



Draft Outline of the 2017 Work Programme

This document presents an outline of the tasks the Agency plans to perform in 2017. 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 (AWP).

The content of this draft outline will serve as the basis for the preparation of the AWP that the Director will submit to the European Commission, as part of the Single Programming Document (SPD), by 31 January 2016, the deadline stipulated by the Communication from the Commission on the Guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies of December 2014.

The Guidelines foresee a common template for the SPD. While the new mandatory deadlines enter into force with the AWP 2017, the Agency has already used the format of the SPD for its 2015 and 2016 AWP.

According to its founding act, Regulation (EC) No 713/2009, the Agency is due to submit its AWP to the European Parliament, the European Commission and the Board of Regulators (BoR) by 30 June. Following the Commission's opinion and the subsequent approval of the AWP by the BoR by 1 September, the AWP is submitted to the Agency's Administrative Board, which adopts it before 30 September. Therefore, the SPD will be submitted without prejudice to the submission of the AWP and its approval and adoption, according to the process stipulated in Regulation (EC) No 713/2009.

As in previous years, the implementation of the AWP depends crucially on the continuous support of the NRAs through the Working Groups (whose Chairs and co-Chairs were consulted on this outline on 13 October) and on the Agency being assigned the human and financial resources on which the AWP 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 started on 7 October 2015.

Due to the new timing for the submission of the SPD to the Commission, the programming exercise for 2017 has been initiated earlier than in previous years. Since the Agency's budget for 2016 has inevitably not yet been approved, and the draft budget for 2017 is also not yet known, the final list of deliverables and tasks listed in this draft will depend on:

- a) the Agency's budget for 2016 (the scope of tasks in 2017 will in part depend on those performed in 2016) and
- b) the preliminary draft budget for 2017, which will only be submitted by the Director by 15 February 2016 and approved by the Administrative Board by 31 March 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 2016, and therefore after the AWP is finally approved by the Board of Regulators and adopted by the Administrative Board (by 30 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 AWP. At that stage, a revision of the content of the AWP 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;

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).

- Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation)⁵;
- All the Network Codes and Guidelines which have been adopted to date.

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;
- 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 2017

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 Regulation (EC) No 715/2009 stipulates that the European

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).

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. As in previous years, we expect the Commission to consult on the priority list for 2017 in the first half of 2016 and to formalise it afterwards. Therefore, no indication as to which priority areas will be identified for 2017 is currently available.

However, some tasks in 2017 will derive from work already started in the previous year(s). This includes the implementation of the adopted Network Codes and Guidelines and its monitoring, as well as the advice to be given during the comitology process, even though we expect that the remaining Network Codes still being worked on will be adopted before the end of 2016. More specifically, during 2017, the Agency plans to work towards the following deliverables:

Electricity:

Electricity Network Codes

1. Harmonised transmission tariff structures: Common set of transmission tariff principles to facilitate a harmonised approach, if needed;
2. Preparation for and monitoring of the implementation of the adopted Network Codes and Guidelines, including:
 - a. Opinion on ENTSO-E's plan for the monitoring of the implementation of the adopted Network Codes and Guidelines;
 - b. Determination of a list of relevant information to be communicated by ENTSO-E to the Agency for the purpose of its monitoring activities pursuant to the adopted Network Codes and Guidelines;
 - c. Recommendations to assist NRAs and market players in sharing good practices, where necessary;
3. Investigation of the reasons when TSOs, NEMOs or other entities fail to submit terms and conditions or methodologies for the approval by NRAs pursuant to the adopted Network Codes and Guidelines;
4. Assistance to NRAs for the approval of the terms and conditions or methodologies developed by TSOs, NEMOs or third entities pursuant to the adopted Network Codes and Guidelines;
5. Coordination of implementation projects established pursuant to the Network Codes and Guidelines and, where relevant, pursuant to the early implementation process;
6. Facilitation of the stakeholder involvement, as required, pursuant to the adopted Network Codes and Guidelines;

7. Review of the requests for amendments to the adopted Network Codes and Guidelines from interested persons and, where appropriate, based on these requests or the Agency's own initiative, preparation of the amendment proposals for the European Commission;
8. Performance of the specific obligations of the Agency pursuant the adopted Network Codes and Guidelines;
9. Adoption of the opinions and recommendations at the request of one or more NRAs, or the European Commission, pursuant to Regulation (EC) 713/2009 as well as the adopted Network Codes and Guidelines;
10. Monitoring of the implementation of all the Network Codes and Guidelines adopted.

Gas:

Gas Network Codes

11. Review of the requests for amendments to the adopted Network Codes from interested persons and, where appropriate, based on these requests or the Agency's own initiative, preparation of the amendment proposals for the European Commission, if appropriate amendment of the Transparency Annex;
12. 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;
13. Implementation Monitoring Report for the Network Code on Capacity Allocation Mechanisms, Balancing, Interoperability and Data Exchange for issues that were not implemented in a timely manner and addressed appropriately in the previous review;
14. 3rd ACER report on Progress of capacity bundling at interconnection points according to the Network Code on Capacity Allocation Mechanisms due on 4 November 2017;
15. 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;
16. 4th ACER report on monitoring of Congestion at interconnection points due on 1 June 2017;
17. Work on data collection tools to improve monitoring of the Network Codes and assessing their effectiveness in the internal market.

