

Deliberation of the French Energy Regulatory Commission dated 30 September 2010 on the application of article 7 of Regulation (EC) No. 1228/2003 dated 26 June 2003 and on conditions for access to the French electricity transmission grid for new exempt interconnectors

The following were present at the deliberation: Maurice MÉDA, Vice-Chairman chairing the meeting, Michel THIOILLIÈRE, Vice-Chairman, Jean-Paul AGHETTI, Anne DUTHILLEUL, Emmanuel RODRIGUEZ and Marie-Solange TISSIER, commissioners.

1. Introduction

Article 14 of French law No. 2000-108 dated 10 February 2000, amended, relating to the modernisation and development of the electricity public service (hereafter referred to as the “*law of 10 February 2000*”), entrusts the electricity transmission system operator with the mission to develop the public transmission grid in order to enable interconnection with other networks in particular.

Article 7 of Regulation (EC) No. 1228/2003 of the European Parliament and Council dated 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (hereafter referred to as “*Regulation 1228/2003*”) sets the terms under which a new interconnector may be granted an exemption, by the national regulatory authorities, from all or part of the regulation in force in terms of third party access, approval of tariff-setting mechanisms, and use of revenues from the allocation of interconnection capacity.¹

Pursuant to article 7 of Regulation 1228/2003 and in the absence of conflicting provisions in the legislation, the national regulatory authority is, in principle, competent to process applications and grant exemptions to new interconnectors.

An exemption decision is an individual decision that creates a right, which is then notified to the applicant and published on the French Energy Regulatory Commission (CRE)'s website (see section 2.1.7 hereafter).

In virtue of Article 2 of Regulation 1228/2003, an interconnector is a “*transmission line which crosses or spans a border between Member States and which connects the national transmission systems of the Member States*”. A new interconnector is defined as an interconnector that was not completed by 15 July 2003.

The notion of ‘*new exempt interconnector*’ results from European Community law and has not been defined in French law. As a result, it is necessary to specify the regulation framework under which such projects would fall and establish measures that take account of their specific features, in order to allow new exempt interconnectors to be integrated to the French regulated system.

During the public consultations carried out by CRE from 2 April to 2 May 2009 and from 3 May to 3 June 2010, the electricity market players expressed their views on exemption conditions and the terms of grid access applicable to new exempt interconnectors. CRE took these contributions into account when drawing up this deliberation.

¹ CRE would like to remind readers that an exemption does not under any circumstances give the right to construct an interconnector, and that all projects must comply with legislation in force, in particular in terms of urban development and environment.

2. Application of article 7 of Regulation 1228/2003

Article 7 of Regulation 1228/2003 (hereafter referred to as “*Article 7*”) offers the possibility of granting an exemption from Article 6(6) of said Regulation (on the use of revenues from the allocation of interconnection) and/or Articles 20 (on third party access), 23(2), 23(3), 23(4) (on power to approve and modify rules for allocation and management of interconnection capacity) of Directive 2003/54/EC dated 26 June 2003.

French legislation entrusts the electricity transmission system operator with the development, construction and operation of regulated interconnectors. Private investors can thus only construct and operate an interconnector within the context of an exemption, as provided for in article 7.

As specified by the European Commission², these exemptions can only be granted in exceptional cases: in principle, new interconnection lines must be developed under the responsibility of the electricity transmission system operators in a regulated context.

2.1. Applying for exemption: assessment criteria

According to Article 7, to be granted an exemption, a project has to meet six conditions (a to f). An application for exemption must include detailed information demonstrating that the project meets all of these conditions.

In the remainder of this section, CRE describes how an application for exemption could meet each of these conditions. It then indicates the basic principles that should be incorporated in rules and methods for managing and allocating capacity on the new interconnector, as well as the documents that must be included in an exemption application. This information is not exhaustive and will be adapted according to the specific nature of each exemption request.

2.1.1. Increasing competition (condition a)

Condition a) concerns increasing competition via the investment:

“a) the investment must enhance competition in electricity supply”.

More details on this condition are provided in the explanatory note on condition f (see section 2.1.3).

2.1.2. Project-related risk (condition b)

Condition b) concerns risks related to the project:

“b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted”.

In theory, condition b) would be met by a project for a new exempt interconnector as long as there is no similar regulated project for the development of exchange capacity. Projects with comparable effects on the impacted markets and comparable levels of maturity are considered similar.

In particular, condition b) could be considered to be met if a regulated project for exchange capacity development exists, but the exemption applicant’s acceptance of a higher risk enables him/her to propose a project which is more beneficial for the community.

