

**OPINION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 22/2017**

of 7 December 2017

**ON ENTSO-E'S PRACTICAL IMPLEMENTATION DOCUMENT FOR
INCLUSION OF TRANSMISSION AND STORAGE PROJECTS IN THE
TEN-YEAR NETWORK DEVELOPMENT 2018**

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 Regulators¹ (“the Agency”), and, in particular, Article 6(3)(b) thereof,

HAVING REGARD to the favourable opinion of the Board of Regulators of 22 November 2017, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

WHEREAS:

- (1) Pursuant to Article 6(3)(b) of Regulation (EC) No 713/2009, the Agency shall provide an opinion to the European Network of Transmission System Operators for Electricity (“ENTSO-E”) in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No 714/2009² on relevant documents referred to in Article 8(3) of Regulation (EC) No 714/2009. Point (b) of Article 8(3) of Regulation (EC) No 714/2009 requires ENTSO-E to adopt a non-binding Community-wide ten-year network development plan (“TYNDP”) every two years.
- (2) On 3 October 2017 ENTSO-E published a document called “*ENTSO-E Practical implementation document for inclusion of transmission and storage projects in the 10-year network development (TYNDP) 2018*” (“TYNDP Guidelines”).
- (3) In its Opinions No 01/2017³ and No 08/2017⁴ related to the draft TYNDP 2016, the Agency recommended a clearer and better applied procedure for identification of projects to be included in the TYNDP in order to minimise the observed, sometimes significant, differences between the projects included in the TYNDP and those included in National Development Plans (“NDPs”). Therefore, the Agency deems the TYNDP Guidelines a

¹ OJ L211, 14.8.2009, p. 1.

² OJ L211, 14.8.2009, p. 15.

³ Page 5.

http://www.acer.europa.eu/official_documents/acts_of_the_agency/opinions/opinions/acer%20opinion%2001-2017.pdf

⁴ Page 6.

http://www.acer.europa.eu/official_documents/acts_of_the_agency/opinions/opinions/acer%20opinion%2008-2017.pdf

relevant document in the meaning of Article 8(3) of Regulation (EC) No 714/2009 and formulates the present Opinion on it.

- (4) In preparing the present Opinion, the Agency has taken into account that Articles 6(3)(b) of Regulation (EC) No 713/2009 and Article 9(2) of Regulation (EC) No 714/2009 stipulate that the TYNDP should contribute to non-discrimination, effective competition, efficient and secure functioning of the electricity market and a sufficient level of interconnection open to third party access.
- (5) In the Agency's view, the principles of transparency on the entire electricity transmission network and on the TYNDP process, indicated in Recital (9) of Regulation (EC) No 714/2009 and in Annex III.2(5) of Regulation (EU) No 347/2013, can foster the quality and credibility of the TYNDP and of the projects included therein.
- (6) In line with Annex III.2 (5) of Regulation (EU) No 347/2013, the Agency also assesses whether the principle of equal treatment is ensured by ENTSO-E when developing the TYNDP.
- (7) Finally, pursuant to Article 8(11) of Regulation (EC) No 714/2009, the Agency assesses the principle of consistency between the TYNDP and National Development Plans,

HAS ADOPTED THIS OPINION:

1. General considerations

The Agency considers the project collection and identification phase as one the four main phases of the TYNDP, which should take place after scenario development and identification of infrastructure needs and before the cost benefit analyses of projects.

In order to improve the consistency of the TYNDP with NDPs, in its Opinions No 01/2017 and No 08/2017, the Agency recommended⁵ that the TYNDP be built on the cross-border relevant projects included in the NDPs, and on additional projects which are not part of the NDPs (due to the different timings of the plans, national restrictions imposed on national plans or other reasons) and are proposed by the project promoters. Moreover, additional projects can be the result of ENTSO-E studies.

The process envisaged by the TYNDP Guidelines is based solely on voluntary applications by project promoters. The TYNDP Guidelines include a request for promoters to provide a reference of the project in the relevant NDPs (NDP code and page number) or the reason for its absence

The Agency considers that this constitutes a step forward in the direction to enhance consistency of the TYNDP with NDPs. In this regard, the Agency stresses that the reference to

⁵ Pages 5 and 6.

http://www.acer.europa.eu/official_documents/acts_of_the_agency/opinions/opinions/acer%20opinion%2001-2017.pdf

each NDP (code and number) or the reason for absence should be reported in the project sheets of TYNDPs from 2018 on.

However, the Agency notes that project promoters are still free not to include their cross-border relevant projects in the TYNDP. As this may reduce transparency on the development of the transmission network, the Agency recommends that, from 2018 onwards, ENTSO-E identifies and includes in the TYNDP all projects listed in the NDPs having cross-border relevance and require the necessary data from the respective project promoters.

