

Implementing the third energy package - An initial consultation paper by the European Energy Regulators OVERVIEW

1. Introduction

1. The Third Package of legislation on the internal electricity and gas markets will provide a new framework for competition in the energy sector. The European energy regulators welcome the political agreement at the October Energy Council on the Third Package on legislation on the internal electricity and gas markets. The European energy regulators are launching this consultation on how to put key elements into practice.
2. As promised at the Madrid Forum, European energy regulators have developed initial proposals to allow work to begin in earnest on implementation. It is important to make progress as rapidly as possible without waiting until the 3rd package proposals are definitively agreed. Where the package changes, a revised approach can be developed, having had the first reactions from around Europe. The European energy regulators¹ outline what needs to be done during the 18 months or so before the 3rd package enters into full legal effect. Throughout the document this is defined as the “interim period”.
3. The present paper presents an overview of the three key areas. For each, three appendices², provide supplementary information on the respective key area together with a more detailed analysis of the key issues:
 - The stakeholders’ interaction with the Agency;
 - The development of the framework guidelines and network codes;
 - The coordination of regional and national approaches into the European regulatory framework during the period of transition to a single European market.
4. These documents provide a **comprehensive description of European energy regulators’ initial approach** with an explanation of the practicalities. Views from stakeholders are sought by **31 December 2008**.
5. Where issues emerge that fall whole or in part within others’ responsibility (notably the Commission and the ENTSOs), we do not mean to imply that any decision is being taken. Including issues that go beyond our own responsibility is necessary to allow consideration of key issues of importance for us as regulators.

¹ The 3rd package proposes that national regulatory authorities constitute the Regulatory Board of the proposed regulatory Agency.

² The contents of this suite of papers presented is as follows:

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|---|-----------------|
| - Consultation paper: Implementing the Third Package | (C08-GA-45-08) |
| - Appendix 1: The Agency | (C08-GA-45-08a) |
| - Appendix 2: Framework Guidelines and European Codes | (C08-GA-45-08b) |
| - Appendix 3: Co-ordination of Decisions | (C08-GA-45-08c) |

6. The paper focuses on those elements where there is sufficient clarity as to the likely outcome and where there is a need for action at the European level. (For example, the issue of unbundling, while critically important, is outside the scope of this paper.)

Start early

7. Much preparatory work will be needed during what we have termed “the **interim period**”. The interim period covers the time between the formal implementation of the third package (probably 18 months from formal adoption of the legislation), during which the Agency will be established but not empowered to take any formal decisions. The time we have available is thus very compressed. Assuming the earliest formal adoption of the third package (early 2009), the Agency will be unable to act until June 2010. Nor will the ENTSOs be formally operational before January 2011 and, thus, on the best assumptions, the first codes may well not be in place until 2012 or even later. Thus the need to think through arrangements, even as the institutions are still to take final decision, is vital. **That is a challenge for all of us, and the way in which ERGEG, the TSO preparatory bodies, the Commission and stakeholders, will work together to meet that challenge will be critical.**

The work of the ENTSOs

8. The system operators have already taken important interim steps. As regulators we welcome the proposals of the European gas transmission system operators (TSOs) creating a new organisation called ‘GTEplus’ ahead of the establishment of the (gas) European Network of Transmission System Operators (ENTSO) declaration of intent signed by all electricity TSOs to establish ‘ENTSO-E’ before the end of 2008 as preparatory body for the ENTSO (electricity). A constructive relationship between the ENTSOs and regulators and later the Agency itself will be fundamental in ensuring that our respective work plans are properly co-ordinated and executed with the greatest efficiency. The roles and responsibilities of the Agency and the ENTSOs are quite very different but close working relationships and informal collaboration that fully respect the responsibilities of each, will be essential. We are, of course, already encouraging informal contacts.

The Framework Guidelines

9. The framework guidelines are now being prepared within ERGEG. They are necessary as the basis for the ENTSOs to draft the respective network codes. It will be the responsibility of the Commission, following the advice of the Agency to establish the priorities for developing network codes. In the absence of the Commission’s prioritisation, we shall, on a pragmatic basis, continue to base our work on our own current priorities for framework guidelines.

Network Codes

10. Significant responsibilities rest with the ENTSOs for preparing the proposed network codes and documents with final approval resting with the Agency. Developments in regional markets will also be of real significance as the single energy market is achieved. With all these developments and players, there will be very complex sets of **relationships and interactions** that must be well understood and made to work effectively. Thus, for the European regulatory framework to provide real benefits to European consumers, the **role of each of the bodies will need to be well defined**

initially. Network users and consumers should also be appropriately involved in the processes.

