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**RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY  
REGULATORS No 10/2013**

**of 11 November 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 Regulators<sup>1</sup>, 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 1228/2003<sup>2</sup>, and, in particular, Article 6(9) thereof;

HAVING REGARD to the opinion of the Board of Regulators of 5 November 2013, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- 1) On 29 March 2013, ENTSO-E submitted to the Agency 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').
- 2) On 19 June 2013, the Agency provided its opinion on the Network Code (the 'Opinion'). This Opinion acknowledged that the requirements introduced by the Network Code shall facilitate achieving the targets of the European Union on renewable energy sources and distributed generation penetration, as well as market integration, while ensuring security of supply. This Opinion however also recognised that the Network Code did not comply with the Framework Guidelines on Electricity System Operation<sup>3</sup> (the 'Framework Guidelines') of 2 December 2011 particularly in the following areas:

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<sup>1</sup> OJ L 211, 14.8.2009, p.1.

<sup>2</sup> OJ L 211, 14.8.2009, p. 15.

<sup>3</sup> Opinion No 12/2013 of 19 June 2013 on the Network Code on Operational Planning and Scheduling, [http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Opinions/Opinions/ACER%20Opinion%2012-2013.pdf](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2012-2013.pdf)

1. National scrutiny;
  2. Coherence and compatibility with the other network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009;
  3. Performance indicators; and
  4. Scope and application of the Network Code.
- 3) In its Opinion, the Agency asserted that its specific concerns could 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, amending the Supporting Document.
- 4) On 24 September 2013, ENTSO-E submitted to the Agency an amended Network Code (the 'amended Network Code') and its amended Supporting Document. The Agency recognises that the amendments made improve the Network Code, as well as its Supporting Document, and partially address the concerns raised in its Opinion,

**HEREBY RECOMMENDS:**

The adoption of the amended Network Code by the European Commission, subject to the following further amendments:

- 1) The amended Network Code introduces the notion of '*Outage Coordinating TSO*'. Thereby it creates a specific category of Transmission System Operator ('TSO'), which could limit the scope of TSOs eligible for outage coordination and establish a hierarchy amongst TSOs. It is not clear to the Agency why such categorisation is necessary, in particular because, pursuant to Article 1(3) of the amended Network Code, the Network Code is addressed to all TSOs and there is already a specific regime for assigning obligations under the Network Code if a TSO does not have the relevant function. Moreover, the Agency regards the definition of '*Outage Coordinating TSO*' as very unclear and recursive. Therefore the Agency recommends the European Commission to consider whether the category of '*Outage Coordinating TSO*' is indeed necessary, in which case the definition '*Outage Coordinating TSO*' together with Chapter 4 of the amended Network Code would need to be drafted more clearly. If the category '*Outage Coordinating TSO*' is not necessary, the Agency recommends the European Commission to remove this category, to impose the outage coordination obligations on all TSOs and to amend Chapter 4 of the amended Network Code accordingly;
- 2) The amended Network Code does not provide for the notification to the National Regulatory Authority or other relevant national authorities of the scope of the tasks delegated by a TSO or TSOs to Regional Security Coordination Initiatives ('RSCI') pursuant to Article 8 of the amended Network Code. Although the Agency understands that the delegating TSO would remain responsible for any obligations delegated to a RSCI, it still believes that, for transparency reasons, National Regulatory Authorities or other relevant national authorities should be notified of the scope of the delegated tasks.

Such notification is, in the Agency's opinion, essential to allow National Regulatory Authorities or other relevant national authorities to monitor effectively the compliance with the Network Code;

- 3) The Agency welcomes the addition of performance indicators in Article 60 of the amended Network Code as it improves the assessment of the accuracy of the variables referred to in Article 15(3) of the amended Network Code. The Agency understands that those performance indicators focus *ex post* on the outputs of the Operational Security activities, and not on the forecasted discrepancies. However, the Agency believes that the transparent assessment of the accuracy of variables referred to in Article 15(3) of the amended Network Code provides incentives for TSOs' self-regulation and is accordingly a more suitable policy option compared to an *ex post* evaluation of system-wide incidents. The Agency therefore recommends to add an obligation of transparency for the assessment of the accuracy of the variables referred to in Article 15(4) of the amended Network Code;
- 4) The Agency welcomes the reference in Article 60(1) of the amended Network Code to Article 32(2) of the Network Code on Operational Security as amended on 24 September 2013 (the 'amended NC OS'). The Agency recommends the European Commission to ensure the application of a Member State granularity of performance indicators, in line with the Agency's Recommendation No 09/2013 of 11 November 2013 on the Network Code on Operational Security.

