



ACER/ENTSO-E 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



EFET response – 23 January 2015

The European Federation of Energy Traders (EFET)¹ welcomes the joint initiative of ACER and ENTSO-E on the role of stakeholders in the implementation of network codes and related guidelines. The disappearance of the reference to a Stakeholder Committee in the final version of the CACM Guideline approved by the Electricity Cross-Border Committee on 5 December 2014, albeit for acceptable legal reasons, has left market participants uncertain about their degree of involvement in the implementation, and the review of network codes and related guidelines.

We take the present consultation document as an encouraging move from ACER and ENTSO-E to foster productive involvement of market participants in the *implementation* of these regulatory instruments. We note that the *review* of network codes and related guidelines is not tackled in the present document and look forward to further discussion on that element.

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information, visit our website at www.efet.org.

General considerations:

The Third Energy Package implementation architecture setting up ACER and the ENTSOs has a number of benefits, including a leadership role of ACER in the harmonisation of national policies in view of the establishment and functioning of the internal energy market. However, the experience of the drafting of network codes and related guidelines has proven that this European vision is still largely absent in the work of the ENTSOs.

In the specific case of ENTSO-E, we note the good will of its Secretariat in trying to reach trade-offs between ENTSO-E members and market participants. However, cooperation and coordination is mainly conducted at operational level through external, regional bodies. The poor quality and lack of compliance with the Framework Guidelines of the draft network codes is a result of the decision-making process at ENTSO-E (submission to the GM of every draft network code, consensus approval sought at the GM), which leads to a de facto veto right of every single TSO on the content of network codes. The sophisticated consultation process fails to deliver results as market participant suggestions are in large part ignored without appropriate justification. Overall, the process leads to TSOs – consciously or not – defending the status quo or only pushing for reform that would preserve their individual operational or technical interests.

Examples such failures include:

- No consensus to standardise issuance of forward transmission rights
- No yielding on timing and criteria for granting financial firmness of forward transmission rights
- No real attempt to drive a common methodology and timetable for balancing and procurement of reserve
- No effective leadership in the coordination of Balancing Pilot Projects
- No willingness to develop a continental/ regional CMM for intraday capacity booking, pending readiness of PXs' SOB platform
- Reluctance to develop common cross-border re-dispatch and countertrade arrangements
- No harmonisation of generation adequacy assessment methodology

EFET has in the recent past communicated to ACER and ENTSO-E governance reform proposals to tackle this problem. The object of the present document is to focus on the stakeholder involvement proposal put forward in the consultation document. Nonetheless, we believe that only a comprehensive reform, including of the governance and roles of ACER and ENTSO-E, will be able to reach the objective of *effective stakeholder involvement* pursued by the joint proposal.

Detailed comments on the consultation document:

Assessment of past experience

First and foremost, we miss an assessment by ACER and ENTSO-E of stakeholder involvement in the drafting process of the network codes and related guidelines. We believe that there is a consensus among market participants representing various parts of the electricity value chain that this process, albeit sophisticated, has proven unsuccessful and counterproductive considering the time and efforts of all parties involved. An open assessment of the successes and failures of this initial stakeholder involvement process would reassure market participants that lessons have been learnt and that the proposal for the implementation of network codes and related guidelines can map the road to a fruitful collaboration.

European Stakeholder Committees

The permanent structure comprising three European Stakeholder Committees for the market, operational and connection codes seems suitable. Appropriate communication must however be ensured when approaching codes belonging to different “families” but dealing with related subjects, such as the LFCR and Electricity Balancing codes.

We observe that AESAG has de facto been carrying out such a role in the past years for market-related topics and have expressed our overall satisfaction with the functioning of that body. We agree to the proposal that ACER takes the lead to chair European Stakeholder Committee for Market guidelines in continuation of the work done through AESAG.

We believe that the European Stakeholder Committees for operational and connection codes should also be chaired by ACER. TSOs are interested parties for most of the codes with clear commercial interests that could be conflicting with the interests of other stakeholders. As such, they should not have privileged rights such as chairing any of the European Stakeholder Committees, and should be considered as stakeholders among others. With the proposed structure for operational and connection codes, it might be very difficult if not impossible for ENTSO-E to act independently of TSOs’ interests. Only ACER is in a position to remain objective and impartial.

Considering that EFET will mainly focus on the implementation of the market guidelines, the comments in the rest of this document will solely focus on the stakeholder involvement structure for the Market guidelines unless stated otherwise.

Expert groups and regional stakeholder committees

We agree to the need for dedicated European experts groups within the European Stakeholder Committee for Market guidelines, specialised in specific topics. Such groups should indeed be created and run depending on implementation needs and does not need to be restrictive.

We see the most pressing topics for which such expert groups are needed as the following:

- Day-ahead market coupling - PCR monitoring – Euphemia algorithm
- Flow-based market coupling
- Intraday market coupling - XBID platform - LIPs
- Cross-border balancing

These groups should be composed of subject experts, and report on progress at each meeting of the European Stakeholder Committee. Groups will be created or cease their activity depending on the actual need to monitor implementation.

