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COMMISSION OPINION

of 4 April 2025

on the Articles of Association, Rules of Procedure, including the Rules of Procedure on consulting stakeholders and list of members of the European Network of Network Operators for Hydrogen

(Only the English text is authentic)

(C/2025/2773)

I. GENERAL

Regulation (EU) No 2024/1789 of the European Parliament and of the Council [1] foresee in Article 57 (10) that the European Commission is to provide an opinion to the European Networks of Network Operators for Hydrogen on their draft statutes, procedural rules and list of members.

The European Network of Network Operators for Hydrogen (hereafter 'ENNOH') submitted on 30 August 2024 its Articles of Association, Rules of Procedure, including the Rules of Procedure on consulting stakeholders and list of Members to the European Commission and to the Agency for the Cooperation of Energy Regulators (hereafter 'ACER').

ACER adopted on 18 December 2024 an opinion on the Articles of Association (AoA), Rules of Procedure (RoP), including the Rules of Procedure on consulting stakeholders (RoP CS) and list of members taking into account the outcome of a public consultation and submitted that opinion to the Commission on 19 December (hereafter 'ACER's Opinion' [2]).

Taking into account the opinion of ACER of 18 December 2024, the Commission hereby provides the following opinion on the list of members, statutes and procedural rules of ENNOH.

II. ASSESSMENT

II.1. Purpose and Activities – Article 4 AoA

II. 1.1 *Content*

Article 57 of Regulation (EU) 2024/1789 defines ENNOH's objectives, including climate-related objectives (Article 57(6)). At the same time, Article 4(1) of the AoA defines ENNOH's purpose and mirrors the wording of Article 57(1) of Regulation (EU) 2024/1789 but omits the obligation to support climate objectives.

II.1.2 *ACER's Opinion*

ACER notes that omitting the climate related objectives from the AoA is an inconsistency with Regulation (EU) 2024/1789 and may unintentionally narrow ENNOH's activity scope. Also stakeholders in ACER's public consultation highlighted the need to align ENNOH's purpose and activities with the EU's decarbonisation and sustainability goals, including emphasising the priority of renewable hydrogen and its use in hard-to-decarbonise sectors. Therefore, ACER recommends explicitly adding these objectives to ENNOH's purpose defined in Article 4(1) of the AoA.

II.1.3 *The Commission's Opinion*

Article 3 of Regulation (EU) 2024/1789 sets out clear principles for the organisation of hydrogen markets, including climate-related objectives (market operation and network planning shall for example prioritises hydrogen use in hard-to-decarbonise sectors and facilitate the achievement of the Union's climate and energy targets).

In conclusion, the Commission considers that Article 4 AoA should be modified as to include climate related objectives.

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[1] Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision (EU) 2017/684 and repealing Regulation (EC) No 715/2009 (OJ L, 2024/1789, 15.7.2024, ELI: http://data.europa.eu/eli/reg/2024/1789/oj).

[2] Opinion No 10/2024 of the European Union Agency for the Cooperation of Energy Regulators of 19 December 2024, ACER Opinion 10-2024 on ENNOH's statutory documents.

II.2. **Members of the Association – Articles 6 and 7 AoA and Article 2 of RoP**

II.2.1 *Content*

Article 57 of Regulation (EU) 2024/1789 defines that ENNOH shall consist of hydrogen transmission network operators (hereafter 'HTNO') certified pursuant to Article 71 of Directive (EU) 2024/1788 of the European Parliament and of the Council ([3]). The legislation also introduces transitional provisions taking into account the nascent character of the developing hydrogen market. More precisely, it establishes a transitionary period by stating in Article 57(3) that HTNOs are eligible to become ENNOH members already at the start of their certification procedures conducted by the regulatory authority. This membership is subject to:

subsequent positive certification in accordance with Article 14 of Regulation (EU) 2024/1789 and Article 71 of Directive (EU) 2024/1788 conducted within 24 months of becoming a member of ENNOH; and

at least developing hydrogen infrastructure projects with a final investment decision within four years of becoming a member of ENNOH.