Context

11. To deliver an effective Agency will depend on many factors, some outside the immediate scope of this paper. Of particular importance is the strengthening of the powers and independence of each national regulatory authority (European energy regulators continue to argue that the emerging legislation should bestow on the Agency greater powers). The National regulatory authorities (NRAs) also play a critical role in ensuring the essential elements of a level playing field are in place (and are properly enforced) for the market to function, and develop effectively. In doing so, they will need fully to co-operate and take account of issues which reach beyond their national markets. Independent national regulators are central to creating the conditions necessary to ensure adequate investment in Europe's energy infrastructure.
12. Implementation of the 3rd package is, of course, undertaken against the background of major European measures to address climate change. These will have substantial implications for the operation on energy markets and will pose real and major challenges for all involved in the future development and operation of Europe's energy networks.

2. The work of the Agency

Consultation

13. The way the Agency carries out its consultation with all stakeholders will be of crucial importance. European energy regulators have decided to introduce an interim set of arrangements on which an effective modus operandi can be developed. With the experience gained over the interim period the Agency can consider whether to adopt similar consultation procedures when it becomes fully operational.
14. Since the creation of the Council of European Energy Regulators (CEER) and (by Commission decision) the European Regulators Group for Electricity and Gas (EREGEG), regulators have demonstrated their commitment to effective and full consultation. EREGEG formally established and published consultation procedures³ on which **twenty eight** public consultations over the last five years have been **successfully tried and tested**. These procedures - which also apply to CEER - set out who should be consulted; when consultation should take place; how the consultation should happen; how EREGEG will respond to comments made during a consultation; and how confidential information will be handled. **These arrangements, we believe, offer an excellent basis for the consultation practices of the Agency when it develops its own approach.** They are not, however, in themselves sufficient.
15. Regulators will now consider and consult on **ways of improving the present EREGEG consultation**. Any significant new regulatory policies would need to involve an impact assessment, in accordance with Better Regulation principles. Calls for Evidence (drawing on experience in some other sectors) could also be developed for approval in appropriate situations. These arrangements will be practically tested during the interim period and should provide a sound basis for the consultation model of the Agency when

³ [Ref: E07-EP-16-03 Guidelines on EREGEG's Public Consultation Practices]

decided. Our objective is the optimal involvement of all network users and customer representatives. They must be effectively and appropriately engaged in the development and implementation of the European regulatory framework. The ENTSOs will of course play a major role. Their own procedures for involving stakeholders are particularly important and must clearly carry the trust of the stakeholders themselves. Finally, whilst it is in the interest of all that potential overlaps are avoided and that stakeholders' resources are effectively engaged, it is also fundamental that stakeholders themselves gear up to meet this challenge.

Role of stakeholders

16. The idea of a '**stakeholder panel**', in addition to the normal consultation processes, has been suggested by the stakeholders themselves, ultimately to **assist the Agency** in engaging effectively with network users and consumers. The term "stakeholder panel" could cover a range of different models. One would bring together a **broad spectrum of representative stakeholders** from across the EU to act as a sounding board in policy development and evaluation. The European energy regulators consider that this approach is already effectively addressed through the **Florence and Madrid Fora**, to which the **Citizens' Energy Forum** in London will shortly be added.
17. Another model to enhance the effective input of stakeholder views is the creation of "**ad hoc panels**", each comprising of a **small group** (perhaps ten people) of sector experts to review technical details of policy design, to interact with Director of the Agency and provide expert advice from market participants and customers on specific issues in short timescales. This type of model may be useful, for example, in providing **focused advice on the development of framework guidelines, the preparation of priority codes**, and developing and evaluating proposals for **modifications to the network codes**. Again, it would supplement, not replace the need for wider consultation. One way to structure such panels would be to make them **sub-groups of the existing Florence, Madrid and London Fora**. The panels would, of course, need to meet more frequently than in the case for the Fora, and in no way be seen as representative of the full membership of the Fora. A report on their activities could be presented, however, to the wider stakeholder group represented there. The consumer and network user **stakeholders identified for particular projects could themselves nominate relevant experts** to the panels. Views are welcome on whether this type of panel is needed, and whether it should be structured in a way which builds on the existing fora. An alternative would be to establish separate ad hoc groups with appropriate expert representation.

Consultation by the ENTSOs

18. The **ENTSOs have rightly committed themselves to involve market participants and network users** whilst fulfilling their legal responsibilities in respect of the development and improvement of the network codes or other key documents. That involvement is likely to be at all stages and would certainly be invaluable to develop most effective, efficient proposals. Regulators are fully aware that consultation is demanding of those carrying out the consultation as well as those being consulted in terms of time and resources. Thus, it is appreciated that duplication of consultation should be minimised. However, it must also be appreciated that regulators will need to satisfy themselves that, when taking their formal decisions on any action or advice they give the Commission, they have an unambiguous view of all stakeholders and that normally, they would organise their own final consultation.

