



Preliminary Draft Outline of the 2016 Work Programme

This document presents a preliminary draft outline of the tasks that the Agency plans to perform in 2016. As such, it focuses primarily on the external deliverables the Agency expects to produce, while the full scope of activities (including those pertaining to administrative, coordination and communication tasks) will be presented in the Agency's Annual Work Programme. The content of this document, and any comment received on it, will serve as the basis for the preparation of the Agency's Work Programme that the Director will submit to the European Parliament, the European Commission and the Board of Regulators by 30 June.

As in previous years, the implementation of the Work Programme depends crucially on the continuous support of the NRAs through the Working Groups and on the Agency being assigned the human and financial resources on which the Work Programme is based. This is vital for performing all the Agency's (legally mandated) tasks, and all the more so for the implementation of REMIT, which by 2016 will have reached the operational stage: the wholesale energy trading data reporting and market monitoring by the Agency will in fact start already on 7 October 2015.

The performance of the tasks proposed in this note is consistent with the preliminary draft budget for 2016; however the subsidy to the Agency from the EU Budget, and therefore the resources actually available to the Agency in 2016, will not be defined until the EU Budget is adopted by the Budgetary Authority. This will happen towards the end of 2015, and therefore after the Work Programme is finally approved by the Board of Regulators (by 1 September) and adopted by the Administrative Board (by 31 September). Such adoption is in any case without prejudice to the annual budgetary procedure. Therefore, it is only once the EU Budget is adopted and the resources available to the Agency finally defined that the Agency will be in a position to assess the feasibility of its Work Programme. At that stage, a revision of the content of the Work Programme may be proposed.

Legal basis

The purpose of the Agency is to assist National Regulatory Authorities (NRAs) in exercising, at Union level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action.

The tasks, organisation and operation of the Agency are set out in Regulation (EC) No 713/2009 (the “Agency Regulation”)¹, as well as in the other legal acts forming the Third Legislative Package on the Liberalisation of the Energy Markets².

Additional tasks were assigned to the Agency by:

- Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging³;
- Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT)⁴; and
- Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation)⁵.

The Agency plays a key role in promoting the integration and well-functioning of the EU markets in electricity and gas, as well as their transparency and integrity. The Agency, in particular

- complements and coordinates the work of NRAs in areas laid down in the legislation;
- participates in the creation of European network rules, by producing Framework Guidelines containing criteria and principles for the Network Codes to be developed by the ENTSOs;
- monitors the execution of the tasks of ENTSOs and regional cooperation of TSOs, and provides opinions on their relevant documents (annual work programme, community-wide TYNDP, supply outlooks, etc.);
- participates in the process for the identification of infrastructure Projects of Common Interest, by providing opinion on several methodological and procedural aspects;

¹ 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 Regulators (OJ L 211, 14.8.2009, p. 1).

² Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ L 211, 14.8.2009, p. 55), Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94), 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 1228/2003 (OJ L 211, 14.8.2009, p. 15) and 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 1775/2005 (OJ L 211, 14.8.2009, p. 36).

³ Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging (OJ L 250, 24.9.2010, p. 5).

⁴ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326/1, 8.12.2011).

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, 25.04.13, p.39).

- takes, under certain conditions, binding individual decisions on terms and conditions for access and operational security for cross border infrastructure, on exemptions and on cross-border cost allocation;
- gives advice on various energy related issues to the European institutions;
- monitors and reports on developments in the energy markets, and
- monitors trading in wholesale energy markets in order to detect and deter insider trading and market manipulation.

In carrying out its tasks the Agency consults extensively and at an early stage with market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner.

TASKS AND DELIVERABLES IN 2016

Framework Guidelines and Network Codes

As regards the Agency's work on framework guidelines and network codes, Article 6(1) of Regulations (EC) No 714/2009 and (EC) No 715/2009 stipulates that the European Commission, after consulting the Agency, ENTSOs and other relevant stakeholders, establishes an annual priority list identifying the areas to be included in the development of network codes. This note takes into account the priorities informally discussed with the European Commission – Directorate-General for Energy.

