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**OPINION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 21/2013**

of 21 November 2013

**ON THE NETWORK CODE ON INTEROPERABILITY AND DATA
EXCHANGE RULES**

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 (hereinafter referred to as the 'Agency')¹, and, in particular, Articles 6(4) and 17(3) thereof;

HAVING REGARD to 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 1775/2005², and, in particular, Article 6(7) thereof;

HAVING REGARD to the favourable opinion of the Board of Regulators of 5 November 2013,

WHEREAS:

- (1) After having received the European Commission's invitation on 31 January 2012, the Agency started its formal process for developing the Framework Guidelines on Interoperability and Data Exchange Rules for European Gas Transmission Networks (the 'Framework Guidelines'), that were adopted by the Agency on 26 July 2012³.
- (2) On 11 September 2012, the European Commission, in consideration of the Framework Guidelines' contribution to non-discrimination, effective competition and the efficient functioning of the gas market, invited the European Network of Transmission System Operators for Gas (ENTSOG) to establish a Network Code on Interoperability and Data Exchange Rules for European Gas Transmission Networks (the 'Network Code') within 12 months.
- (3) In drafting the Network Code, ENTSOG has endeavoured to extensively involve stakeholders in a transparent process by organising several "Stakeholders Joint Working Sessions" (SJWS), workshops, and public consultations.
- (4) Throughout the whole process, ENTSOG has closely cooperated with the Agency. ENTSOG published a draft Network Code for public consultation on 27 February

¹ OJ L 211, 14.8.2009, p.1

² OJ L 211, 14.8.2009, p.36

³ Decision No 02/2012 of the Agency for the Cooperation of Energy Regulators of 26 July 2012 adopting the Framework Guidelines on Interoperability and Data Exchange Rules for European Gas Transmission Networks

2013. To assist ENTSOG in the finalisation of the Network Code, the Agency has evaluated the draft Network Code's compliance with the Framework Guidelines and informally submitted its detailed preliminary views to ENTSOG on 17 June 2013.

- (5) After having consulted a refined draft Network Code in a stakeholder support process in July 2013, ENTSOG officially submitted the Network Code to the Agency and to the European Commission on 10 September 2013, in which ENTSOG addressed also most of the Agency's concerns expressed in the preliminary views of 17 June 2013.
- (6) The Agency assessed and evaluated the Network Code on the basis of the degree of compliance with the Framework Guidelines and the fulfilment of the objectives as set out in Chapter 1. c. of the Framework Guidelines. These include the promotion of consistently harmonised technical, operational and communication rules for the operation of transmission systems in order to encourage and facilitate efficient gas trading and transport across gas transmission systems within the EU. The Framework Guidelines' objectives also refer to the overall objectives of the internal energy market, including security of supply, the achievement of greater internal market integration and delivering benefits to consumers,

HAS ADOPTED THE PRESENT OPINION:

The Network Code on Interoperability and Data Exchange Rules for European Gas Transmission Networks submitted by ENTSOG to the Agency on 10 September 2013 shows a high degree of compliance with the Agency's Framework Guidelines on Interoperability and Data Exchange Rules of 26 July 2012.

This conclusion is justified by the fact that the fundamental principles of the Framework Guidelines⁴, which had been set out by the Agency to overcome the identified barriers to the efficient functioning of the Internal Gas Market, have been assessed, further elaborated and finally established in the provisions of the Network Code.

Notably, the introduction of harmonised Interconnection Agreements, including default rules per content item (as for example on flow control, measurement, matching and gas quantity allocation principles), as well as provisions on the related processes to develop, align and amend the interconnection agreements, provide an important basis for the commercial and operational cooperation between adjacent transmission system operators at interconnection points.

These rules combined with the provisions on:

⁴ Five of the six areas outlined in the Framework Guidelines (Interconnection Agreements, Units, Gas Quality, Odourisation, Data Exchange) have been established in the Network Code. The issue of capacity calculation (Chapter 7 of the Framework Guidelines) was – upon the European Commissions' initiative – moved to Article 6 of [COMMISSION REGULATION \(EU\) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation \(EC\) No 715/2009](#), OJ L 273, 15.10.2013, p. 5.

- a common set of units,
- the monitoring and managing of gas quality differences,
- a plan for removing barriers related to differences in odourisation practices, and
- the requirement to implement specific common data exchange solutions

are considered essential elements to facilitate cross-border gas transport and trade and contribute to the development of competitive and efficient gas wholesale markets in Europe.

The stakeholder engagement process carried out by ENTSOG has been commendable with regard to transparency and comprehensiveness. ENTSOG's efforts in this process to align the Network Code to the Framework Guidelines taking most of the Agency's and stakeholder views and expectations into account are much appreciated.