In addition, the European Commission, when adopting the amended Network Code, may wish to take into account the following considerations:

- 1) Recital (9) of the amended Network Code refers to approval or fixing '*within a timeframe allowing the timely delivery of those terms and conditions or actions*'. Such reference could be appropriate to avoid undue delays in the delivery of terms and conditions or actions necessary to ensure operational security, as long as it is construed as a recommendation without any limitations to the competences of Member States and National Regulatory Authorities under the 3<sup>rd</sup> Package;
- 2) Several notions in Article 1(4) of the amended Network Code lack clarity, as does the amended Supporting Document. The notion of '*not operating synchronously with*' could lead to interpreting the Network Code as not applying to DC Transmission Systems (or parts of). The notion of '*temporarily disconnected*' lacks clarity and is not further explained in the amended Supporting Document. The European Commission may wish to provide further clarification on this issue when adopting the amended Network Code. Besides, the Agency questions the necessity to have an explicit provision with regard to the Aland Islands;
- 3) Article 9(2) of the amended Network Code refers to the Network Code on Capacity Allocation and Congestion Management (the 'NC CACM'). This article would benefit also from referencing the Network Code on Forward Capacity Allocation;
- 4) With regard to the Agency's concerns on forecasting obligations (p. 6 of the Opinion), the Agency understands that Member States' legal frameworks assign the task of forecast

calculation differently: in some Member States, the TSO calculates the forecasts while in some others the market parties deliver data on forecasted production and demand to the TSO (p. 55 of the amended Supporting Document). Article 5 of the amended NC OS obliges Distribution System Operators ('DSOs') and Significant Grid Users to submit their forecasts, subject to determination of the scope of data exchange pursuant to Article 16(4) of the amended NC OS. Accordingly, the Agency recommends introducing, in Articles 15(3), 18(2), 18(3) and 51(1) of the amended Network Code, clear obligations for TSOs to calculate (missing) forecasts, in particular if the relevant forecasts were deemed to be outside the scope of data exchange pursuant to Article 16(4) of the amended NC OS and would thus not be received from DSOs and Significant Grid Users;

- 5) Article 32 of the amended Network Code requires Availability Plans to have at least an hourly granularity. While an hourly granularity seems appropriate for short-term periods, it appears too onerous for a Year-Ahead period. Although the amended Network Code allows for lowering the granularity through agreement by all parties, it does not clarify or justify why Relevant Assets, such as generation and demand, are required to produce Availability Plans with more onerous hourly granularity at the Year-Ahead stage. This is not current practice in Member States and the requirement has not been justified. Therefore, Article 32 should clearly state that for a Year-Ahead period a preferred policy option is daily granularity;
- 6) Articles 35 and 36 of the amended Network Code, setting out processes for Year-Ahead outage coordination, lack consistency. Article 36(1)(a) of the amended Network Code considers minimising the impact on the market whilst preserving Operational Security. The same is not considered in Article 35 of the amended Network Code. Furthermore, Article 36(4) of the amended Network Code refers to using all economically efficient and feasible means in the process. The same principle is not used in Article 35 of the amended Network Code. The Agency invites the European Commission to apply a consistent approach for the Year-Ahead outage coordination in Article 35 and 36 of the amended Network Code;
- 7) Article 44(4) and (5) of the amended Network Code refers to the notion of '*Relevant Grid Element owner*'. This notion is however not defined in Article 2 of the amended Network Code and thus the Agency invites the European Commission to add the corresponding definition;
- 8) In Article 47(3) of the amended Network Code, the link between the methodology approved according to Article 47(1) of the amended Network Code and the methodology previously adopted by ENTSO-E pursuant to Article 8(1)(f) of Regulation (EC) No 714/2009 lacks clarity. The Agency believes Article 47(3) should be understood as implying that TSOs should take into account the methodology adopted by ENTSO-E pursuant to Article 8(1)(f) of Regulation (EC) No 714/2009 when developing the methodology pursuant to Article 47(1) of the amended Network Code;
- 9) Article 49(3) of the amended Network Code requires TSOs to provide National Regulatory Authorities or other relevant national authorities with an analysis of the causes for adequacy non-fulfilment. It seems to the Agency that TSOs should also provide possible solutions to address the adequacy non-fulfilment;



- 10) In Article 57(1) of the amended Network Code, the references to the NC CACM should be clarified, at least in terms of reference to the relevant chapters;
- 11) The Agency believes that Article 60 of the amended Network Code should lay out explicit obligations for TSOs to launch a detailed analysis in case of degradation in system operation conditions and not leave it to the non-binding Incident Classification Scale methodology. Furthermore, the European Commission may wish to consider in Article 60 of the amended Network Code performance indicators related to the transparency of activities that could result in increased powers to TSOs and impacts on other parties due to TSO decisions;
- 12) In the amended Network Code, the notion of '*best endeavour*' has been deleted and replaced by the words '*economically, efficient and feasible*' in a number of areas. This raises questions about consistency between the use of '*endeavours*', '*best endeavours*' and '*economically efficient and feasible*'. The latter lacks clarity about for whom it should be economically efficient, about how the efficiency should be measured and about which actions would be feasible to, for example, maintain system security by the TSO, irrespective of being economically efficient. Furthermore, the use of the words '*economically efficient and feasible*' could also be considered for the activities of other parties, such as Significant Grid Users, for example in Article 35 of the amended Network Code.

This Recommendation is addressed to the European Commission.

The amended Network Code and the amended Supporting Document received from ENTSO-E are attached to this Recommendation for information purposes.

Done at Ljubljana on 11 November 2013.

For the Agency:



Alberto Pototschnig  
Director



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