However, some tasks in 2016 will derive from work already started in the previous year(s). This includes Reasoned Opinions and Recommendations which the Agency will be called to formulate on Network Codes currently or soon to be developed by ENTSO-E and ENTSO-G, the advice to be given during the comitology process and the preparation for the Network Code implementation and monitoring. More specifically, during 2016, the Agency plans to work towards the following deliverables:

Electricity:

- 1) Follow-up of the work on possible rules regarding harmonised transmission tariff structures (depending on the outcome of the scoping phase);
- 2) Advice and support on Network Codes and Guidelines during the comitology process, as appropriate;
- 3) Preparation for and monitoring of the implementation of the adopted Network Codes and Guidelines;

- 4) Coordination of NRAs for the approval of, and, upon request of NRAs or ACER's initiative, opinions on terms and conditions or methodologies developed by TSOs or NEMOs pursuant to the adopted Network Codes and Guidelines (e.g. Common Grid Model methodology, a common coordinated Capacity Calculation Methodology, classification of emerging technologies, etc.);
- 5) Decision in case NRAs are unable to reach an agreement on terms and conditions or methodologies to be developed pursuant to the adopted Network Codes and Guidelines;
- 6) (Possibly) launch of the assessment and review of Bidding Zone configuration (depending on the outcome of the current analysis);
- 7) Survey of possible transitional arrangements for some Member States according to the adopted Network Codes and Guidelines;
- 8) Investigation and opinion in case TSOs or NEMOs fail to submit terms and conditions or methodologies for the approval by NRAs, pursuant to the adopted Network Codes and Guidelines;
- 9) Monitoring of the progress of NEMOs/TSOs in establishing and implementing the market coupling operator function, including possible reports;
- 10) Opinions on framework agreements for the relations between NEMOs and TSOs involved in single day-ahead and intra-day coupling;
- 11) Monitoring of derogations from requirements of grid connection Network Codes and (possible) reasoned recommendations to NRAs;
- 12) (Possibly) opinion(s) on the participation of third countries in day-ahead coupling and single intra-day coupling, including possible agreements with the relevant authorities of the concerned third countries;
- 13) (Possibly) opinions on composition, on rules and procedure, as well as, potentially, on decisions of committees to be established pursuant to the adopted Network Codes and Guidelines;
- 14) (Possibly) opinions and decisions in case of disputes within committees established pursuant to the adopted Network Codes and Guidelines;
- 15) Opinion on ENTSO-E's plan for the monitoring of the implementation of the adopted Network Codes and Guidelines;
- 16) Determination of a list of relevant information to be communicated by ENTSO-E to ACER for the purpose of monitoring activities pursuant to the adopted Network Codes and Guidelines;

- 17) Review of amendment requests to Network Codes and proposal for amendments on own initiative based on Article 7 of the Electricity Regulation and preparation of reasoned proposals to the Commission, where appropriate.

Gas):

- 18) Early implementation of the Network Code on Harmonised transmission tariff structures and the amendment of the Network Code on Capacity Allocation Mechanisms regarding Incremental Capacity;
- 19) Implementation Monitoring Report for the Network Code on Capacity Allocation Mechanisms;
- 20) 2nd ACER report on Progress of capacity bundling at interconnection points according to the Network Code on Capacity Allocation Mechanisms due on 4 November 2016;
- 21) Implementation Monitoring Report for the Network Code on Balancing;
- 22) Opinion(s), if sought by NRAs, on within-day obligations and continuous revision of the annual reports on interim measures according to the Network Code on Balancing;
- 23) Review of the ENTSOG monitoring on the Implementation of the Network Code on Interoperability and Data Exchange Rules;
- 24) 3rd ACER report on monitoring of Congestion at interconnection points due on 1 June 2016 and possible review of the Implementation Monitoring Review on the CMP Guidelines with a view to the combined application of CMPs;
- 25) Review of amendment requests to Network Codes and propose amendments on own initiative based on Article 7 of the Gas Regulation and preparation of reasoned proposals to the Commission, where appropriate;
- 26) Preparation for the review (Transparency) or scoping new Framework Guidelines at the request of the EC. Potential amendment to the Network Code on Capacity Allocation Mechanisms, for instance if there is scope for improvements based on ACER's analysis of conditional capacity uses.

