Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging (Text with EEA relevance)

COMMISSION REGULATION (EU) No 838/2010

of 23 September 2010

on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003[(1)], and in particular the first sentence of Article 18 (5) thereof,

Whereas:

(1) Commission Regulation (EU) No 774/2010 of 2 September 2010 on laying down guidelines relating to inter-transmission system operator compensation and a common regulatory approach to transmission charging[(2)] establishes 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. However, that Regulation will expire on 2 March 2011.

(2) In order to ensure the continuity of implementation the inter-transmission system operator compensation mechanism, new guidelines specified in Article 18(1) and (2) of Regulation (EC) No 714/2009 of 13 July 2009 should be adopted which reflect the institutional framework established by that Regulation. In particular, the Agency for the Co-operation of Energy Regulators (hereinafter 'the Agency'), established by Regulation (EC) No 713/2009 of the European Parliament and of the Council[(3)] should be responsible for monitoring the implementation of the inter-transmission system operator compensation mechanism.

(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 or from territories 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-

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transmission system compensation Mechanism on an equivalent basis to transmission system operators from Member States.

(5) It is appropriate to allow 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 to enter into multi-party agreements with the transmission system operators in the Member States which enable all parties to be compensated for the costs of hosting cross-border flows of electricity on a fair and equitable basis.

(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) The Union-wide assessment of electricity transmission infrastructure associated with facilitating cross-border flows of electricity should be carried out by the Agency as the body responsible for coordinating the activities of regulatory authorities who must carry out a similar function at a national level.

(9) Transmission system operators in third countries should face the same costs for using the Union transmission system as transmission system operators in Member States.

(10) 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.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Committee set up by Article 46 of Directive 2009/72/EC of the European Parliament and of the Council[(4)],

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 for access to the transmission system shall be in accordance with guidelines set out in Part B of the Annex.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

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It shall apply from 3 March 2011.

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

Done at Brussels, 23 September 2010.

For the Commission

The President

José Manuel BARROSO

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ANNEX

PART A

Guidelines on the 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) set up in accordance with Article 5 of Regulation (EC) 714/2009 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 compensation for:

(1) the costs of losses incurred national transmission systems as a result of hosting cross-border flows of electricity;

and

(2) the costs of making infrastructure available to host cross-border flows of electricity.

1.3. Contributions to the ITC Fund shall be calculated in accordance with points 6 and 7.

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

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 as soon as possible, and at the latest within six months of the end of the period to which they apply.

1.4. The Agency shall oversee the implementation of the ITC mechanism and 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 the Agency in this task and shall provide the Agency with all information necessary for this purpose.

Each transmission system operator shall provide ENTSO for Electricity and the Agency with all information necessary for the implementation of the ITC Mechanism.

1.5. 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.

1.6. Transit of electricity shall be calculated, normally on an hourly basis, by taking the lower of the absolute amount of imports of electricity and the absolute amount of exports of electricity on interconnections between national transmission systems.

For the purpose of calculating transits of electricity the amount of imports and the amount of exports at each interconnection between national transmission systems shall be reduced in proportion to the share of capacity allocated in a manner which is not compatible with Point 2 of the guidelines on congestion management set out in Annex I of Regulation (EC) No 714/2009.

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Notwithstanding the provisions of the second subparagraph of this point imports and exports of electricity on interconnections with third countries to which the provisions of point 7.1 apply shall be included in the calculation of transit of electricity.

1.7. For the purposes of this part of the Annex, the net flow of electricity shall mean the absolute value of the difference between total exports of electricity from a given national transmission system to countries where the TSOs participate in the ITC Mechanism and total imports of electricity from countries where the TSOs participate in the ITC Mechanism to the same transmission system.

For ITC mechanism parties with a common border with at least one third country to which the provisions of Point 7.1 apply the following adjustments to the calculation of net flow shall be made:

(1) if total exports of electricity to countries where the TSOs participate in the ITC Mechanism are greater than total imports of electricity from countries where the TSOs participate in the ITC Mechanism, net flows shall be reduced by the lower of:

  (a) net import flows from those third countries; or

  (b) net export flows to countries where the transmission system operator participates in the ITC Mechanism;

(2) if total imports of electricity from countries where the TSOs participate in the ITC Mechanism are greater than total exports of electricity to countries where the TSOs participate in the ITC Mechanism then net flows shall be reduced by the lower of

  (a) net export flows to those third countries; or

  (b) net import flows from countries where the transmission system operator participates in the ITC mechanism.

1.8. For the purposes of this annex load shall mean the total amount of electricity which exits the national transmission system to connected distribution systems, end consumers connected to the transmission system and to electricity producers for consumption in the generation of electricity.

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 for 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 referred to in Article 9 of the Energy Community Treaty[(5)] shall be entitled to participate in the ITC mechanism.

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