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**OPINION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 12/2013**

of 19 June 2013

**ON THE NETWORK CODE ON OPERATIONAL PLANNING AND
SCHEDULING**

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(4) 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, Article 6(7) thereof;

HAVING REGARD to the favourable opinion of the Board of Regulators of 12 June 2013, issued pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) The Framework Guidelines on Electricity System Operation, FG-2011-E-003 (the 'Framework Guidelines')³, were adopted by the Agency on 2 December 2011.
- (2) By letter of 24 February 2012, the Commission invited ENTSO-E to start the drafting of the operational planning and scheduling network code and to submit it to the Agency, pursuant to Article 6(6) of Regulation (EC) No 714/2009, by 1 April 2013.
- (3) In drafting this network code, ENTSO-E endeavoured to involve stakeholders in a transparent process by organising stakeholder workshops, technical expert group meetings for Distribution System Operators and public consultations, documented on ENTSO-E's website. The Agency recognises the close working of ENTSO-E with stakeholders and the Agency to facilitate improvements to the draft network code whilst under development.

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 211, 14.8.2009, p. 15.

³ http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Framework_Guidelines/FG%20on%20Electricity%20System%20Operation/FG-2011-E-003_02122011_Electricity%20System%20Operation.pdf

- (4) On 29 March 2013, ENTSO-E submitted to the Agency, pursuant to Article 6(6) of Regulation (EC) No 714/2009, the Network Code on Operational Planning and Scheduling (the 'Network Code'), accompanied by the Supporting Document for the Network Code on Operational Planning and Scheduling (the 'Supporting Document'). The Supporting Document was taken into account for the assessment of the Network Code in this opinion.
- (5) The Agency acknowledges the importance of the Network Code for the security of supply, as well as for the completion and well-functioning of the internal market in electricity and cross-border trade, including the delivery of benefits to customers and the facilitation of the European Union's targets for the penetration of renewable energy sources,

HAS ADOPTED THIS OPINION:

The Network Code submitted by ENTSO-E to the Agency on 29 March 2013 is broadly in line with the Framework Guidelines and the objectives stated therein.

The Agency commends ENTSO-E's efforts to align the Network Code with the Framework Guidelines and acknowledges that the requirements introduced by the Network Code shall facilitate achieving the targets of the European Union on renewable energy sources, as well as market integration, while ensuring security of supply, non-discrimination, effective competition and the efficient functioning of the market.

However, the Network Code does not comply with the Framework Guidelines in the following areas: national scrutiny, transparency, compatibility and coherence with the other network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009, performance indicators as well as scope and application of the Network Code.

Considering the importance of the timely adoption of the Network Code for the security of supply, as well as the completion and well-functioning of the internal market in electricity and cross-border trade, including the delivery of benefits to customers and the facilitation of the European Union's targets for the penetration of renewable energy sources, the Agency focuses its concerns in this opinion on those issues which require improvements before the Agency can be satisfied that the Network Code is in line with the Framework Guidelines and can recommend its adoption to the European Commission. The Agency believes that the issues identified in what follows can be addressed within a reasonable period, through targeted amendments to the Network Code, by improving the drafting of the Network Code provisions or, where relevant, by amending the Supporting Document. To this end, the Agency is fully committed to support ENTSO-E in the process of addressing these issues.

1. National scrutiny

The Framework Guidelines (section 1.1) require that the Network Code “*will be applied by electricity system operators and significant grid users, taking into account possible public service obligations and without prejudice to the regulatory regime for cross-border issues pursuant to Article 38 of Directive 2009/72/EC (henceforth referred to as the “Electricity Directive”)* and to the responsibilities and powers of regulatory authorities established according to Article 37(6) of the Electricity Directive”.

National scrutiny over the requirements of the Network Code to be implemented at the national level is addressed in the Network Code through generic statements in Recitals 7 to 9 indicating that the Network Code “*should respect the competences of national authorities raising out of Regulation (EC) No 714/2009 and Directive 72/2009/EC*” (Recitals (7)), as well as through Article 4, listing the methodologies and conditions establishing the framework for the adoption by Transmission System Operators (‘TSOs’) of terms and conditions necessary for Operational Security to be approved by national regulatory authorities or other relevant national authorities.

The Agency considers that this approach raises several concerns, which are listed below and should be resolved.