Based on the content of the TYNDP Guidelines, the Agency sees that their major objective is to ensure that the TYNDP projects are credible and promoted by technically and financially capable project promoters. The Agency supports this major objective and acknowledges that the inclusion criteria and the required information provide more clarity regarding the project application and inclusion in the TYNDP 2018. In that respect, the TYNDP Guidelines contribute to a greater transparency of the process, improve the equal treatment of project promoters and of their projects, and eventually improve the quality and credibility of the TYNDP 2018.

The Agency notes that the achievement of the aforementioned objectives requires a strict application of the TYNDP Guidelines, leading to the exclusion of projects which do not meet the inclusion criteria or for which incomplete data are provided by promoters.

2. Views on the process and the scope of the TYNDP Guidelines

ENTSO-E organised a public workshop on 30 June 2017 on inclusion rules⁶. On 1 September ENTSO-E invited feedback on a preliminary version of the TYNDP Guidelines by a selected group of stakeholders, including all promoters of third-party projects in the previous TYNDP and the ENTSO-E Network Development Stakeholder Group, which includes the European Commission and the Agency as observers.

On 2 October 2017, ENTSO-E opened on its website⁷ a window for submission of projects in the TYNDP 2018 from 2 October until 30 November 2017.

Although informal exchanges of views among experts of some stakeholders including the Agency, took place before the publication of the TYNDP Guidelines, the Agency regrets that the TYNDP Guidelines were not published early enough to allow the Agency to issue an Opinion on them (and ENTSO-E to take it into account) before the call for applications was launched.

In this regard, the Agency recommends for TYNDPs beyond 2018 that ENTSO-E publishes TYNDP Guidelines for consultation at least 4 months before the beginning of the process for

⁶ <https://www.entsoe.eu/news-events/events/Pages/Events/Join-us-to-improve-the-Guidelines-for-inclusion-of-projects-in-the-TYNDP-2018.aspx?EventWorkshopId=312>

⁷ <https://www.entsoe.eu/news-events/announcements/announcements-archive/Pages/News/Include-your-project-in-the-pan-European-network-development-plan--submission-window-open-between-2-October-until-30-Novemb.aspx>

inclusion of projects in the TYNDP to allow for stakeholders' and the Agency's comments to be taken into account.

The Agency notes that the TYNDP Guidelines address some major elements of the project collection and identification, including:

- the technical and administrative criteria in order for promoters' projects to be included and assessed in the TYNDP;
- the list of the documents and information that the promoters are required to submit to fulfil these criteria;
- information about the use and distribution of the submitted information.

In the Agency's view, there is however further room for improving the scope of these guidelines. In particular, the guidelines for TYNDPs beyond 2018 should be expanded with a much more detailed description of the process for building the TYNDP and of the inputs expected from stakeholders, as previously suggested by the Agency⁸, as well as to explain how projects would be treated with respect to their inclusion in the "reference network".

3. Criteria to be fulfilled in order to allow a project to be part of the TYNDP

The Agency welcomes the differentiation of the inclusion criteria (and the required documentation) based on the advancement status of the candidate projects, allowing a more advanced status only for projects included in the NDPs in the "planned, but not yet in permitting" or more advanced status (i.e. project which typically have already passed a regulatory scrutiny) and those which have requested an exemption⁹.

Regarding the inclusion criteria, the following remarks are noted.

- Administration criterion a., which sets an unbundling requirement for transmission system operator (TSO) and non-TSO promoters, is unclear, as the unbundling provisions of Directive 72/2009/EC apply only to TSOs and TSOs already received certification. Non-TSO promoters may likely be exempted from the unbundling requirement, as it happened for three out of four projects which received an exemption decision¹⁰ pursuant to Article 17 of Regulation (EC) No 714/2009. The Agency intends to review the value added of administration criterion a., and to make a proposal in its Opinion on the draft TYNDP 2018.
- The Agency deems the proposed "mandatory" administrative criteria b., c. and d. reasonable.
- The Agency deems the proposed "optional" administrative criterion e. appropriate, in order to allow PCIs to be included in the TYNDP, because PCIs, pursuant to Article 3(6) of Regulation (EU) No 347/2013, shall become an integral part of the relevant national 10-year network development plans.
- The Agency welcomes the introduction of the requirement that TSOs' proposals on inclusion of conceptual projects should result from an ENTSO-E system needs study

⁸ Agency's Opinion No. 01/2017, p.7.

⁹ Optional administrative criteria f., g. and i.

¹⁰ https://ec.europa.eu/energy/sites/ener/files/documents/exemption_decisions2017_0.pdf

(Identification of System Needs or Regional Investment Plans) (administrative criterion k.).