19. **When the consultation arrangements for regulators have been confirmed they will serve as the basis for the interim period. Once constituted formally the Agency will decide whether arrangements similar to these can be adopted with or without amendment. The Agency's Board of Regulators will also need to endorse formally (or amend) any decisions taken in the interim period.**

Accountability

20. **Accountability of the Agency will be an essential component of the new arrangements.** In addition to its annual report and an evaluation report, regulators envisage providing a periodic report (reviewing the functioning of the market) to the European Parliament, the Council and the Commission. The Chairman of the Agency's Board of Regulators may also offer to appear (with the Agency's Director) before the relevant committees of the European Parliament. Regulators will also establish a 'Quality Charter' to improve the Agency's accountability to stakeholders.
21. The following high level timetable is calculated on the most optimistic assumptions:
- The Agency established in June 2010, 18 months after adoption of draft Regulation;
 - Rules of procedure for the Agency (or its committees) adopted by Q3 2009. The rules of procedure will need to be sufficiently elaborated in the interim period to form a sound basis for that decision;
 - The European energy regulators will prepare initial draft annual work plan for Agency by Q4 2010;
 - ENTSO Rules of Procedure prepared in the interim period by ENTSO-E and GTEplus by Q3 2009, to allow approval in draft form by the European energy regulators and the Commission, sufficient to complement that timetable.
22. Quite separately from the formal rules of the Agency, European energy regulators are presently analysing their own internal rules of procedure and arrangements which are not subject to consultation. When agreed, they will be published to allow their introduction after the 3rd package is agreed.
23. More detailed discussion of all these is provided in appendix 1.

Questions

- A *Please comment on the Consultation Arrangements proposed in this paper (see Appendix 1 Annex 2) as a basis for the interim period and for later decision by the Agency as its own process.*
- B *Could the fora (i.e Florence, Madrid, London) be further enhanced to allow stakeholders to make an effective contribution to the development of the single European energy market? How could this be done in a practical way?*
- C *Could focused 'ad hoc panels' of interested expert stakeholders assist the Agency in the development of regulatory policies? Should they be linked (though without full representation) to the **Florence, Madrid, and the new London Fora** to avoid the proliferation of consultation structures, ensure the effective delivery of stakeholder views and proper representation? Or should the ad hoc panels be organized independently of the Fora in close cooperation with energy consumer and network user representatives?*

- D *Are proposed measures to ensure the **proper public accountability** of the Agency broadly adequate?*
- E *What do you consider to be the key elements for the successful establishment of the Agency? What are the most important issues relating to the NRAs and their role within the Agency?*

3. Framework Guidelines, Codes and Other Cross-Border regulatory Issues

24. The 3rd package envisages the development of cross-border gas and electricity network codes, drafted by the ENTSOs. These will form the basis for the interaction between national gas and electricity networks and markets. The codes will be based on higher level framework guidelines ultimately prepared by the Agency. The guidelines and the codes, taken together, are a major tool which, over time, will enable the diverse national and regional markets in the Union to evolve towards an efficient single European energy market. However, for this outcome to be achieved it is necessary to ensure that the processes for establishing the first set of guidelines and of codes are effective, and that processes for the subsequent modification of the codes (an essential element in the evolution towards a single market) are established in the legislation, and are well designed and clearly understood.
25. Although the negotiations have still to be completed it seems likely that the **Agency will define the objectives and the scope of the network codes** in framework guidelines and will provide advice to the Commission on that basis. The ENTSOs, on the request of the Commission, will engage in the task of producing network codes that adhere to these guidelines. The Agency will also have a role in reviewing and advising the Commission on the codes produced by the ENTSOs and, on the basis of this advice the Commission may propose that the codes be made binding through comitology. Any subsequent enforcement by NRAs and/or the Commission has yet to be finalised in the negotiations. In considering the process for this work, it raises the following issues, which apply equally to electricity and gas:

i. What is the nature of the framework guidelines and the codes?

26. The network codes will be potentially binding instruments which govern cross-border network issues. Each code must be consistent with the related (non-binding) framework guideline. It is envisaged that the network codes will co-exist with national codes or rules but that these national codes and rules must be compatible with the European network codes. The European network codes should be limited to what is necessary to achieve the objective of creating a seamless interaction between national transmission networks, which, together, will form a European grid as the basis for a single European market. The 3rd package does not, however, contain any specification as to how detailed or specific they will be, or how extensively they should reach into the operation of national networks.
27. The many different technical approaches to the operation of markets and networks will take a considerable period of time to converge towards a single energy market. The extent to which different approaches should be accommodated in the codes during the period of transition to the single European market will be largely determined by the framework guidelines. It may be that, over time, the Agency will need to develop a process for improving or modifying the codes, which could include criteria for assessing

modification proposals to provide clarity on the overall direction of market convergence from a technical perspective.

