

Public consultation on ACER's Framework Guidelines on the joint scenarios for electricity and gas network development plans ("Scenarios Guidelines")

Fields marked with * are mandatory.

Introduction

This consultation of the European Union Agency for the Cooperation of Energy Regulators ('ACER') is addressed to all interested stakeholders.

The purpose of this survey is to collect specific and concrete views from the public on the draft Scenarios Guidelines and inform ACER's decision-making process for adopting the Guidelines by 24 January 2023.

The draft Guidelines are available [here](#). The consultation questions directly refer to this document. Replies to this consultation should be submitted by Monday **14 November 2022, 23:59 hrs (CET)**

Data Protection and Confidentiality

ACER will process personal data of the respondents in accordance with [Regulation \(EU\) 2018/1725](#), taking into account that this processing is necessary for performing ACER's consultation tasks.

More information on data protection is available on [ACER's website](#).

ACER will not publish personal data.

Following this consultation, ACER will make public:

- the number of responses received;
- organisation names, except those with a valid reason for not having their organisation name disclosed;
- all non-confidential responses;
- and ACER's evaluation of responses.

You may request that (1) the name of the organisation you are representing and/or (2) information provided in your response is treated as confidential. To this aim, you need to explicitly indicate whether your answers contain confidential information, and also provide a valid reason if you want that the name of your

organisation remains confidential.

You will be asked these questions at the end of the survey.

1. Respondent's Data

* 1. Name and surname

* 2. Email

* 3. Organisation

* 4. Country of your organisation

- [xx] - All EU Member States
- AT - Austria
- BE - Belgium
- BG - Bulgaria
- HR - Croatia
- CY - Cyprus
- CZ - Czechia
- DK - Denmark
- EE - Estonia
- FI - Finland
- FR - France
- DE - Germany
- GR - Greece
- HU - Hungary
- IE - Ireland
- IT - Italy
- LV - Latvia
- LT - Lithuania
- LU - Luxembourg
- MT - Malta
- NL - Netherlands
- [xx] - Other
- PL - Poland
- PT - Portugal
- RO - Romania
- SK - Slovak Republic
- SI - Slovenia

- ES - Spain
- SE - Sweden

* 6. Activity

- Transmission System Operator (or association)
- Distribution System Operator (or association)
- Other market participant
- End-user (or association)
- Energy supplier (or association)
- Generator (or association)
- Utility (or association)
- Civil society organisation
- Other

Confirmation

I accept that ACER processes my data in line with its data protection rules

2. Consultation questions

To help the Agency understand your concrete and specific input, we recommend that you connect your feedback as much as possible to the recital numbers in the draft Guidelines.

8. Please write here your specific and concrete feedback on the criteria proposed to ensure a timely scenario preparation process (Section 2 of the draft Guidelines).

We welcome the emphasis on ensuring that scenarios are timely prepared (24). The related requirement for a comprehensive process timeline and stakeholder engagement plan in Section 4 complement this. However, the draft Guidelines should go further, providing a minimum baseline of specific events and consultations to be held for the scenario development, and timelines for the same, to be expanded upon in a comprehensive process timeline and stakeholder engagement plan to be developed jointly with the SRG (see also our comments to Section 4, recitals (42)-(48)). This will turn qualitative (i.e., more discretionary) obligations placed on the ENTSOs to, e.g., provide “stakeholders enough time” (45) into quantitative, non-discretionary minimum obligations which can be added to as warranted. The ENTSOs should also be obligated to provide regular updates to stakeholders as they progress in scenario development, even if not related to a specific opportunity for input.

We are concerned about the overemphasis on Member States’ draft NECPs reflected in recital (28). Article 12(1) of the new TEN-E Regulation (Regulation (EU) 2022/869) makes clear that the scenarios must be “fully in line with the energy efficiency first principle and with the Union’s 2030 targets for energy and climate and its 2050 climate neutrality objectives ...” In contrast, TEN-E states that the scenarios must only “take into account” (i.e., they do not need to substantively align with) the NECPs, and only “when relevant.” In other words, Article 12(1) creates a clear hierarchy between EE1st, the Union’s energy and climate targets, and the NECPs. This is for very good reason. Although important for linking EU ambition with Member State policy, NECPs have not ensured alignment with the Union’s energy and climate targets, and they quickly become outdated after their adoption. This means that they cannot be relied upon – at least on their own – to meet the 2030/2050 energy and climate targets. Primacy should therefore be given to achieving these targets. This is also more than a matter of policy. It is a legal obligation, reflected not only in Art. 12(1) TEN-E, but also the European Climate Law (Regulation (EU) 2021/1119). This is because the joint scenarios report must be approved by the Commission, which is a Union institution subject to the obligations in Articles 2 and 4 of the Climate Law to “take the necessary measures” and “prioritise swift and predictable emissions reductions” to ensure that the 2030/2050 targets are collectively met. The Commission is therefore bound to reject any joint scenarios report which does not enable the achievement of these targets. Accordingly, the Guidelines should be revised to ensure this alignment through, in this instance, amending recital (28) to note that the scenarios must align with EE1st and 2030/2050 energy and climate targets as a priority over the draft NECPs.