Regarding the recitals of the Network Code, the Agency is of the opinion that:

- The drafting proposed in Recitals (7) to (9) of the Network Code does not make clear that the competences of national regulatory authorities or other relevant national authorities pursuant to the 3rd Package are relevant and effective also for the Network Code and for the acts taken under the Network Code. It should be clarified that the provisions of the Network Code are to be read in line with the provisions of the 3rd Package and that, accordingly, the establishment by TSOs pursuant to the Network Code of terms and conditions or actions necessary to ensure Operational Security or their methodologies shall be without prejudice to the competences granted by the 3rd Package to national regulatory authorities or other relevant national authorities;
- The Network Code provides for the establishment by TSOs of Remedial Actions. Remedial Actions are addressed in the Network Code on Capacity Allocation and Congestion Management (‘NC CACM’), under which Countertrading and Redispatching arrangements are subject to an explicit approval by national regulatory authorities (Article 41 of the NC CACM). It should be clarified that this Network Code builds upon the national scrutiny ensured in the NC CACM.

The Agency furthermore considers that the lists of items to be approved by national regulatory authorities or other relevant national authorities in Article 4 of the Network Code should not be construed as exhaustive. In accordance with the principle of subsidiarity, any Member State should be entitled, in line with its rules of national law implementing the provisions of the 3rd Package related to the competences of national regulatory authorities and/or other relevant national authorities, to subject to regulatory approval any items to be developed pursuant to the Network Code, irrespective of whether it is included in Article 4 of

the Network Code. The Agency accordingly suggests clarifying in Article 4(1) of the Network Code that the lists contained in Articles 4(2), (3) and (4) are not exhaustive.

The Agency also considers that Article 4 should be completed by items that, if not approved, are at least notified to national regulatory authorities or other relevant national authorities for information. Those items are the following:

- The scope of the tasks that would be delegated by a TSO or TSOs to Regional Security Coordination Initiatives pursuant to Article 8 of the Network Code;
- The multilateral agreement for coordinating Operational Security pursuant to Article 20(1) of the Network Code. The final draft agreement should be made available to the individual relevant national regulatory authorities or other relevant national authorities in due time before its signing off phase. In case a TSO is expected to conclude more than one multilateral agreement, the submission of the final draft multilateral agreements should allow for a simultaneous evaluation by the respective national regulatory authorities or other relevant national authorities;
- Article 48(3)(a) of the Network Code provides for the information of national regulatory authorities in case of detection of absence of Adequacy within a Responsibility Area. This information should not be limited to national regulatory authorities, but also be shared with other relevant national authorities of a Member State, if any.

2. Transparency

The Framework Guidelines (section 2) require that the “[n]etwork codes shall set out the transparency requirements for TSO’s actions with a significant impact to market functioning and to ensure non-discrimination between grid users”.

Several provisions of the Network Code appear to lack transparency. The Agency believes that an adequate level of transparency is imperative for any terms and conditions or actions necessary to ensure Operational Security, or their methodologies, established by TSOs pursuant to the Network Code. Therefore, the Agency calls for improvements of the following articles:

- In Article 15(4) of the Network Code, transparency should be ensured in the assessment of the accuracy of the variables referred to in Article 15(3) of the Network Code, and on the basis of which the Individual Grid Models shall be built. This transparency should be ensured via the yearly report referred to in Article 62(1) of the Network Code as well as the addition of the appropriate performance indicators in Article 62(2) of the Network Code;

- In Article 20(1) of the Network Code, the geographical scope, in terms of regionally involved TSOs, of the multilateral agreements to be established per region for the coordination of Operational Security should be made publicly available.

3. Coherence and compatibility with other network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009

The Framework Guidelines (section 1.3) state that “[i]n drafting the relevant network code(s) *ENTSO-E shall ensure that they are appropriately coherent and compatible*”.

The Agency considers that the Network Code lacks consistency with the Network Code on Operational Security (‘NC OS’), developed under the same Framework Guidelines. Article 19(1) of the Network Code requests TSOs to establish a methodology covering the “*principles for defining the Observability Area*”. The NC OS however provides, in its Article 19(1), that the Network Code should provide for the development of a methodology for the definition of the Observability Area, and not be limited to mere principles. Article 19(1) of the Network Code should accordingly be adapted to provide for the development of a methodology for the definition of the Observability Area.

4. Performance indicators and forecasting obligations

The Framework Guidelines (section 2) require that the Network Code shall “*foresee the publication of a yearly report by ENTSO-E on the evolution of system operation performance. This report shall provide a detailed assessment of the performance per country, including the selected performance criteria and their evolution over time*”.