28. It is necessary to **understand what sort of instruments each code will be**. This may vary by subject matter. Alternative models could include:
- legally binding codes which are directly enforceable (and therefore drafted in legally precise terms), with variations or options to accommodate regional differences ; or
 - codes which must be transposed into national laws to give them legal effect so that their provisions can be enforced; or
 - voluntary codes which are less specific, which set out principles. These would not be enforceable by the NRAs.
29. To promote regulatory clarity and predictability for stakeholders and investors, we consider that that the first of these models is the most appropriate, and what follows is based on this view. If the codes are to play a major role in the achievement of a single European energy market, it is essential that they are binding, and drafted in such a way that they are capable of being enforced. It is vital to reach a common understanding on this approach when drafting the relevant documents.
30. The binding nature of the codes and the importance of the enforcement role mean that the codes are likely to be materially different from existing documents such as the ERGEG GGP. For example, the current non-binding ERGEG guidelines of good practice provide a good basis for the substance of the framework guidelines, but are not prepared in a legally enforceable framework and will sometimes be subjected to major redrafting.

*ii. **Although a number of areas are specified in the proposals, the number of codes is not. The priority of these codes will need to be established as well as the grouping of the areas into codes.***

31. The Commission's initial proposals contain a list of 11 areas each for electricity and gas. Although the final number may change, the prospect is that list will still contain a significant number of areas which are closely interrelated. This raises the issue of how the areas should be prioritised, and whether the most closely interrelated areas should be grouped into a fewer number of codes. In addition the 3rd package includes further areas of work (e.g. the 10 year network investment plan, guidelines on storage and LNG) where a different legal approach is suggested, but which still need to be considered in the overall context of the development of the market.

Prioritising

32. While it may be possible to complete work on the **framework guidelines** during the interim period, work **to develop the codes is expected to take for longer** as they will be far longer, more complex and possibly legally binding documents. This work will need to be **undertaken in an ordered way**, rather than all at once. This will help both the ENTSOs and other stakeholders manage their resources. European energy regulators have already started preparatory work on the development of the framework guidelines as an essential prerequisite to the codes. The position on the development of the framework guidelines is different in gas and electricity. In some areas work undertaken in the past is relevant to the work on the framework guidelines. This has enabled

preparatory work on the electricity guidelines to proceed more quickly than is the case in gas.

33. In **electricity** work related to the **framework guidelines** is underway on the following areas:
- security and reliability rules including interoperability rules and operational procedures in an emergency;
 - grid connection and access rules;
 - capacity allocation and congestion management rules;
 - transparency rules;
 - balancing rules including reserve power rules; and
 - energy efficiency regarding electricity networks.
34. In **gas** work related to framework guidelines is underway in a number of areas. The existing Guidelines of Good Practice (GGP) which have already been developed, consulted on and monitored, will be the basis for the development of framework guidelines. Current work of European energy regulators in gas covers the following areas:
- capacity allocation calculation and congestion management;
 - transparency rules;
 - tariff guidelines; and
 - balancing rules including transparency provisions on balancing
35. Furthermore, detailed work has either been completed or is under way in relation to the scope, content and approach for developing the 10 year investment plan, GGP and other specific recommendations for the Commission on storage and on LNG.
36. The prioritisation of the ENTSO's work on the codes is a decision which rests with the Commission, having consulted with the Agency, ENTSOs and stakeholders. It would be practical for the Agency to involve ENTSOs early in the process (and regulators to involve TSO EU bodies in the interim period) so as to ensure fast and efficient drafting of the codes. European energy regulators therefore seek views on prioritisation so that they can advise the Commission on an appropriate priority list of codes so that work can proceed during the interim period.
37. **For electricity**, ambitious and necessary measures addressing climate change concerns have substantial implications for the reliable operation of networks and energy markets and pose major challenges for the development and operation of Europe's energy infrastructure. This, coupled with the large system disturbances which occurred in Europe in 2003 and in 2006, emphasises the importance of a reliable platform for the market. For this reason European energy regulators consider security and reliability to be the first Priority group. Thereafter the focus should be on the issues related to the use of the infrastructure; rules on connecting to the grid and of accessing it. This second Priority group could cover the issues of scarce capacity and how to accommodate the competing requests of grid users in these cases. A closely related issue is transparency, the lack of which has been one of the major shortcomings of the European electricity market. The third Priority group could cover issues essential for good market functioning. Finally, the fourth Priority group contains topics that are important but not that critical for market integration or for which there is already in place a practical working solution.