Article 7 of the draft AoA however extends the eligibility criteria beyond what is set out in the legislation, by creating an additional category of 'founding members' and stating that the 'Association has been established by the Founding Members'. Furthermore, Article 2(3) of the draft RoP states that for founding members the certification procedure shall be deemed started once a founding member submits a copy of a request in which it requests the regulatory authority to initiate the certification procedure.

Member States are required to transpose Directive (EU) 2024/1788, including Article 71 on certification, into their national legislation within a two-year transposition period, ending on 5 August 2026. This also includes establishing national legislation which confers the necessary powers on regulatory authorities to conduct the certification process.

II.2.2 *ACER's Opinion*

ACER raises three main issues regarding ENNOH membership.

First, ACER notes that Article 57(3) of Regulation (EU) 2024/1789 clearly mandates that ENNOH must be composed of HTNOs certified according to Article 71 of Directive (EU) 2024/1788. This certification requirement is implied in the draft statutory documents. However, to avoid any ambiguity, ACER recommends using clearer language by explicitly stating in Article 6(1) of the AoA that ENNOH members must be certified under Article 71 of Directive (EU) 2024/1788. ACER also recommends clarifying in the statutory documents that, by way of derogation from Article 57(3) of Regulation (EU) 2024/1789, an HTNO derogated from Article 68 of Directive (EU) 2024/1788 concerning the unbundling requirement is also eligible to become ENNOH's member, subject to conditions specified in Article 57(4) of the Regulation.

Second, ACER notes that admitting founding members to ENNOH as members without the formal initiation of the certification procedure as set out in Article 57 Regulation (EU) 2024/1789, but based on a request by the company to be certified addressed to the national regulatory authority under national law would undermine the legal basis for ENNOH's establishment and cast doubt on the legitimacy of its deliverables. This may result in challenges regarding the credibility and acceptance of ENNOH's work, as stakeholders may question whether the association's establishment was legal in the first place.

ACER further notes that the process proposed in the AoA and RoP largely depends on how the regulatory authority responds to the request to initiate the certification procedure. Since the regulatory authority may not yet have the legal competence to process such requests before the Directive is transposed into national law, it is likely that these requests would be deemed inadmissible.

ACER also points to the risk that founding members may lose their membership if they have not yet been certified within a period of two years following joining ENNOH as members. In ACER's view, this risk is not insignificant, given that Member States have until 5 August 2026 to transpose the Directive. This approach also risks to only postpone the concerns of the start of an effective and smooth functioning of ENNOH to August 2026.

([3]) Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (OJ L, 2024/1788, 15.7.2024, ELI: http://data.europa.eu/eli/dir/2024/1788/oj).

ACER therefore presents an alternative and pragmatic approach, consisting of partial but expedient transposition of the Directive in the Member States, focused on the missing national rules on HTNO certification. Whilst it would remove the above-mentioned legal concerns, ACER understands however that the initiative for such solution does not lie with ENNOH and its members.

ACER acknowledges that the difference in timing between the requirements for establishing ENNOH and the transposition of Directive (EU) 2024/1788 at national level has created a significant challenge for an effective functioning of ENNOH during this initial period. In ACER's view, the draft statutory documents address this problem by aiming to offer a practical solution to support the timely establishment of ENNOH, without being constrained by the two-year period provided to the Member States for transposing the Directive's certification provisions into their national laws.

Third, ACER also identifies the risk that the transposition of the Directive may proceed at varying speeds across Member States, and this can lead to an uneven regional representation of operators within ENNOH in the initial phase, potentially compromising the representative nature of ENNOH's working methods, as intended by the EU legislator ([4]).

ACER therefore recommends that ENNOH members mitigate such a risk if it materialises by liaising, as far as possible, with prospective members who are unable to join yet but are expected to do so in the future. This would, in ACER's view, be best achieved by proactively involving prospective members in preparing ENNOH's initial deliverables and taking into account all relevant hydrogen interests. ACER adds that such collaboration would take place outside the provisions of the statutory documents.

II.2.3 *The Commission's Opinion*

The Commission has several observations as regards Articles 6 and 7 of the draft AoA and Article 2 of the draft RoP.