The Network Code does not clarify, as required by the Framework Guidelines, that the report shall provide a detailed assessment of the performance per country as well as the evolution of the selected performance criteria over time. Even though the Supporting Document provides an explanation of why the performance indicators can be applied only per synchronous area, this justification may not be considered as valid for all indicators.

The Agency understands that the relevant data shall be collected at the individual TSO level and recognises the strong benefits from higher granularity of the proposed performance indicators. This would allow to ascertain the cross-border nature of the monitored phenomena and to appropriately inform the potential change of any given network code. The Agency accordingly expects the reporting of the performance indicators per Member State.

The Agency notes that the current version of the ENTSO-E Incident Classification Scale of 23 March 2012 developed pursuant to Article 8(3)(a) of Regulation (EC) No 714/2009 is not consistent with the wording of Article 62 of the Network Code.

Regarding the forecasting obligations, the Framework Guidelines (section 2) state that “*Operational Planning and Scheduling are tasks conducted prior to the real-time operation and include outage scheduling, day ahead congestion forecast (...)*”.

The current wording of the Network Code suggests that the issue of TSOs forecasts, e.g. consumption and generation, is only indirectly addressed. There seems to be no explicit obligation for a TSO under this Network Code or the NC OS to forecast the demand or generation from Renewable Energy Sources and follow the weather forecast. The Agency considers that inadequate forecasting could have a detrimental influence on the penetration of Renewable Energy Sources since the efficiency of the system operation could be reduced in terms of congestion management and operational planning. The Agency thus recommends including in the Network Code clear obligations for the TSOs to forecast various parameters used for operational planning, at least in the following articles: Article 14 (demand and generation forecast for the definition of the most representative scenarios for analysing the Operational Security), Article 18(2) (definition of demand and generation forecasts so as to allow TSOs to monitor the demand and generation forecasts as well as the update of the Operational Security Analysis) and Article 48 (forecast of contribution of generation from Renewable Energy Sources).

Moreover, the Agency encourages ENTSO-E to develop a performance indicator related to adequacy, as addressed in Chapter 5 of the Network Code. Such quantitative indicator, covering a short time horizon (Articles 50 and/or 51 of the Network Code) and its evolution over time could be an important input for discussions on capacity markets.

5. Scope and application

The Framework Guidelines (section 1.1) provide that “[t]he network code(s) developed according to these Framework Guidelines shall be applied by electricity system operators and significant grid users”.

The Network Code introduces two new categories of grid users for the purpose of outage coordination, namely Relevant Asset and Relevant Grid Element. The category of Relevant Asset includes “*Self-Planned Interconnectors*”, defined as “*grid element used to link different Responsibility Areas whose planning of the Availability Status is not performed by a Connecting TSO(s) of these Responsibility Areas*”. As drafted, this notion lacks clarity and does not allow identifying unambiguously the types of interconnectors it covers. Particularly, it is not clear whether this notion is intended to apply to interconnectors certified as unbundled TSOs under the procedure of Article 10 of Directive 2009/72/EC. The Agency believes that the subject-matter of “*Self-Planned Interconnectors*” is sufficiently covered by the definition of “*Relevant Grid Element*”, as part of the Transmission Network or the Distribution Network, depending on the implementation of those notions by Member States at the national level. The Agency thus recommends the deletion of the term “*Self-Planned Interconnectors*” from the Network Code.

The Framework Guidelines (section 1.1) require that the Network Code shall ensure “*the functioning of the internal market in electricity and cross-border trade*” and in particular “*an efficient functioning of the interconnected transmission systems to support all market activities*” (emphasis added).

Regarding the obligations of TSOs under the Network Code, it seems that those obligations assume that all TSOs operate the transmission system. However, in some Member States, there are multiple TSOs, with some TSOs owning and maintaining assets but not operating the transmission system. This is notably the case in Member States where operators of interconnectors, independent from the operator of the national transmission system, are certified as TSOs. In the Agency's opinion, the various types of TSOs may require different treatment under the Network Code to ensure an efficient functioning of the interconnected transmission systems supporting all market activities. The Agency therefore recommends allowing in the Network Code for the different treatment of TSOs taking into account the transmission system a TSO owns or operates and the TSO's capability to fulfil the obligations and provisions of the Network Code.