38. This suggests that an approach for prioritisation of the network codes may be the following (it should be emphasized that some sub-issues within each area could have a different priority):
- Priority I: security and reliability rules; interoperability rules; and operational procedures in an emergency;
 - Priority II: grid connection and access rules; capacity allocation and congestion management rules; and transparency rules;
 - Priority III: balancing rules including reserve power rules; and data exchange and settlement rules; and
 - Priority IV: rules regarding harmonised transportation tariff structures including locational signals and inter-TSO compensation rules; energy efficiency regarding electricity networks.
39. **For gas** the proposed priorities are different and reflect the different circumstances. Here the main concerns are proper access to existing infrastructure, lack of transparency and resolving practical problems with interoperability and coordination between TSOs. A number of studies indicate the following priorities should be attached to the areas identified in the Commission's initial proposals for the development of codes:
- Priority I: capacity allocation and congestion management rules; transparency rules; balancing rules;
 - Priority II: rules regarding harmonised transmission tariff structures; interoperability rules;
 - Priority III: security and reliability rules; grid connection and access rules; data exchange (although aspects of this area may have relevance to other, higher priority areas) and settlement rules; rules for trading related to technical and operational provision of network access services and system balancing; and
 - Priority IV: operational procedures in an emergency, energy efficiency regarding gas networks;
 - Although not part of the list of "11 Areas", the 3rd package may provide the Commission with new possibilities to propose guidelines for LNG and storage, two areas which have repeatedly been identified as having a significant impact on the internal gas market. European energy regulators would encourage the Commission to propose such guidelines, closely coordinated with the work on the 11 areas.
40. The prioritisation of the individual areas will also depend on future decisions on possible grouping.

Grouping

41. The 3rd package identifies a number of areas that the gas and electricity network codes should cover. The Commission's original proposal listed 11 areas but the final number may be different. Regulators note that many of the areas listed are inter-related: for practical reasons grouping of areas into a fewer codes may be needed. Drafting a **large number of separate documents**, particularly as these may change individually over time as Europe progresses to a single market, will make it **difficult to keep track of all the relationships and ensure consistency is maintained**. Many codes would potentially require **many comitology procedures which could be quite cumbersome**.
42. **Different approaches to grouping the areas into codes are possible.**

43. The 3rd package proposals give the task of determining the priority of the codes to the Commission on the advice of the Agency. European energy regulators will advise the Commission later on the grouping of the issues and the prioritisation of the codes in the light of this consultation.

iii. The process and timetable for the developing the codes needs to be specified as well as the process for making any necessary subsequent modifications to the codes

44. Formally, the Agency will not be able to act during the interim period which means until June 2010 at the earliest. Further time allowed for the Agency and the ENTSOs to formally prepare the codes could add **further delay until 2012** (as the Agency has six months to draft the framework guidelines and the ENTSOs, subsequently one year to draft each network code). **In order to accelerate the process European energy regulators consider that work should begin now.**

45. For the **10 - year European network development plan**, the ENTSOs are required to adopt the plan every two years after the Regulation enters into force. If the 3rd package is adopted by the end of 2008, this could mean that the ENTSOs have to produce their first investment plan at the latest by the end of 2011, or by 2013 if the two year deadline is taken to run from the point the ENTSOs are formed. **It would be possible to accelerate this timetable by agreement with ENTSO-E and GTEplus** that preparatory work should be undertaken during the interim period.

46. The key features of the process that European energy regulators envisage after the interim period for the development of the codes identified as priorities are:

- The Agency will prepare its own draft framework guidelines, drawing on previous work and consultations by ERGEG. It will liaise with the relevant ENTSO in drawing up the draft and will consult stakeholders fully on the draft framework guidelines using an effective published consultation procedure, including an impact assessment for each guideline where appropriate. We envisage that much of the preparatory work for this step can occur in the interim period;
- The resulting framework guideline for setting the objectives for the codes will be submitted to the Commission and, with the Commission's agreement, to the relevant ENTSO;
- The ENTSO will draft the relevant network code to fulfil the objectives specified in the framework guideline. The ENTSO may involve network users and other stakeholders in this process. It is for the ENTSOs themselves to develop the mechanisms for stakeholder involvement. In view of the public interest issues involved, European energy regulators consider that the exact methods for involving stakeholders should be included in the rules of procedure of the ENTSOs (just as the Agency's methods will be in its rules of procedure), which are to be approved by the Commission on the advice of the Agency. It would be practical for the Agency to be closely involved in the process. The ENTSO will pass the draft network code to the Agency;
- The Agency will, where necessary, exercise its right to undertake a definitive consultation on each draft network code in order to establish that the code meets the objectives in the relevant framework guideline. This will be a last chance to ensure comments raised previously have been properly considered – stakeholders will need

to understand that any substantive issues really need to be raised in the previous rounds of consultation;

- The Agency will advise the Commission on the draft network code in the light of the consultation. The Commission may then make a proposal to the comitology committee to make the draft network code binding.

