

# DECISIONS

## COMMISSION DECISION

of 21 August 2013

### on the establishment of the annual priority lists for the development of network codes and guidelines for 2014

(Text with EEA relevance)

(2013/442/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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>(1)</sup> and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to natural gas transmission networks and repealing Regulation (EC) No 1775/2005<sup>(2)</sup>, and in particular Article 6(1) thereof,

Whereas:

#### CONTEXT

- (1) The European Council on 4 February 2011 set 2014 as a target for the completion of the internal market for electricity and gas. The Third Energy Package is an important element in the development towards this target. However, further efforts have to be made to allow gas and electricity to flow freely across Europe. The network codes and guidelines which are foreseen by the Third Package will provide the relevant rules for this further development.
- (2) As a first step towards binding European network codes, an annual priority list identifying the areas to be included in the development of network codes has to be established by the Commission in accordance with Article 6(1) of Regulation (EC) No 714/2009 ('the Electricity Regulation') and Article 6(1) of Regulation (EC) No 715/2009 ('the Gas Regulation'). In setting the priorities, the Commission has to consult the Agency for the Cooperation of Energy Regulators ('ACER'), the responsible European Network of Transmission System Operators ('ENTSOs') and other relevant stakeholders. This decision sets out the priorities as decided by the Commission based on the outcome from the public consultation.

- (3) For the planning of resources it is important to identify annually the key areas for the development of network codes and guidelines. As soon as an area is identified as important for the first time, scoping work needs to be started in order to identify to what extent a harmonisation is needed. Key areas where the work on network codes and guidelines has already started will be continued and completed.

#### PUBLIC CONSULTATION

- (4) The public consultation, as required by Article 6(1) of the Electricity and the Gas Regulation, took place from 2 April to 13 May 2013. The Commission received 22 responses<sup>(3)</sup>.
- (5) The following were the major general comments received during the public consultation:
  - (a) A clear message from the public consultation was that stakeholders supported the focused approach of the Commission prioritising the work to deliver key elements that are necessary for the completion of the internal energy market. Stakeholders are of the view that the Commission has pointed out in its consultation the most important tasks to be done for further integration of the internal energy market and no more tasks should be added to the annual priority lists for 2014.
  - (b) Several stakeholders are emphasising the importance of a proper implementation of already adopted network codes, some of them calling for a more active role of the Commission and ACER in ensuring a coherent implementation. Furthermore, stakeholders seek clarity on future amendments of adopted network codes and what the governance would be. One stakeholder states the urgent need for a global and unique definitions list valid for all network codes.

<sup>(1)</sup> OJ L 211, 14.8.2009, p. 15.

<sup>(2)</sup> OJ L 211, 14.8.2009, p. 36.

<sup>(3)</sup> The responses are published under [http://ec.europa.eu/energy/gas\\_electricity/consultations/20130513\\_network\\_codes\\_en.htm](http://ec.europa.eu/energy/gas_electricity/consultations/20130513_network_codes_en.htm)

