

DIRECTIVE 2005/89/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 18 January 2006
concerning measures to safeguard security of electricity supply and infrastructure investment
(Text with EEA relevance)

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 Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity ⁽³⁾, has made a very important contribution towards the creation of the internal market for electricity. The guarantee of a high level of security of electricity supply is a key objective for the successful operation of the internal market and that Directive gives the Member States the possibility of imposing public service obligations on electricity undertakings, *inter alia*, in relation to security of supply. Those public service obligations should be defined as precisely and strictly as possible, and should not result in the creation of generation capacity that goes beyond what is necessary to prevent undue interruption of distribution of electricity to final customers.
- (2) Demand for electricity is usually forecast over a medium-term period on the basis of scenarios elaborated by transmission system operators or by other organisations capable of constructing them at the request of a Member State.
- (3) A competitive single EU electricity market necessitates transparent and non-discriminatory policies on security of electricity supply compatible with the requirements of such a market. The absence of such policies in individual

Member States, or significant differences between the policies of the Member States would lead to distortions of competition. The definition of clear roles and responsibilities of the competent authorities, as well as of Member States themselves and all relevant market actors, is therefore crucial in safeguarding security of electricity supply and the proper functioning of the internal market while at the same time avoiding creating obstacles to market entrants, such as companies generating or supplying electricity in a Member State that have recently started their operations in that Member State, and avoiding creating distortions of the internal market for electricity or significant difficulties for market actors, including companies with small market shares, such as generators or suppliers with a very small share in the relevant Community market.

- (4) Decision No 1229/2003/EC of the European Parliament and of the Council ⁽⁴⁾, sets out a series of guidelines for Community policy on trans-European energy networks. 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 electricity ⁽⁵⁾ sets out, *inter alia*, the general principles and detailed rules relating to congestion management.
- (5) When promoting electricity from renewable energy sources, it is necessary to ensure the availability of associated back-up capacity, where technically necessary, in order to maintain the reliability and security of the network.
- (6) In order to meet the Community's environmental commitments and to reduce its dependence on imported energy, it is important to take account of the long-term effects of growth of electricity demand.
- (7) Cooperation between national transmission system operators in issues relating to network security including definition of transfer capacity, information provision and network modelling is vital to the development of a well-functioning internal market and could be further improved. A lack of coordination regarding network security is detrimental to the development of equal conditions for competition.

⁽¹⁾ OJ C 120, 20.5.2005, p. 119.

⁽²⁾ Opinion of the European Parliament of 5 July 2005 (not yet published in the Official Journal) and Council Decision of 1 December 2005.

⁽³⁾ OJ L 176, 15.7.2003, p. 37. Directive as amended by Council Directive 2004/85/EC (OJ L 236, 7.7.2004, p. 10).

⁽⁴⁾ OJ L 176, 15.7.2003, p. 11.

⁽⁵⁾ OJ L 176, 15.7.2003, p. 1. Regulation as amended by Council Regulation (EC) No 1223/2004 (OJ L 233, 2.7.2004, p. 3).

- (8) The main intention of the relevant technical rules and recommendations, such as those contained in the Union for the Coordination of Transmission of Electricity (UCTE) Operation handbook, similar rules and recommendations developed by Nordel, the Baltic Grid Code and those for the United Kingdom and Irish systems, is to provide support for the technical operation of the interconnected network, thus contributing to meeting the need for continued operation of the network in the event of system failure at an individual point or points in the network and minimising the costs related to mitigating such supply disruption.
- (9) Transmission and distribution system operators should be required to deliver a high level of service to final customers in terms of the frequency and duration of interruptions.
- (10) Measures which may be used to ensure that appropriate levels of generation reserve capacity are maintained should be market-based and non-discriminatory and could include measures such as contractual guarantees and arrangements, capacity options or capacity obligations. These measures could also be supplemented by other non-discriminatory instruments such as capacity payments.
- (11) In order to ensure that appropriate prior information is available, Member States should publish measures taken to maintain the balance between supply and demand among actual and potential investors in generation and among electricity consumers.
- (12) Without prejudice to Articles 86, 87 and 88 of the Treaty, it is important for Member States to lay down an unambiguous, appropriate and stable framework which will facilitate security of electricity supply and is conducive to investments in generation capacity and demand management techniques. It is also important that appropriate measures are taken to ensure a regulatory framework that encourages investment in new transmission interconnection, especially between Member States.
- (13) The European Council in Barcelona on 15 and 16 March 2002 agreed on a level of interconnection between Member States. Low levels of interconnection have the effect of fragmenting the market and are an obstacle to the development of competition. The existence of adequate physical transmission interconnection capacity, whether cross-border or not, is crucial but it is not a sufficient condition for competition to be fully effective. In the interest of final customers, the relation between the potential benefits of new interconnection projects and the costs for such projects should be reasonably balanced.
- (14) While it is important to determine the maximum available transfer capacities without breaching the requirements of secure network operation, it is also important to ensure full transparency of the capacity calculation and allocation procedure in the transmission system. In this way, it could be possible to make better use of existing capacity, and no false shortage signals will be given to the market, which will support the achievement of a fully competitive internal market as envisaged in Directive 2003/54/EC.
- (15) Transmission and distribution system operators need an appropriate and stable regulatory framework for investment, and for maintenance and renewal of the networks.
- (16) Article 4 of Directive 2003/54/EC requires Member States to monitor and submit a report on security of electricity supply. This report should cover short, medium and long-term factors relevant for security of supply including transmission system operators' intention to invest in the network. In compiling such a report, Member States will be expected to refer to information and assessments already being undertaken by transmission system operators both on an individual and collective basis, including at European level.
- (17) Member States should ensure the effective implementation of this Directive.
- (18) Since the objectives of the proposed action, namely secure electricity supplies based on fair competition and the creation of a fully operational internal electricity market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive establishes measures aimed at safeguarding security of electricity supply so as to ensure the proper functioning of the internal market for electricity and to ensure:

- (a) an adequate level of generation capacity;
- (b) an adequate balance between supply and demand;

and

(c) an appropriate level of interconnection between Member States for the development of the internal market.

2. It establishes a framework within which Member States are to define transparent, stable and non-discriminatory policies on security of electricity supply compatible with the requirements of a competitive internal market for electricity.

Article 2

Definitions

For the purposes of this Directive, the definitions contained in Article 2 of Directive 2003/54/EC shall apply. In addition, the following definitions shall apply:

- (a) 'regulatory authority' means the regulatory authorities in Member States, as designated in accordance with Article 23 of Directive 2003/54/EC;
- (b) 'security of electricity supply' means the ability of an electricity system to supply final customers with electricity, as provided for under this Directive;
- (c) 'operational network security' means the continuous operation of the transmission and, where appropriate, the distribution network under foreseeable circumstances;
- (d) 'balance between supply and demand' means the satisfaction of foreseeable demands of consumers to use electricity without the need to enforce measures to reduce consumption.

Article 3

General provisions

1. Member States shall ensure a high level of security of electricity supply by taking the necessary measures to facilitate a stable investment climate and by defining the roles and responsibilities of competent authorities, including regulatory authorities where relevant, and all relevant market actors and publishing information thereon. The relevant market actors include, *inter alia*, transmission and distribution system operators, electricity generators, suppliers and final customers.

2. In implementing the measures referred to in paragraph 1, Member States shall take account of:

- (a) the importance of ensuring continuity of electricity supplies;
- (b) the importance of a transparent and stable regulatory framework;

(c) the internal market and the possibilities for cross-border cooperation in relation to security of electricity supply;

(d) the need for regular maintenance and, where necessary, renewal of the transmission and distribution networks to maintain the performance of the network;

(e) the importance of ensuring proper implementation of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market ⁽¹⁾ and Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market ⁽²⁾, insofar as their provisions are related to security of electricity supply;

(f) the need to ensure sufficient transmission and generation reserve capacity for stable operation;

and

(g) the importance of encouraging the establishment of liquid wholesale markets.

3. In implementing the measures referred to in paragraph 1, Member States may also take account of:

- (a) the degree of diversity in electricity generation at national or relevant regional level;
- (b) the importance of reducing the long-term effects of the growth of electricity demand;
- (c) the importance of encouraging energy efficiency and the adoption of new technologies, in particular demand management technologies, renewable energy technologies and distributed generation;

and

(d) the importance of removing administrative barriers to investments in infrastructure and generation capacity.

4. Member States shall ensure that any measures adopted in accordance with this Directive are non-discriminatory and do not place an unreasonable burden on the market actors, including market entrants and companies with small market shares. Member States shall also take into account, before their adoption, the impact of the measures on the cost of electricity to final customers.

⁽¹⁾ OJ L 283, 27.10.2001, p. 33. Directive as amended by the 2003 Act of Accession.

⁽²⁾ OJ L 52, 21.2.2004, p. 50.

5. In ensuring an appropriate level of interconnection between Member States, as referred to in Article 1(1)(c), special consideration shall be given:

- (a) each Member State's specific geographical situation;
 - (b) maintaining a reasonable balance between the costs of building new interconnectors and the benefit to final customers;
- and
- (c) ensuring that existing interconnectors are used as efficiently as possible.

Article 4

Operational network security

- 1. (a) Member States or the competent authorities shall ensure that transmission system operators set the minimum operational rules and obligations on network security.

Before setting such rules and obligations, they shall consult with the relevant actors in the countries with which interconnection exists;

- (b) notwithstanding the first subparagraph of point (a), Member States may require transmission system operators to submit such rules and obligations to the competent authority for approval;
- (c) Member States shall ensure that transmission and, where appropriate, distribution system operators comply with the minimum operational rules and obligations on network security;
- (d) Member States shall require transmission system operators to maintain an appropriate level of operational network security.

To that effect, transmission system operators shall maintain an appropriate level of technical transmission reserve capacity for operational network security and cooperate with the transmission system operators concerned to which they are interconnected.