47. These steps will ensure the **effective involvement of stakeholders in the process** for the development of the codes, and that the roles and responsibilities of the Commission, the Agency, and the ENTSOs are clearly defined. The Agency would also consult on other important documents which are not network codes – notably the 10 year network development plan and the annual work plan of the ENTSOs.

48. European energy regulators anticipate that preparatory work on the framework guidelines and the draft network codes will proceed during the interim period. It is proposed that the process outlined above is followed, as far as possible, by ERGEG, GTEplus and ENTSO-E.

49. The following timetable is the most ambitious possible, assuming speedy adoption of the proposals (the ENTSOs and, during the interim period, GTEplus and ENTSO-E will need to consider their likely timetable for delivery set against their resources):

- Network codes in priority areas to be prepared in draft form by June 2010 (the earliest date).
 - The highest priority framework guidelines to be prepared for consultation by Q3 2009.
 - Agency to undertake final consultation on priority codes from June 2010.
- The first 10-year network development plans to be prepared by ENTSOs by January 2013 (required every two years – hence two years after creation of ENTSOs).

50. More detail on these issues is contained in Appendix 2.

Questions

- A *Are the proposed priorities for the codes and technical areas the right ones? If not, what should the priorities be?*
- B *Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If so, what could the groupings be?*
- C *Which aspects of market design or network operation should be fully harmonised across the Union through the first set of codes?*
- D *Annex 1 of Appendix 2 we describe the content of each area mentioned in the Commission's initial proposals. Do you think the description is complete? If not, what aspects should be elaborated within the areas?*

4. The ENTSOs and European Energy Regulators

51. The 3rd package proposes the establishment of two independent TSO organisations, one for gas and another for electricity, for the purpose of co-ordinating the activities of TSOs to the extent necessary for fulfilling the European functions envisaged. For these arrangements to work effectively and efficiently, it is likely that a **much greater degree of co-ordination will be required between these two bodies and the Agency.**

European energy regulators consider that there should be a **clear published document** which would describe the way interactions between the Agency and the ENTSOs will take place. We also consider that a similar publication is needed to establish how interactions between ERGEG/CEER and the European TSO bodies will take place during the interim period.

52. The TSO organisations have already announced preparatory steps for the creation of the ENTSOs, which we welcome. GTE has established GTE+ which is tasked with undertaking work in anticipation of the creation of ENTSO (Gas). ENTSO has announced a declaration of intent signed by all electricity TSOs to establish a new organisation, ENTSO – E. ENTSO, UCTE, Nordel, UKTSOA (UK), BALTSO (Baltics) and ATSOI (Ireland and Northern Ireland) will transfer their activities to ENTSO-E and to wind-up their respective associations as soon as the new body is established and the transfer of activities has been accomplished. European energy regulators welcome these developments, in particular as the creation of these interim TSO bodies will facilitate the progress of work during the interim period.
53. The ENTSOs will propose codes which must meet the public interest obligations placed upon them in a way which is consistent with each national TSO fulfilling its functions. There is, inevitably (and naturally) therefore, a commercial dimension to the ENTSOs activities as TSOs are driven by commercial considerations. The relationships between European regulators and TSOs, and later the ENTSOs and the Agency, are key in gaining confidence that these wider public interest responsibilities are properly fulfilled. Whereas the ENTSOs have public interest obligations placed upon them in the 3rd package, it will be the Agency (which has no commercial affiliations) that has the duty to protect the public interest. The respective roles of the Agency and the ENTSOs, therefore, must be fully understood and protected. This will be particularly important as the day to day working relationships will inevitably be close, initially between the regulators and the TSO bodies during the interim period, and later between the Agency and the ENTSOs when they are established. Collaboration in many areas will be key to a successful outcome because of the close interaction between the functions of the Agency and the ENTSOs (and the TSO bodies and the regulators in the interim).
54. The Agency will also need to reassure itself that the manner in which the ENTSOs fulfil their obligations is consistent with the wider public interest, in much the same way that NRAs do with national TSOs. The Agency's role will be: to develop the principles (under the Framework Guidelines) which the ENTSOs will use to prepare the detailed codes; and to review (or approve) the codes. The exercise of these important functions by the Agency and the ENTSOs will demand adequate public **reporting to provide reassurance as to their proper accountability**.
55. The implications of this formal relationship between the Agency and the ENTSOs are **profound for the operation of the Agency**. For example:
 - Work plans and the resources to deliver them will need to be carefully assessed and co-ordinated.
 - Principles governing the relationship between the Agency and the ENTSOs will need to be developed and published.