As a result of the interactive stakeholder involvement in the Network Code development process, some provisions of the code go beyond the Framework Guidelines and/or could be considered not to be fully in line with the Guidelines. Those deviations have been justified to the Agency (e.g. in the accompanying documentation of the Network Code) and have been supported by stakeholders. These include the following issues and solutions:

- active involvement of stakeholders when issues that concern them arise (e.g. Interconnection Agreements, gas quality, odourisation, data exchange);
- allowing additional units or reference conditions for units for data exchange and publication as well as provisions on conversion rules in case other reference conditions apply (e.g. CEN-standards);
- NRA responsibility for the identification of cross-border trade barriers (when gas quality and/or odourisation differences appear on the two sides of an interconnection point (IP));
- guidance for the national analysis of short-term monitoring of in-spec gas quality variations;
- setting up of a more detailed process to remove potentially identified barriers hampering cross-border flow at IPs due to differences in odourisation practices (incl. a default rule regarding the physical flow of non-odourised gas in cases where no other cost efficient solution is found (subject to approval of the competent national authorities and including an implementation timeframe));
- restriction of the scope for the implementation of data exchange solutions to Network Users as counterparties at IPs (supported by a cost-benefit analysis⁵);
- enabling of a flexible implementation period for the data exchange solution by maintaining existing compatible solutions (subject to NRA approval); and

⁵ <http://www.entsog.eu/public/uploads/files/publications/INT%20Network%20Code/2013/INT0414%20CBA%20DataExchange-final.pdf>

- inclusion of a requirement for ENTSOG to develop data exchange requirements for other Network Codes through Common Network Operation Tools.

Some structural and textual amendments, as well as a few adaptations and clarifications on the content of the Network Code, as listed below, are recommended to bring the envisaged Regulation establishing the Network Code on Interoperability and Data Exchange Rules in line with the provisions and objectives of:

- the Framework Guidelines,
- Regulation (EC) No 715/2009 and its annexes (i.e. Guidelines on Congestion Management Procedures⁶),
- the Network Code on Capacity Allocation Mechanisms⁷, and
- the Network Code on Gas Balancing of Transmission Networks (under adoption⁸).

I. Content related recommendations:

1.) Single sided nominations

According to Article 19(7) of the Network Code on Capacity Allocation Mechanisms, adjacent TSOs have to enable single nomination processes for bundled products. While the provisions in the current draft, e.g. on matching, seems sufficiently open to allow for single nomination processes, the Agency notes that ENTSOG has just started to develop such procedures with stakeholder involvement. It is recommended that this process, although not yet formally required, shall be in line with the provisions in Article 25(2) of the Network Code, referring to the development of common network operation tools in accordance with Article 8(3a) of Regulation (EC) No 715/2009.

2.) ‘Owner’ vs. ‘transmission system operator’ in Articles 6 to 9

The default rules in Articles 6 to 9 assign responsibilities to the ‘owner’ of the dedicated equipment. As the actual ownership might not always coincide with the party who is in charge and control of the equipment, the Agency recommends to replace the references of ‘owner’ in the text with ‘transmission system operator’. This is also in line with the concept that a transmission system operator, who is certified, acts independently when managing its system. Furthermore, there will be only one TSO responsible for operating a system.

The proposed changes shall apply to the following articles:

- Article 6(4): “...the party(ies) who own the flow control equipment shall,...”
to be replaced with: ‘...*the transmission system operator that operates the flow control equipment shall*’

⁶ [COMMISSION DECISION of 24 August 2012 on amending Annex I to Regulation \(EC\) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks \(2012/490/EU\)](#), OJ L 231, 28.08.2012, p. 16

⁷ Cf. full reference in footnote 4

⁸ <http://ec.europa.eu/transparency/regcomitology/index.cfm?do=search.documentdetail&h0jw1eO/0PPdrhRxRiFC6DqFc6Lr2kv54xDT3Q2J51f4o0axdUxpW4SfLVhjC5wy>

- b. Article 7(4)(a): "...the owner of the measurement equipment shall be responsible for the installation, operation and maintenance [...] and for providing [...] the data...." to be replaced with: '*...the transmission system operator in control of the measurement equipment shall be responsible for the installation, operation and maintenance [...] and for providing [...] the data...*'
- c. Article 8(2)(d): "...The default rule for this provision is such that the owner of the relevant flow control equipment shall..." to be replaced with: '*...The default rule for this provision is such that the transmission system operator in control of the relevant flow control equipment shall...*'
- d. Article 9(5)(a): "...The default rule for this provision is such that the contracting party(ies) who owns the measurement equipment shall..." to be replaced with: '*...The default rule for this provision is such that the transmission system operator in control of the measurement equipment shall...*'

3.) Settlement of disputes arising from Interconnection Agreements (Article 11)

Article 11 offers a detailed description on dispute settlement. The Agency considers that Article 11(4) is redundant and softens the principles set out in Article 11(1) to (3). Therefore Article 11(4) should be deleted.

4.) Managing gas quality differences (Article 16)

The national competences of the Member States regarding gas quality ranges (cf. Article 16(1)(b)) could be better reflected and anchored in the text. Not in all cases, the national regulatory authority is the competent authority regarding this subject.