Internal Energy Market monitoring - Cross-sectoral (Electricity and Gas)

As regards the Agency's work on Internal Energy Market monitoring, Article 11 of Regulation (EC) No 713/2009 specifies that the Agency shall monitor the internal market for electricity and natural gas, and, in particular, retail prices of electricity and natural gas, access to networks (including the access of electricity produced from renewable energy sources), and compliance with consumer

rights as laid down in the Third Package. This activity has to be carried out in close cooperation with the European Commission, NRAs and other relevant organisations, and without prejudice to the competences of competition authorities. This work will be combined with part of the Agency's obligation under article 7(3) of Reg. (EU) 1227/2011.

In this area, the Agency plans to work in 2016 towards the following deliverable:

- 27) The 5th Market Monitoring Report covering retail prices in electricity and natural gas, barriers to entry, wholesale market integration, consumer welfare benefits or losses as a result of market integration (or lack thereof), access to networks (including electricity produced or gas sourced from renewable energy sources), and compliance with consumer rights (including protection and enforcement of consumer rights). The report will also cover the operation of different categories of market places and ways of trading.

Regional Initiatives - Cross-sectoral (Electricity and Gas)

Since its formal establishment in March 2011, the Agency has been coordinating the Electricity and Gas Regional Initiatives (ERI and GRI) and monitors the implementation of regional and cross-regional projects developed in the frame of ERI and GRI.

In relation to this area, the Agency plans to work in 2016 towards the following tasks and deliverables⁶:

- 28) Coordination and monitoring of activities for the early voluntary implementation of Network Codes before their rules become legally binding;
- 29) Annual Regional Initiatives Annual Status Review Report, reviewing developments in the Electricity and Gas Regional Initiatives and providing guidance for future work;
- 30) Presentations on progress for the Madrid and Florence Forums.

TSO Cooperation

The tasks related to the Agency's work on TSO cooperation, pursuant to Article 6 of Regulation (EC) No 713/2009, consist in formulating opinions on draft statutes, list of members and draft rules of procedure of the ENTSOs; formulating opinions on draft annual work programmes, draft Community-wide ten-year network development plans (TYNDPs) and other ENTSO's relevant documents (e.g. annual Summer and Winter supply outlooks); monitoring the execution of tasks of

⁶ Some of the tasks under the frame of the Regional Initiatives may fall under the scope of implementing the Network Codes with their potential entry into force in 2016.

ENTSOs, monitoring progress of new interconnector projects, the implementation of TYNDPs and regional cooperation of TSOs.

In relation to this area, the Agency plans to work in 2016 towards the following deliverables:

Electricity:

- 31) Annual monitoring report on the implementation and management of the inter-TSO compensation fund;
- 32) Opinions on ENTSO-E's annual work programme and ENTSO-E's annual report;
- 33) Opinions on ENTSO-E's annual Summer and Winter supply outlooks;
- 34) Opinions on ENTSO-E's common network operation tools including a common incidents classification scale (the latter is subject to ICS report);
- 35) Opinion on ENTSO-E's research and development plan;
- 36) Opinion on the electricity national ten-year network development plans to assess their consistency with the Community-wide network development plan and (if appropriate) recommendations to amend the national ten-year network development plans or the Community-wide network development plan;
- 37) Opinion on ENTSO-E's recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators;
- 38) Report on monitoring the implementation of the electricity Community-wide TYNDP and the progress as regards the implementation of projects to create new interconnector capacity;
- 39) Opinion on ENTSO-E's draft Ten Year Network Development Plan 2016;
- 40) Opinion on ENTSO-E's draft Scenario Outlook and Adequacy Forecast 2016.

