

ENTSO-E Response to informal consultation on draft Governance Guidelines

Dear Mr. Supponen,

We would like to thank you for the opportunity for being able to contribute to the development of the governance guidelines for the single price coupling. From our viewpoint, the past AESAG Governance Group discussions chaired and moderated by the European Commission have ultimately led to the balanced framework now proposed. At its core, the draft guideline strikes a fair and balanced compromise between the previously discussed Governance options 3 (as the main option) and 4 (as the fallback option in case of failure to deliver by June 2014). We very much **support this compromise** as well as the overall initiative and would like to contribute the following considerations for its further development:

I. Relationship Governance Guideline and the CACM Network Code

The CACM Network Code and the Governance guideline both describe the overall market coupling arrangements. They are therefore strongly interrelated. We understand that the European Commission intends to simultaneously launch the comitology process for both legal frameworks. In this context, further explanations and discussions of whether and how both documents would ultimately be integrated into one another would add clarity. In order to facilitate this coordination we very much hope to be able to continue our present constructive dialogue on this subject.

II. Clarification of Roles and Responsibilities

We are very grateful that a broad alignment between the roles and responsibilities included in both the Governance Guideline and the CACM Network Code has taken place. There are only few remaining places where we still see minor discrepancies

1) The responsibility for publishing results

According to the governance guideline NEMOs bear the responsibility for publishing market results in form of prices and net positions (cf. lit. f) of the NEMO responsibilities). The draft Transparency Guideline assigns this responsibility to TSOs. As an alternative approach, **NEMOs could cover the direct interface to market participants by informing them individually about the execution status and Clearing prices of their Orders**. In compliance with the Transparency guideline **TSOs would publish market results on a central platform**.

2) The responsibility for matching bids

The governance guideline assigns the responsibility for matching bids to the NEMOs. The CACM Network Code assigns this function to the MCO. A **more precise description of the interfaces between MCO and NEMO** would support an alignment of the two documents. Following this rationale, the governance guideline should assign NEMOs the *responsibility for matching the bids based on the price coupling results received from the MCOs* (cf. lit. a) of NEMOs' roles and responsibilities). This would clearly describe the interface where MCOs calculate the price coupling results and NEMOs would use these results to match the bids.

3) Responsibility for Clearing and settlement

To our understanding the **NEMO task to "clear and settle contracts" should also include the cross border transactions**. As an alternative the CACM Network Code also allows for TSOs to act as the shipping agent, subject to the conclusion of a specific agreement between the involved parties, and subject to approval by National Regulatory Authorities. Increased

alignment between the Governance Guideline and the CACM Network Code is needed on this aspect.

4) Responsibility for validation of results.

Presently both NEMOs and TSOs have responsibilities for validating results. The scope of this validation should be specified in further detail. One particular aspect of this would involve **NEMOs** in the **clearing price validation** (lit. e of the NEMO roles and responsibilities). As already stipulated under lit d) of the TSO responsibilities section **TSOs** would **validate results in terms of capacity allocation**.

III. The Role of MCOs and potential tendering process

We strongly support the introduction of the MCO role. This central role essentially assumes a monopoly function. For this reason, the **MCO function should be explicitly placed under regulatory supervision**. This supervision should particularly ensure a collective responsibility of several MCOs (entities) for the unique MCO function. Furthermore, given the overall responsibility of TSOs for capacity allocation we would recommend that the entities proposed by the NEMOs to undertake this role are approved by NRAs, after consultation with the TSOs.

With regard to the **tendering process** we understand that a potential failure to provide an implementation by 30 June 2014 would lead the EC and ACER to take certain measures. These measures could be specified in a more concrete and unique manner. It could in particular be specified:

- 1) whether the EC “shall” immediately launch a tender process (as stipulated on p.2 of the draft governance guideline) or
- 2) whether ACER shall express an opinion upon which the EC “shall decide” whether this option will be pursued (as stipulated on p.4 of the draft governance guideline).

In each option **ENTSO-E would be willing to contribute to the realization of the fallback solution** e.g. by **assuming responsibility for certain MCO tasks or the MCO function**.

Moreover, the implementation by 30 June 2014 should be deemed successful provided that a significant number of countries succeed to implement. There should also be an escalation processes to arrange for the allocation of the MCO functions in only those regions that have failed to appoint an appropriate entity so that the pan-European implementation cannot be jeopardised by insufficient progress of a sub-set of parties.

IV. The Committees

ENTSO-E regards the introduced committees as a meaningful vehicle to support decision making on an operational level and to facilitate stakeholder involvement. The general approach therefore gains our full support. We would nevertheless like to forward some suggestions regarding the scope and working modalities of the committees:

1. Operational Committee

In terms of representation we support a limitation of the number of delegates. This would support efficient discussions and decision making. As the overall responsibility of congestion management is assigned to TSOs under the Reg. 714/2009 as well as under the Framework Guidelines we see a strong case for assigning the **majority of seats in the Committee to TSOs**.

As an immediate consequence of this limitation of representation not all directly affected TSOs, MCOs and NEMOs will be part of the operational Committee. Rather than “establishing” operational rules (as stipulated under lit b) of the task list) **the Committee should therefore only be entitled to “propose” such rules**. This would avoid operational rules being “established” at the expense of third parties not directly involved in the Committee.

With regard to decision making high level principles for the voting process and the voting rights could be specified in further detail. Again, due to our overall responsibility for congestion management the **voting majority should be assigned to TSOs**.