In the light of the foregoing, Article 16(2)(e) could be amended to read as follows:

'...submit a proposal for removing the identified barrier [...] to their respective competent national authorities for approval.'

Further, the identification of a barrier to cross-border flow due to gas quality differences – representing the first step in the outlined process – shall be made more prominent in the text. This could be achieved by restructuring Article 16(2) (e.g. extracting the first part and turning it into a new paragraph).

Finally, a reference is made in Article 16(6) to ensure cost recovery for the concerned transmission system operators. The Agency considers that having a process that is under approval of the respective competent national authorities implies that the costs associated with whatever solution is to be executed are assured (see also the Agency's recommendation on Article 27(2)). The Agency therefore recommends deleting Article 16(6).

5.) Data exchange – general provisions (Article 21)

The current limitation of scope to the data exchange between counterparties at IPs only, raises the issue of compatibility with the European vision of market integration. In particular because of the increasing role of the so called 'hub-to-hub' setting, network users shipping gas from the hub in one system to the hub in another system should not face a barrier created

by different communication protocols and data exchange formats. Therefore, the term “counterparties”, as described in Article 21(1) of the Network Code, should refer to “*network users active at interconnection points or virtual trading points, at least to those who engage in hub-to-hub transmission.*”

6.) Common data exchange solutions (Article 22)

On the data format, the Edig@s-XML format is explicitly mentioned twice in Article 22(2) and (3) to be used for the document based data exchange and the integrated data exchange, without prejudice for ENTSOG to develop a different format. The Agency proposes to allow other equivalent formats to Edig@s to be considered as long as the requirements of Article 22(6) are met. Therefore, the Agency proposes to include a reference to the possibility of ‘an equivalent format’ in the text each time directly after the term Edig@s-XML is mentioned and to delete the ENTSOG reference under Articles 22(2)b and 22(3)b.

7.) Implementation - Cost recovery (Article 27(2))

Article 27(2) sets out that “costs assessed as reasonable and proportionate shall be recovered in a timely manner via network tariffs...”. As “a timely manner” is vague and the principle of cost recovery via tariff setting and NRA approval (of tariffs or methodologies) is anyhow already reflected in the 3rd Package (cf. Art. 13 (1) of Regulation 715/2009), this paragraph is redundantly describing NRAs tasks (cf. Article 41(6) of Directive 2009/73/EC⁹) without providing any additional value and should therefore be deleted.

II. Proposals on text refinement and legal consistency

8.) Article 2: Definitions

Alignment has been kept with the other network codes already discussed in comitology and duplication of definitions has been avoided. Still, the relevance of having a definition in Article 2 compared to the option of inserting it into the relevant chapter shall be reconsidered with a view to improve both the readability and the structure of the Network Code.

9.) Article 3: General provisions and introductory articles

The Network Code proposes the communication of new agreements (in Article 3(4)) to be triggered “upon signature”. A clearer formulation would be achieved by rephrasing the ending of the first sentence of Article 3(4) to read: “*...to their respective national regulatory authority within the deadline of 10 days upon conclusion (of the agreement)*”.

10.) Article 4: Location of default rules

The summary of default rules in Article 4(4) is a redundant repetition of the rules within the Articles 5 to 11 and provides no added value. It should therefore be deleted.

⁹ [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

The Agency would also suggest to have the default rules located at the same place within each article in order to allow for the easy reading of the code. This concerns in particular Articles 6 to 9.

11.) Articles 5 to 11: Specifying the mandatory terms

In chapter II on Interconnection Agreements (Articles 5 - 11), most of the minimum rules have been written in an indirect form (e.g. 'The interconnection agreement shall specify...') with reference to the existence of an interconnection agreement.

Given that Article 3(1) lists the terms and requirement of an interconnection agreement already, no further reference to interconnection agreement is necessary in the first paragraph of Articles 5 to 11.

The minimum requirements shall be directly applicable even when an interconnection agreement is not (yet) concluded. Therefore, the Agency recommends redrafting Articles 5 to 11 to make them applicable without reference to the existence of an interconnection agreement.

12.) Article 8: Matching

Article 8(2)(f)(iii) describes the third step of the matching process as '*confirming to network users and scheduling the gas flow across the interconnection point by all the contracting parties within two hours from the start of the nomination (respectively re-nomination) cycle*'. There might be a potential timing conflict with the minimum interruption lead time provided by Article 22 of the Network Code on Capacity Allocation Mechanisms.

Article 8 should be amended in the same way as the Network Code on Balancing has been aligned. The Agency proposes to add the following sentence:

"Article 8(2)(f)(iii) shall be without prejudice to the rule for minimum interruption lead times referred to in Article 22 of Commission Regulation (EU) No 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009."

13.) Article 26: Dispute Resolution

The added value of this chapter is questionable. Based on a sole article, this chapter is mainly referring to existing legislation. To avoid redundancy, the Agency proposes to delete the Article and the chapter.

Done at Ljubljana on 21 November 2013.

For the Agency:


Alberto Pototschnig
Director



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