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RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS No 09/2013

of 11 November 2013

ON THE NETWORK CODE ON OPERATIONAL SECURITY

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[1], 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[2], 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 28 February 2013, ENTSO-E submitted to the Agency the Network Code on Operational Security (the 'Network Code'), accompanied by the Supporting Document for the Network Code on Operational Security (the 'Supporting Document').

2) On 28 May 2013, the Agency provided its opinion on the Network Code[3] (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 there was room for improvement in some specific areas of the Network Code in order to bring it in line with the Framework Guidelines on Electricity System Operation[4] (the 'Framework Guidelines') of 2 December 2011. These areas were related particularly to:

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[1] OJ L 211, 14.8.2009, p.1.
[2] OJ L 211, 14.8.2009, p. 15.
[3] Opinion No 10/2013 of 28 May 2013 on the Network Code on Operational Security, http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2010-2013.pdf
[4] 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

1. Coherence and compatibility with the other network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009 (particularly in the area of network connection rules);

2. National scrutiny;

3. Performance indicators; and

4. Information exchange.

3) In its Opinion, the Agency asserted that its specific concerns could have been 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, in Article 4(2), does not subject the determination of the scope of data exchange with Significant Grid Users, pursuant to Article 16(4), to regulatory approval. This is inconsistent with Article 9(5)(d)(2) of the Network Code for Requirements for Grid Connection Applicable to all Generators and Article 18(1)(c) of the Network Code on Demand Connection (the 'NC DC'), pursuant to which the determination of the information exchange's content is subject to regulatory approval. This is furthermore inconsistent with the NC DC as the determination of the scope of data exchange, pursuant to Article 16(4) of the amended Network Code, could significantly influence the uptake of demand side participation (e.g. Article 29 of the amended Network Code) and the flexibility of the future electricity systems (e.g. Articles 20 and 26 of the amended Network Code), items which are subject to regulatory approval pursuant to the NC DC.

   Moreover, the absence of regulatory approval for the determination of the scope of data exchange pursuant to Article 16(4) of the amended Network Code leads to uncertainty as to the proportionality of the requirements of Articles 24 to 27 and 29 of the amended Network Code.

   The Agency understands that Article 16(4) of the amended Network Code aims at allowing Transmission System Operators ('TSOs') to transparently determine the scope of the data exchange with Significant Grid Users. It follows from the amended Supporting Document that only a few Member States apply real-time exchange of information

obligations to Significant Grid Users up to Type B Power Generating Modules. An improper implementation of Article 16(4) of the amended Network Code could thus lead to significant deviations from current standards and requirements.

The Agency thus believes that the regulatory approval of the determination of the scope of data exchange pursuant to Article 16(4) of the amended Network Code is essential to ensure that the implementation of the amended Network Code at the national level respects the principles of transparency, proportionality and non-discrimination, as well as protects Significant Grid Users that are subject to these requirements from undue and unjustified capital and operational costs;

2) The Agency welcomes the addition in Article 4(2) of the amended Network Code of an explicit regulatory approval for the modifications of Power Generating Modules' capabilities, pursuant to Article 10(3) of the amended Network Code. The Agency considers that a similar regulatory approval is essential for modifications of Demand Facilities' capabilities, pursuant to Article 10(4) of the amended Network Code;

3) The Agency understands that the methodology and criteria for the establishment of the Contingency List developed pursuant to Article 13(5)(f) of the amended Network Code might not directly influence Significant Grid Users, and may therefore as such not be subject to approval by the National Regulatory Authority or other relevant national authority. However, in the opinion of the Agency, Contingency Lists can still have an indirect influence on Significant Grid Users as, under the forthcoming Network Code on Capacity Allocation and Congestion Management, it is expected that Contingencies used for Operational Security Analysis should also be used for Capacity Calculation, and that TSOs should provide justifications if the Contingencies would not be the same. Consequently, the Agency believes that the methodology and criteria for the establishment of the Contingency Lists pursuant to Article 13(5)(f) of the amended Network Code should at a minimum be published on the ENTSO-E website, so as to allow for an efficient assessment of the differences in case the Operational Security Limits and Contingencies used in Capacity Calculation are not the same as in Operational Security Analysis;

4) The Agency welcomes the improvements in Article 32 of the amended Network Code with regard to performance indicators. However, the Agency reiterates, in line with its Framework Guidelines, that system performance's reporting shall be based on a Member State granularity. In the opinion of the Agency, performance indicators are vehicles to monitor the efficiency and effectiveness of network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009 to address cross-border issues. Performance indicators are thus essential to decide on appropriate policy options in the frame of the network codes amendment process pursuant to Article 7 of Regulation (EC) No 714/2009. This can only be achieved with indicators having a Member State resolution.

The Agency also notes that a similar resolution is already applied in Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council, since TSOs have to reveal the locations of

unavailable transmission infrastructure, as well as of unavailable generation and production units.

Accordingly, Article 32(2) of the amended Network Code should clearly state that ENTSO-E annual report should contain Operational Security Performance Indicators with a per Member State resolution.

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

1) Recital (10) 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 3rd 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 amended Network Code as not applying to any DC Transmission System (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 16(4) of the amended Network Code lacks criteria for the determination of the scope of data exchange with Significant Grid Users. The application of the principles of efficiency and proportionality in Article 16(6) of the amended Network Code fails to bring the necessary comfort to the Agency as it is limited to exchanges between TSO and DSO for their cooperation on the exchange of information;

4) 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, e.g. Articles 8(4), 10(1), 11(2), 13 (5)(c) and 16(1). This raises questions about consistency between the use of 'endeavours', 'best endeavours' and 'economically efficient and feasible'. The latter lacks clarity about to 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. 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;

5) Article 4(2)(d) of the amended Network Code provides for the regulatory approval of criteria for requesting a compliance test from Significant Grid Users, pursuant to Article 31(8) of the amended Network Code. However, this latter article does not provide for such criteria to be developed and applied by TSOs. The Agency believes that a relevant provision, requiring TSOs to develop and adhere to criteria for requesting compliance tests, should be included in Article 31(8) of the amended Network Code;

6) Article 31(9) of the amended Network Code lacks clarity as to its intention, to whom it should apply to and to the level of requirements it should cover, having only general references to '*facilities*' and to '*the requirements of this Network Code*';

7) The Agency believes that performance indicators suit the network amendment process entrusted to the Agency pursuant to Article 7 of Regulation (EC) No 714/2009 and that, in this regard, the involvement of National Regulatory Authorities in the process of analysis and classification of system incidents, especially those categorised as having influence on one region or more, plays a pivotal role in the evolution of network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009. The Agency thus considers that Article 32(2) and (3) of the amended Network Code should involve National Regulatory Authorities in the process of analysis and classification of system incidents;

8) In general, the Agency believes that compatibility and coherence amongst all network codes developed pursuant to Articles 6 and 8(6) of Regulation (EC) No 714/2009 should be ensured. Here in particular the challenge is to bring definitions and cross references in line. The Network Code on High Voltage Direct Current Connections, currently being developed by ENTSO-E pursuant to the Framework Guidelines on Electricity Grid Connections[5], introduces two definitions, 'DC-connected Power Park Modules' and 'HVDC Systems', which seem to be left out of the amended Network Code, but which are crucial for its scope of application and legal certainty.

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

[5] Framework Guidelines on Electricity Grid Connections, 20 July 2011, FG-2011-E-001, http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Framework_Guidelines/Framework%20Guidelines/FG%20on%20Electricity%20Grid%20Connections.pdf

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