

OPINION No 10/2019
OF THE AGENCY FOR THE COOPERATION OF
ENERGY REGULATORS

of 25 March 2019

ON ENTSOG's RECOMMENDATIONS RELATING TO THE COORDINATION OF
TECHNICAL COOPERATION BETWEEN COMMUNITY AND
THIRD-COUNTRY TSOs

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 Regulators¹, and, in particular, Article 6(3)(b) thereof,

Having regard to Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005², and, in particular, Article 9(2) thereof,

Having regard to the favourable opinion of the Board of Regulators of 20 March 2019, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

Whereas:

1. INTRODUCTION

- (1) The European Network of Transmission System Operators for Gas (“ENTSOG”) developed and adopted recommendations for the coordination of technical cooperation of Transmission System Operators (“TSOs”) of the European Union with third-country TSOs (hereinafter, “Recommendations”) pursuant to Article 8(3)(c) of Regulation (EC) No 715/2009.

¹ OJ L211, 14.8.2009, p. 1.

² OJ L211, 14.8.2009, p. 36.

- (2) Pursuant to Article 6(3)(b) of Regulation (EC) No 713/2009, the Agency shall provide an Opinion³ to ENTSOG on, *inter alia*, relevant documents referred to in Article 8(3) of Regulation (EC) No 715/2009, as submitted to the Agency pursuant to Article 9(2), first subparagraph, of Regulation (EC) No 715/2009.
- (3) On 31 October 2018, ENTSOG submitted to the Agency for its Opinion a document⁴ describing ENTSOG's Recommendations regarding the potential participation of TSOs of third-countries in groups of TSOs of the Union coordinated or facilitated by ENTSOG. Such groups are for the cooperation and exchange of information on technical matters, and include the Regional Coordination System for Gas (the "ReCo System"), ENTSOG's External Contact Platform ("ECP"), and other fora for technical exchanges.

2. SUMMARY OF THE DOCUMENT

- (4) ENTSOG has developed legally non-binding Recommendations in order to fulfil its legal obligation pursuant to Article 8 (3) (c) of Regulation (EC) No 715/2009, which requires ENTSOG to adopt "*recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators*" ("*Third-country TSOs*").
- (5) The document provides a definition of the meaning of a third-country TSO in this context. Under ENTSOG's working groups, it seems that the collaboration and participation of third-country TSOs on the coordination of technical cooperation matters is only possible for those TSOs having an "observer status" in ENTSOG. The observer status is open to TSOs in States which are either: a) a candidate for accession to the European Union ("EU"); b) a party to the treaty establishing the Energy Community; or c) a party to the convention establishing the European Free Trade Association ("EFTA").
- (6) The document describes the progress and the level achieved in the technical cooperation between ENTSOG and third-country TSOs currently cooperating under ENTSOG groups. It refers to the cooperation framework for such third-country TSOs by listing the criteria

³ This Opinion is prepared in line with the Agency's Revised Programming Document 2018-2020, which assigns resources to various tasks depending on its classification in terms of priority as "critical", "important" or "relevant". This Opinion is considered as "relevant" and is accordingly developed by using a simplified format.

⁴ Named in ENTSOG's submission as "Recommendations re technical cooperation 3rd countries (INT1226-171121, 11 June 2018)", which was submitted jointly with the "ReCo as CNOT for emergency conditions (INT1328-18, 28 June 2018)" and the "Incidents Classification Scale as Annex I to the ReCo as CNOT for emergency conditions (INT1315-18, 28 June 2018)".

used to categorise them⁵, and the three categories of third-country TSOs that result from applying the criteria. The coordination of technical cooperation entails:

- a. In the area of **security of supply**, the development of a ReCo System for gas in compliance with Regulation (EU) No 2017/1938 concerning measures to safeguard the security of gas supply (“the SoS Regulation”);
 - b. In the area of **expert knowledge on interoperability**, the harmonisation in technical, operational and communication areas contributing to the integration of gas markets. ENTSOG has cooperated with the Energy Community by holding annual joint public workshops dedicated to discuss topics such as the content and implementation of European Network Codes (“NCs”)⁶, as well as other technical issues. ENTSOG has also supported the Energy Community Secretariat in the adaptation and incorporation of the Interoperability Network Code (“INT NC”)⁷ to the Energy Community *acquis*.
 - c. The establishment of the **External Contact Platform (“ECP”)** between EU and non-EU gas transmission companies for discussing the coordination and technical cooperation among TSOs.
- (7) ENTSOG’s Recommendations⁸ take into account the three categories of third-country TSOs as defined by ENTSOG and describe their level of involvement under the ReCo System, the expert knowledge on interoperability activities and the ECP by indicating the type of exchanges and cooperation established. Participation of third-countries under these structures is currently possible for countries that are Contracting Parties of the Energy Community or members of EFTA and have already implemented or are in the process of implementing the same technical standards and market rules as the TSOs of ENTSOG. Participation is also possible, to some extent, for third-countries in negotiation to implement EU legislation in the field of energy. The participation of TSOs from third-countries that are neither Contracting Parties of the Energy Community nor have concluded agreements with the EU for the adoption and implementation of EU legislation in the field of energy is not possible, although ENTSOG seems to be open to broaden the participation and cooperation.