- (c) Several stakeholders stressed the importance of a transparent, efficient and coherent process which guarantees early and close stakeholder involvement. It was also mentioned that the necessary timeslots for the development of robust network codes, with sufficient time for consultation of involved actors need to be given. In this context stakeholders requested that draft proposals for the framework guidelines and network codes should be accompanied by the relevant Impact Assessment which has been subject to stakeholder consultation.
- (6) The following were the major comments concerning the annual priority list for 2014 regarding electricity network rules received during the public consultation:
- (a) Several stakeholders expressed concerns that the network codes under development do not provide for a sufficient level of harmonisation on a European level, pointing at the fact that many decisions (e.g. on values and methodologies) are not taken in the code itself but left open to a further decision making/approval process by TSOs and national regulatory authorities. Stakeholders fear that this could lead to a supplementary regulatory layer at European level, adding rather than solving existing diversity in network management and market design rules.
- (b) Some stakeholders were concerned about possible inconsistencies between network codes and stated that developing several network codes under the same framework guideline has proven not be the most efficient way to establish European rules and therefore proposed to develop only one network code in line with the respective framework guideline. Some emphasised that in order to ensure the consistency at least some network codes need to be developed together such as the rules on requirement for generators, rules for longer term (forward) capacity allocation, balancing rules and rules on emergency requirements.
- (c) Several stakeholders support the development of rules regarding harmonised transmission tariff structures, as the existing variety of tariff structures creates inequalities for electricity generators within the EU as some need, for example, to pay grid tariffs and others not.
- (d) ENTSO-E expressed its concern that the annual priority list for 2014 does not include rules on investment incentives while they were part of the list for 2013. ENTSO-E is of the opinion that relying on the process set up by the new Regulation on guidelines for trans-European energy infrastructure<sup>(1)</sup> ('TEN-E Regulation'), by which the EC may issue guidelines in case it considers that the methodology to be published by 31 March 2014 by the national regulatory authorities on the basis of best practice recommendations from ACER, is not sufficient to ensure the timely implementation of projects of common interests, endangers the efficiency of the entire TEN-E Regulation.
- (7) The following were the major comments concerning the annual priority list for 2014 regarding gas network rules received during the public consultation:
- (a) The majority of stakeholders welcome that incremental capacity has been put on the annual priority list for 2014 and emphasise that rules need to be thoroughly consulted on with stakeholders in their preparation and be coherent with the network code on capacity allocation mechanisms. Several stakeholders including ENTSOG point out the strong interaction of rules on tariffs and incremental capacity and that care needs to be given to the consistency between both topics.
- (b) Several stakeholders including ENTSOG support the undertaking of a scoping exercise on rules for trading in 2014 in order to identify whether harmonised European rules for the design of capacity products and contracts as regards firmness, restrictions to allocation and secondary markets are needed. The scoping shall take into account the experience gained from implementing the network code on capacity allocation mechanisms and on balancing and the possible impacts of increasing renewable penetration in electricity markets. One stakeholder proposes to undertake a step-by-step analysis of the differences in contractual terms and transmission system operators processes at each Interconnections Point. ENTSOG calls for recognising the fact that mismatches of capacity and different levels of firmness are an inevitable consequence of implementation entry-exit systems. One stakeholder raised strong opposition with regard to the further harmonisation of the design of capacity products and contracts as it is not required and would lead to an insufficient offer of firm capacity and finally to inefficient investments. Furthermore it was stated that rules for trading should avoid adding complexity to the process of implementation of Regulation (EU) No 1227/2011 of the European Parliament and of the Council<sup>(2)</sup> on Energy Market Integrity and Transparency.

<sup>(1)</sup> OJ L 115, 25.4.2013, p. 39.

<sup>(2)</sup> OJ L 326, 8.12.2011, p. 1.

- (c) One stakeholder calls for a network code for gas quality and a network code for benchmark-related efficiencies including its tariffs in order to achieve the goal of an internal market in an efficient and effective manner, suggesting as a first step to mandate ACER to do a comparison of all European TSOs, including all provided services.
- (d) One stakeholder suggests including in the priority list the development of guidelines to solve the situation of the historical contracts, in accordance with Article 23(1) of Regulation (EC) No 715/2009.
- (8) Even though this decision focuses only on setting the annual priority lists for 2014, the Commission also consulted stakeholders on the need and possible scope of network codes and guidelines which could be envisaged as key areas beyond 2014 in order to enable ACER to foresee scoping work in its work programme for 2014.
- (9) The following were the major comments concerning possible scope and need of network codes and guidelines beyond 2014 regarding electricity network rules received during the public consultation:
- (a) Some stakeholders welcome rules on setting the principles to judge the adequacy of transmission networks, and thus the requirement towards third parties. Other stakeholders are of the opinion that rules on reserves, adequacy and capacity mechanisms are not included in Article 8(6) of the Electricity and Gas Regulation and therefore do not appear legally sound, instead falling in the remit of national governments.
- (b) Several stakeholders are asking for clarification what will be included in the rules on operational coordination.
- (c) One stakeholder proposes to develop rules on procurement, trading and governance of ancillary services as well as all types of flexibility and capability services with the overall aim of developing a European market for grid support services, including balancing and all types of flexibility services.
- (10) The following were the major comments concerning possible scope and need of network codes and guidelines beyond 2014 regarding gas network rules received during the public consultation:
- (a) Several stakeholders were of the opinion that rules on network connection and emergency procedures have to be coherent with Regulation (EU) No 994/2010 of the European Parliament and of the Council<sup>(1)</sup> concerning measures to safeguard security of gas supply.
- (b) Stakeholders were questioning the scope of network connection rules with respect to provide locational signals and were not supporting development of such rules.