First, Article 57(3) of Regulation (EU) 2024/1789 clearly mandates that ENNOH must be composed of HTNOs certified according to Article 71 of Directive (EU) 2024/1788. The Commission agrees with ACER that a clear reference to the certification of HTNOs is lacking in the statutory documents.

To address this concern, the Commission recommends:

— using clearer language by explicitly stating in Article 6(1) of the AoA that ENNOH members must be certified under Article 71 of Directive (EU) 2024/1788; and

— clarifying in the statutory documents that, by way of derogation from Article 57(3) of Regulation (EU) 2024/1789, an HTNO derogated from Article 68 of Directive (EU) 2024/1788 concerning the unbundling requirement is also eligible to become a member of ENNOH, subject to conditions specified in Article 57(4) of the Regulation.

Second, the Commission acknowledges the challenge for the effective functioning of ENNOH in the initial phase, created by the difference in timing between the requirements for establishing ENNOH and the transposition of Directive (EU) 2024/1788 at national level. The transposition is a prerequisite for initiating and proceeding with the certification of HTNOs by the regulatory authorities in the Member States.

At the same time, the Commission considers that the rules in Articles 6 and 7 of the draft AoA and Article 2 of the draft RoP differ from those set out in Article 57 of Regulation (EU) 2024/1789, which clearly outline the requirements hydrogen network operators must fulfil to be eligible for ENNOH membership. The draft statutory documents try to enable that founding members, i.e. companies who are currently operating as gas transmission system operators in the Member States, can become ENNOH members without fulfilling the requirements in Article 57 of Regulation (EU) 2024/1789.

The Commission concurs with ACER that a partial and expedient transposition of the Directive focusing on the provisions concerning unbundling and the certification of HTNOs would offer an alternative solution. However, the Commission notes that the initiative for such solution does not lie with the companies establishing ENNOH but with the Member States.

In view of the above, the Commission considers that the draft AoA, the draft RoP and the draft list of members have to be modified to ensure that all ENNOH members fulfil the eligibility criteria, meaning they are certified or started the certification process, as set out in Article 57 Regulation (EU) 2024/1789.

([4]) See Recital (78) of Regulation (EU) 2024/1789.

Third, the Commission agrees with ACER that the transposition of the Directive may proceed at varying speeds across Member States, and this can lead to an uneven regional representation of operators in ENNOH in the initial phase, potentially compromising the representative nature of ENNOH's working methods, as formulated in Recital (78) of Regulation (EU) 2024/1789.

The Commission recommends ENNOH to liaise, as far as possible, with those HTNOs who are prospective members and are expected to join ENNOH in the near future. As such collaboration would take place outside the provisions of the statutory documents, this does not necessitate changes to the draft AoA or RoP. At the same time, ENNOH should act independently and should provide the necessary transparency to enable a cost-efficient development and operation of the future EU hydrogen pipeline network.

The Commission notes that under Article 57(5) of Regulation (EU) 2024/1789 Member States have the possibility to nominate an entity as an associated partner within ENNOH. This facilitates the formal inclusion of prospective members in the development of ENNOH's initial deliverables, by providing them with a well-defined and structured role until their HTNO certification is completed.

II.3. **Addition of new members and transfer of membership – Articles 7 and 8 AoA**

II.3.1 *Content*

Article 7 of the draft AoA states that the ENNOH General Assembly decides on the admission of new members. Further, the General Assembly has the discretion to reject a membership application, provided that its decision is justified, however without outlining the criteria for rejecting an application.

Similarly, Article 8 of the draft AoA mandates the General Assembly to decide on a request for membership transfer to an entity fulfilling ENNOH's membership criteria. The General Assembly should take such a decision based on a recommendation by the ENNOH Board. However, the AoA does not set out criteria as basis for such a decision.

II.3.2 *ACER's Opinion*

ACER expresses concerns over the discretionary powers granted to the ENNOH General Assembly in admitting new members or deciding on transfers of membership, particularly the possibility of rejecting an EU HTNO for reasons other than failing to meet the membership eligibility criteria outlined in Article 57 of Regulation (EU) 2024/1789.

In ACER's view this may conflict with Article 57(1) of the Regulation, which mandates all HTNOs to cooperate at the Union level through ENNOH and places new members at a disadvantage compared to founding members.

