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**OPINION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 25/2013**

of 18 December 2013

**ON THE DRAFT ENTSO-E WORK PROGRAMME
AUTUMN 2013 THROUGH DECEMBER 2014**

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, Articles 6(3)(b) and 17(3) thereof;

HAVING REGARD to 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 1228/2003², and, in particular, Articles 8(3)(d), 8(5) and 9(2) thereof;

HAVING REGARD to the favourable opinion of the Board of Regulators of 11 December 2013, issued pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) On 24 October 2013, the European Network of Transmission System Operators for Electricity ('ENTSO-E'), with reference to Article 9(2) of Regulation (EC) No 714/2009, submitted to the Agency, for its opinion, the ENTSO-E's draft work programme autumn 2013 to December 2014 as approved by the ENTSO-E Assembly on 26 June 2013 (the 'WP'), a summary of the consultation process and of the responses received, and an appendix explaining how these responses have been taken into account.
- (2) The Agency assessed the WP on the basis of the following main criteria: (i) the annual work programme's essentials as specified in Article 8(5) of Regulation (EC) No 714/2009, and (ii) the objectives set out in Article 6(3)(b) of Regulation (EC) No 713/2009 and Article 9(2) of Regulation (EC) No 714/2009,

HAS ADOPTED THIS OPINION:

¹ OJ L 211, 14.8.2009, p.1

² OJ L 211, 14.8.2009, p.15

1. General remarks

Overall, the WP can be considered to be in line with the requirements of Article 8(5) of Regulation (EC) No 714/2009 as well as with the objectives of Article 6(3)(b) of Regulation (EC) No 713/2009 and of Article 9(2) of Regulation (EC) No 714/2009. It contains, partly by reference to ENTSO-E's website, a list and description of the network codes to be prepared, observations with regard to the envisaged coordination of the network operation, a plan of the research and development activities to be realised, and an indicative calendar of the deliverables. The Agency does not consider the WP as not contributing to non-discrimination, effective competition, efficient and secure functioning of the market, or to a sufficient level of cross-border interconnection open to third party access.

In terms of its time span, the WP, according to its title, covers the period from autumn 2013 through December 2014. As such, the WP overlaps with the previous work programme covering the period 2012 to December 2013. There may be valid reasons for such an overlap, e.g. to inform about change of plans or new requirements for 2013. However, as these reasons are not stated in the WP, it is difficult fully to assess the benefits of the overlapping periods. Thus, in case of an overlap in the period covered by two work programmes, ENTSO-E should clarify the relevance of the overlap.

Regarding the substance, it is to note that the WP is by nature confronted with the difficult task of finding the right balance between concise and detailed information. Overall, the WP presents a fair compromise in this respect. In some areas though, a higher level of detail would be useful to better identify the scope of activities. For instance, for the preparation of network codes, ENTSO-E chose to incorporate information in the WP by referring to its website (p. 5). Such a technique may have its advantage and simplify how information is presented. On the other hand, the Agency still believes that essential information, such as a short description of the network codes referred to in Article 8(5) of Regulation (EC) No 714/2009, should be included directly in the WP document. Similarly, the Agency would welcome particular deliverables being listed not merely in a table by their title but also with regard to their content (e.g. p. 18).

To ensure a correct understanding, it is important that the WP avoids statements which might give a wrong impression of the facts. This is not always the case with regard to network codes because several references to the network codes' requirements might give the impression that those requirements have already become law, while they are still to be adopted. For instance, the WP (p. 7) states that the connection codes require approximately 40 provisions to be set at national level. Since those codes are still in the process of adoption, it should be made clear that their requirements are expected.

2. Specific remarks

2.1 Section 3 of the WP – Network codes

The WP (p. 7) explains that ENTSO-E will continue to work on the implementation of the forthcoming network codes so that the benefits of the network codes can be realised quickly. The relevant work is in principle summarised as actions and specifications necessary to

deliver the benefits of the network codes. The monitoring and the analysis of the network codes are not explicitly addressed in this context.

The Agency supports this foresighted pragmatic approach to the network code implementation. Moreover, the Agency deems it appropriate that ENTSO-E considers in this context also its task of monitoring and analysing the implementation of network codes pursuant to Article 8(8) of Regulation (EC) No 714/2009. The implementation, its monitoring and its analysis go hand in hand.

2.2 Section 4 of the WP – Regional market development

The WP (p. 8) refers to the market developments for the day-ahead and intraday timeframes only, and describes ENTSO-E's intentions for these specific areas. It does not address ENTSO-E's plans regarding market developments for the long-term timeframe and regarding capacity calculation, as well as the way in which ENTSO-E intends to contribute to meet the 2014 deadline.