⁵ Mainly by: a) referring to the third-country relationship with the EU in terms of being a party to the Energy Community Treaty, and the type of bonds to the implementation of the *acquis communautaire*; and b) the existence of an exit point to (or an entry point from) an ENTSOG member.

⁶ Among others, the Interoperability network code and the ENTSOG’s common network operation tools (“CNOTs”) for Capacity Allocation Mechanism (“CAM”) and Congestion Management Procedures (“CMP”).

⁷ Commission Regulation (EU) 2015/703 of 30 April 2015 establishing a network code on interoperability and data exchange rules.

⁸ ENTSOG’s Recommendations, p.4.

3. ASSESSMENT OF THE DOCUMENT

- (8) The Agency welcomes the adoption of ENTSOG's Recommendations and takes note of the steps taken by ENTSOG to enable the coordination of technical cooperation among Union and third-country TSOs as defined by ENTSOG. The Agency encourages such third-country TSOs to engage into the cooperation structures and activities set up by ENTSOG and to follow and implement such recommendations on technical matters.
- (9) The Agency agrees with the views of ENTSOG that third-country TSOs' access to information and exchanges related to the implementation and harmonisation of technical, operational and communication issues, according to the European rules, is a step in the adequate direction for better integrating network operations and markets of third-countries and EU Member States.
- (10) The Agency notes that the Recommendations provide an overview of the initiatives and structures set out by ENTSOG to promote the cooperation on technical issues. The Agency considers reasonable the approach of using already existing structures to continue promoting the coordination of technical cooperation among EU and non-EU TSOs in fields such as prevention and preparedness for potential security of supply situations or implementation of NCs. At the same time, the Agency notes that ENTSOG's Recommendations primarily refer to the progress already achieved, while in the Agency's opinion they should be forward-looking by, in particular, including suggestions towards further strengthening such cooperation.
- (11) The Agency understands from ENTSOG's Recommendations that the participation of third-country TSOs is only possible for those TSOs having obtained an "observer status" in ENTSOG, i.e. TSOs based in countries either candidates for accession to the EU⁹, or parties to the Treaty Establishing the Energy Community¹⁰, or parties to the convention establishing the European Free Trade Association¹¹. The Agency notes that such restriction excludes *de facto* some third-countries with pipelines directly connected to the Union that actually play an important role in EU gas supplies.
- (12) The Agency, while understanding that not all third-countries maintain the same form of relationship with the EU, notes that participation in ENTSOG's cooperation structures for technical cooperation of TSOs, should be, in principle, open to all relevant TSOs from third-countries pursuant to Article 8 (3) (c) of Regulation (EC) No 715/2009.

⁹ Republic of Albania, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey. See <http://ec.europa.eu/environment/enlarg/candidates.htm>

¹⁰ European Community, Republic of Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Republic of Montenegro, Moldova, Republic of Serbia, Ukraine and United Nations Interim Administration Mission in Kosovo. See <https://www.energy-community.org/legal/treaty.html>

¹¹ Iceland, Liechtenstein, Norway and Switzerland.

- (13) The Agency appreciates that ENTSOG seems to be open to broaden the participation and technical cooperation to include the third-country TSOs that are currently not participating in ENTSOG's cooperation structures. The Agency recommends ENTSOG to investigate further options to enhance the relationships with all the third-country TSOs of countries supplying gas to the Union. The Agency deems that stronger cooperation, in particular on technical information on matters necessary to provide security of supply in emergencies, among EU TSOs and the TSOs of EU bordering countries may contribute to improve the preparedness of the Union TSOs to face potential technical operation challenges.
- (14) In summary, the Agency expects ENTSOG to:
- a. Take into account this Opinion and consider amending the Recommendations in particular in a way that would allow all relevant third-country TSOs to participate in the coordination of technical cooperation between Community and third-country TSOs;
 - b. Publish on ENTSOG's website the Recommendations as submitted to the Agency for its Opinion and after the Opinion, together with an accompanying document explaining how the Agency's Opinion has been taken into account for amending the Recommendations; and
 - c. Monitor and report periodically to the Agency on the implementation of the Recommendations and the outcome of such cooperation. The first reporting could take place preferably after 2 years after adoption of the final version of ENTSOG's Recommendations.

HAS ADOPTED THIS OPINION:

1. The Agency is of the view that ENTSOG's Recommendations meet the objectives of Regulation (EC) No 713/2009 and Regulation (EC) No 715/2009 in terms of contributing to effective competition and the efficient and secure functioning of the internal natural gas market.
2. The Agency underlines that ENTSOG should work on broadening the participation on technical cooperation to include those third-country TSOs which are currently not participating in ENTSOG's cooperation structures, taking all necessary efforts to preserve the confidentiality of potentially sensitive information exchanged.

This Opinion is addressed to ENTSOG.

Done at Ljubljana on 25 March 2019.


For the Agency
Director ad interim
Alberto POTOTSCHNIG