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**OPINION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 03/2016**

of 17 March 2016

**ON ENTSO-E'S RECOMMENDATIONS RELATING TO THE COORDINATION
OF TECHNICAL COOPERATION BETWEEN THE EUROPEAN UNION AND
THIRD-COUNTRY TRANSMISSION SYSTEM OPERATORS**

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, Article 9(2) thereof,

HAVING REGARD to the favourable opinion of the Agency's Board of Regulators of 16 March 2016, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) On 6 January 2016 the European Network of Transmission System Operators for Electricity ('ENTSO-E') submitted its recommendations relating to the coordination of technical cooperation between the European Union and third-country transmission system operators (TSOs) (the 'recommendations document'), pursuant to Article 8(3)(c) of Regulation (EC) 714/2009, to the Agency for its opinion.
- (2) Pursuant to Article 6(3)(b) of Regulation (EC) No 713/2009 and the first subparagraph of Article 9(2) of Regulation (EC) No 714/2009, the Agency shall issue an opinion on the recommendations document, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal market in electricity.
- (3) In formulating the present Opinion, the Agency also considered Article 47 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity³, as well as Decision No 994/2012/EU of the European Parliament and of the Council of 25 October 2012 establishing an information

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 211, 14.8.2009, p. 15.

³ OJ L 211, 14.8.2009, p. 55.

exchange mechanism with regard to intergovernmental agreements between Member States and third countries in the field of energy⁴.

- (4) In formulating the present Opinion, the Agency also considered, among others, relevant Commission documents, such as the Commission Communication 'Long term infrastructure vision for Europe and beyond' of 14 October 2013,

HAS ADOPTED THIS OPINION:

I. ENTSO-E's recommendations document

In the recommendations document, ENTSO-E emphasises its role outside the European Union (EU) as a coordinator and leader, in particular:

- That European TSOs have – over decades - been collecting experience in the procurement and management of network assets, such as transformers, overhead lines, cables, substations and high voltage equipment;
- ENTSO-E's instrumental role in the development of international standards such as the International Electrotechnical Commission standard 61850;
- ENTSO-E's cooperation with standardisation organisations such as CENELEC⁵;
- ENTSO-E's significant contribution to the industry through the development and adoption of the Common Information Model (CIM) for grid models exchange;
- ENTSO-E's development of the network codes related to system interoperability;
- ENTSO-E's experience in coordinated network planning through its delivery of the Union-wide Ten-Year Network Development Plan (TYNDP);
- Active engagement of ENTSO-E members in the planning of additional backbone transmission corridors based on novel High Voltage Direct Current (HVDC) technology connected to the existing alternating current network;
- ENTSO-E's pioneering of the European Awareness System;
- ENTSO-E's experience with protection against theft;
- ENTSO-E's development of business processes for market-related remedial actions.

ENTSO-E has structured the recommendations document with respect to three main fields of cooperation, namely technical cooperation, market and regulatory cooperation, and interconnections, for which it provides high-level recommendations.

⁴ OJ L 299, 27.10.2012, p. 13

⁵ CENELEC is a European regional standards organisation which, together with its sister organisations CEN, the European Committee for Standardisation, and ETSI, the European Telecommunications Standards Institute, compose European Standards Organisations (ESOs). ESOs are officially recognised by the European Commission and act as a European platform through which European Standards are developed.

II. Analysis

The Agency acknowledges ENTSO-E's role as a coordinator and leader and therefore notes that third countries outside the EU will rely on the recommendations document for guidance.

To ensure that the recommendations may be actioned effectively by third countries, it is essential to structure the recommendations document as clearly and specifically as possible. In this respect, the Agency sees room for improvements. To increase the clarity and specificity of the recommendations document, the Agency therefore recommends that ENTSO-E changes the recommendations document as follows.

The recommendations document should be restructured to include:

- 1) headings to differentiate between what is necessary for third countries in the Energy Community⁶ versus neighbouring third countries outside the Energy Community (who are under a different set of agreements), for third countries which are or are likely to be electrically linked with the EU (i.e. North Africa and Eastern Mediterranean countries beyond Morocco and Syria⁷) and for other third countries (North America, for example) and;
- 2) a subsequent layer of structural granularity, with subheadings to differentiate between what is necessary for third countries with interconnections, those with planned interconnections and those with no interconnections.