Recital (28) also calls for a “streamlined scenario preparation process.” Although timeliness is important as a practical matter, it is not a legal requirement in Art. 12 TEN-E. We are concerned that, as a general matter, the draft Guidelines appear to promote expediency and streamlining at the expense of achieving the legally required substantive outcomes of aligning the scenarios with EE1st and the 2030/2050 energy and climate targets. Art. 12(1) sets out a new policy approach, which necessarily implies a transition and adaptation period to ensure it is effectively and efficiently applied. Even though this learning process may slow the implementation of this new framework, it does not permit a weakening of the substantive requirements of Art. 12(1). Instead, streamlining and efficiencies must first come through learning how to achieve these requirements in practice, which will involve some trial and error. Elements to streamline the process should be introduced later on, but caution should always be exercised at the beginning. This means that efficiencies should not be introduced if doing so risks causing substantive non-alignment with Art. 12(1).

One potential practical way to promote efficiencies while maintaining substantive alignment with Art. 12(1) TEN-E, at least for the next TYNDP, is to use the ambition of the most recent REPowerEU plan and Fit-for-55. This approach is imperfect as it does not guarantee compliance with EE1st (i.e., there is a notable overemphasis on supply-side measures), but it would provide a more suitable baseline than Member States’ draft NECPs for purposes of the first TYNDP under the new TEN-E framework. This approach also aligns with ACER’s July 2022 decision on the draft TYNDP 2022 Scenario Report (Opinion No 06/2022), which stresses the importance to take into consideration up-to-date information and increased ambitions reflected in, i.a., REPowerEU/Fit-for-55.

9. Please write here your specific and concrete feedback on the proposed criteria to ensure robust objective-driven scenario development (Section 3 of the draft Guidelines).

We welcome the inclusion of the EE1st principle and considerations of demand-side response and energy system integration in this Section, and the characterisation of the 2030/2050 energy and climate targets and EE1st principle as binding boundary conditions (30-31). We object to footnote 14, which permits ENTSOs to deviate from the energy and climate targets, as this derogation is clearly prohibited by Art. 12(1) TEN-E and the European Climate Law (see our comments to the previous question). Also, the 2030/2050 energy and climate targets already set boundaries with sufficient discretion within which ENTSOs can deviate, so there is no practical reason to exclude their application. This footnote must be deleted.

Our primary concern with Section 3 (and the draft Guidelines more generally) is that it converts clear substantive obligations included in Art. 12(1) TEN-E into procedural ones. Art. 12(1) provides that the Guidelines must ensure that the scenarios – as a substantive matter – fully align with EE1st and the 2030 /2050 energy and climate targets. However, the draft Guidelines create a purely procedural obligation which merely requires the ENTSOs to report on how certain related assumptions are taken into account in the scenarios (31). To comply with Art. 12(1), the Guidelines must include substantive requirements and criteria which can help ensure the scenarios align with EE1st and the 2030/2050 energy and climate targets. Some potential examples of these substantive requirements and criteria could include:

- A recognition that relevant policies will increasingly require the implementation of energy efficiency and flexibility measures in lieu of new infrastructure investments or costly infrastructure maintenance.
- A recognition that relevant policies will increasingly require the electrification of low-temperature heat.
- A prohibition of scenarios which contemplate the use of hydrogen or other gases to decarbonise fossil gas end uses which are not in priority, hard-to-abate sectors that cannot otherwise be decarbonised.

We welcome the call to build scenarios on information gathered through bottom-up approaches where inputs have already gone through national level consultation and validation (34). However, we are concerned with the direction in the same recital that scenarios build on “feasible and broadly supported” supply and demand assumptions. As explained, Art. 12(1) TEN-E requires substantive alignment with EE1st and the 2030/2050 energy and climate targets. If using feasible and broadly supported assumptions on supply and demand could cause these substantive requirements to be missed, this warrants including at least multiple, varying assumptions about supply and demand to ensure compliance.

For this reason, the NECPs should not necessarily be the primary basis for scenario development (35), since (as discussed above) they are often not compliant with EE1st and the 2030/2050 energy and climate targets. And although recital (35) recognises that the ENTSOs should amend the assumptions in case of inconsistencies between NECPs and these targets, this task should not be left to the ENTSOs alone. This recital should be amended to at least incorporate the SRG in this reconciliation.