CRE will ensure that the scope of an accorded exemption corresponds is proportional to the degree of risk taken by the investor. In certain cases, CRE could grant a partial exemption from Article 6(6) by imposing on

² The European Commission states in the document “*Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity*” dated 6 May 2009, that “*The Gas and Electricity Directives oblige transmission system operators (TSOs) to invest to meet reasonable market demand for transmission [...]. The necessary investment should therefore be realised by the TSOs provided that the ensuing costs are adequately compensated for by regulated tariffs*”.

the project manager a distribution of part of the revenues or profits³. All or part of the revenues or profits above a certain ceiling could then be used as stated in Regulation 1228/2003.

2.1.3. Effect of the exemption (condition f)

Condition f) concerns the effect of the exemption:

“f) the exemption is not to the detriment of competition or the effective functioning of the internal electricity market, or the efficient functioning of the regulated system to which the interconnector is linked”.

The analysis of the effect of the new interconnector on competition and on the effective functioning of the internal electricity market should take into account the investor's and his shareholders' identity and the proposed rules for allocation and management of interconnection capacity. The investor will have to show that, with the proposed allocation and management rules, offering the planned interconnection capacity will not hinder competition or the effective functioning of the internal market.

CRE will pay particular attention to the effect of an allocation of very long term products (pluriannual) on the functioning of the markets and on competition (if the investor wishes to propose this type of product), as well as the effect of priority access granted to a dominant player (shareholder or not). If an exemption is granted, any significant change⁴ in the shareholdings during the period for which the exemption is valid should be notified to CRE.

CRE will also take into account the effect of the new interconnector on the functioning of the regulated network. The analysis of this effect should take into account forecast constraints on the public transmission grid, but also the consequences on the revenues and expenses of the transmission system operator during the exemption period, which could potentially result in costs attributed to network users.

CRE could refuse an exemption if it considers that the new interconnector makes network users bear a potential financial cost that is not proportionate to the expected benefits of market integration. This decision would take into account an assessment of quantifiable benefits and costs such as reinforcement costs, the effect on the congestion revenues on exempt interconnectors and the enhancement of social welfare, and also benefits which are less directly quantifiable such as an increase in supply security.

2.1.4. Other conditions (conditions c, d and e)

Conditions c), d) and e) concern the ownership and financing of the new interconnector:

“c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems the interconnector will be built”.

The absence of relationship between the exemption applicant and interconnected system operators must be duly documented (company articles of association, certificate of registration, etc.).

“d) charges are levied on users of that interconnector”,

“e) since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector”.

For most exemption applications, these conditions will simply have to be verified, and will not require further in-depth analysis. If, after study of the first documents provided, CRE deems it necessary, it will send the investor a list of additional documents to be provided.

2.1.5. Methods for managing and allocating capacity

Article 7(4) (b) (ii) states that *“consideration shall be given, on a case by case basis, to the need to impose conditions regarding [...] non discriminatory access to the interconnector”.*

³ Such a distribution or reinvestment of part of profits was imposed on BritNed Development Ltd for a new exempt interconnector between the Netherlands and the United Kingdom.

⁴ As stated in article 3(3) a) of Regulation (EC) No.139/2004 of the Council dated 20 January 2004.

In cases where a total exemption from Article 20 of Directive 2003/54/EC is not granted, the rules for allocating and managing capacity on a new exempt interconnector must comply with the guidelines on the management and allocation of available transfer capacity of interconnections between national systems, appended to Regulation 1228/2003.

A partial or total exemption from the aforementioned article⁵ would be strictly governed by the conditions of the exemption, in order to ensure optimum use of interconnection capacity.

CRE wants the interconnection capacity management and allocation rules to be as harmonised as possible with the rules in force on French regulated interconnectors, in particular those connecting the same markets as the new interconnector. They must comply with the following principles:

- transparency: the operator of the new exempt interconnector publishes the same information on its activity as that published by the operator of a regulated interconnector connecting the same markets;
- maximisation of capacity made available to market players: measures against capacity hoarding are implemented. Such measures include, at least, introducing a stage at which nomination must be firm, early enough to allow re-allocation of products that have not been used and netting of long-term capacity nominated in the opposite direction;
- optimisation of the use of interconnection capacity: the target models defined through work at European level for different timeframes are implemented. In order to allow cross-border balancing, the operator of the new exempt interconnector makes all interconnection capacity that is still available after the intra-day timeframe available to the operators of the interconnected networks. The cost of making this capacity available could be invoiced to the system operators;
- non discriminatory third-party access: the criteria for accessing interconnection capacity are defined in a clear and transparent way. The allocation of capacity should be based on non discriminatory, transparent and market-based criteria;
- organisation of a secondary market: the operator of a new exempt interconnector should implement capacity resale and transfer mechanisms.