Regional stakeholder committees, though not tackled in detail in the body of the consultation, appear in the chart on page 6. We are reserved about the need of such regional bodies unless their usefulness is clearly demonstrated for the implementation of market rules by a group of early movers. We believe that ACER and ENTSO-E should be the prime supporters of the harmonisation of European power market rules, which should be reflected in the stakeholder involvement structure to the largest extent possible. Also, the need for such regional bodies can be questioned if regional issues can be primarily dealt with by the expert groups. Expert groups active on projects with a certain regional scope should strive to include all European partners in the discussion if the project is intended to be rolled out throughout Europe in the long run (as an example, such pan-European coordination is currently missing in the flow-based market coupling project).

Role of the committees and expert groups

The role of the European Stakeholder Committee and expert groups should not be restricted to *sharing views* on guidelines implementation and monitoring. The committees and expert groups should take concrete and motivated actions based on a fair and well-balanced consideration of all stakeholder interests. Information and exchange of ideas is fruitful and necessary, but experience of the drafting of network codes has shown market participants that their input was rarely followed up by concrete, motivated decisions. Any conflict arising at expert group level should be reported to the European Stakeholder Committee.

Functioning of the committees and expert groups

For constructive progress to be reached in the committees and expert groups, their terms of reference must clearly state how stakeholder involvement will take place. Here are a set of fundamental elements that should find the way in such terms of reference:

- PXs and TSOs should be obliged to provide full transparency on all the necessary information and data for the members of the committees/expert groups to effectively perform their tasks of
- PXs and TSOs should inform the members of the committees/expert groups of any incident in a timely manner to allow them to analyse and provide mitigation recommendations
- Consultation of stakeholders on specific implementation proposals or rules amendments should happen ex-ante, with sufficient lead time before any formal or informal consultation deadline

- Ex-post communication on outcome/results of implementation decisions, and possible derogations/exemptions of such decisions in specific markets should be made in a timely manner and discussed openly within the committee/expert group
- Committee/expert group members should be allowed to take any matter within the scope of the group for review and request additional information and data to analyse the matter and provide recommendations

Composition and leadership of the committees and expert groups

As mentioned above, we understand the European Stakeholder Committee for Market guidelines as a continuation of AESAG. Its composition should remain similar to the composition of AESAG as it stands today, with a special attention to having the relevant representatives present when a specific subject needs to be discussed. We should also not forget that larger trade bodies such as Eurelectric, IFIEC or EFET do represent a large number of market participants. Their voice should be listened to with particular attention, as a large amount of work is being performed in order to reach balanced positions which are independent from individual company interests. The consultation document lumps together all stakeholders. In fact we observe that market participants should take the lead on market facing codes. Their representative trade bodies, with a fundamental interest in the completion of the internal electricity market, should be given a status in the Committee reflecting that lead role.

The composition of the other European Stakeholder Committees should broadly follow the same structure, with appropriate representation of stakeholder more specifically interested in the operational and connection subjects (e.g. DSOs, representative associations of aggregators, etc.).

The expert groups should be composed of subject experts from representative associations who may or not be identical to the representatives in the European Stakeholder Committee. The expert groups should be chaired or co-chaired by independent parties ensuring objectivity and impartiality. As a starting point, we propose that the lead regulator already appointed in the working groups on the four subjects mentioned above (Day-ahead market, flow-based market coupling, intraday market coupling, and cross-border balancing) chairs these expert groups. Possible co-chairing by a PX or TSO should be proposed to and approved by the members of the expert group.

Interaction between committees and expert groups

Interaction between the different European Stakeholder Committees, and between the committees and the expert groups is essential. It should avoid conflicting implementation decisions on related subjects and make sure that potential disagreements between stakeholders are appropriately flagged and resolved. Any conflict arising at expert group level should be reported to the relevant European Stakeholder Committee.

Having a simple and reactive structure is one of the reasons why we believe that implementation groups at regional level should be limited, if not avoided, and the work be focused on specific subject matters through the expert groups under the oversight of the European Stakeholder Committees.

Transparency

We support the transparency efforts proposed in the consultation document to ensure that all parties are well informed in terms of content and timelines for the implementation of network codes and related guidelines.

Our recommendations are as follows:

- The IT platform needs to be simplified and more user-friendly compared to the current online tool used by ENTSO-E for consultations
- There should be fully transparent access to the contributions of all parties
- Individual TSOs should be required to also submit comments, like any stakeholder, rather than using their involvement in ENTSO-E to advocate their position

Review of the network codes and related guidelines

A clear distinction should be made between committees/expert groups responsible for the implementation of the network codes and related guidelines on the one side, and the groups responsible for the establishment and review of the network codes and guidelines on the other side. The review of the market guidelines especially, given the different legal nature that the European Commission has decided to give them, still needs to be clarified. Groups responsible for gathering stakeholder input on the review of the guidelines should remain at the level of regulatory discussion, with improved market participants involvement compared to the NC SAG set up for the initial drafting of the network codes.