



E3G – Third Generation Environmentalism
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EU Transparency register: [\[link\]](#)

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Consultation on the role of stakeholders in the implementation of network codes and related guidelines, and in particular the establishment of European Stakeholder Committees for network code implementation
(Ref PC_2014_E_08)

E3G response

Key points

The network codes are an essential element of the creation of the internal energy market and E3G welcomes ACER and ENTSO-E's efforts to engage with stakeholders throughout their elaboration and implementation.

This topic is however of such nature that an inherent bias exists in the engagement process which often prevent the newest and smallest stakeholders from fully participating.

The creation of stakeholder committees will be a positive development in further engaging with stakeholders, provided ACER, ENTSO-E and the European Commission devote resources to engage with NGOs and energy stakeholders of the future – which include consumers, demand response providers and aggregators, energy cooperatives and small-scale renewables operators, ICT companies, etc.

Support could be provided in different ways and should include:

- Proactive engagement with relevant stakeholders to flag timing and key elements of the network codes under discussion;
- Compensation for active and effective participation in the Stakeholder Committees for consumers and least resourced stakeholders.

Problem definition

Although the network code development process makes provision for public consultation at various stages, in reality there is very limited stakeholder participation beyond regulatory and large industry representation – NGOs and consumer groups are close to invisible in the process. This exposes ACER to the risk of 'regulatory capture' which could weaken their ability or willingness to properly balance the influence of industry.

"Regulatory capture" is a systemic problem whereby industries that have a vested and high-stake interest in the outcome of the regulatory activity can be expected to focus their resources on influencing the regulator to create policies that fit their business interests. In effect, the close involvement of incumbent energy companies in the development of the network codes, and the lack of engagement from the - often much less well resourced - NGOs



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and demand-side representatives, creates the risk that the incumbents could be successful in 'capturing' influence with the staff members at ENTSO-E and ACER so that their preferred policy outcomes are delivered¹.

Such an outcome would be detrimental to the creation of a level-playing field for generation and demand-side players alike, and ultimately to the establishment of a sustainable and affordable internal energy market. As ACER rightly points out in its "A Bridge to 2025" paper, the energy landscape will be profoundly different in 10 years time. The way we generate, share, and use energy will significantly evolve as a result of the deployment of new technologies in the electricity, heating and transport sectors, the changes in consumers' attitudes towards the smart technologies and their role in the energy market, the development of new business models and services, etc.

This implies that consumers, demand response providers and aggregators, energy cooperatives and small-scale renewables operators, ICT companies, etc. will grow to be more central to the European energy system than their current involvement leads to believe. It is thus crucial that these "stakeholders of the future" are involved in building the architecture of a fully functioning, competitive and interconnected Internal Energy Market².

Proposed solution

1. We fully support ACER's proposal to establish stakeholder panels to facilitate holistic discussions on future energy market developments, and to strengthen consumers' and other stakeholders' awareness and participation.
2. We also agree with ACER's observation that the effective representation and empowerment of small consumers will require a special effort from the part of ACER, NRAs, the European Commission.
3. We encourage ACER and ENTSO-E to extend this observation to NGOs, other representatives of the demand-side of the energy markets, and new energy market entrants.
4. We call on ACER and the European Commission to provide funding to representatives of consumer groups, NGOs and small new market entrants, to allow them to actively engage in stakeholder committees and other stakeholder engagement opportunities. The funding provided should help these groups towards seeking expert advice and ensuring participation in stakeholder committee meetings by offering compensation for time spent and travel.

¹ The points regarding regulatory capture exposed in these paragraphs were principally extracted from ClientEarth's September 2014 report "Proposed Interventions to Optimise Energy Efficiency & Demand Response in EU Network Code Development" available at

<http://www.clientearth.org/climate-energy/climate-energy-publications/proposed-interventions-to-optimise-energy-efficiency-a-demand-response-in-eu-network-code-development-2640>

² Concerning consumers, ACER affirms that "All energy consumers, including domestic and small business consumers, should have an active role in decisions relating to the future development of the IEM on an equal basis with industry stakeholders"



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About E3G

E3G is an independent, non-profit European organisation operating in the public interest to accelerate the global transition to sustainable development. E3G builds cross-sectoral coalitions to achieve carefully defined outcomes, chosen for their capacity to leverage change. E3G works closely with like-minded partners in government, politics, business, civil society, science, the media, public interest foundations and elsewhere.

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