Gas Regional Initiatives

18. Coordination and monitoring of activities for the early voluntary implementation of Network Codes before their rules become legally binding;

19. Greater involvement in the SSE region to improve compliance with the network codes and capability to integrate their national markets into the internal market;
20. Annual Gas Regional Initiative Status Review Report, reviewing developments in the Gas Regional Initiative and providing guidance for future work.

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 Regulation (EU) 1227/2011.

In this area, the Agency plans to work in 2017 towards the following deliverable:

21. The 6th Market Monitoring Report, covering retail prices in electricity and natural gas, barriers to entry, wholesale market integration (for gas also including the Gas Target Model Metrics), 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 assess market effects of those network codes that are in force and for which a sufficiently long data time series is available), and compliance with consumer rights (including protection and enforcement of consumer rights). The report will cover the operation of different categories of market places and ways of trading. Lastly, the report will also assess the effect the (implemented) network codes have on the market integration process and the functioning of the Internal Energy Market. For this purpose the specific data collecting provisions in the relevant network codes will be considered.

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 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 2017 towards the following deliverables:

Electricity:

22. Annual monitoring report on the implementation and management of the inter-TSO compensation fund;
23. Opinions on ENTSO-E's annual work programme 2018 and ENTSO-E's annual report 2016;
24. Opinions on ENTSO-E's annual Summer and Winter supply outlooks;
25. Opinions on ENTSO-E's common network operation tools including a common incidents classification scale;
26. Opinion on ENTSO-E's research and development plan;
27. Opinion on the electricity national ten-year network development plans to assess their consistency with the Union-wide network development plan and (if appropriate) recommendations to amend the national ten-year network development plans or the Union-wide network development plan;
28. Opinion on ENTSO-E's recommendations relating to the coordination of technical cooperation between the Union and third-country transmission system operators;
29. Report on monitoring the implementation of the electricity Union-wide TYNDP and the progress as regards the implementation of projects to create new interconnector capacity;
30. Opinion on ENTSO-E's Mid-term Adequacy Forecast 2017.

Gas:

31. Opinions on ENTSG's annual work programme 2018 and ENTSG's annual report 2016;
32. Opinion on ENTSG's common network operation tools including a common incidents classification scale;
33. Opinion on ENTSG's research and development plan;
34. Opinions on ENTSG's annual Summer and Winter supply outlooks;
35. Opinion on ENTSG's draft Ten Year Network Development Plan 2017;
36. Reviews and recommendations on national ten-year network development plans to assess their consistency with the Union-wide network development plan and (if appropriate) recommendations to amend the national ten-year network development plans or the Union-wide network development plan;
37. Opinion on ENTSG's recommendations relating to the coordination of technical cooperation between Union and third-country transmission system operators;

38. Report on monitoring the implementation of the Union-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 relate to the process of identification and monitoring of Projects of Common Interest (PCIs).

In relation to this area, the Agency plans to work in 2017 towards the following deliverables:

Electricity and Gas:

39. 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;
40. Opinion on ENTSO-E's and/or ENTSO-G's methodologies for cost-benefit analysis, if updated;
41. Opinion on the draft regional lists of proposed projects of common interest, in particular on the consistent application of the criteria and the cost-benefit analysis across regions;
42. Opinion to Member States and the Commission on ENTSOs consistent and interlinked electricity and gas market and network model including both electricity and gas transmission infrastructure as well as storage and LNG facilities, submitted to the Commission and the Agency by 31 December 2016;
43. (If applicable) Provide input to the European Commission in the assessment of the implementation of projects of common interest, the issues related to regulatory treatment and the overall effectiveness of Regulation 347/2013;
44. Possible follow-up work on the 2016 report on national methodologies and criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them;
45. Recommendations to assist NRAs and market players in sharing good practices, where necessary.

Wholesale Market Monitoring (REMIT)

In the REMIT area, the Agency plans to work on the following tasks and deliverables in 2017:

46. ACER will undertake a review of the REMIT operations and rulebook in the light of the experience with data collection during 2016. This may result also in the formulation of proposals to the European Commission for technical updates of REMIT, according to Article 6 of REMIT, or of the REMIT Implementing Regulation, the drafting of recommendations and guidance;
47. 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;
48. 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;
49. 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. One of ACER's key objectives is to foster regulatory convergence and to avoid regulatory arbitrage resulting from different regulatory practices under REMIT. This may include the update of the Agency's guidance on the application of REMIT, and coordination of NRAs' investigation activities on cross-border market abuse instances;
50. 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;
51. 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 2017 the Agency may be called to work on the following tasks and deliverables on request:

52. Decisions on investment requests including on cross-border cost allocation;

53. 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);
54. Opinions on preliminary decisions by NRAs on TSO certification when requested by the Commission;
55. Decision on terms and conditions or methodologies to be approved pursuant to the adopted electricity Network Codes and Guidelines in case NRAs are unable to reach an agreement;
56. Peer reviews, as submitted to the Agency based on Article 7(4) of Regulation EC No 713/2009;
57. Opinions on the application of Union energy legislation pursuant to Article 7(6) of Regulation (EC) No 713/2009;
58. Opinions and recommendations in the areas of its competence, upon request by the European Parliament, the Council and the European Commission.

Deliverables on the Agency's own initiative

In 2017 the Agency may decide to issue:

59. Opinions and recommendations in the areas of its competence to the European Parliament, the Council and the European Commission.