- ENTSO should consider opening their working groups to experts from the Commission and the Agency experts as observers in the way that current ERGEG working groups are open to the Commission to ensure an efficient process from drafting to approval.
 - Disputes (for example, in relation to relative priorities) will need a resolution process.
 - Information held by the Agency will need to be protected to the extent (in this context) that it relates to the Agency's regulatory role in respect of the ENTOSOs.
 - Formal public reporting by the ENTOSOs should be to the Agency in the first instance. The Agency should then report on the public interest implications of the ENTOSOs activities. This will have implications for the timetable for the preparation of the reports of these European bodies.
 - Appropriate involvement of stakeholders will also need to be explored. The "network codes" will also impact on market design issues; in particular, the coordination between the Agency and other market participants needs to be developed through establishing consultation practices.
56. The **Commission will also participate** in the establishment of the work plans, not least as a key player in some important aspects (for example, in making the codes binding).
57. The constructive relationship that will be a major objective of the ENTOSOs and the Agency will ensure that work plans are properly co-ordinated; the execution of work is done efficiently; and that there is good communication between the Agency and the ENTOSOs. There will be regional aspects to the work of the ENTOSOs and the Agency and appropriate co-ordination of these dimensions is essential. However, the **Agency will remain the acknowledged guardian of the public interest, notably** in order that network users, consumers and investors can have confidence in the European regulatory framework, and the Agency's role in this regard must be protected.
58. A tentative indicator of the optimal timings of the necessary actions from the ENTOSOs is given below, recognising that it is for the ENTOSOs themselves to establish their timetable and consider the resources needed to fulfil it:
- ENTOSOs first annual work plans will need to be prepared for adoption by the beginning of 2011 (the Commission having approved their rules of procedure on advice from the Agency – requiring a gap of up to 6 months from the Agency being formally established)
 - During the interim period the TSO EU organisations will need to prepare relevant draft ENTSO annual work plans by a deadline of Q4 2010 and consistent with the draft work plan drawn up by the Agency (see para 21 above)
59. More detail on these issues is contained in Appendix 2.

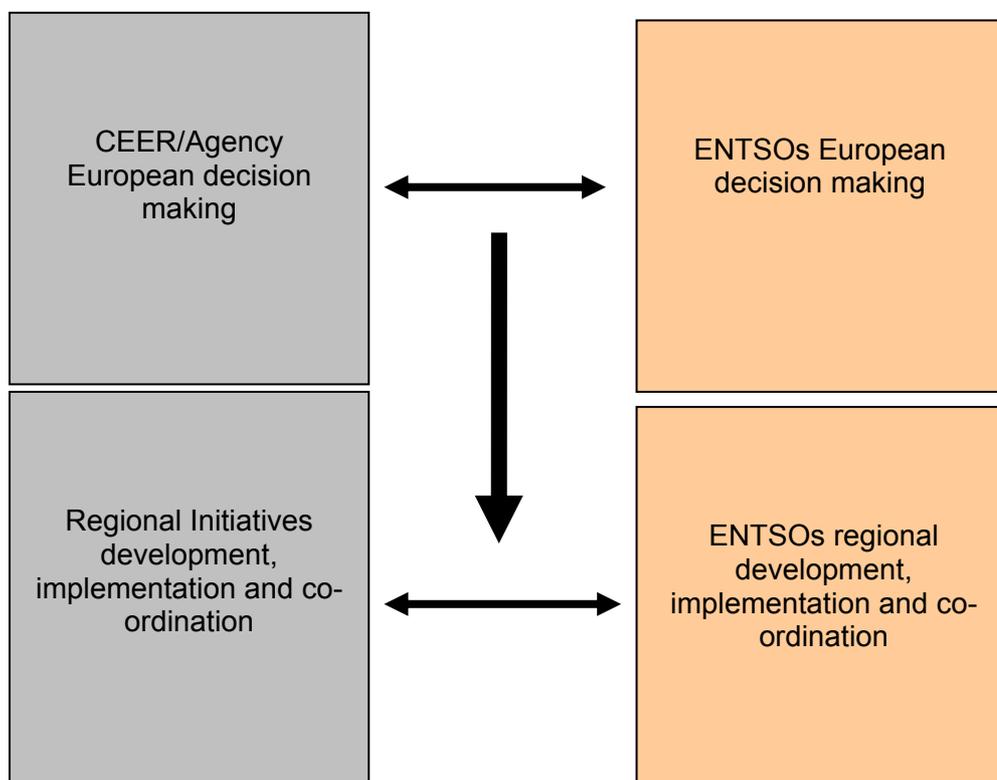
Questions

- A *Are the mechanisms and observations outlined above – notably in relation to the interaction between the Agency and the ENTOSOs (and CEER and GTEplus/ENTSO-E) adequate? Are there changes that should be considered for their improvement?*