It is also problematic that ACER recommends using only a single (best estimate) scenario for the short-term, which in turn incorporates economic growth as the only driver (39). The justification for this is to streamline scenario preparation activities. It also seems to be a political consideration, noting that economic growth “resonates to decisionmakers.” Art. 12(1) TEN-E does not mention expediency, economic growth, or political considerations, but it does require substantive compliance with EE1st and the 2030/2050 energy and climate targets. Looking only to economic growth to guide short-term scenario development is plainly inconsistent with Art. 12(1) TEN-E. It is also inconsistent with the obligation in the Climate Law placed on the Commission and all Member States to “prioritise swift and predictable emission reductions” (Art. 4(1)). Therefore, additional drivers must be incorporated in short-term scenario development as well, including at least those noted in footnote 17, increased ambitions under REPowerEU and Fit-for-55, and other considerations guided by EE1st (e.g., widespread electrification of low-temperature heat, incorporation of demand response).

10a. Please write here your specific and concrete feedback on the proposed criteria to ensure a transparent, inclusive and streamlined development process, focusing on the stakeholder engagement requirements (Section 4 of the draft Guidelines, recitals (42)-(48)).

We appreciate the creation of the Stakeholder Reference Group ('SRG') and generally agree that it provides an effective approach to realising the stakeholder participation requirements in Art. 12(3) TEN-E. We are concerned that the ENTSOs are put in charge of creating and then facilitating this group (43), however, as that could erode its independence and result in an overinclusion of technical experts at the exclusion of social and policy experts. It would be better if ACER, the ESABCC, or another public institution plays this role, and that the "civil society representatives" (Art. 12(3) TEN-E) in the SRG include not only technical organisations but also those focused on relevant policy matters such as environmental protection, security of supply, social justice, and affordability. It is also unclear what this recital intends to achieve by assigning an "observer" role to ACER, the Commission, the JRC, and the ESABCC. Although TEN-E does not mandate their inclusion, to the extent they participate, these institutions would provide valuable insight which should be considered equally alongside the contributions of the SRG's participating members.

As discussed in our comments to Question 8, the requirement placed on the ENTSOs to create a comprehensive process timeline and stakeholder engagement plan is important (45). However, these should be developed by the SRG in collaboration with the ENTSOs to better ensure that stakeholders are given sufficient time and opportunity to participate, that the SRG can play a meaningful role in steering scenario development, and that expertise on a broad range of relevant issues (e.g., social justice, environment, security of supply) are considered. The Guidelines should also provide a minimum baseline of specific events and consultations to be held for the scenario development, and timelines for the same.

10b. Please write here your specific and concrete feedback on the proposed criteria to ensure a transparent, inclusive and streamlined development process, focusing on the information and publication requirements (Section 4 of the draft Guidelines, recitals (49)-(52)).

The two-tiered disclosure of information should be removed (51). The ENTSOs should be required to provide to the public both the information envisioned as being disclosed only to "informed stakeholders" and the simplified information for the "wider public." There is no reference to confidentiality protections (i.e., non-disclosure agreements required of the "informed public" which receives more technical information), so we assume this two-tiered approach is to ensure these two audiences simply have access to information which is most suitable for their purposes. However, this can also be achieved by disclosing all non-confidential information to the public, and designating certain information as being more technical in nature. If the two-tiered system is maintained, the reference to "informed stakeholders" should be to the "SRG".

We also join in calls from others in civil society to publish all data sets under an open data licence and use open source modelling software. This is the best way to ensure the "transparent, non-discriminatory and robust development of scenarios" as required by Art. 12(1) TEN-E.

Lastly, information, assumptions, and methodologies concerning greenhouse gas emissions and carbon budgets must be included in the reported information in recital (51). This is critical to include, as the Guidelines must be aimed at ensuring the scenarios align with the 2030/2050 energy and climate targets (Art. 12(1) TEN-E). It is difficult to see how this can be ensured if this information is not disclosed.

11. Please write here your specific and concrete feedback on the process for ensuring independent scrutiny of inputs, assumptions and methodologies (Section 5 of the draft Guidelines).

It is problematic that the draft Guidelines contemplate the SRG primarily acting by majority consensus (53). The SRG will be comprised of industry and civil society organisations representing a broad range of interests (e.g., consumer protection, security of supply, environment, social justice). These diverse organisations will bring varying expertise and perspectives to scenario development. It will be important to reach consensus-building within the SRG, as long as this does not unduly politicise the process at the expense of objectivity. However, the real strength and benefit of the SRG will be in its ability to effectively and efficiently channel all diverse input from all stakeholders to inform scenario building, even if a majority is not reached on each given piece of input.