With regard to the question of whether two separate committees are required for the Day Ahead and Intraday timeframe, we think that **establishing one committee** would lead to a **more efficient working structure**. Day Ahead or Intraday specifics could be dealt with by flexible sub-committee arrangements established under the terms and conditions of the committee.

2. NEMO Committee

We understand that the NEMO committee will be established in form of a sub-entity beneath the operational committee. The **escalation process** in case of disputes **should** therefore not only **involve** ACER but also the **operational committee**.

3. Stakeholder Committee

ENTSO-E regards the Stakeholder Committee an appropriate entity to discuss and consult with a wider circle of interested parties. We therefore intend to also include this entity in our draft CACM Network Code. Stakeholders will, however, not assume any liability for market functions. Therefore, the **competences of this committee should not go beyond the presently foreseen advisory function**.

V. Cost Recovery

ENTSO-E welcomes the inclusion of a cost recovery section. With regard to the provision of **cost forecasts** we think that such **information should be provided before such costs are being covered by contribution of TSOs** (add "*and before*" in lit. k) of the NEMOs roles and responsibility section). In order to accommodate flexible arrangements **cost recovery should also not be limited to national tariffs** (add "*...or other regulatory mechanisms*" after "*via the national tariffs*" in the Cost sharing principles section). In order to ensure consistency with the EU Reg 714/2009 we further recommend to **use the terminology "*reasonable and proportionate*"** rather than "*efficient cost level*".

VI. NRA approvals

There are some slight inconsistencies in the proposed Governance Guideline and the articles quoted from the Directive. We would suggest that the relevant sections from the Directive are repeated verbatim to avoid confusion. If it is the intention of the Governance Guideline to create new responsibilities or obligations then these should be clearly specified.

We hope these suggestions are useful and would welcome an opportunity to discuss them in further detail. Please find annexed suggestions on how some of our proposals could be implemented in detail. Again, we would like to emphasize our support towards the general principles of the proposed governance framework.

Kind Regards,

Juha Kekkonen,
Chairman of the ENTSO-E Market Committee



Annex: detailed suggestions to the text (non exhaustive)

reference	Current text	Proposed new text
II.1. (p.4 of the governance guideline)	a) Operate local markets including [...] publish prices [...]	a) Operate local markets including [...] publish prices <u>by informing Market Participants individually about the execution status and Clearing prices of their Orders [...]</u>
II.2. (p.4 of the governance guideline)	a) Operate local markets including [...] overall responsibility for matching bids in accordance with the single price coupling and single intra-day market results [...]	a) Operate local markets including [...] overall responsibility for matching bids in accordance with the single price coupling and single intra-day market results <u>based on the results received from the MCOs [...]</u>
II.3. (p.4 of the governance guideline)	a) Operate local markets including [...] settle and clear the contracts [...]) Operate local markets including [...] settle and clear the contracts <u>including cross bidding zone contracts [...]</u>
II.4 (p.4 of the governance guideline)	c) Establish together with other NEMOs one or several MCOs to perform the MCO functions defined in [reference], having regard to considerations of economic efficiency and liquidity	c) Propose together with other NEMOs one or several MCOs to perform the MCO functions [...]. MCOs shall be subject to NRA approval, in consultation with TSOs.
II.5. (p.4 of the governance guideline)	e) Check and validate the results calculated by the MCOs and make them as final results in case they are considered correct and take responsibility for them	e) Check and validate the results <u>in terms of clearing prices</u> calculated by the MCOs and make them as final results in case they are considered correct and take responsibility for them
IV. 1 (p.6 of the governance guideline)	The operational committee shall: [...] b) Establish and maintain day-to-day single price coupling and single intra-day market operational rules and procedures	The operational committee shall: [...] b) <u>Propose</u> and maintain day-to-day single price coupling and single intra-day market operational rules and procedures
V. (p.4 of the governance guideline)	provide the single price coupling and single intra-day market cost information to NRAs according to [reference] and to TSOs where NEMO or MCO costs are to be covered by	provide the single price coupling and single intra-day market cost information to NRAs according to [reference] and to TSOs where <u>and before</u> NEMO or MCO costs are to be

	contribution of TSOs.	covered by contribution of TSOs.
V. (p.6 of the governance guideline)	The costs of the TSOs to perform the functions under this governance guideline shall be assessed by national NRAs and be recovered, if approved as an efficient cost level by the NRA, via the national tariffs.	The costs of the TSOs to perform the functions under this governance guideline shall be assessed by national NRAs and be recovered, if approved as <u>reasonable and proportionate</u> by the NRA, via the national tariffs <u>or other regulatory mechanisms</u>
VI. (p.9 of the governance guideline)	In accordance with Article 37(6) of Directive 2009/72/EC, [...], NRAs shall be responsible for fixing, or approving [...], the terms and conditions for access to crossborder infrastructure, including the algorithm [...].	In accordance with Article 37(6) c) of Directive 2009/72/EC, The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.
VI. (p.6 of the governance guideline)	In accordance with Article 37(9) of Directive 2009/72/EC, for the purpose of implicit allocation of cross-zonal capacity, NEMOs, MCOs and TSOs shall submit the terms and conditions for implicit access [...].	In accordance with Article 37(9) of Directive 2009/72/EC, for the purpose of monitoring congestion management, NEMOs, MCOs and TSOs shall submit their congestion management rules, including capacity allocation, to the national regulatory authorities. National regulatory authorities may request amendments to those rules.