content of the information collected and distributed by TSOs.



The third package of legislative proposals (2)



We have to observe that

- amendments to the (EC) 1228/03 Regulation were limited to the content of the regulation itself, not addressing also the annex 1. Sensitive issue of the 7 regions' perimeter definition was probably one of the reasons to not open discussions upon the first annex content;
- The criteria regarding this perimeter definition were never outlined. However, the evident reason of several countries' presence in more regions is to ensure support to the regions' connection through so called "overlapping country" principle;
- Obviously this principle used to define the regions' perimeter was not equally respected and consistently implemented in the wording of the annex. The principle, at least in the current interpretation of the Commission is asking the regions be connected not by member states' borders but by these "overlapping countries. The common understanding that an overlapping country is implementing on the borders belonging to the different regions different procedures according mechanisms developed by these regions' countries is not reflected by the wording of the article 3.2 of the annex 1.



Reactions to the 3rd package (1)



European Parliament

Two main reports on electricity amendments:

- Eluned Morgan (UK): report regarding the amendments to (EC) 54/03 Directive (the most sensitive aspects are addressing the energy poverty and social protection and the requirement to empower the regulator to provide plans to limit until 2020 the maximum market share to 20%);
- Vidal Quadras (Sp) report regarding the amendments to the (EC)1228/03 Regulation is mainly requiring more details regarding the process of the technical and commercial codes design and related consultation process.

Member states

Part of European Union members approved the concept of the ownership unbundling, but eight countries proceeded to claim against this provision of the 3rd package considering it mainly not enough justified, determining damages and breaching the constitutional law and the principle of free movement of capital, drafting the principles of a substitute solution, so called “third way”. A letter signed by the ministers of economy from the eight Member States was sent to the European Parliament by the French Permanent Representation to the Parliament.

Disharmony between Parliament (supporting full unbundling) and the Council of Ministers (compromise advocating)



Reactions to the 3rd package (2)



EFET

Especially welcoming:

- Deeper unbundling of monopoly transmission infrastructure from production, import and supply businesses
- Greater independence of individual energy regulators
- Creation of a regulatory agency at EU level to foster deeper collaboration among national regulators to solve remaining obstacles to cross-border market access
- Measures to improve transparency of information.

However, expressing following requests:

- Precise criteria to promote appropriate regional integration of grid operation across national frontiers
- The introduction of regulatory incentives, to encourage TSOs or ISOs to facilitate transmission access between their systems
- A transition away from separate, national renewable production subsidy regimes towards harmonized market-based mechanisms
- A prohibition on fixing energy prices payable by non household customers by regulatory means

EURELECTRIC

Positive issues:

- The proposal of having independent national regulators with harmonized powers, with a clear European approach;
- The establishment of a European Agency for the Cooperation of Energy Regulators (ACER);
- The similar approach taken for gas and electricity as a driver to facilitate the competitive sourcing of gas for electricity generation;
- The priority use of congestion rents for maintaining or increasing interconnection capacities;
- The initiative of creating a retail forum as a way to build consensus on the further development of retail markets.

Warnings:

- the package still lacks a real impetus towards market integration;
- there is too much focus on national issues and not enough on how integrated market will be achieved.
- Furthermore, the package only partially addresses its own assigned objectives, namely the development of properly functioning and competitive energy markets, facilitation of investment in generation and infrastructure and the guarantee of security of supply;
- EURELECTRIC doubts that the conclusions of the impact assessment document are fully reliable.



South East Europe: current legislation (EC Treaty).



The Treaty establishing the Energy Community in South East Europe

- entered into force in 1 July 2006;
- signed in 25 October 2005 by the European Union and by the following States from the South East Europe: Republic of Albania, Republic of Bulgaria, Former Yugoslav Republic of Macedonia and UNMIK, Republic of Romania, Republic of Croatia

The signatory countries committed to implement the *acquis communautaire* on energy, environment, competition and renewables.

The ECSEE *acquis* is related to the EU legislation: (EC) 54/03 Directive and (EC)1228/03 Regulation

Through its Annex I, the Treaty set a calendar for the signatory countries related to the implementation of the related EU legislation:

Related to electricity,

- each Contracting party shall implement the Directive 54/2003 and the Regulation 1228/2003 within 12 months after the Treaty' entrance into force (1 July 2006);
- each Contracting Party must ensure that the eligible customers (as considered by the Directive 54/2003) are, from 1 January 2008 - all non-household customers and from 1 January 2015 - all customers.



SEE regional market. Review of implementation.



Energy Community Secretariat briefed on the status of the implementation of the Treaty for electricity, as status registered in September 2007.

General progress was made, at national level, in areas as:

- development of the primary legislation,
- unbundling (accounts, legal in transmission),
- public service provisions,
- third party access (transmission),
- authorization for new infrastructure,
- overall wholesale market organization;

The implementing status of the (EC) 54/03 Directive by the signatory states that are not members of the EU (respectively without Bulgaria and Romania) is requiring more efforts regarding:

- the technical rules,
- the unbundling (in distribution and supply, respectively in generation),
- the retail market, the tariff reforms,
- the security of supply,
- the protection of vulnerable customers.



The non legally binding initiative and the envisaged (EC) 1228/03 Regulation update



A joint meeting CEER – ETSO in September 2007 approached the possible amendment of the annex 1 of the (CE) 1228/03 Regulation in order to provide a position for Romania and Bulgaria within EU specific legislation after accession in EU.

The two countries are not included now in any of the 7 existing regions. Is debatable if the two countries may be included in the Central Eastern region, as well as it is not yet decided if an 8th region as amendment of the CMG (annex 1 1228/03) may include signatory countries of the EC treaty not being EU countries: the adhering parties.