For example, an environmental organisation may not have sufficient expertise to weigh in on whether the correct sources of data were evaluated for a given technical input, nor would that necessarily be relevant to the purpose of its participation in the SRG. In the same way, an organisation representing independent aggregators may not need to opine on gas demand projections unrelated to the electricity sector – or at least, it might not be appropriate to give its opinion equal weight to other organisations working closer to the data (specific circumstances depending). By calling for a majoritarian approach, the draft Guidelines suggest that each organisation will weigh in on all issues, and that their input on all issues will be considered equally (i.e., they each get one vote). A majoritarian approach also requires that the membership of the SRG be proportionate to the interests affected by scenario development; otherwise, it will be biased. This is effectively impossible to achieve, in part due to the complex policy questions underlying scenario development and the relative capacities of the various organisations that should sit on the SRG.

Instead, the SRG should be oriented toward facilitating effective, independent input from all its members, whether that is in scrutinising proposals in an advisory capacity (as is largely envisioned throughout the Guidelines) or in developing proposals in tandem with the ENTSOs (which is ideal). All input must be duly considered, and deviations from input received from members on the SRG must be duly justified (e.g., more must be required than simply recording and publishing this input, as envisioned in recital (57)). This should provide sufficient flexibility to ensure that all SRG members can contribute effectively at least within their areas of expertise and interest, while also ensuring contributions are appropriately weighed according to this relative expertise and interest. A quantifiable, majoritarian approach unnecessarily frustrates this.

For this reason, recital (55) should also be deleted. It might be unduly burdensome to seek independent advice outside the SRG in all instances, but it should be encouraged whenever possible.

12. Please write here your specific and concrete feedback on the proposed quick-review process to enable updating a scenario in case key assumptions change (Section 6 of the draft Guidelines).

We strongly support a quick-review mechanism to update the scenarios as needed. The requirement on lack of foreseeability (59) should be removed, since a realised event which was arguably foreseeable at the time of scenario development may still have been unlikely and therefore not included in the scenario.

It is also problematic that the ENTSOs are given free discretion to declare a sufficiently significant event and update their scenarios accordingly, with no opportunity for oversight by the Commission or ACER and no need for independent scrutiny or verification. The Commission, ACER, and/or the ESABCC must have the opportunity to amend or reject a scenario adaptation (61).

The ESABCC should also have the authority to declare a sufficiently significant event. If the majoritarian approach to the SRG is maintained (see our comments to the previous question), then the SRG should also be able to declare a sufficiently significant event.

This Section should also be revised to clearly note that a scenario updated via this quick-review process must still be consistent with the rest of the Guidelines, and in particular with EE1st and the 2030/2050 energy and climate targets (as required by Art. 12(1) TEN-E).

A two-week public consultation should always be held (64). This may not be necessary if input from the SRG is binding or the Commission, ACER, or ESABCC are can amend or reject an updated scenario.

13. Please write here your specific and concrete feedback on the proposed compliance reporting (Section 7 of the draft Guidelines).

We have no specific comments on this section.

14. Would you like to share anything else with us regarding the draft Scenarios Guidelines?

The reference documents (page 2) must be updated to include at least: Regulation (EU) 2021/1119 of 30 June 2021 establishing the framework or achieving climate neutrality; Regulation (EU) 2018/1999 of 11 December 2018 on the Governance of the Energy Union and Climate Action; Regulation (EU) 2019/942 of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators; Commission Recommendation (EU) 2021/1749 of 28 September 2021 on Energy Efficiency First: from principles to practice – Guidelines and examples for its implementation in decision-making in the energy sector and beyond. These documents all contain relevant, important requirements and considerations regarding achievement of the 2030/2050 climate targets and application of the EE1st principle.

The reference to streamlining in recital 10 should be removed, since this is not required by Art. 12 TEN-E.

Any reference to the 2030/2050 energy and climate targets or to EE1st as “policy objectives” (e.g., footnote 10) must be changed to “legal obligations” as they are substantive legal requirements in, i.a., Art. 12(1) TEN-E.

As with all modelling scenarios, there will remain a significant risk of overshooting the 2030/2050 energy and climate targets. Scenarios should be oriented toward achieving climate neutrality by 2040, to ensure achievement of the 2050 climate neutrality target.

Confidentiality

- * 15. Your response would be published on the Agency's public consultation web page. Please confirm that:
- My response and name of my organisation can be published
 - My response can be published without my organisation's name (You are asked to give a justification below)
 - My response contains confidential information; a redacted version may be published (Please ensure you marked the specific text by preceding and closing it with [CONFIDENTIAL]. In addition, you are asked to give a justification below)

Thank you!

Background Documents

[Scenarios Guidelines DRAFT](#)

Contact

[Contact Form](#)