ACER therefore recommends that the decision of the General Assembly on the admission of new members and membership transfers is limited to verifying that the candidate members are EU HTNOs in the meaning of the Directive and have commenced the certification procedure in one of the Member States. If these conditions are met, the General Assembly should admit the new members or allow transfers without further discretion.

II.3.3 *The Commission's Opinion*

The Commission agrees with ACER that giving the ENNOH General Assembly the discretion to decide about membership applications and transfers may hinder EU HTNOs from fulfilling their obligation under Article 57(1) of Regulation (EU) 2024/1789 to cooperate at the Union level through ENNOH.

The Commission therefore recommends changing Articles 7 and 8 of the draft AoA to limit the role of the ENNOH General Assembly on the admission of new members and membership transfers to verifying if the membership criteria of Article 57 of Regulation (EU) 2024/1789 are met.

II.4. **Observers – Article 14 AoA**

II.4.1 *Content*

Article 14 of the draft AoA states that ENNOH may have observers. Observer status can be granted to an EU HTNO that has been derogated from certain requirements of Directive (EU) 2024/1788 by its Member State, to entities functioning as HTNOs in non-EU countries that are either parties to the Treaty establishing the Energy Community or to the Convention establishing the European Free Trade Association (EFTA).

Observers can participate in ENNOH's activities, with certain restrictions. According to Article 14(3) of the draft AoA, they may attend the General Assembly meetings, however with no voting rights, and may also participate in ENNOH's working groups, to the extent granted by the Board.

II.4.2 *ACER's Opinion*

ACER sees value in granting observer status to entities from countries with cooperation agreements with the EU, particularly from those that have already transposed or are in the process of transposing the Third Energy Package, as these countries are also likely to transpose the new EU legal framework for hydrogen in the future. However, for the same reason, ACER believes that countries that neither apply nor plan to adopt and apply the relevant EU energy *acquis* should not be permitted to participate in ENNOH's operations or contribute to its deliverables through observers. ACER adds, that to cooperate with network operators from third countries ENNOH can conclude bilateral agreements, as outlined in Article 26 of the draft RoP. These agreements enable the exchange of necessary information and coordination of actions, without granting access to ENNOH's internal structures.

ACER recommends limiting observer status to undertakings acting as HTNOs from third countries that are either parties to the Treaty establishing the Energy Community or to the Agreement on the European Economic Area (EEA).

II.4.3 *The Commission's Opinion*

ENNOH will have specific tasks under Regulation (EU) 2024/1789. Accordingly, only stakeholders, including hydrogen network operators, from third countries that apply EU legislation should be eligible to participate in carrying out those tasks, even as observers. The Commission concurs with ACER and encourages amending the draft AoA to limit observer status to undertakings acting as HTNOs from third countries that are either parties to the Treaty establishing the Energy Community or to the Agreement on the European Economic Area (EEA).

The Commission further recommends clarifying in the statutory documents the rules of participation of observers in the ENNOH General Assembly, Board and working structures (e.g. working groups). Such rules should avoid that observers have undesired influence on ENNOH decision-making, taking into account that ENNOH's primary role is to deliver on EU mandates and promote EU objectives. This should include strengthening the confidentially framework for observers and rules on managing observers' access to information (types of information accessible to observers) to avoid that information which could compromise EU interests, is disclosed.

II.5. **Composition of the Board**

II.5.1 *Content*

Article 29 of the draft AoA allows for the election of up to 17 Board members. The Board election consists of a three-step process, incorporating pre-assigned seats to reward Member States investing in hydrogen. However, in electing the Board, the General Assembly is required to consider the balanced representation of the HTNOs. The criterion in the draft AoA, reiterated in the draft RoP, obliges the General Assembly to place strong emphasis on achieving an equitable and reasonable regional balance among members when selecting the President, Vice-Presidents and Board members, as well as ensure a fair and reasonable representation of HTNOs from smaller Member States.

Further, Article 16(2) of the draft RoP states, that candidates for Board members, Vice-Presidents and President, shall be chosen amongst the employees of the member HTNOs, or of the parent companies entitled to legally represent the member HTNO.

