

European Commission consultation

ACER evaluation under Article 34 of Regulation 713/2009



EFET response – 18 September 2013

GENERAL INFORMATION:

1. Please specify which institution/organization you represent:

Industry representatives (companies, associations): European Federation of Energy Traders (EFET).

EFET is a group of more than 100 energy trading companies from 27 European countries dedicated to stimulate and promote energy trading throughout Europe.

2. Please specify which area of work of the Agency you are aware of/familiar with?

We are familiar with ACER work under items a) - e) and aware of some activities under items f) & g).

a) Development of Framework Guidelines and Network Codes for gas and electricity

ACER should be more closely involved in the development of EU network codes for electricity and gas. More active ACER involvement in the ENTSO-G and ENTSO-E drafting processes would help to identify discrepancies with the Framework Guidelines at earlier stages, which would facilitate the development of a more comprehensive draft for consideration by the European Commission and the EU Gas Committee.

b) Regional Initiatives

ACER could help to refocus the Regional Initiatives to ensure that electricity or gas wholesale market integration projects in all parts of the EU are open to market participants' involvement on an equal basis. Any aspect of the Regional Initiatives that excludes market participants should be phased out. It is also important to limit the scope of the Regional Initiatives to areas where they are demonstrably an efficient and inclusive tool for delivering change in the energy market, in line with EU network Codes and other EU energy markets implementation requirements.

c) Infrastructure and Ten Year Network Development Plans (TYNDPs)

Although we have not been closely involved in discussions on infrastructure developments and the TYNDPs, EFET is following the ACER work on those topics.

As far as electricity infrastructure is concerned, in our view, existing infrastructure improvement is at least as important as building new infrastructure. TSOs must ensure that the maximum possible transmission capacity is made available to the market. The lowest cost option to do so is to optimise the use of existing transmission assets. To maximise the available capacity on existing assets, the capacity calculation and allocation rules set in the Capacity Allocation and Congestion Management (CACM) and Forward Capacity Allocation (FCA) network codes, which provide a common grid model for flow-based calculations in day ahead and intraday and intra-zonal ATC calculations for forward capacity allocation, must be implemented.

The optimal allocation of anticipated available capacity through physical or financial transmission rights in forward timeframes, and the utilisation of coordinated redispatch and countertrading tools to guarantee allocated capacity when necessary, are also key to improving infrastructure use. ACER needs to make sure that the TYNDP for electricity takes into account the latest developments on market design (such as the CACM and FCA network codes, flow-based capacity allocation, etc.). This does not seem to be the case at the moment.

The expansion of the transmission grid to avoid structural congestions, of course, is also important for a well-functioning market and for the efficient integration of electricity from renewable sources. For instance, increasing interconnection capacity between markets with large amounts of base load capacity and markets with significant peak load capacity offers clear benefits and would improve market performance. Following a careful analysis of structural congestions which cannot be solved by improving the use of existing infrastructure, TSOs should propose new infrastructure projects to relieve structural congestions. Ideally, accumulated congestion revenues should be used to finance such projects. Regulators and ACER should ensure that an appropriate framework is established to incentivise the use of congestion revenue for investment in new infrastructure.

d) Monitoring and reporting on the electricity and gas sectors

e) Monitoring of wholesale energy trading and market integrity (under REMIT)

See our response to question 3 d).

f) Exemptions from third party access and tariff regulation for major new infrastructures

g) Coordination and promotion of cooperation between National Regulatory Authorities

h) Other (please specify)

RESULTS ACHIEVED BY THE AGENCY:

3. How do you evaluate the results achieved by the Agency so far in relation to its objective, mandate and tasks?

a) How do you rate in general the results of the Agency achieved since its establishment?

Despite its limited statutory powers, ACER has had a positive influence on the process of completing the Internal Energy Market. In particular, ACER has shown outstanding steering capabilities, most notably through AESAG, in spite of the obstacles permeating the electricity market integration agenda.

b) Has the Agency so far met its objectives as defined in the third energy package and complementary legislation?

c) Which of its tasks has the Agency in your view executed particularly well?

d) Are there any tasks which in your view the Agency has not given sufficient attention and/or which it has not (fully) executed?

We are concerned about some aspects of the Agency's IT support procurement strategy in relation to REMIT implementation. If the Agency puts more trust in open standards rather than proprietary systems and/or platforms, it could collate transaction-related data in a more cost-efficient manner for the Agency and market participants. Part of the money could be better spent in the form of participation by Agency staff in the elaboration of appropriate open standards (such as the commodity product mark-up language) designed to help harmonise the process of delivery of such data to regulators (either directly or through repositories.)

4. What do you think of the results of the Agency measured against ACER Annual Work Programmes?

a) Do you follow the development of the ACER Annual Work Programmes (by taking part in public consultations, workshops organized by the Agency)?

Yes.

b) Do you consider that ACER has set the right priorities in its Annual Work Programmes?

Broadly yes. However, in our view two important areas are missing:

Gas hub operation

An area that would benefit from improved clarity and consistency is the approach taken to gas hub operation in different parts of Europe. We believe that there needs to be shared understanding of the structure and operation of gas trading hubs, so that the roles of TSOs, exchanges, other trading platforms and brokers are not confused with the specific duties and services of a hub operator. We do not see the need to develop an EU regulation on this, but

it would be worthwhile to develop guidelines for good practice for hub operators (GGPHO). In our view, CEER would be the most appropriate body to lead on the development of such guidelines. ACER's involvement in such a process would be valuable. EFET would be happy to contribute to the development of the GGPHO, as well as to the overall EU gas network code development process for the topics that we have identified in this short response.