5. Regional considerations in moving to a single European market

60. The ultimate goal of the 3rd energy package is the achievement of a single European gas and electricity market. The Regulators' policy of Regional initiatives is pursuing the same objective. However, there are many different approaches to the operation and development of national and regional markets that can inhibit trade and the achievement of this goal. Nor will they be overcome instantly through the implementation of the 3rd package measures. A process of change must be envisaged which will enable the necessary reforms to take place over a period of time so that the difficult issues can be addressed, solutions found and necessary investments made.
61. The development of regional markets we are now witnessing in the Regional Initiatives are essential steps towards a single European energy market. Growing interactions between neighbouring markets, as a result of the Regional Initiatives and the implementation of the 3rd package, will require ever greater co-operation between regulators and TSOs.
62. The 3rd package itself proposes **enhancing the duties of national regulators to meet the regulatory challenge of regional markets** and contains proposals for greater co-ordination of network planning and co-ordinated decision making in respect of major cross-border infrastructure investments. This will require particularly close discussion and co-ordination between neighbouring TSOs and national regulators.
63. There are also proposals for enforcement actions being taken by regulators in a co-operative way where the cause and effects of market or network problems are not confined to one national jurisdiction. These will require formalized co-ordination between the relevant NRAs. However, **as jurisdictions are at national and EU level only, enforcement action cannot be based at a regional level.**
64. It is essential to have a detailed appreciation at regional and national level to ensure that regional circumstances can be taken properly into account in drafting codes and other European regulatory policies, and that the process of convergence to a single European market can be managed in an orderly way.
65. **The provisions in the 3rd package have the potential to impose a comprehensive regulatory regime on the interaction between national gas and electricity markets.** Principally these result from the proposals for network codes. The 3rd package proposals foresee that, at least in the medium term, some of the different approaches which exist in different regions of Europe may need to continue during the transition to a single European market in those cases where they cannot be harmonised immediately. This may mean that the codes, if they are binding and directly enforceable, will need to be drafted in a way which accommodates these existing essential regional differences within a European framework. The regional accommodations might lead, for example, to provisions on the timing of implementation of the European rules set out in the code.
66. Framework guidelines should ensure that where regional specificities have to be reflected they do not amount to incompatible or even divergent approaches, and that over time the different approaches converge.

67. Once again this set of relationships will require careful co-ordination, in the interim between the regulators, the Commission and the TSO EU bodies, and later the Agency.



Vertical and horizontal aspects of European and regional decision making

68. It is **imperative that stakeholders are clear about the process of co-ordination, how it will operate, and how they can interact effectively with it.**

69. The processes proposed by European energy regulators to enhance co-ordination at regional and EU level include:

- Co-ordination of work plans at European level with those proposed in the Regional Initiatives.
- Utilising European and appropriate regional approaches to consult with stakeholders.
- In-year monitoring of regional developments.
- Issues which emerge at regional level that have wider European implications will be subject to scrutiny and EU consultation on a case-by-case basis before adoption.
- Disputes between regulators would, as proposed in the third package, be referred to the Agency for resolution. The Agency might choose to seek advice from the relevant RCC before reaching a view. Effective co-ordination is essential between the work plans of the ENTSOs and those of the Agency.
- The co-ordination arrangements between the Agency and the ENTSOs will be published.

70. More detail on these issues is contained in Appendix 3.

Questions

- A *Are the proposals in paragraph 69 to ensure the regional level involvement of stakeholders adequate? If not, how could they be further improved?*
- B *How do you envisage the Regional Initiatives operating after the entry into force of the 3rd package legislation? Will their role become less important, given the development of network codes at EU level?*

6. Responding to this Public Consultation

- 71. ERGEG invites all interested parties to comment on this Consultation Paper by the deadline of 31 December 2008 after which the European energy regulators will publish comments received, set out their reaction to them and set out the next steps they propose.
- 72. Any respondent wanting their contribution to remain confidential must mention this explicitly in their reply. Unless marked as confidential, all responses will be published by placing them on the ERGEG website www.energy-regulators.eu.
- 73. Comments should be sent by e-mail to: implementation@erreg.org
- 74. Any questions relating to this document should in the first instance be directed to:
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