II.5.2 *ACER's Opinion*

First, ACER notes that the principle of regional balance aims to impose a constraint on the three-step system, mandating that the allocation of pre-assigned seats does not lead to regions obtaining more seats than what is justified by an equitable and reasonable regional distribution. ACER adds, that while the three-step election process designed to reward first movers is clearly outlined in the statutory documents, the specific impact of the regional balance principle on the election and voting mechanism remains unclear.

To enhance transparency, ACER recommends elaborating on this aspect either within the statutory documents themselves or, at a minimum, in a guidance document accessible to stakeholders as needed. If the latter approach is taken, the guidance document and any subsequent revisions should be reported to ACER and the Commission upon adoption.

Second, ACER also finds it reasonable that the four seats allocated to the frontrunner Member States are time-limited and will expire with the introduction of an alternative system which will then reward these states through the reallocation of votes in the General Assembly (the so called Grid Significance Factor set out in Article 24(5) and (6) of the draft AoA and Article 13 of the draft RoP). While ACER acknowledges that the size of the investment costs and the uncertainty surrounding the future evolution of the hydrogen market may be a consideration to grant a longer duration of the guaranteed seat commensurate with these factors, it remains at the same time doubtful that such seat should be guaranteed on a permanent basis. ACER therefore recommends to explicitly provide for a future revision of this rule.

II.5.3 *The Commission's Opinion*

The Commission acknowledges the challenge of balancing the need for an equitable and reasonable regional balance among members when selecting the President, Vice-Presidents and Board members as well as ensuring a fair and reasonable representation of HTNOs from smaller Member States on the one hand, while rewarding frontrunner Member States in light of the uncertainty of the development of the future hydrogen market on the other hand. The Board election process is one key section of the ENNOH statutory documents where this effort becomes evident.

Taking into account ACER's opinion, Commission recommends that the statutory documents are amended to:

— provide more transparency, by elaborating on the specific impact of the regional balance principle on the election and voting mechanism in the statutory documents or in other publicly accessible documents; any such document and its amendments should be submitted to the Commission and ACER; and

— provide for a future revision of the rules on the pre-allocated Board seats with the aim of phasing them out once the Grid Significance Factor is introduced.

II.6. **Amendments to the statutory documents – Articles 47 and 50 AoA**

II.6.1 *Content*

Article 57(8) of Regulation (EU) 2024/1789 sets out that HTNOs shall submit to the Commission and to ACER any draft amendments to the statutes, list of members or rules of procedures, including the rules of procedure on consulting stakeholders. The process of providing these opinions is detailed in Article 57(9)-(12) of Regulation (EU) 2024/1789 and is the same as for the adoption of the statutory documents of ENNOH.

Articles 47 of the AoA applying to the amendment of the AoA and Article 50 of the draft AoA applying to the amendment of the RoP provide that if ENNOH does not receive the Commission's opinion on the proposed amendments within seven months of submission to the Commission and ACER, ENNOH assumes that the Commission has no objections and proceeds with the approval of the amendments.

II.6.2 *ACER's Opinion*

ACER notes that the presumption of the Commission's favourable opinion is not in line with Article 57(11) of Regulation (EU) 2024/1789. The Regulation clearly mandates that the Commission's explicit favourable opinion is a prerequisite for the adoption of amendments. Therefore, ACER recommends replacing this presumption with a requirement to obtain a favourable opinion from the Commission.

II.6.3 *The Commission's Opinion*

The Commission concurs with ACER that Articles 47 and 50 of the AoA are not in line with Article 57(11) of Regulation (EU) 2024/1789. The Commission therefore recommends amending these Articles of the draft AoA to clarify that the amendment of all statutory documents (notably the articles of association, the list of members and the rules of procedures, including the rules of procedure on consulting stakeholders) must obtain the Commission's favourable opinion before the amendments can be adopted and the documents can be finalised.

II.7. **Changes to the list of members**

II.7.1 *Content*

Article 57(8) of Regulation (EU) 2024/1789 lists the list of ENNOH members among the statutory documents ENNOH shall submit for the opinion of the Commission and ACER in case of amendment.

