



Public Consultation Paper

Establishment of the annual priority lists for the development of network codes and guidelines for 2018 and beyond

The Third Energy Package has created an institutional set-up for developing network codes with a view to harmonising, where necessary, the technical, operational and market rules governing the electricity and gas grids. In this institutional set-up there is a key role for the Agency for the Cooperation of Energy Regulators ("ACER"), for the European Networks of Transmission System Operators ("ENTSOs") and for the European Commission to work in close cooperation with all relevant stakeholders on the development of network codes. The process of developing network codes is defined in Articles 6 and 8 of Regulation (EC) No. 714/2009 ("Electricity Regulation") and of Regulation (EC) No. 715/2009 ("Gas Regulation"). The areas in which network codes can be developed are set out in Article 8(6) of the Electricity Regulation and the Gas Regulation.

Besides the possibility to develop network codes according to the process laid down in Article 6 and 8 of the Electricity Regulation and the Gas Regulation, the European Commission can develop guidelines on its own initiative launching the adoption procedure to make them legally binding. The areas in which guidelines can be developed are set out in Article 18 (1), (2), (3) of the Electricity Regulation and Article 23 (1) of the Gas Regulation.

Once ACER submits a network code to the Commission recommending its adoption, the Commission starts the adoption phase ("Commission adoption phase").¹ First, in order to adopt a network code, it has to be finalised and translated by the Commission. Afterwards, it needs to obtain a positive vote² by the competent Committee composed of Member States' representatives. Following the positive vote of the Committee, the Commission aligns the translations of the network code and submits the network code (together with the translations and accompanying documents) to the European Parliament and the Council for a three months scrutiny period. If, on the expiry of this period, neither has opposed it, the Commission will adopt and publish the network code.

According to Article 6(1) of the Electricity Regulation and of the Gas Regulation, the Commission has to establish an annual priority list identifying the areas to be included in the development of network codes. Before setting the annual priorities, the Commission has to consult ACER, the ENTSOs and other relevant stakeholders. Since the adoption of the Third Energy Package the Commission has already consulted and adopted the annual priority lists for the years 2013³, 2014,⁴ 2015⁵, 2016⁶ and 2017⁷.

¹Network codes and guidelines are adopted according to Article 5a (1) to (4) of Decision 1999/468/EC ("regulatory procedure with scrutiny").

²Qualified majority expressed by a majority of the Member States.

³<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32012D0413>

⁴<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D0442>

⁵<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014D0713>

⁶<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1960>

The purpose of this document is to consult stakeholders on the priorities for the development of network codes and guidelines for 2018 as well as to receive input what network codes and guidelines could be envisaged beyond 2018.

1. Tentative annual priority lists 2018

The development and implementation of network codes and guidelines is an important step to be taken in order to fully integrate the internal energy market. But not only the actions needed to develop and implement network codes and guidelines have to be taken, also the full implementation and enforcement of the Third Energy package, the enhancement of investments in energy infrastructure, the work of regional initiatives and the enforcement of competition and State aid rules are needed.

Having regard to: (i) the Commission's ongoing work concerning the market design initiative as part of the Clean Energy for all European Package⁸; (ii) the various actions needed to ensure the full integration of the internal energy market; (iii) the fact that in recent years the most apparent priorities for network codes have been identified, the relevant network codes have been developed and the majority of them has been adopted; and (iv) the fact that the implementation of network codes and guidelines requires significant resources from all relevant parties including the Commission, ACER and the ENTSOs, the Commission proposes to prioritise in 2018 the implementation work already started in the previous years.

1.1 Tentative annual priority list 2018 regarding electricity networks rules

Harmonised rules on electricity markets, grid connection and system operation have either already been adopted, published and are being implemented in the Member States⁹ or they are expected to be adopted and published by the end of 2017.¹⁰ Focus therefore remains on the correct implementation of those rules. The Commission therefore proposes not to include new items on the annual priority list for 2018 and beyond for the development of harmonised **electricity** rules but to focus on the full and correct implementation of the existing market, grid connection and system operation rules in all Member States in 2018.

1.2 Tentative annual priority list 2018 regarding gas networks rules

Harmonised rules on congestion management procedures, capacity allocation, balancing, interoperability and data exchange, and harmonised transmission tariff structures have already been adopted, published and are being implemented in the Member States. Focus therefore remains on the correct implementation of those rules.

In addition, ACER informed the Commission in June 2014 that, according to its scoping exercise¹¹, the necessity of harmonised rules for gas trading related to technical and operational provisions of network access services and system balancing was at that time not demonstrated¹².

⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0089&from=EN>

⁸ <https://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition>

⁹ Rules on capacity allocation and congestion management, rules on connection of generators, rules on demand connection, rules on high voltage direct current and rules on forward capacity allocation.

¹⁰ Rules regarding on system operation, rules on emergency and restoration requirements and procedures, rules on balancing.

¹¹ The Commission decision on the annual priority list for 2014 had foreseen this scoping exercise (OJ 2013, L 224, 14).

¹² ACER has in particular assessed whether further harmonised rules on i) capacity products and terms and conditions of capacity contracts and transparency thereof (in particular limitations to free allocability), ii)

The Commission therefore proposes not to include new items on the annual priority list for 2018 and beyond for the development of harmonised **gas** rules but to focus on the full and correct implementation of the existing market rules in all Member States in 2018.

2. Annual priorities beyond 2018

Even though the European Commission proposes to focus in 2018 on the implementation work already started in the previous years, it wants to encourage stakeholders at an early stage to give their input on the need and possible scope of network codes and guidelines that could be envisaged as key areas beyond 2018. This will enable ACER to include potential scoping work in its work program for 2018. The areas in which network codes can be developed are set out in the Articles 8 (6) of the Electricity and Gas Regulations. The areas in which guidelines can be developed are set out in Article 18 (1), (2), (3) of the Electricity Regulation and Article 23 (1) of the Gas Regulation.

3. Consultation

The Commission would welcome feedback from stakeholders on whether they agree with the proposed annual priority lists and encourage them to give their input on the possible scope and the need of network codes and guidelines beyond 2018.

Input to the consultation should be sent by **20 December 2017** by e-mail to ENER-NC-PRIORITIES@ec.europa.eu.

All responses will be published in full unless it is specifically indicated that the information contained within the response is confidential. Following the consultation period, the Commission will evaluate the input received and will adopt the priorities for 2018.

secondary capacity markets, iii) virtual trading point (VTP) design/access, and hub issues or iv) on licensing requirements for market participants other than TSOs are needed. <http://www.acer.europa.eu/Gas/Framework%20guidelines%20and%20network%20codes/Pages/Rules-for-Trading.aspx>