The level of foreseeable circumstances in which security shall be maintained is defined in the operational network security rules;

- (e) Member States shall, in particular, ensure that interconnected transmission and, where appropriate, distribution system operators exchange information relating to the operation of networks in a timely and effective fashion in line with the minimum operational requirements. The same requirements shall, where appropriate, apply to transmission and distribution system operators that are interconnected with system operators outside the Community.

2. Member States or the competent authorities shall ensure that transmission and, where appropriate, distribution system operators set and meet quality of supply and network security performance objectives. These objectives shall be subject to approval by the Member States or competent authorities and their implementation shall be monitored by them. They shall be objective, transparent and non-discriminatory and shall be published.

3. In taking the measures referred to in Article 24 of Directive 2003/54/EC and in Article 6 of Regulation (EC) No 1228/2003, Member States shall not discriminate between cross-border contracts and national contracts.

4. Member States shall ensure that curtailment of supply in emergency situations shall be based on predefined criteria relating to the management of imbalances by transmission system operators. Any safeguard measures shall be taken in close consultation with other relevant transmission system operators, respecting relevant bilateral agreements, including agreements on the exchange of information.

Article 5

Maintaining balance between supply and demand

1. Member States shall take appropriate measures to maintain a balance between the demand for electricity and the availability of generation capacity.

In particular, Member States shall:

- (a) without prejudice to the particular requirements of small isolated systems, encourage the establishment of a wholesale market framework that provides suitable price signals for generation and consumption;
- (b) require transmission system operators to ensure that an appropriate level of generation reserve capacity is available for balancing purposes and/or to adopt equivalent market based measures.

2. Without prejudice to Articles 87 and 88 of the Treaty, Member States may also take additional measures, including but not limited to the following:

- (a) provisions facilitating new generation capacity and the entry of new generation companies to the market;

- (b) removal of barriers that prevent the use of interruptible contracts;
- (c) removal of barriers that prevent the conclusion of contracts of varying lengths for both producers and customers;
- (d) encouragement of the adoption of real-time demand management technologies such as advanced metering systems;
- (e) encouragement of energy conservation measures;
- (f) tendering procedures or any procedure equivalent in terms of transparency and non-discrimination in accordance with Article 7(1) of Directive 2003/54/EC.

3. Member States shall publish the measures to be taken pursuant to this Article and shall ensure the widest possible dissemination thereof.

Article 6

Network investment

1. Member States shall establish a regulatory framework that:

- (a) provides investment signals for both the transmission and distribution system network operators to develop their networks in order to meet foreseeable demand from the market;

and

- (b) facilitates maintenance and, where necessary, renewal of their networks.

2. Without prejudice to Regulation (EC) No 1228/2003, Member States may allow for merchant investments in interconnection.

Member States shall ensure that decisions on investments in interconnection are taken in close cooperation between relevant transmission system operators.

Article 7

Reporting

1. Member States shall ensure that the report referred to in Article 4 of Directive 2003/54/EC covers the overall adequacy of the electricity system to supply current and projected demands for electricity, comprising:

- (a) operational network security;
- (b) the projected balance of supply and demand for the next five-year period;
- (c) the prospects for security of electricity supply for the period between five and 15 years from the date of the report;

and

- (d) the investment intentions, for the next five or more calendar years, of transmission system operators and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacity.

2. Member States or the competent authorities shall prepare the report in close cooperation with transmission system operators. Transmission system operators shall, if appropriate, consult with neighbouring transmission system operators.

3. The section of the report relating to interconnection investment intentions, referred to in paragraph 1(d), shall take account of:

- (a) the principles of congestion management, as set out in Regulation (EC) No 1228/2003;

- (b) existing and planned transmission lines;

- (c) expected patterns of generation, supply, cross-border exchanges and consumption, allowing for demand management measures,

and

- (d) regional, national and European sustainable development objectives, including those projects forming part of the Axes for priority projects set out in Annex I to Decision No 1229/2003/EC.

Member States shall ensure that transmission system operators provide information on their investment intentions or those of any other party of which they are aware as regards the provision of cross-border interconnection capacity.

Member States may also require transmission system operators to provide information on investments related to the building of internal lines that materially affect the provision of cross-border interconnection.

4. Member States or the competent authorities shall ensure that the necessary means for access to the relevant data are facilitated to the transmission system operators and/or to the competent authorities where relevant in the development of this task.

The non-disclosure of confidential information shall be ensured.

5. On the basis of the information referred to in paragraph 1(d), received from the competent authorities, the Commission shall report to the Member States, the competent authorities and the European Regulators Group on Electricity and Gas established by Commission Decision 2003/796/EC ⁽¹⁾ on the investments planned and their contribution to the objectives set out in Article 1(1).

This report may be combined with the reporting provided for in point (c) of Article 28(1) of Directive 2003/54/EC and shall be published.

Article 8

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 February 2008. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. By 1 December 2007, Member States shall notify the Commission of the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 9

Reporting

The Commission shall monitor and review the application of this Directive and submit a progress report to the European Parliament and the Council by 24 February 2010.

Article 10

Entry into force

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

Article 11

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 18 January 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
H. WINKLER

⁽¹⁾ OJ L 296, 14.11.2003, p. 34.