Moreover, the use of an existing platform for allocating capacity should be favoured where possible.

Article 7(4) (c) states that:

“when granting an exemption, the relevant authority may approve or fix the rules and/or mechanisms on the management and allocation of capacity”.

The rules for management and allocation of capacity made available to third parties on a new exempt interconnector will be submitted to CRE for approval before being implemented and this at every revision⁶.

Finally, the regulator must have sufficient access to data on management and transactions in order to ensure that the principles listed above are enforced, and so that it can correctly monitor cross-border trades and transactions carried out on organised markets. In view of this, a process enabling communication of data will be implemented. In virtue of Article 33 of the French law dated 10 February 2000, CRE has the right to access all additional data deemed necessary to accomplish its missions.

2.1.6. Documents to be included in an exemption application

All applications for exemption submitted to CRE should be written in French. CRE can make documents in the application file available to public consultation, as long as the information provided does not involve professional secrecy or commercially sensitive information.

As exemptions are granted on a case by case basis (in accordance with article 7(4) a)⁷, and so that CRE may ensure compliance with the conditions provided for in Regulation 1228/2003, applicants must add any relevant information to their requests. The following documents must be included in applications:

⁵ A partial exemption could, for example, give the investor priority access to interconnection capacity or aim to mitigate the negative effect on the investor caused by a significant change in third party access regulation.

⁶ In most cases, an exemption from Article 23(2) (a) of Directive 2003/54/EC will thus not be granted, and CRE will keep its power to approve the access rules.

Documents to be included in an exemption application	Written by
i) Analysis of the relevant markets	Investor
<p>ii) A study of the effect the chosen allocation and management mechanisms could have on the concentration of the interconnected markets, compared to allocation and management mechanisms already in place on the French regulated interconnectors (see paragraph 2.1.5). Particular attention will be paid to dominant players⁸.</p> <p>This study could be included together with measures advocated to ensure that a dominant player does not get increased market power.</p>	Investor
iii) A justified valuation of the optimal interconnection capacity between the two networks to be connected.	Investor
<p>iv) An assessment:</p> <ul style="list-style-type: none"> - of the social welfare generated by the interconnector and how it is shared out between different types of stakeholders, - of the profitability of the project (as far as the investor is concerned). <p>This assessment may include a quantitative study of the different unforeseen events the project might encounter and the potential effect on social welfare, as well as a description of the <i>scenarios</i> in which the project would not be profitable, either for the community, on the one hand, or for the investor, on the other.</p> <p>It must provide an explanation of the choice of planned interconnection capacity and may include an assessment of risks and costs, for the investor, related to an increase in capacity.</p> <p>The assessment must include a detailed business-plan with a valuation of costs and profits for the investor for the various scenarios.</p>	Investor
v) A justified description of the requested exemption (duration, paragraphs concerned, <i>etc.</i>)	Investor
<p>vi) The technical and financial proposal presenting the results of the connection study, drawn up and created a maximum of three months prior, except if it has already been signed by the exemption applicant. The document must be signed within the timeframe provided for in the connection procedure, and the signature must be notified to CRE within one month. In the event of an extension, this timeframe may be increased, provided that CRE is notified of the extension.</p> <p>If the investor contests the results of the connection study, it can include a counter-valuation to the file which will also be assessed by CRE.</p>	Transmission System Operator (and investor in the event of a counter-valuation)
vii) A description of how the project will be financed.	Investor
viii) A description of the investor's shareholding.	Investor
ix) A detailed proposal on the process for communicating data to CRE.	Investor

⁷ "The regulatory authority may, on a case by case basis, decide on the exemption referred to [...]"

⁸ In particular, any player holding 40% or more of the French wholesale market can be considered as dominant.

x) A technical description of the project and the facilities making up the new interconnector, including the two connection points.	Investor
xi) A detailed description of the different stages of the project as well as a schedule.	Investor

The assessments to be carried out by the investor may be based only on data belonging to the investor or public data. The scenarios taken into consideration (documents *iii*) must be realistic and may be based on recognised (public) studies.

Where necessary, CRE may conduct impact studies of the new exempt interconnector on competition, the functioning of the internal market or the regulated network market, based on confidential information. It also may request that the transmission system operator provide additional information, in particular information such as details on the studies carried out by the system operator in the context of the technical and financial proposal. The non-confidential part of these studies will be sent to the exemption applicant and incorporated in the file submitted for public consultation (see section 2.1.7).

