

RESPONSE TO THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON A PLANNED PROCEDURAL CLARIFICATION IN FOUR ELECTRICITY GUIDELINES BY WAY OF A COMMISSION IMPLEMENTING REGULATION

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INTRODUCTION

ENTSO-E, the European Network of Transmission System Operations for Electricity, is an Association of 42 TSOs, whose objective is to promote the reliable operation, optimal management and sound technical evolution of the European electricity transmission system in order to ensure security of supply and to meet the needs of the Internal Energy Market.

ENTSO-E has given due consideration to the European Commission's (EC) public consultation on a planned procedural clarification in four electricity guidelines by way of a Commission Implementing Regulation. Given ENTSO-E's critical role in terms of the drafting of the eight electricity Network Codes and Guidelines and its role to coordinate and monitor its implementation it is clear that due consideration should be given to the views contained here below.

ENTSO-E understands the proposal by EC is to provide the possibility for extending deadlines in exceptional cases and changes requiring all competent NRAs' coordination to request amendments. ENTSO-E supports the provisions that facilitate the process and the principle of increased flexibility; however, has concerns where this flexibility extends beyond the scope or intention of that which is necessary especially when it comes to the right of revision, which should be intended in line with Regulation (EU) 2019/942¹ (ACER Regulation) as a conditional and not unlimited right.

Regarding the EC Consultation itself, ENTSO-E would recommend that in line with agreed guidance under the Network Code Implementation and Monitoring Group (NC IMG), future amendment proposals are discussed in the frame of this Group. This Group has been previously agreed this approach within the published NC IMG informal guideline and that the implementation of the proposed changes should not affect the implementation of more substantial changes on Network Codes and Guidelines.

ENTSO-E'S POSITION ON MAIN AMENDMENT PROPOSALS

ENTSO-E has identified six main areas where the EC proposes changes. In the following, ENTSO-E explains its position regarding the proposed changes on the COMMISSION REGULATION (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (CACM), COMMISSION REGULATION (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation (FCA), COMMISSION REGULATION (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing (EBGL) and COMMISSION REGULATION (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation (SOGL).

1. Extension of Deadlines for TCMs (CACM Art. 9.1, FCA Art. 4.1, EBGL Art. 4.1, SOGL Art. 5.1)

ENTSO-E welcomes the EC's proposal to mandate NRA(s) and ACER to extend deadlines for submission of terms and conditions or methodologies (TCM) in exceptional circumstances. This gives legal certainty for

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.158.01.0022.01.ENG

dealing with exceptional cases where TSOs and NEMOs cannot meet the legal deadlines, both for TSOs/NEMOs and NRAs/ACER.

2.Failure of submission of TCMs by TSOs/NEMOs (CACM Art. 9.4, FCA Art. 4.4, EBGL Art. 4.7, SOGL Art. 5.9)

First of all, ENTSO-E wonders why the part regarding the task of the EC to take appropriate steps to make possible the adoption of the T&Cs/methodologies in case TSOs or NEMOs fail to submit TCMs has been deleted from the guidelines. This EC task should remain a first step when TSOs/NEMOs fail to submit a proposal. Removing this step would indeed imply considering that there is no difference between TSOs reaching an agreement (according to the qualified majority rules as defined by the same guidelines) or failing to reach an agreement. TSOs would have no incentive anymore to negotiate compromise proposals that have the highest possible chance of being subsequently approved. The level of maturity of the proposals submitted to NRAs may decrease as a result.

If NRAs or ACER are attributed with the right to revise and complete the draft TCMs and approve them, this right should be a conditional right to revise only if the objectives of those guidelines are not met, not an unlimited right, in line with Art. 5(6) ACER Regulation and only on the parts not meeting the objectives of those guidelines. In case an unconditional right to revise and complete draft proposals would be given to ACER or NRAs, the incentive for TSOs to negotiate to come to an agreement may be reduced.

Furthermore, ENTSO-E suggests the EC to clarify that the power of revision is only granted by the Art. 5(6) ACER regulation regarding EU wide and regional proposals, but not regarding purely national proposals.

3.Approval of TCMs (CACM Art. 9.5, FCA Art. 4.7, EBGL Art. 5.1, SOGL Art. 6.1)

ENTSO-E supports aligning the four Guidelines with Art. 5(2) ACER regulation which foresees that EU wide proposals are submitted and approved by ACER.

The wording of article 9.5 of CACM (and the same for the other guidelines) should not be termed "drafts" but "proposals for terms and conditions or methodologies". There is a significant difference between a draft (implying failure of agreement between TSOs) and a proposal (on which TSOs did reach an agreement). A reference to Art. 5(6) ACER regulation should be added. Furthermore, ENTSO-E suggests the EC to specifically state that the power of revision is only granted by the Art. 5(6) ACER regulation regarding EU wide and regional proposals, but not regarding purely national proposals.

For the approval of regional TCMs, ENTSO-E suggests that the possibility of applying qualified majority voting (QMV) on the NRAs' side where the regions are composed of more than five Member States more frequently is explored, however, understands that some decisions may still require unanimity. Applying QMV on regional level would be more efficient and more appropriate than escalating regional decisions to ACER where all NRAs would decide on regional proposals. Facilitating NRAs decisions at regional level is a good step forward however doesn't help resolving issues in case unanimity can't be reached.

4.Notification to ACER in case one NRA is approving (CACM Art. 9.9, FCA Art. 4.4, EGBL Art. 5.1, SOGL Art. 6.1)

ENTSO-E has reservations on this proposal as it seems to go beyond the provisions of the ACER Regulation where in accordance with article 5.3 only the notification to ACER of regional proposals is envisaged. The

word “notification” should be used in line with Art. 5(3) ACER regulation. ENTSO-E generally welcomes efforts for ensuring and where needed increasing transparency.

5. Amendment requests by single NRA (CACM Art. 9.12)

ENTSO-E supports that amendment requests are coordinated by the NRAs of the relevant region. Unilateral and potentially even contradicting amendment requests from single NRAs and blocking power by one NRA need to be avoided.

6. Determination of deadline for amendment proposals after request (CACM Art. 9.13, FCA Art. 4.12, EBGL Art. 6.3)

The EC should clarify that ACER/NRAs have to determine adequate deadlines for submission of amendment proposals by TSOs/NEMOs. These should be determined in consultation with TSOs.

ENTSO-E'S POSITION ON THE PROCESS

1. Legal process

The EC announced that the proposed amendments to avoid “procedural uncertainty” are limited to procedural issues related to the adoption of the Terms and Conditions or Methodologies (TCM), to align with the recast ACER Regulation and in reaction to the 24 October 2019 judgements of the General Court². However, it seems that the proposed amendments are more than just alignment or clarification of the current legal situation. For instance, ACER and NRAs tasks and roles are clearly different and well-distinguished through the legal texts of the ACER Regulation. Also, notifying national proposals to ACER even when those proposals are subject to a single NRA's approval is not in the scope of the current legal texts.

ENTSO-E realises that some of the proposals go beyond the ACER Regulation. ENTSO-E is ready to be consulted on the implications.

2. Alignment with other amendment processes

The proposed Implementing Regulation for these changes should not impact the timeline on more substantial content amendments, as already discussed on CACM, the Connection Network Codes and potentially SOGL, for which work has already started within ENTSO-E and in the context of the NC IMG. Otherwise, it may be advisable to proceed by Guideline, and combine the amendments aligning the text with the CEP with the more substantial amendments.

² Cases T—332/17 *Energie-Control Austria vs ACER* and T-333/17 *APG vs ACER*, judgments of the General Court of 24 October 2019