



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

amending Regulation (EC) No 1228/2003 as regards the date of application of certain provisions to Slovenia

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Relevant provisions of the act in question

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 (hereinafter referred to as the “Electricity Regulation”) aims at setting fair rules for cross-border exchanges in electricity, thus enhancing competition within the internal electricity market, taking into account the specificities of national and regional markets. This will involve the setting of harmonised principles on the allocation of available capacities of interconnections between national transmission systems”.

According to Article 6, paragraph 1 of the Electricity Regulation, “network congestion problems shall be addressed with non-discriminatory market based solutions which give efficient economic signals to the market participants and transmission system operators involved”.

The Electricity Regulation contains in annex “Guidelines on the management and allocation of available transfer capacity of interconnections between national systems”. The rules contained under points 1.- 4. of the chapter “General” in these guidelines are directly linked to the general provision of Article 6, paragraph 1, and provide further detailed rules on its implementation.

In accordance with its Article 15, the Electricity Regulation shall apply from 1 July 2004.

2. Scope and justification of the amendment

The Republic of Slovenia has submitted to the Commission a request for amendment of the Electricity Regulation, which would allow Slovenia to continue operating its current system of congestion management at the interconnections with Austria and Italy until 1 July 2007. At the moment, half of the total available capacity of the two interconnections in question is allocated by Slovenia on the basis of this system. In fact, according to an arrangement between the transmission system operators concerned, the other halves of the total capacity are allocated by the Italian respectively the Austrian system operator.

Under the current Slovenian system the available capacity, in case total demand for capacity exceeds the capacity available (congestion), is allocated to applicants for capacity on a pro-rata basis (pro-rate curtailment of the requests for capacity). The capacity is allocated free of charge. Eligible for applications of capacity are Slovenian consumers (Austrian border) and respectively Slovenian electricity producers (Italian border). A minimum of 1 MW must be requested by applicants (which de facto excludes on the consumer side small consumers, notably households).

Such a system cannot be considered a non-discriminatory, market based solution in the sense of the Electricity Regulation.

Slovenia has provided the following justification of the request:

- With regard to the interconnection with Austria the pro-rata allocation has resulted in allocation of capacity to large, energy intensive industrial consumers located in the north of the country, notably aluminium and steel producers. If the capacity is allocated on the basis of market mechanisms instead, for instance auctioned, it would

no longer be made available free of charge. The companies in question would thus see their cost of production increase, which would make them uncompetitive in the short term and endanger the currently implemented final phase of their restructuring-process.

- With respect to the interconnection with Italy the allocation allows electricity producers to sell part of their production on the Italian market and benefit from the higher price level for electricity in Italy, compared to Slovenian prices. If the capacity is no longer allocated free of charge but at a price resulting from a market mechanism the additional cost would be close to the current price difference between the Italian and the Slovenian market. Notably one producer - the largest electricity producer in Slovenia – has to bear high costs arising from investment in environmental protection, necessary to meet EC acquis.

3. Proposal of the Commission

The Commission finds it appropriate to amend the regulation as requested by Slovenia.

Slovenia has invoked reasons which justify such a transitional period. Furthermore - and most importantly - its practical impact on the functioning of the internal electricity market would be very small. This is notably due to the very limited usable capacity which is available at the interconnections between Slovenia and Austria, and respectively Italy, of which only 50% are allocated by Slovenia.

Concretely, around 300 MW (Italian border) and respectively 250 MW (Austrian border) of the total capacity are allocated by Slovenia. These capacities are very small, compared – for instance - to the total installed capacity for electricity production of the three Member States concerned: Italy around 77.000 MW, Austria around 18.000 MW and Slovenia around 13.000 MW.

This situation is unlikely to change before 1 July 2007. Whilst there are concrete plans to extend the capacity of the two interconnections concerned, the state of these projects is such that no significant extension of the current capacity can be expected before 1 July 2007.

As regards the impact on the Slovenian market, it is true that smaller consumers are under the current system de facto excluded from access to notably the Austrian interconnector. However, it should be noted that households are not concerned since the Slovenian government does not intend to open the markets for households before 1 July 2007, the deadline foreseen in Directive 54/2003 for full market opening.

In conclusion, the Commission suggests amending the Electricity Regulation in such a way that Article 6 (1) and the related provisions of the Guidelines apply in Slovenia only from 1 July 2007, as far as the capacity of an interconnection is allocated by the Slovenian side.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the Opinion of the European Economic and Social Committee²,

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

Whereas:

- (1) Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity⁴ aims at setting fair rules for cross-border exchanges in electricity.
- (2) According to the second paragraph of Article 15 of Regulation (EC) No 1228/2003, that Regulation shall apply from 1 July 2004.
- (3) In accordance with Article 6(1) of Regulation (EC) No 1228/2003, network congestion problems are to be addressed by means of non-discriminatory market based solutions which give efficient economic signals to the market participants and transmission system operators involved.
- (4) The Guidelines on the management and allocation of available transfer capacity of interconnections between national systems, annexed to Regulation (EC) No 1228/2003, contain in their first chapter entitled "General", in paragraphs 1 to 4, rules which are directly linked to the general principle contained in Article 6 (1) of that Regulation.
- (5) Slovenia has requested a transitional period for the application of Article 6 (1) and the related provisions in those guidelines until 1 July 2007.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ L 176, 15.7.2003, p. 1.

- (6) Slovenia has demonstrated that without a transitional period certain Slovenian energy intensive industries would be adversely affected by higher prices for electricity imported from Austria and certain electricity producers by lower incomes from export sales to Italy. That situation would impede the ongoing efforts of the industries concerned to restructure and respectively comply with Community acquis applicable to electricity production.
- (7) The reasons provided by Slovenia justify a derogation. Furthermore, due to the small interconnection capacity of the two interconnections concerned and given that that situation is unlikely to change before 1 July 2007, the practical impact on the internal market of such a derogation will be very small.
- (8) The derogation should be limited to what is strictly necessary in view of the Slovenian request. It should, therefore, only cover the part of the interconnections allocated by the Slovenian transmission system operator and apply only insofar as such capacity does not exceed half of the total capacity available.
- (9) Regulation (EC) No 1228/2003 should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

In Article 15 of Regulation (EC) No 1228/2003, the following third paragraph is added:

“As regards interconnections between Slovenia and neighbouring Member States, Article 6 (1) as well as rules 1. to 4 contained in the chapter entitled “General” of the Annex shall apply from 1 July 2007. This paragraph shall apply only to the interconnection capacity which is allocated by the Slovenian transmission system operator and only insofar as such capacity does not exceed half of the total available interconnection capacity.”

Article 2

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

It shall apply from 1 July 2004.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President