CRE reserves the right to request any document necessary for answering the exemption request.

2.1.7. Assessment of the exemption application

CRE will study all exemption applications in cooperation with the regulator of the Member State whose electricity transmission network would be connected to the French network by the projected future interconnector. This study should firstly highlight which documents are necessary to complete the file. No applications will be processed before the file has been submitted to both regulators.

Once CRE has received the complete file, it will launch a public consultation on the non-confidential sections.

If any major⁹ modifications are made to the technical and financial proposal on the exemption applicant's initiative the application is liable to be considered as withdrawn. A modification of the technical and financial proposal on the transmission system operator's initiative after this date has no consequences for the exemption application processing procedure. The version of the technical and financial proposal which is taken into account in the processing of the application will be that in force at the date on which the exemption application is filed.

The completed application will be studied in cooperation with the regulator of the other Member State that is concerned. In virtue of article 7(4)(e), other Member States or regulatory authorities will also be consulted if the planned new exempt interconnector is likely to have an effect on their market and/or regulated system.

Pursuant to this study, and where necessary following the consultation of other regulators, CRE will state its decision, possibly imposing additional conditions to those described by the investor in his file.

The decision will include, at least, the duration of the exemption (set number of years), the date of its entry into force and its scope (the articles and paragraphs from which the applicant is exempt). Other conditions may be added, such as those related to third-party access to capacity and the approval of the management and allocation rules or the interconnector's date of operability. Where necessary, the decision may include a description of profit-sharing with users of the transmission network or the reinvestment of revenues/profits.

In virtue of Article 7(4) and (5), the decision concerning exemption will be duly justified and published on CRE's website. It will immediately be notified to the European Commission which will have a two-month delay (this delay may be extended by one month where additional information is sought by the European Commission) to ask CRE to amend or withdraw the decision to grant an exemption. The exemption applicant will also be notified of the decision.

⁹ In particular, a modification leading to a departure from the waiting list is considered as major.
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2.2. Amendment and expiry of the exemption

2.2.1. Conditions for amending the exemption

An exemption is granted for a set period of time. In the event of non-compliance with one of the conditions listed in the exemption decision, the exemption may be amended or withdrawn.

The investor will be asked to present its observations before any amendment or withdrawal.

2.2.2. Expiry of the exemption period

French legislation entrusts the transmission system operator with the operation of regulated interconnectors. In principle, the interconnection line can only be subsequently operated under the regulated system.

The owner of the new exempt interconnector must, at the end of the exemption period, choose between the following options:

- hand the facility over to the relevant system operator (RTE in France), in exchange for a price negotiated between the two parties,
- request a new exemption which would be subject to the conditions provided for in article 7(1) of Regulation 1228/2003,
- by default, stop operating the interconnector, disconnect the facility from the transmission grids and dismantle it.

The first and the third options are also applicable in the event of the amendment of an exemption, or if the owner of a new exempt interconnector wishes to cease operation.

3. Recommendations on conditions for access, connection and operation of a new exempt interconnector to the French regulated system

3.1. Connecting a new exempt interconnector to the public electricity transmission grid

3.1.1. Technical requirements for connecting a new exempt interconnector

Article 14 of the French law dated 10 February 2000 provides that a decree sets the “*general technical requirements regarding design and operation for connection to the public transmission network which generating installations, consumer facilities directly connected, public distribution grids, interconnector circuits, as well as direct lines must fulfil*”.

In accordance with this provision, two decrees were published. Decree No. 2003-588 dated 27 June 2003, amended, on the general technical requirements regarding design and operation which installations must fulfil for connection to the public electricity transmission network. This decree sets the technical requirements for connection, excluding generation facilities which are dealt with in decree No. 2008-386 dated 23 April 2008.

New exempt interconnectors, which technically are interconnector circuits, must respect what is stated in the aforementioned decree of 27 June 2003. In such, just as for the consumer facilities and public distribution networks, a decree should state the technical requirements regarding design and operation to ensure that new exempt interconnectors fulfil the objectives this decree has set for their connection to the public transmission grid. If this decree is not published, the TSO will be asked to produce transition rules establishing the technical requirements for connecting an interconnector circuit and to publish them in its reference technical documentation.

Representatives of the different categories of users of the public transmission grid should be consulted before the transition rules on connection of an interconnector circuit are published. The electricity distribution system operators should also be consulted.

Prior to publication, the public transmission system operator should notify the transition rules on connection of an interconnector circuit to CRE, as well as the results of the consultation carried out with representatives of the different categories of users and the electricity distribution system operators, clearly stating the different opinions collected.