Focusing on the day-ahead and intraday market only, whereby most of the developments depend on power exchanges, and disregarding completely the long-term timeframe and capacity calculation, whereby progress relies significantly and almost exclusively on transmission system operators ('TSOs'), is highly questionable and not in line with the commonly agreed ambition to deliver the target models for capacity allocation and congestion management before the end of 2014. Thus, it would be in the interest of the internal electricity market that ENTSO-E also states its plans for (a) the long-term market, as already proposed in the Agency's Opinion on ENTSO-E's draft work programme 2012 through 2013 (p. 6)³, (b) capacity calculation, in particular for the early implementation of the forthcoming Network Code on Forward Capacity Allocation, and (c) the smooth development of the flow-based method within the Central West Europe and Central Eastern Europe regions.

2.3 Section 4 of the WP – The challenges of financing infrastructure

The WP (p. 9) suggests that ENTSO-E will work towards appropriate binding Europe-wide rules on investment incentives to improve the regulatory certainty for investors in transmission projects and to encourage vital investment.

As already stated in the Agency's Opinion on ENTSO-E's draft work programme 2012 through 2013 (p. 5)⁴, a Europe-wide harmonisation of the relevant rules could be a possible solution, but it might not be the only one. Therefore, the Agency still believes that the risks of different types of projects and the barriers found in practice should be assessed first. ENTSO-E should focus on this assessment.

³http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2002-2013.pdf

⁴http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2002-2013.pdf

2.4 Section 4 of the WP – Overall activity

The WP (p. 11) depicts, in a diagram, the expected timelines and steps for the work with regard to each market activity. For some steps indicated in the diagram the legend does not provide any explanation or sufficient clarity with regard to the final deliverable.

Therefore, the diagram and the legend should be clarified.

2.5 Section 5 of the WP – Ten year network development plan

The WP (p. 12) claims that Regulation (EU) No 347/2013⁵ expanded the role of the ten-year network development plan ('TYNDP'), making it the 'sole base for transmission and storage projects that are eligible to be characterised as of "Common Interest" (PCI).'

This claim could be understood to the effect that a storage project can only qualify as a project of common interest ('PCI') as defined by Regulation (EU) No 347/2013 if it has been included in the TYNDP. If so, this claim seems questionable for both from a legal and a technical perspective. First, Annex III.2(3) of Regulation (EU) No 347/2013 only requires projects referred to in Annex II.1(a), (b) and (d) to be part of the TYNDP, but not those referred to in Annex II.1(c) which lists electricity storage facilities. Secondly, a network development plan is a plan for the development of network assets, while generation-owned storage projects are external input parameters at the stage of scenarios, network and market modelling.

The WP (p. 12) envisages ENTSO-E's intention to produce a set of ENTSO-E recommendations on the scenarios for the TYNDP to be put up for a public consultation alongside the TYNDP in summer 2014. The Agency welcomes this intention.

The WP (p. 12) implies that the '2030 visions development' activity ends in October 2013 and is not followed by any drafting or publication, and that the drafting for the TYNDP 2014 (which includes the Scenario Outlook) starts in March 2014.

This raises the question of when ENTSO-E will prepare a comprehensive description of the methodology applied to develop the visions and scenarios (as well as description of all values of their parameters) for the TYNDP 2014. In the Agency's view such a comprehensive description is indeed advisable and its early preparation would support the activities of the expert group on scenarios for the TYNDP.

The WP (p. 12) states that ENTSO-E 'established the year 2030 as the reference point for the TYNDP studies'.

This statement is not entirely clear in the light of ENTSO-E's position that 'ENTSO-E is confident that its guideline [i.e. on TYNDP methodology] of (...) considering at least 2

⁵ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009, OJ L 115, 25.4.2013, p.39.

horizons is the best compromise at the pan-European level. This is consistent with international practice over the past number of years (...)’⁶. ENTSO-E should therefore clarify whether it intends the TYNDP 2014 studies to be based on one or two timeframes.

The WP (p. 13, diagram) indicates that ENTSO-E plans to submit the draft TYNDP 2014 to the Agency for its opinion in December 2014.

The Agency is concerned that this timeline might be too tight for the TYNDP 2014 to be adopted by the end of 2014, i.e. in line with the deadline of ‘every two years’ referred to in Article 8(3)(b) of Regulation (EC) No 714/2009. If the Agency exhausts the two-month deadline for issuing its opinion, pursuant to Article 9(2) of Regulation (EC) No 714/2009, on a TYNDP 2014 submitted in December 2014, ENTSO-E will not be able to take into account the Agency’s opinion and adopt the TYNDP 2014 before the end of 2014. To avoid such an undesirable outcome, the Agency calls on ENTSO-E to plan for an earlier submission of the TYNDP 2014 to the Agency for its opinion.