Rules for gas trading

At the Madrid Gas Forum in April 2013, the regulators promised that there would be full transparency of the differences in contractual terms and procedures on either side of each IP where bundled capacity products are proposed. In our view, work is definitely required in this area. This work should identify all contractual and procedural differences that could affect the capacity rights and obligations, and then set out plans to resolve those differences that reduce the value of capacity if the existing contracts and processes were to remain unchanged when bundled capacity products are offered. Specific differences that may need to be addressed include:

- Definition of firm capacity and access from or to the Virtual Trading Point
- Definition of FM and emergency provisions if they affect firm capacity rights
- Right to nominate/re-nominate use of capacity, including timing & procedural issues
- Credit arrangements
- Impact of planned and unplanned maintenance on capacity rights
- Dispute resolution procedures
- Notifications, billing and payment
- Any other rights or obligations between the capacity holder and TSO that have a material impact on the value of capacity at IPs.

In that regard, Guidelines for Good Practice for Credit Arrangements in relation to TSO Transportation and Balancing Services developed by CEER, for instance, would be a useful tool for improving consistency. ACER's contribution in that regard would also be helpful.

c) Do you follow the Work Programme implementation through the reporting published by ACER in its Annual Activity Reports?

Yes.

d) Do you think that ACER carried out its Work Programmes? If not, please indicate where this has not been the case.

WORKING METHODS:

5. Governance, organizational structure, independence and resources:

a) Are you aware of the organization of ACER and its governance arrangements (Administrative Board, Board of Regulators, Board of Appeal, Director)? If yes, do you consider the governance arrangements suited for the fulfilment of ACER's objectives, mandate and tasks?

b) How do you assess National Regulatory Authorities' coordination and cooperation through the Agency? Has the coordination and cooperation improved since the establishment of the Agency?

Yes. However, in our view the competences of the Agency should be strengthened. This would allow for a more coordinated European approach, rather than a regulatory processes dominated by different national regulatory perspectives.

The influence of certain NRAs over ACER decisions may be strongly felt at times, which leads ACER to take less ambitious roads instead of pushing for an ambitious completion of the Internal Energy Market. The influence of specific NRAs may, for instance, be observed in the weaker role played or counter-intuitive opinions defended by ACER in the drafting of the Forward Capacity Allocation and Electricity Balancing Network Codes.

The role of ACER should also be recognised in the wording of the Network Codes. Provisions of the Network Codes foreseeing a role for all European national regulatory authorities collectively should fall in the realm of ACER's role, as ACER should remain the guardian of the energy markets harmonisation process.

c) Please specify to what extent ACER has succeeded in your view in setting up effective and efficient working relationships with the EU institutions, NRAs, ENTSOs and other stakeholders, the public at large?

We consider the working relationship between ENTSO-E and ACER with respect to the drafting of electricity network codes to be suboptimal. There is a lack of respect on the part of ENTSO-E for some of the fundamental principles embedded in the Framework Guidelines developed by ACER.

The consultation exercises conducted in relation to the Framework Guidelines became formulaic in some cases. We particularly deplore the tendency to make a statistical analysis of the content of responses without distinguishing the quality, representative status and closeness to the subject matter of the various responders.

d) Please specify the extent to which you think that ACER is independent (from gas and electricity companies, from Governments, from TSOs, from the Commission)?

ACER has shown a satisfactory level of independence with regard to EU institutions, ENTSOs and stakeholders. With regard to EU institutions and ENTSOs, regular meetings and communication seems to take place. With regard to stakeholders, ACER has developed efficient means of interaction (such as AESAG meetings), and remains accessible for bilateral meetings.

e) Do you consider that ACER has adequate resources to carry out its tasks?

No.

6. Communication and Transparency:

a) How do you rate in general ACER's communication? Are you sufficiently informed of its activities? Which channels of communication do you consider to be most effective?

The Agency's external communication is quite satisfactory. Stakeholder meetings, email alerts and regular updates of the ACER website contribute to this efficient communication. The functionalities of the ACER website could be improved to make it more user-friendly.

b) How do you rate ACER's website? How often have you visited it in the past 3 months? Did you find what you were looking for?

We use the ACER website on a regular basis. The website could be improved in terms of document organisation. Sometimes it is difficult to locate documents.

c) Did you read any of the documents that ACER has produced so far? Which ones did you consider particularly useful? Which ones did you consider less useful and why?

d) What is your assessment of the quality of the documents that ACER has produced so far (framework guidelines, recommendations, guidelines, opinions, others)? Do they contain a clear position? Are they clearly drafted?

In general, documents issued by ACER have proved to be of high quality. The accuracy of terminology and sense in English of some provisions in the Framework Guidelines could be improved.

e) Are the public consultation arrangements of ACER sufficient, efficient and effective? In particular, does the Agency make efficient use of communication tools: Workshops? Publications? Website? Other?

The Agency does make efficient use of communication tools for consultations. Consultation exercises may, however, tend to be formulaic on some occasions (see answer to 5 c) above).

7. Suggestions for improvement to ACER's working methods

a) Do you have any suggestions for improvement to ACER's working methods?

b) Do you see a need for changes to Regulation 713/2009? If so, which changes and why?

Yes. We would like to see the powers and resources of ACER strengthened. We would also like to see the governance of ENTSO-E reformed so that the direction and content of draft network codes is not subject to voting within a general assembly of an association; electricity market related network codes (and probably all other codes which bind third parties other than TSOs) should preferably in future be handled by an ENTSO foundation bound by a much stricter and narrower statement of purpose; such a foundation should be separate from pursuit by ENTSO-E as an association of business, infrastructure development, security and financial interests on behalf of its members.