The draft AoA or RoP do not clearly outline the process for amending the list of members and do not address the role of the Commission and ACER in this process. The Articles of Association only state that the General Assembly has the discretion to take decisions or actions resulting in changes to the list of members (admission of new members in Article 7(1) of the AoA and Article 2(2) of the RoP, transfer of membership in Article 8(1) of the AoA, exclusion of members in Article 10(1) of the AoA and Article 4(1) of the RoP, or managing resignations in Article 9 of the AoA and Article 3(3) of the RoP).

II.7.2 *ACER's Opinion*

ACER expresses the view, that omitting the process for amending the list of members from the statutory documents leaves these processes outside the statutory framework and this creates uncertainty. In ACER's view this is particularly concerning because the statutes explicitly detail the procedure for amending the AoA and the RoP (Articles 47 and 50 of the draft AoA), but they remain silent on how the list of members should be updated. ACER therefore recommends clarifying in the statutory documents that changes to the list of members, such as admission, transfer, resignation and exclusion, must be submitted to both ACER and the Commission.

II.7.3 *The Commission's Opinion*

The Commission agrees with ACER that omitting rules on the amendment of the list of members creates uncertainty. Therefore, the Commission recommends amending the draft AoA and RoP to clarify that amendments to the list of members shall be submitted to the Commission and ACER for an opinion and shall receive the Commission's favourable opinion.

II.8. **Dissolution of ENNOH – Article 48 AoA**

II.8.1 *Content*

Article 48 of the draft AoA outlines that the dissolution of ENNOH can only occur through a proposal by the Board and must be approved by the General Assembly, requiring a special majority vote and a quorum of two-thirds, and that the General Assembly determines the method of its dissolution and liquidation.

II.8.2 *ACER's Opinion*

ACER highlights that the establishment and existence of ENNOH is mandated by Regulation (EU) 2024/1789, to ensure optimal management of the EU hydrogen network and to allow trading and supplying hydrogen across EU borders. To ensure adequate regulatory oversight, as required by the Regulation, ACER recommends that the statutory documents explicitly state that any decision by the ENNOH's General Assembly to dissolve the association must first receive ACER's and the Commission's opinion, and that such a decision cannot proceed unless the Commission's opinion is favourable.

II.8.3 *The Commission's Opinion*

The Commission shares ACER's concerns as regards the rules in Article 48 of the draft AoA and the dissolution of ENNOH.

The Commission therefore recommends amending the AoA to clarify that the dissolution of ENNOH should be considered as an amendment to the statutory documents establishing ENNOH and must therefore be submitted to ACER and to the Commission for an opinion and must receive the Commission's favourable opinion.

II. 9. **Bilateral agreements with third-country hydrogen network operators – Article 26 RoP**

II.9.1 *Content*

Article 26 of the draft Rules of Procedure allows ENNOH to conclude bilateral agreements to collaborate with hydrogen network operators from third countries that do not qualify for observer status. These bilateral agreements are concluded by the Board, after receiving unanimous approval from all members, including directly affected associated partners. This provision also specifies that these agreements are meant to enable information exchange and coordinated actions.

II.9.2 *ACER's Opinion*

ACER notes that while the provision ensures that this collaboration will not grant third-country operators access to ENNOH's structures or information exclusive to ENNOH members, it remains unclear what specific information this refers to or how it relates to information classified as confidential or non-public.

ACER further adds that since associated partners and observers have access to all ENNOH structures, it seems that only a small amount of information would be truly restricted to ENNOH members. In ACER's view this implies that most of the information available within ENNOH could potentially be shared with third-country operators through these bilateral agreements, which could materially impact ENNOH's operations.

ACER recommends that these agreements be recognised as part of ENNOH's essential functions, be regulated within the statutory documents and be subject to prior review by ACER and the Commission, particularly concerning the information shared with third-country operators.

II.9.3 *The Commission's Opinion*

The Commission shares ACER's concerns and invites ENNOH to amend the draft RoP to include rules on information exchange with third country hydrogen network operators in the framework of cooperation based on bilateral agreements, including a clear differentiation between the information available exclusively to ENNOH members and information which can be exchanged with third country hydrogen network operators.