- Regarding the threshold of 100 MW set in the mandatory technical criterion n. for the initial estimation of the net transfer capacity increase for the internal infrastructure, the Agency deems it reasonable, as, on the one hand, it is not too high (thus allowing to detect all projects which impact on cross-border capacities) and, on the other hand, it ensures the materiality of the expected increase of transfer capacity.
- The Agency welcomes the introduction of the mandatory technical criteria o. and p. regarding provision of project characteristics for network modelling purposes and of necessary information on project expected commissioning date, status and costs.
- Regarding the definition of the project status “planned, but not yet in permitting”, it is noted that the provision that “projects which are not yet in the NDPs, but certain to be submitted for inclusion in the next NDP if they completed the phase of initial studies” introduces subjectivity on the inclusion of projects that claim to be in this status, as the “certainty” contained in the definition is not verifiable and may not necessarily result in a project being approved as “planned, but not yet in permitting” in the related NDP. In the Agency’s view the regular update of NDPs “at least every two years” (as recommended in the Agency’s Opinion No. 08/2017) should ensure that more advanced projects that receive regulatory support be already included in the NDPs ahead of the preparation of the TYNDP. Inclusion of projects in the TYNDP as more advanced, while they do not appear in at least one of the relevant NDPs would weaken the credibility of the “planned, but not yet in permitting” status category and would create inconsistencies with the NDPs, which may cause market inefficiencies if materialised. Therefore, the Agency recommends ENTSO-E to align the definition of project status “planned, but not yet in permitting” to the related recommendation in the Agency’s Opinion No 05/2017¹¹.

4. Information-provision, data handling and access to the project assessment

4.1 Information provision

The Agency welcomes the following requirements for provision of information in the TYNDP Guidelines¹²:

- the requirement for promoters to link their projects to the needs identified in the Identification of System Needs report or the latest available regional or national plans¹³;
- the requirement for promoters to indicate the cost of their projects, both CAPEX and OPEX and at investment level, and comply with the Cost Benefit Analysis Methodology in force;
- the requirement for promoters to provide reference details of the projects in the last available NDPs for all the ENTSO-E countries directly concerned and, if not part of

¹¹ Annex II, section 2.12, page 20.

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2005-2017.pdf

¹² TYNDP Guidelines, page 14.

¹³ TYNDP Guidelines, page 10. It is noted that the reference to national plans is not present in page 14.

- any NDP, to justify the non-inclusion and to describe the steps the promoter intends to follow in this respect;
- any explanation in line with the Cost Benefit Analysis Methodology which enhances the description of the project benefits in the TYNDP report.

Also, the Agency welcomes the statements (p. 5) that “Data provided for the projects submitted during the TYNDP application have to be coherent with the PCI project candidate application”, as this can significantly improve the consistency of the PCI selection 2019 with the TYNDP 2018.

4.2 Handling of and access to data

The Agency welcomes the introduction of clear rules that increase the transparency of the process and therefore increase the credibility of the TYNDP. More specifically, the Agency welcomes¹⁴:

- the rule that, in case of missing information that does not allow a full CBA calculation of the project, the project will be disregarded and not included in the TYNDP 2018. Moreover, the Agency urges ENTSO-E further to increase transparency by listing in the TYNDP 2018 the rejected candidate projects and the reasons for their rejection (e.g. due to missing information or ineligibility revealed during their assessment);
- the provision that, by default, all the technical information submitted to ENTSO-E is considered non-confidential;
- the provision that all data and documentation provided by the promoter will be accessible to the European Commission and the Agency;
- the clear definition of the handling of data updates depending on the date of their submission by promoters, and especially the fact that project updates submitted during the consultation phase of the TYNDP will be mentioned in the TYNDP, but will not be considered in the CBA assessment.

4.3 Access to the project assessment results

Regarding access of promoters to the assessment results for their projects, the TYNDP Guidelines indicate (p. 14) that “If deemed necessary and upon promoters request ENTSO-E will organize a meeting with ENTSO-E experts and promoter’s one in order to clarify the outcomes of the assessment”.

The Agency considers always necessary that ENTSO-E be available to meet promoters upon their request after a first round of explanations. The current provision is therefore a positive step, but may not be sufficient.

In order to ensure equal treatment between TSO members of ENTSO-E and other promoters, the Agency recommends that third party promoters be allowed to receive, upon their request, the TYNDP market and network datasets (as soon as ENTSO-E has finalised them), so that promoters can verify directly their project results. Market data should be made publicly available by ENTSO-E at the earliest convenience, as in the TYNDP 2016 practice. For

¹⁴ TYNDP Guidelines, p.13.

network data, confidentiality and non-disclosure rules for third party promoters may be imposed, as already done for the TYNDP 2016 network datasets.

Notwithstanding the views and the recommendations provided in this Opinion, the Agency considers that the TYNDP Guidelines should be deemed as final. They should be fulfilled by project promoters wishing to have their projects included in the TYNDP 2018 and duly applied by ENTSO-E.

Done at Ljubljana on 7 December 2017.

For the Agency:


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Director