#### DECISION

- (11) Having regard to the responses of stakeholders supporting the prioritisation of the work to deliver key elements that are necessary for the completion of the internal energy market by 2014 and recognising the various actions needed towards its completion, the limits to resources, the fact that already adopted network codes and guidelines will require resources in order to be properly implemented, and the fact that any new area that is added to the annual priority list 2014 may not result in a guideline or network code being adopted by 2014,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Commission establishes for the development of harmonised electricity rules this annual priority list for 2014:

- capacity allocation and congestion management rules including governance for day-ahead and intraday markets including capacity calculation (Commission adoption phase),
- network connection rules:
  - rules on requirements for generators (Commission adoption phase)
  - rules on distribution system operator and industrial load connection (Commission adoption phase)
  - rules on high-voltage direct current transmission system connection (finalise network code and start Commission adoption phase),
- system operation rules<sup>(2)</sup>:
  - rules on operational security (Commission adoption phase)
  - rules on operational planning and scheduling (Commission adoption phase)

<sup>(1)</sup> OJ L 295, 12.11.2010, p. 1.

<sup>(2)</sup> Rules on operational training and on requirements and operational procedures in emergency will follow later.

- rules on load-frequency control and reserves (Commission adoption phase)
- rules on emergency requirements and procedures (finalise network code and start Commission adoption phase),
- balancing rules including network-related reserve power (Commission adoption phase),
- rules for longer term (forward) capacity allocation (Commission adoption phase),
- rules regarding harmonised transmission tariff structures (scoping by ACER to prepare framework guideline <sup>(1)</sup>).

#### Article 2

As it is foreseen that harmonised rules on capacity allocation and balancing will be adopted in 2013, the Commission establishes for the development of harmonised gas rules this annual priority list for 2014:

- interoperability and data exchange rules (Commission adoption phase),
- rules regarding harmonised transmission tariff structures (ENTSOG drafting network code),
- rules regarding an EU-wide market-based approach on the allocation of 'new build' gas transmission capacity (drafting

of amendment of network code on capacity allocation mechanisms by ACER and ENTSOG as well as including respective tariff rules in the network code on transmission tariff structures),

- rules for trading related to technical and operational provisions of network access services and system balancing (scoping by ACER to identify whether binding EU rules for the further harmonisation of the design of capacity products and contracts as regards firmness, restrictions to allocation or secondary markets are needed, taking into account the implementation of the guideline on congestion management procedures and the network codes on capacity allocation mechanisms and on balancing).

#### Article 3

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 21 August 2013.

For the Commission

The President

José Manuel BARROSO

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<sup>(1)</sup> Regarding rules on investment incentives, the TEN-E Regulation notably Article 13, provides for rules to ensure that appropriate incentives are granted to infrastructure projects of common interest in gas and electricity, which are subject to higher risks than normally incurred. In this context, the TEN-E Regulation sets out the following tasks:

- each national regulatory authority to submit to ACER its methodology and criteria used to evaluate investments and the higher risks incurred by them, where available, by 31 July 2013,
- ACER to facilitate the sharing of good practices and to make recommendations by 31 December 2013,
- each national regulatory authority to publish its respective methodology and the criteria used to evaluate investments and the higher risks incurred by them by 31 March 2014.

Based on the input from the abovementioned tasks, the European Commission will decide whether legally binding guidelines need to be issued.