Furthermore, as drafted, the Network Code raises concerns with regard to the application of the Network Code to non-interconnected systems. The Network Code merely addresses this issue in its Recital (6) according to which: *"This Network Code has been drafted in accordance with Article 8(7) of Regulation (EC) 714/2009 according to which the Network Code shall be developed for cross-border Network issues and market integration issues (...)"*.

This recital lacks clarity and could accordingly lead to the risk of interpreting the Network Code as applying to small-isolated systems not connected to any country, such as, for instance, the Canary Islands (Spain), Madeira (Portugal) and Guadalupe (France). For islands without interconnections, there are neither cross-border network issues nor market integration issues (and no cross-border trade either). Accordingly, on the basis of Article 8(7) of Regulation (EC) No 714/2009, it seems to the Agency that the non-application of the Network Code to islands without interconnections should be explicitly stated in the operative part of the Network Code.

6. Drafting quality

The drafting of several provisions of the Network Code could, in the opinion of the Agency, be improved to ensure effective and efficient implementation of the Network Code.

Provisions that could in particular affect legal certainty and undermine the targets of the 3rd Package include the following:

- The definitions introduced in this Network Code are not always consistent with those provided in other network codes. For instance, the notion of *"Distribution Networks and Closed Distribution Networks with the Connection Point directly to the Transmission System"* used in the Network Code lacks consistency with the notion of *"Transmission Connected Distribution Network Operators"* used in the Network Code on Demand Connection ('NC DC'). For a same term, the co-existence of two (or more) definitions may lead to lack of legal certainty. Therefore, the Agency expects that the definitions are harmonised across all network codes as well as published on the ENTSO-E website;

- The notions of “*The Connecting TSO shall...*” and “*TSO shall...*” are inconsistently used in the Network Code. This leads to a confusing treatment of TSOs and could impact on the implementation in Member States with multiple TSOs. It should be clarified or justified why some articles address a “*Connecting TSO*” as opposed to “*all TSOs*”;
- The Network Code refers to the notions of “*Transmission System*” and “*Transmission Network*”. Those two notions are defined differently in the NC CACM (definition of “*Transmission System*”) and the NC DC (definition of “*Transmission Network*”). The absence of reference to consistent and appropriate notions affects the legal certainty of the Network Code. Furthermore, the Network Code lacks clear criteria as to how the Transmission System/Network should be determined at the Member State level;
- The drafting of Articles 1(5) and 1(6) of the Network Code lacks clarity, and therefore may cause legal uncertainty with regard to new applications;
- In Article 2 of the Network Code, the definitions of “*Relevant Asset*”, “*Relevant Demand Facility*”, “*Relevant Grid Element*” and “*Relevant Power Generating Modules*” should be clarified to highlight that they constitute a sub-category of Significant Grid Users and that they are determined pursuant to Articles 23 and 24 of the Network Code;
- The last sentence of Article 3(3) of the Network Code does not seem necessary as it merely reflects the obligations of TSOs pursuant to Article 12 of Directive 2009/72/EC. In addition, this last sentence appears to aim at giving national legislation precedence over European Union legislation (see the use of the words “*in compliance*” and “*according to*”). This sentence should therefore be deleted;
- Article 4 of the Network Code establishes the competences of national regulatory authorities or other relevant national authorities for regulatory approvals. However, it does not consider that Member States might find it appropriate to foresee, in line with the 3rd Package, regulatory involvement other than through approval, notably by fixing the methodologies and conditions. Further, it does not consider that national regulatory authorities, to attend their duties effectively, need to be informed whenever TSOs can implement the Network Code without the approval of national regulatory authorities or other relevant national authorities. Those aspects should also be taken into account by the Network Code;
- In Articles 4(3) and (4), it should be clarified - to ensure an efficient procedure - that national regulatory authorities or other relevant national authorities, when approving methodologies and conditions established by all TSOs or TSOs of a Synchronous Area, should consult each other and cooperate closely with each other, in line with the recommendations made by the Agency on the NC CACM (Recommendation No

01/2013 of 14 March 2013⁴) and on the NC OS (Opinion No 10/2013 of 28 May 2013⁵);