II.10 **Drafting committees – Article 33 RoP**

II.10.1 *Content*

Article 72(10) of Regulation (EU) 2024/1789 requires ENNOH to convene a drafting committee to assist the development of network codes. This committee must include representatives from ACER, ENTSOG, ENTSO-E, and, where appropriate, the EU DSO entity, along with a limited number of key affected stakeholders.

Article 33(5) of the draft RoP specifies that each network code should have its own drafting committee. It further states that the composition of these committees will be determined through a transparent and objective process using inclusive selection criteria, and that rejected candidates will be provided with reasons for their rejection. Additionally, the article foresees that ENNOH will publish the rules governing the operation and formation of the drafting committees when each network code development process is launched.

II.10.2 *ACER's Opinion*

ACER has a number of comments as regards drafting committees.

First, ACER notes that Article 33 of the draft RoP does not explain how the drafting committees will be set up or how they will operate, and that their role in ENNOH's network code development process is also unclear. Article 26(6) of the RoP refers to 'advice', implying that the drafting committees serve primarily as advisory or consultative bodies, while the working groups carry out the actual drafting. The level or frequency of interaction between the working groups and the drafting committees is not specified either.

ACER therefore recommends that the RoP should clarify when and how the drafting committees are convened, the documentation they will access, and their involvement at different stages of the network code development process, up to the submission of the code to ACER. Furthermore, the RoP should explicitly define the relationship between the drafting committees and the working groups, whose respective roles need to be more clearly articulated.

Second, ACER refers to the outcome of its public consultation on the draft ENNOH statutory documents ([5]) proposing to involve in ENNOH's network code development a broad range of market stakeholders, such as shippers, producers, suppliers, and trading operators. ACER agrees with the stakeholders that this is essential for promoting transparency and fostering innovation.

ACER therefore recommends that ENNOH incorporate a diverse stakeholder group within the drafting committees to best align network codes with current market realities and technological developments. Further on the composition of the drafting committees, ACER recommends that ENNOH includes independent climate expert bodies, such as the European Scientific Advisory Board on Climate Change, in the drafting committees. Their involvement would provide ENNOH with impartial strategic advice during the rule development process, ensuring alignment with EU energy and climate goals as well as the broader interests of European society.

II.10.3 *The Commission's Opinion*

The Commission notes that clear rules on the set-up and functioning of the drafting committees will support their role in the network code development process.

The Commission therefore invites ENNOH to amend the RoP to introduce rules on:

— when and how the drafting committees are convened,

— the documentation they will have access to,

— their involvement at all different stages of the network code development process, and

— the roles of the drafting committees and the working groups and the relationship between them.

Further, the Commission concurs with ACER that involving a broad range of hydrogen stakeholders, including independent climate expert bodies and civil society representatives, would promote transparency, foster innovation and contribute to ENNOH's climate-related objectives in Article 57(6) of Regulation (EU) 2024/1789. It would also reflect the legal obligation to ensure that key affected stakeholder are involved in the drafting committees.

Therefore, the Commission recommends amending Article 33 RoP to reflect this suggestion.

II.11. **Stakeholder engagement and consultations**

II.11.1 *Content*

Article 63 of Regulation (EU) 2024/1789 requires ENNOH to conduct an extensive public consultation process when preparing its deliverables. The process must start early, be open and transparent, and include all relevant market participants, particularly stakeholder organisations, in line with the rules of procedure for the consultation of stakeholders.

([5]) On 23 September 2024, ACER launched a public consultation on ENNOH's draft statutory documents, inviting all interested parties to submit their comments by 21 October 2024. ACER sought views specifically from organisations representing all stakeholders, in particular the system users, including customers. ACER received 13 responses which were considered in preparing its Opinion. These responses are published on ACER's consultation website, and summarised in the Evaluation Report annexed to the ACER Opinion.

The consultation process shall accommodate stakeholder comments before the final adoption of the proposal, with the aim of identifying the views and proposals of all relevant stakeholders during the decision-making process. The consultation should also involve regulatory and other national authorities, producers, network users, including customers, technical bodies, and stakeholder platforms.