The ERGEG Regional Initiatives Annual Report - February 2008 envisages the possibility for the non EU member states to be included in the 8th region but it seems to be in contradiction with the opinion of the legal department of the Commission, expressed during September meeting.

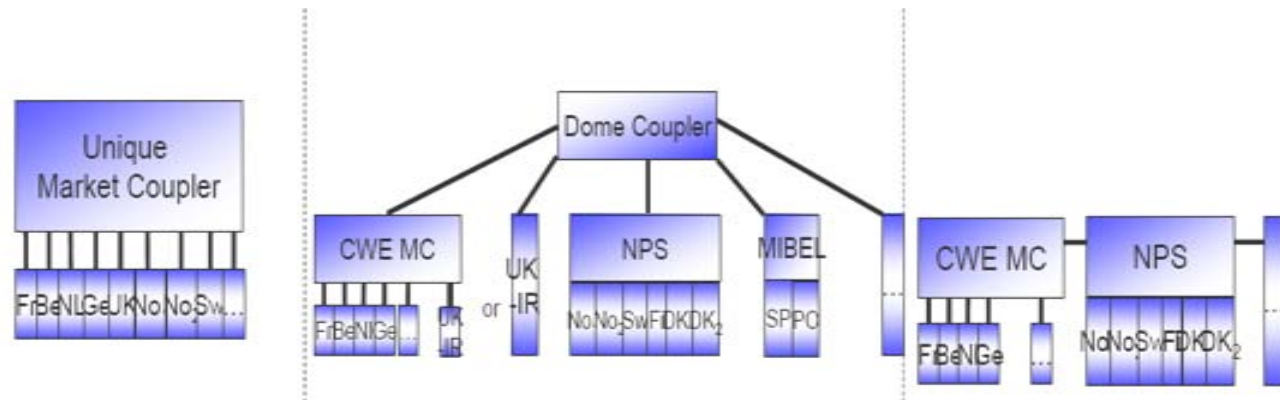
According the article 11 of the EC Treaty the applicable acquis in SEE was including the version 2003 of the 1228 regulation, not the 2006 version with updated annex. Consequently, the Ministerial Council of the Energy Community decided in 27.06.08 on implementation of Commission Decision of 9 November 2006 amending the Annex to Regulation (EC) No 1228/2003.

This decision is addressing a perimeter containing the Adhering Parties, the territory under the jurisdiction of the United Nations Interim Administration Mission in Kosovo, the territories of EU members: Bulgaria, Greece, Hungary, Romania and Slovenia, Italy with regard to the interconnections between Italy and the Adhering Parties by asking a common coordinated congestion management method and a procedure for the allocation of capacity to the market at least yearly, monthly and day-ahead to be applied by not later than 31 December 2009.

Role of the power exchanges; the interim report ETSO-EUROPEX



The XIVth European Electricity Regulatory Forum held in September 2007 resulted in requiring ETSO and EuroPEX to prepare a common discussion paper addressing implementation of regional and interregional capacity allocation methods, with focus on governance aspects, the other stakeholders being also invited to contribute to this joint effort.

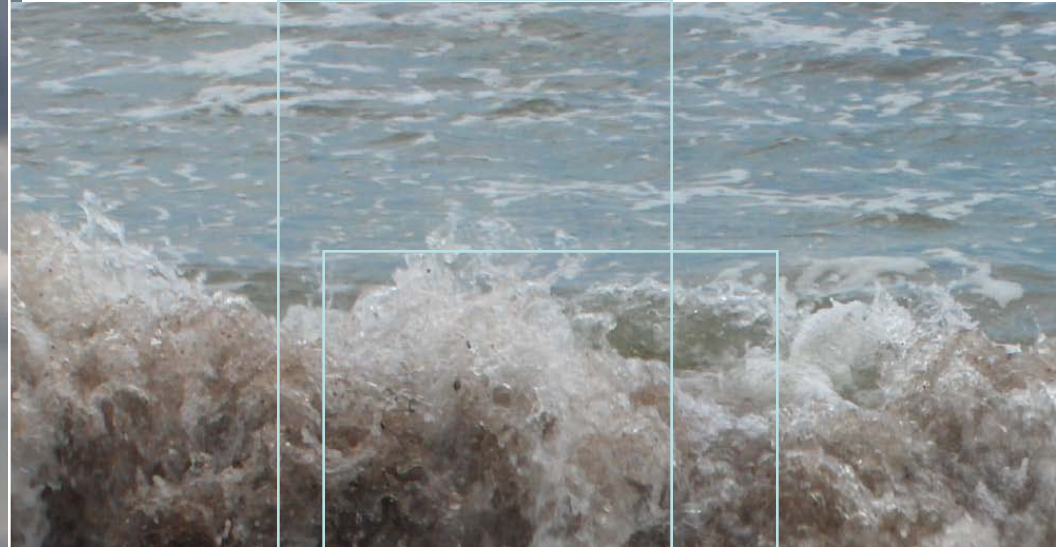


This represents the recognition of the leadership role of the power exchanges in implementation of reliable competitive wholesale markets.

The Power Exchange represents an infrastructure company for the wholesale market, able to provide it with an official price for electricity, set as transparent result of competition within the market and aimed to be consolidated as a reference price for the bilateral wholesale market and for the financial (derivatives) power market, as well as for the retail power market when opened for all end-user customers.

It would therefore offer the trading environment for the regional power market and the support for all national efforts, investments and commitments streamlined at regional level.

We like to consider the lack of references in the 3rd package to the power exchanges is due to the large diversity of the power exchanges ownership, governance and regulatory framework.



Thank You for attention !