2.6 Section 5 of the WP – Gas system interactions

The WP (p. 14) proposes work on delivering common gas and electricity network models as required by Regulation (EU) No 347/2013.

In this respect it is to note that Article 11(8) of Regulation (EU) No 347/2013 requires ENTSO-E and the European Network of Transmission System Operators for Gas (ENTSO-G) to jointly submit a consistent and interlinked electricity and gas market and network model. The work on common market assumptions should therefore not be ignored.

2.7 Section 6 of the WP – TSO cooperation

The wording of the WP (p. 15) suggests that TSO cooperation will focus on coordination of regional remedial actions.

This is an important aspect. In addition, the Agency believes that ENTSO-E should go one step further and extend its efforts to find suitable models for cross-regional coordination. This would help increase efficiency and effectiveness of system operation and of transmission infrastructure use.

2.8 Section 6 of the WP – Grid model

The WP (p. 16) mentions the development of a dynamic model for the synchronous area of Continental Europe, which will be made available also to interested parties, and the preparation of a pan-European Common Grid Model.

The Agency welcomes these plans, though it believes that ENTSO-E should also explain the added value of those activities for the implementation of the corresponding network codes,

⁶ ENTSO-E, Guideline for Cost Benefit Analysis of Grid Development Projects - Frequent Asked Questions (12 June 2013), p.14.

namely the Network Code on Capacity Allocation and Congestion Management and the Network Code on Operational Planning and Scheduling, to better understand those activities in a broader context. With regard to availability of network models, the Agency believes that network models from the ENTSO-E planning activities (in particular the TYNDP) should be available also to parties showing a justified interest in these models, as the case may be e.g. third party promoters. Availability is required in particular for transparency, fair and equal treatment reasons as well as for research purposes.

2.9 Section 6 of the WP – Synchronous operation with Turkey

Regarding technical cooperation with third countries, the WP (p. 16) highlights the extension of the synchronous trial operation with Turkey and the related future activities. Apart from that, the WP does not envisage ENTSO-E's adoption of recommendations relating to the coordination of technical cooperation between Community and third-country TSOs, as required by Article 8(3)(c) of Regulation (EC) No 714/2009.

Following its Opinion on ENTSO-E's draft work programme 2012 through 2013 (p. 6)⁷, the Agency reminds ENTSO-E not to ignore the work on recommendations pursuant to Article 8(3)(c) of Regulation (EC) No 714/2009 and to make this also visible in the WP.

2.10 Section 6 of the WP – Incidents classification scale

The WP (p. 17) enunciates improvements and updates of the incidents classification scale ('ICS') according to the network codes' input on performance indicators by the 2nd quarter of 2014 and the development of specific web-based software by the end of 2014 (4th quarter of 2014).

It is not clear to the Agency why the development of the specific web-based software is postponed to the end of 2014. The work on the specification of technical requirements can be run in parallel with the update of the ICS methodology.

2.11 Section 7 of the WP – Research and development activities

The WP (p. 21) gives a rather comprehensive picture of ENTSO-E's planned research and development ('R&D') activities in the form of a diagram. The text section on R&D (p. 19) is kept in rather general terms and hardly addresses specific activities.

In the Agency's view the WP could significantly enhance the understanding of ENTSO-E's activities in this area if it contained more detail with regard to activities carried out by ENTSO-E, rather than details with regard to individual research projects carried out by TSOs and consortia. The WP should in particular clarify whether or not ENTSO-E is planning an assessment of the quality of R&D results and of the impact on transmission activities of ENTSO-E and its TSO members, as also mentioned in the Agency's Opinion on the ENTSO-

⁷http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2002-2013.pdf

E Research and Development roadmap 2013-2022 (p. 7)⁸. Similarly the WP should indicate whether (annual) monitoring and evaluation reports will be prepared and published.

2.12 Section 9 of the WP – Relationship with ACER

The WP (p. 23) announces that ENTSO-E will focus on key partners, such as the Agency, to promote greater understanding and awareness of its work and deliverables, and that this approach ‘will involve developing less technical information on many deliverables in order to communicate the benefits of this work to an audience of less technical expertise, and to explain more its relevance to European and regional decision making.’

While ENTSO-E’s intention towards an improved communication with key partners is commendable, it is also important that ENTSO-E prepares comprehensive documents, with solid technical foundations. For the Agency, it is essential that ENTSO-E’s deliverables are of high technical quality.

Done at Ljubljana on 18 December 2013.

For the Agency:


Alberto Pototschnig
Director

⁸http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2011-2013.pdf



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