

Subject: Public Consultation regarding the Balansys compliance programme -
PC_2019_G-04
Date: 1 July 2019
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Introduction

The Agency for the cooperation of Energy Regulators (hereafter ACER) invites third parties to submit their views with respect to ACER's proceedings to decide on the compliance programme, which has been submitted to ACER by Balansys N.V. according to the Directive 2009 on common rules for the internal market in natural gas.

FEBEG likes to thank ACER for the organization of this public consultation that offers all stakeholders the opportunity to submit their comments and remarks on the compliance programme. The FEBEG comments and remarks are not confidential.

Retroacta and reservations

FEBEG supports the initiative by Fluxys and CREOS to integrate the balancing zones of Belgium and Luxembourg. This initiative increases the liquidity and flexibility of both markets.

To support this integration, Fluxys and CREOS will set up N.V. Balansys and entrust the balancing of both markets to this new entity.

The main shareholder of CREOS – which is a vertically integrated company – is a commercial supplier. This situation leads to great concern about the risk of conflicts of interest and the protection of commercially sensitive information when Balansys N.V. is established.

FEBEG therefore doubts whether the chosen solution is in accordance with the European principles of unbundling:

- With the application of articles 9 and 10 of the Gas Directive, Fluxys was certified under the model of full ownership unbundling by the decision of September 27, 2012
- With application of article 49.6 of the Gas Directive, Luxembourg is excepted from the application of article 9 of the Gas Directive.
- The Belgian Gas Act was amended on July 8, 2015:
 - o This amendment gives Fluxys Belgium the possibility to set up a joint venture together with other transmission system operators in order to transfer the management of the balancing operations, and more in particular the commercial balancing, to this joint venture.
 - o The legislator has elaborated a specific regulatory framework in order that only the commercial balancing operations are transferred. Based on this specific regulatory

framework, the legislator is of the opinion that any form of control of products and / or suppliers on Fluxys Belgium and on the joint venture is excluded. Therefore the Belgian legislator is also of the opinion that the application of the full ownership unbundling model is not necessary.

FEBEG has formally questioned the chosen solution several times:

- Why is the joint venture certification not necessary? Does this not ignore the fact that Enovos has control over CREOS and therefore also over the joint venture?
- How is it possible for a vertically integrated operator who enjoys an exception to the unbundling rules in one Member State (article 9 of the Gas Directive 2003/73/EC) to participate in a joint venture carrying out regulated activities (balancing) in an other member states where this exception is not applied?
- Can a Member State where article 9 of Directive 2003/73/EC is in full force, give permission to have regulated activities (balancing) carried out by a company from another Member State where an exception to article 9 applies?
- Balancing is a regulated activity To what extent can commercial balancing be distinguished from it?

FEBEG therefore wishes to formulate a reservation on the compliance of Balansys N.V. with the European rules on unbundling.

Punctual remarks

As stated above, FEBEG formulates reservations on the compliance programme as a whole, but we would also like to make a number of punctual comments:

- On the Balansys v6.0 commitments programme
 - o § 5.1.1 concerning the independence criteria: imposing a one year waiting period (*délai de carence*) to change positions as an employee or manager with a producer/supplier and an position with Balansys, is in our opinion too short. We ask to increase this waiting period by 6 months for managers and keep it at 12 months for employees without executive responsibilities.
 - o § 7. concerning the compliance officer: as a consequence of the previous remark, we ask to apply a waiting period of at least 24 months for compliance officers, taking into account the responsibilities the compliance officer had.
