

## COMMISSION DECISION

of 19 July 2012

## on the establishment of the annual priority lists for the development of network codes and guidelines for 2013

(Text with EEA relevance)

(2012/413/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 Third Package of directives and regulations (hereinafter the 'Third Package'), as adopted in 2009, entered into force on 3 March 2011. With it a new system of establishing binding European-wide network codes entered into force as well.
- (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 European Commission ('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 outcomes from the public consultation.
- (3) 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 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.

- (4) 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

- (5) The public consultation, as required by Article 6(1) of the Electricity and the Gas Regulation, took place from 8 March to 16 April 2012. The Commission received 18 responses <sup>(3)</sup>, including one response from a local government and responses by ENTSOG and ENTSO-E. Whereas the other responses came mainly from European energy stakeholder organisations, several individual companies also participated in the public consultation.
- (6) 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 by 2014 as regards the development of network codes and guidelines both for electricity and gas. 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.
  - (b) A further key message by several stakeholders was that they would prefer to put all the issues listed in Article 8(6) of the Electricity and Gas Regulation through the FG/NC process instead of using direct comitology guidelines for the adoption of binding rules on these areas. In this context some stakeholders stressed the importance of a transparent, efficient and coherent process which guarantees early and close stakeholder and distribution system operator 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.

<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/20120416\\_network\\_codes\\_en.htm](http://ec.europa.eu/energy/gas_electricity/consultations/20120416_network_codes_en.htm)

- (c) Several stakeholders requested that draft proposals for the framework guidelines and network codes should be accompanied by the relevant Impact Assessment outlining the main policy options and underpinning by their comprehensive cost-benefit analysis. The Impact Assessment should furthermore be subject to a separate public consultation. Drafting the impact assessment after the end of a public consultation, as in the case of the 'pilot code', would not be acceptable.
- (d) Several stakeholders mentioned in their response that the scope of some network codes is too wide and does not restrict itself to the scope given by the Regulations, i.e. cross-border issues. In this context it was also stressed that network codes should not be over-prescriptive.
- (7) The following were the major comments concerning the annual priority list regarding electricity network rules received during the public consultation:
- (a) Several stakeholders were concerned about possible inconsistencies between network codes. Some proposed to develop only one network code in line with one framework guideline and some emphasised that at least some network codes need to be developed together such as the network codes on generator connection and demand connection, the network codes on grid connection and system operation, the network code on connection and congestion management and the 'governance' comitology guideline.
- (b) Several stakeholders support the development of rules regarding harmonised transmission tariff structures and/or investment incentives. ENTSO-E was of the opinion that the issue of tariff structures and the issue of investment incentives are largely unrelated and recommended therefore addressing them independently while giving priority to rules regarding investment incentives.
- (c) ENTSO-E expressed the view that rules for longer-term (forward) capacity allocation and rules on High-voltage direct current transmission system connection need to be included into the annual priority list for 2013.
- (8) The following were the major comments concerning the annual priority list regarding gas network rules received during the public consultation:
- (a) A key message by stakeholders was that they want to have harmonised rules regarding transmission tariff structures but would prefer to develop the rules through the network code process instead of using direct comitology guidelines. Several stakeholders proposed to set a narrow scope.
- (b) Some stakeholders raised concerns about the consistency between the network code on capacity allocation and the rules on congestion management procedures and therefore recommended to synchronise the comitology process for both topics.
- (9) The following were the major comments concerning possible scope and need of network codes and guidelines beyond 2013 regarding electricity network rules received during the public consultation: some stakeholders were of the view Third Party Access rules should be developed before those related to energy efficiency regarding electricity networks as they could provide a level playing field for operators in the internal market.
- (10) The following were the major comments concerning possible scope and need of network codes and guidelines beyond 2013 regarding gas network rules received during the public consultation:
- (a) Several stakeholders are asking to address the issue of incremental capacity and propose that rules could be developed in a network code on Third Party Access; others also want to have it addressed in the development of rules on harmonised transmission tariff structures. Several stakeholders were of the opinion that rules for trading related to technical and operational provisions of network access services and system balance are already covered by the rules on capacity allocation and balancing. Still stakeholders called for the development of trading rules focusing on rules to foster a liquid market on secondary capacity trading.
- (b) Concerning 'network security and reliability rules' the opinion was given that in case this issue needs to be tackled it would be more appropriate to do so in the framework of Regulation (EU) No 994/2010 of the European Parliament and of the Council<sup>(1)</sup> concerning measures to safeguard security of gas supply.
- (c) Some stakeholders raised concerns whether the development of network codes and guidelines regarding operational procedures in an emergency would have any benefit and were questioning the harmonisation of these provisions.

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

**DECISION**

(11) Having regard to the responses of stakeholders the Commission prioritises the work to deliver key elements that are necessary for the completion of the internal energy market by 2014,

HAS ADOPTED THIS DECISION:

*Article 1*

As it is foreseen that harmonised rules on transparency will pass the comitology procedure in 2012 the Commission establishes for the development of harmonised electricity rules this annual priority list for 2013:

- capacity allocation and congestion management rules including governance for day-ahead and intraday markets including capacity calculation (adoption under comitology procedure),
- rules for longer-term (forward) capacity allocation (drafting of network code),
- network connection rules:
  - network rules on generator grid connection (adoption under comitology procedure),
  - network code on distribution system operator and industrial load connection (finalise network code and start comitology process),
  - network code on High-voltage direct current transmission system connection,
- system operation (finalise network codes on operational security, on operational planning and scheduling and on load-frequency control and reserves and start adoption process <sup>(1)</sup>),

- balancing rules including network-related reserve power rules (finalise network code on balancing),
- rules regarding harmonised transmission tariff structures and/or investment incentives.

*Article 2*

As it is foreseen that harmonised rules on congestion management will pass the comitology procedure in 2012 the Commission establishes for the development of harmonised gas rules this annual priority list for 2013:

- capacity allocation (adoption under comitology procedure),
- balancing rules including network-related rules on nomination procedure, rules for imbalance charges and rules for operational balancing between transmission system operators' systems (finalise network code and start adoption process),
- interoperability and data exchange rules,
- rules regarding harmonised transmission tariff structures.

*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, 19 July 2012.

For the Commission  
The President  
José Manuel BARROSO

<sup>(1)</sup> The network codes on operational training and on requirements and operational procedures in emergency will follow later.