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**RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 05/2013**

of 25 March 2013

**ON A NEW REGULATORY FRAMEWORK FOR THE INTER-
TRANSMISSION SYSTEM OPERATOR COMPENSATION**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (hereinafter referred to as the “Agency”)¹, and, in particular, Articles 5 and 17(3) thereof;

HAVING REGARD to the favourable opinion of the Board of Regulators of 20 March 2013, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) In accordance with its responsibilities stemming from Commission Regulation (EU) No 838/2010 of 23 September 2010 laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging², the Agency for the Cooperation of Energy Regulators issued on 25 March 2013 an opinion (the “Opinion”) on the suitability of using long run average incremental costs (LRAIC) for the assessment of the costs of making infrastructure available for hosting cross-border flows of electricity. In the Opinion, the Agency concluded that the LRAIC methodology is only of limited suitability in the context of the current inter-transmission system operator compensation (ITC) mechanism and that a new regulatory framework should be developed in relation to ITC.
- (2) The Florence Forum, in its 22nd meeting, requested the Agency to identify whether the current ITC scheme needs enhancement³.
- (3) During public consultation on the Agency’s review of the ITC mechanism, stakeholders’ views on the desirable development of the ITC mechanism were highly diverse without clear guidance towards any widely acceptable compensation assessment method.

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 250, 24.9.2010, p. 5.

³ Conclusions of the 22th meeting of the European Electricity Regulatory Forum, Florence 22 and 23 May 2012
http://ec.europa.eu/energy/gas_electricity/doc/forum_florence_electricity/2012_meeting_conclusions.pdf

- (4) In high-level conclusions of the Agency's workshop held in Ljubljana on 28 June 2012⁴, the Agency and the National Regulatory Authorities acknowledged the need, on top of the existing compensation mechanism for losses, for a compensation for the loop flows phenomenon.
- (5) The Agency, with the support of National Regulatory Authorities, is determined to assist in developing the new regulatory framework,

HAS ADOPTED THIS RECOMMENDATION:

To improve the existing ITC mechanism as defined by Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003⁵ and by Regulation (EU) No 838/2010, a new regulatory framework for the compensation arrangements should be developed and implemented before the end of 2015.

The new regulatory framework should better reflect all the on-going developments in terms of the forthcoming Energy Infrastructure Package and Capacity Allocation and Congestion Management (CACM) methods⁶ and provide TSOs with appropriate incentives to develop the network efficiently.

While its details need still to be developed, in close collaboration with all involved stakeholders, in the Agency's view the future regulatory framework should focus on the following main features:

1. The current ITC infrastructure compensation should be limited to existing⁷ infrastructures and the corresponding ITC infrastructure fund should be phased-out.
2. Where appropriate, National Regulatory Authorities, under the Agency's coordination, should engage into Cross-Border Cost Allocation (CBCA) agreements for new investments of EU relevance⁸. These CBCA agreements would allow for an ex-ante, and

⁴ "ACER workshop on unplanned flows - High level conclusions", Ljubljana, 28 June 2012
http://acernet.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/AESAG/10th_AESAG_meeting/A12-AEWG-15-08%20ACER%20workshop%20on%20unplanned%20flows%20-%20High%20level%20conclusions.docx

⁵ OJ L 211, 14.8.2009. p. 15.

⁶ In particular, the implementation of flow-based allocation mechanisms in highly meshed networks.

⁷ "Existing" here refers to all infrastructures that are existing at the end of year 2015. This limitation of the ITC mechanism would require a legislation change in Article 13(6) of Regulation EC No 714/2009, in order to delete the words "investments in new infrastructures".

⁸ The National Regulatory Authorities and, under specific conditions, the Agency are already asked to prepare for taking coordinated decisions on the allocation of investment costs of projects of common interest, in line with Article 13 of the recently agreed "Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations

a priori definitive, contribution of positively impacted countries in the financing of new infrastructures of EU relevance⁹. The cost-benefit analysis methodology, currently under development by ENTSO-E, would constitute an important input for assessing the role of specific electricity transmission infrastructures associated with facilitating cross-border flows of electricity and the need for countries' contribution.

3. Where relevant, and to the extent that they could not be included in the ex-ante cost-sharing agreements, an ex-post compensation mechanism should be implemented to compensate for both the costs induced by the loop flows phenomenon and the losses induced by cross-border flows. There is in fact a need, beyond the existing compensation mechanism for losses, for a compensation for the loop flows phenomenon. In that respect, the on-going joint work between the Agency and ENTSO-E to define an appropriate framework for re-dispatching, including cost-sharing arrangements, could contribute to the finding of a proper compensation.

The Agency and National Regulatory Authorities should be involved in the development of this new regulatory framework for ITC.

This Recommendation is addressed to the European Commission.

Done at Ljubljana on 25 March 2013.

For the Agency:


Alberto Pototschnig
Director

(EC) No 714/2009 and 715/2009". Council of the European Union, 17108/12 ADD 1, 3 December 2012.
<http://register.consilium.europa.eu/pdf/en/12/st17/st17108-ad01.en12.pdf>

⁹ These contributions should be conditional upon some pre-defined performance targets.



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