For example, in the recommendations document, ENTSO-E recommends that third countries requesting interconnection with the EU should already have implemented the third energy package or should be bound to implement it by a negotiated contract with the EU. It is unclear how such a general recommendation would apply to certain third countries, for example Turkey. On the other hand, applying the heading and sub-heading structure as outlined above in items 1 and 2 would enable ENTSO-E better to reflect current status of negotiations and thus make recommendations that are third-country specific. This is without prejudice to EU legislation which assigns legally binding rights and obligations on EU TSOs and which aims to create a level playing field between all EU TSOs. Consequently, EU TSOs, cooperating with third-country TSOs on issues subject to EU law provisions, may have to consider to what extent the concerned third countries have incorporated the relevant EU provisions in their legislation.

The recommendations document should also be more specific and include in particular:

- 3) recommendations with more background information. For example, with respect to interconnections, it would be helpful to provide a complete overview of current and planned interconnection agreements between ENTSO-E and non-ENTSO-E TSOs;

⁶ Albania, Bosnia and Herzegovina, Kosovo, Republic of Macedonia, Moldova, Montenegro, Serbia and Ukraine.

⁷ Examples: Algeria, Georgia, Armenia, Iran, Iraq.

- 4) more detailed explanations of the recommendations (for example, defining ENTSO-E's role in research and development and the means by which the coordination and promotion of best practices and experience sharing will take place);
- 5) proposals for the necessary tools, platforms, mechanisms or legal instruments for implementation (for example, explaining in greater detail the tools in place to identify whether HVDC connection between ENTSO-E and non-ENTSO-E countries is technically and economically preferable);
- 6) suggested plans and timelines (including – for example – for enhanced cooperation with TSOs of third countries, in order to provide a comprehensive picture of grid development as already recommended in the Agency's opinions on the draft TYNDPs 2012 and 2014);
- 7) a more detailed outline of ENTSO-E's objectives, roles and responsibilities.

To this end, ENTSO-E may choose to apply any knowledge and experience gained from the implementation of Decision No 994/2012/EU. In considering the implementation of the Decision, the Agency draws ENTSO-E's attention to the responses⁸ received from last year's stakeholder consultation by the Commission to identify what aspects of the Decision could be improved and to the Commission's corresponding review⁹.

The recommendations document should give more consideration to ENTSO-E's role as coordinator outside the EU. To this end, ENTSO-E may choose to:

- 8) emphasise a more proactive role for ENTSO-E in ensuring the implementation of the recommendations and in coordinating between ENTSO-E and non-ENTSO-E countries (for example, ENTSO-E could reference the Memorandum of Understanding between ENTSO-E and CEN/CENELEC and illustrate in sufficient detail ENTSO-E's roles and responsibilities therein);
- 9) explore the potential of ENTSO-E membership (membership, associated membership or observer membership) as a platform for technical cooperation between the EU and third countries.

The Agency notes that ENTSO-E suggests no change in technical cooperation for ENTSO-E members as, according to ENTSO-E, '*with ENTSO-E members from third countries there is already fruitful technical cooperation that needs not be changed*' (p. 1). However, as the recommendations are required to relate to the coordination of technical cooperation between the EU's and third-country TSOs, the recommendations document should explain:

- 10) in greater detail why ENTSO-E has not issued recommendations to third-country members of ENTSO-E (such as any benchmark analysis it may have conducted to decide if

⁸ <https://ec.europa.eu/energy/en/consultations/consultation-review-intergovernmental-agreements-decision> .

⁹ http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_ener_005_cwp_review_iga_en.pdf .

improvements to technical cooperation are necessary and/or examples of multilateral agreements in place).

Finally, the recommendations document should consider:

- 11) the progress publicly reported by the Commission with regard to bilateral relations with third countries pursuant to Article 47(1)(f) of Directive 2009/72/EC.

III. Conclusion

The Agency suggests that ENTSO-E amends its recommendations relating to the coordination of technical cooperation between EU's and third-country TSOs, taking into account the Agency's recommendations as listed in items 1-11, and resubmits them to the Agency for a subsequent Opinion. When resubmitting these recommendations, ENTSO-E should submit the stakeholder comments it received during the consultation run between 20 May and 31 July 2015, together with ENTSO-E's reasoning on how those comments have been dealt with.

Done at Ljubljana on 17 March 2016.

For the Agency:


Alberto Pototschnig
Director



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