Any project aiming to modify the rules on connection of an interconnector circuit should follow the same process of consultation and notification prior to publication.

3.1.2. Processing the request to connect a new exempt interconnector

CRE will soon specify the conditions for connection to the electricity transmission network which apply to new exempt interconnectors.

The procedure for processing connection requests could draw its inspiration from that which is applied by the TSO to requests to connect a new generation facility, in particular, as regards the ranking criteria used to ensure non-discriminatory processing of the various connection requests. The new exempt interconnectors could be filed on the same waiting list as a generation facility would be. The procedure must also provide for non-discriminatory treatment between new exempt interconnectors and regulated projects aimed at developing exchange capacity.

In order to ensure maximum transparency with regard to the procedures related to exemptions, the transmission system operator must publish on its website a description of the calculation method applied for the reinforcement costs incurred by the connection of an interconnection.

3.2. Financial terms of access to the transmission network

3.2.1. The tariff for use of the electricity transmission network does not apply to new exempt interconnectors

As explained by CRE in its public consultation dated 3 May 2010, the application of the tariff for use of the electricity transmission network (TURPE) to new exempt interconnectors would not constitute equivalent treatment between exempt and regulated lines, and may be detrimental to market integration. As a result, the investor of a new exempt interconnector will not pay the tariff for use of the electricity transmission network.

In some cases, the investor could nonetheless distribute part of profits to the community (see section 2.1.2).

3.2.2. Connection costs

Connecting a facility to the electricity grid generates network costs related to extension and reinforcement work. In the case of a standard connection, the costs related to extension work are invoiced to the user, and those related to reinforcement work are pooled via the TURPE.

Paragraph II of Article 4 of the French law dated 10 February 2000 states that the “*tariffs for use of the networks take account of part of the costs of connection to these networks [...]. Moreover, the share of costs relating to connection and extension of the networks that are not covered by the tariffs for use of the networks are eligible for a contribution*”.

The contribution paid by the connection applicant cannot, thus, cover more than the costs of connection and extension, which excludes reinforcement costs.

This is therefore the invoicing method that should be applied to a new exempt interconnector.

However, CRE will pay particular attention to the reinforcement costs incurred by the new interconnector, and, in accordance with Article 7(1) (f) (see section 2.1.3), could refuse an exemption if it considers the costs borne by the community to be disproportionate in view of the expected profits.

3.3. Terms of operation of a new exempt interconnector

3.3.1. Firmness of injection and withdrawal capacity proposed to the operator of the new exempt interconnector

In accordance with point 1.7 of the guidelines appended to Regulation 1228, “[...] TSOs may not limit interconnection capacity in order to solve congestion inside their own control area, except for [...] reasons of operational security. [...]”.

If need be, for network security, the transmission system operator could curtail capacity offered to the operator of a new exempt interconnector beyond the context laid out in the technical and financial proposal. In this case, the operator would be compensated according to one of the following schemes:

- the cost of compensation of capacity holders by the operator of the interconnector. This cost depends on which compensation mechanism is applied by the investor. It should be the same whatever the origin of the curtailment (decision of the system operator or of the new interconnector’s operator);
- the compensation mechanism applied to regulated interconnectors interlinking the same markets.

Any capacity curtailment, whether in the context of a technical and financial proposal or for the security of the transmission network, must be notified to the operator of the new exempt interconnector early enough for him to be able to propose users of the interconnector the same firmness and compensation conditions as on the French regulated interconnectors interlinking the same markets.

3.3.2. Responsibility for network balance

The operator of a new exempt interconnector must sign a balancing responsible entity contract with the transmission system operator, or be attached to a balancing responsible entity.

The operator must indicate to the transmission system operator the net flows nominated by the capacity holders, grouped together by balancing responsible entities. The operator is responsible for ensuring that the net nominations communicated to the transmission system operator conform to the nominations carried out by its clients. An ad hoc communication process must therefore be implemented by the electricity transmission system operator.

3.3.3. Schedule

The operator of a new exempt interconnector should make its schedule for injection and withdrawal on the French electricity transmission network known to the TSO, in the same way and respecting the same deadlines and conditions as a generator connected to this network.

In order to allow the operator of a new exempt interconnector to plan withdrawals and injections, a scheduling procedure adapted to new exempt interconnectors taking into account, in particular, the schedule for withdrawals, should be established and implemented by the electricity TSO.

Executed in Paris, 30 September 2010

On behalf of the French Energy Regulatory
Commission (CRE)

The Vice-Chairman,

Maurice MÉDA