II.11.2 *ACER's Opinion*

ACER notes that the draft Rules of Procedure for the Consultation of Stakeholders (RoP CS) broadly reflect the principles laid out in Article 63 of Regulation (EU) 2024/1789. However, as also noted by stakeholders in ACER's consultation, the draft RoP CS lack sufficient detail and precision, potentially compromising transparency and causing confusion.

ACER therefore recommends ENNOH to further elaborate on their stakeholder engagement and consultation processes, providing clarification as needed.

As regards the minimum consultation period, ACER believes that the two-month period outlined in Article 9(14) of the draft RoP CS strikes an effective balance between timely delivery of ENNOH's outputs and meaningful stakeholder engagement. However, ACER considers that consultations shorter than one month should be exceptional. In such instances, stakeholders should be given ample advance notice, and the reasons for shortening the consultation period should be clearly communicated to all stakeholders and ACER. ACER recommends explicitly including this provision in Article 9(14) of the RoP CS.

ACER also notes a discrepancy between the general two-month minimum consultation period in Article 9(14) of the RoP CS and the one-month period stated in Article 32(3) of the RoP for stakeholder consultation on the draft Annual Work Programme (AWP). Considering the significance of the AWP in providing stakeholders visibility into ENNOH's planned deliverables and processes, ACER recommends extending the AWP consultation period to a minimum of two months. ACER also recommends clarifying in Article 32(3) of the RoP that the AWP consultation should occur before submission for ACER's opinion, enabling ENNOH to incorporate stakeholder feedback into the version submitted to ACER.

II.11.3 *The Commission's Opinion*

From the Commission's viewpoint, the form and duration of public consultations must be such that all affected stakeholders must have a fair chance to give their comments. In this context, a default consultation period of two months appears adequate. The Commission recommends specifying in the RoP CS, at least by means of examples, in which situations ENNOH will consult the public during shorter periods than two months. Further, the Commission encourages ENNOH to consider using pre-consultations where the formal consultation period is shorter than two months.

In addition, the Commission concurs with ACER that consultations shorter than one month should be exceptional. The Commission invites ENNOH to amend Article 9(14) of the RoP CS to include obligations on ENNOH to give stakeholders the necessary advance notice and communicate to them the reasons for shortening the consultation period in such cases.

The Commission also recommends aligning the provision in Article 33 of the draft RoP on network code development with the relevant provisions of the RoP CS. In particular, Article 33(2) of the draft RoP on the project plan for the development of network codes should include a reference to the RoP CS.

Further, the Commission shares ACER's and stakeholders' concerns about the lack of sufficient detail and precision in the draft RoP CS and invites ENNOH to further elaborate on their stakeholder engagement and consultation processes, to provide clarity and ensure transparency.

II.12. **Diversity and gender balance**

II.12.1 *Content*

The draft statutory documents only contain criterion for selecting Board members, namely, to ensure balanced geographical and economic representation among its members (in Article 29(2) of the AoA and Article 17(1) of the RoP). No specific selection criteria are included for appointing other senior or managerial roles in ENNOH, such as directors, head of departments or team leaders.

II.12.2 *ACER's Opinion*

ACER would welcome the inclusion of diversity and gender balance criteria in both the election of ENNOH's Board members and, where possible, the appointment of senior roles. This would align with the regulatory objectives set forth in both European ([6]) and Belgian legislation ([7]), under which law ENNOH would be established.

II.12.3 *The Commission's Opinion*

Equality is a founding value of the Union, established under Article 2 of the Treaty on European Union (TEU) and the promotion of equality between women and men is an obligation of the Union (Article 3(3) TEU). The Commission has set the target of gender parity at all management levels by the end of the 2019-2024 mandate and will continue to uphold those values going forward.

The Commission therefore encourages ENNOH to include gender parity as a criterion for the election of board members and for the appointment of senior roles.

Done at Brussels, 4 April 2025.

For the Commission
Dan JØRGENSEN
Member of the Commission

([6]) Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures (OJ L 315, 7.12.2022, p. 44, ELI: http://data.europa.eu/eli/dir/2022/2381/oj).

([7]) Article 2 of Belgian federal law of 28 July 2011, Moniteur Belge, 14 September 2011.