- In Article 4(4) of the Network Code, the wording does not clearly reflect the need for TSOs jointly to establish the mentioned methodologies and conditions and accordingly to submit a joint proposal to the concerned national regulatory authorities or other relevant national authorities. This should be clarified;
- Article 4(6) of the Network Code appears to be a repetition of Article 8 of Regulation (EC) No 713/2009 and its deletion should therefore be considered;
- In Article 9(1)(d) of the Network Code, the words “*where relevant*” do not seem to be appropriate since the Intraday Grid Model has to be developed pursuant to Article 15 of the Network Code, and not only in case it is considered as relevant. The words “*where relevant*” should therefore be deleted;
- In Article 9(2) of the Network Code, a reference to the Network Code on Forward Capacity Allocation seems to be necessary along the reference to the NC CACM;
- Articles 17(2)(b) and (c) of the Network Code provides for the detection “*where applicable*” of the Constraints related to the violation of the short-circuit thresholds and the breaches of Stability Limits. It does not seem appropriate to limit such detection to cases “*where applicable*”, since the relevant constraints are already described in, respectively, Articles 11 and 15 of the NC OS. The words “*where applicable*” should therefore be deleted and reference should be made to the concerned articles of the NC OS;
- In Article 18(4) of the Network Code, related to Remedial Actions, the reference to Article 11 of the NC OS does not seem appropriate as this article relates to short-circuit current management and not to Remedial Actions;
- In Article 20(1) of the Network Code, a deadline is missing for the establishment by TSOs of the multilateral agreements for coordinating Operational Security;
- In Chapter 4 of the Network Code, related to the Outage Coordination, the coordination between Coordination Regions is missing. Further clarity should be provided in the Network Code or its Supporting Document;

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http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2001-2013.pdf

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http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2010-2013.pdf

- Article 32 of the Network Code requires the Availability Plans to have at least an hourly granularity. Although an hourly granularity seems appropriate for short-term periods, it appears as too onerous for a year-ahead period. The scope of application of the hourly granularity should be clarified;
- In Articles 49(1) and (4) of the Network Code, the procedure related to the pan-European annual summer and winter Generation Adequacy outlooks lacks consistency. First of all, although Article 4(3) of the Network Code requires the approval of national regulatory authorities or other relevant national authorities of the methodology for establishing summer and winter Generation Adequacy outlooks pursuant to Article 49, this Article 49 does not require that TSOs develop such methodology within a determined timeframe. This obligation should be added in Article 49(1).

Secondly, while Article 49(4) requires a consultation of stakeholders for any update of Generation Adequacy outlooks, Article 49(1) does not foresee such consultation for the establishment of Generation Adequacy outlooks though here, too, stakeholder consultation is essential. Thus, the obligation to consult stakeholders when establishing Generation Adequacy outlooks should be provided for in Article 49(1) of the Network Code;

- The Agency believes that the scope of methodology for the definition of the summer and winter Generation Adequacy outlooks is not robust enough to allow for diligent performance of the Network Code obligations by TSOs under Article 49(3) of the Network Code. The Agency recommends completing in Article 49(1) of the Network Code the list of items to be covered by the methodology with criteria for the quality of the Generation Adequacy outlooks, so as to allow TSOs to perform their obligations under Article 49(3). By the same token, similar quality criteria should be the triggering basis for updating the methodology for the summer and winter Generation Adequacy outlooks pursuant to Article 49(4) of the Network Code rather than an agreement of all TSOs;
- Article 51(3) of the Network Code requires TSOs to inform national regulatory authorities in case of Adequacy non-fulfilment. It seems to the Agency that the scope of this information should be clarified, and particularly contain possible solutions to address the Adequacy non-fulfilment;
- Article 58(3) of the Network Code related to the responsibility of TSOs to provide and update the relevant information to the ENTSO-E Operational Planning Data Environment does not seem necessary. It appears redundant with the provisions already contained throughout the Network Code related to the communication of the relevant information to the ENTSO-E Operational Planning Data Environment. The Agency therefore suggests its deletion;
- In Article 59(1) of the Network Code, the references to the NC CACM should be clarified, at least in terms of reference to the relevant chapters;

- With regard to Article 62 of the Network Code, it is to note that a draft of the Network Code dated 30 January 2013, as published on ENTSO-E's website, required TSOs to launch a detailed analysis in case of degradation in system operation conditions (Article 60(2)). Currently, the Network Code does not provide for such detailed analysis. For the purpose of efficiency of that process and of reinforcement of operational security the Agency considers that this detailed analysis should be reintroduced into the Network Code.

The Agency is committed to supporting ENTSO-E in the redrafting process.

Done at Ljubljana on 19 June 2013.

For the Agency:


Alberto Pototschnig
Director



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