Gas:

- 41) Opinions on ENTSG's annual work programme 2017 and ENTSG's annual report 2015;
- 42) Opinion on ENTSG's common network operation tools including a common incidents classification scale and research plans;
- 43) Opinions on ENTSG's annual Summer and Winter supply outlooks;
- 44) Reviews and recommendations on national TYNDPs regarding their (in)consistency with the Community-wide TYNDP;

- 45) Opinion on ENTSOG's recommendations relating to the coordination of technical cooperation between Community and third-country transmission system operators;
- 46) Report on monitoring the implementation of the Community-wide TYNDP and the progress as regards the implementation of projects to create new interconnector capacity.

The Agency will report to the European Commission on the execution of the tasks of ENTSO-E and ENTSO-G referred to in Art. 8(1), (2) and (3) of Regulation (EC) 714/2009 and Regulation (EC) 715/2009, using the deliverables (opinions and recommendations) listed above and other relevant Agency's acts, with additional comments where needed.

Guidelines for Trans-European Energy Infrastructure

The tasks assigned to the Agency under the TEN-E Regulation mostly relate to the process of identification of Projects of Common Interest (PCIs).

In relation to this area, the Agency plans to work in 2016 towards the following deliverables:

Electricity and Gas:

- 47) Annual consolidated report on progress of projects of common interest and (if appropriate) recommendations to facilitate the implementation and overcome delays/difficulties in PCI implementation;
- 48) Opinion on ENTSOs' updated methodologies for cost-benefit analysis;
- 49) Report on national methodologies and criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them;
- 50) Opinion on ENTSO-E's specifications regarding common network operation tools.

Wholesale Market Monitoring (REMIT)

In the REMIT area, the Agency plans to work on the following tasks and deliverables in 2016:

- 51) Operation and further development and, if necessary, enhancements of the Centralised European register of energy market participants (CEREMP), of the Agency's REMIT Information System (ARIS) for collection of trade, fundamental and other data and for the data sharing with NRAs, in connection with the REMIT implementing acts;
- 52) Market monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation according to Article 7 of REMIT, in cooperation with NRAs, on the basis of data collected in

accordance with the REMIT implementing acts, and establishment, further development and operation of the Agency's market surveillance solution to perform its market monitoring activity;

- 53) Coordination of NRAs and other relevant authorities, including at the regional level, without prejudice to their responsibilities, aiming to promote best practices for the implementation of REMIT and to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way, including the update of the Agency's guidance on the application of REMIT definitions, and coordination of NRAs' investigation activities on cross-border market abuse instances;
- 54) Cooperation with NRAs, ESMA, competent national financial market authorities and other authorities and with supervisory authorities, international organisations and the administrations of third countries with the aim of ensuring that a coordinated approach is taken to the enforcement of market abuse rules where actions relate to one or more wholesale energy products which are financial instruments to which Article 9 of Directive 2003/6/EC applies and also to one or more wholesale energy products to which Articles 3, 4 and 5 of REMIT applies according to Article 1(3) of REMIT;
- 55) Annual report on the Agency activities under REMIT according to Article 7(3) of REMIT.

Tasks/deliverables which are subject to request or specific conditions

In 2016 the Agency may be called to work on the following tasks and deliverables on request:

- 56) Decisions on investment requests including on cross-border cost allocation;
- 57) Decision on terms and conditions and operational security of cross-border interconnectors and on exemptions, when requested jointly by the concerned NRAs or when the concerned NRAs fail to take a decision within a predefined period (6 months, with possible extension);
- 58) Requests for updates and improvements of the (electricity or gas) methodology for cost-benefit analysis;
- 59) Opinions on preliminary decisions by NRAs on TSO certification when requested by the Commission;
- 60) Peer reviews, as submitted to the Agency based on Article 7(4) of the (EC) Regulation No 713/2009;
- 61) Opinions and recommendations in the areas of its competence, upon request by Member States, NRAs, the European Parliament, the Council and the European Commission.

Deliverables on the Agency's own initiative

In 2016 the Agency may decide to issue:

- 62) Opinions and recommendations in the areas of its competence, to Member States, NRAs, the European Parliament, the Council and the European Commission, whenever this is appropriate for ensuring the proper functioning of the Internal Energy Market;
- 63) Recommendation on amendments of the Commission Regulation 838/2010.