

DG Energy's Public Consultation on the ACER evaluation under Article 34 of Regulation 713/2009

A EURELECTRIC response paper

September 2013

EURELECTRIC is the voice of the electricity industry in Europe.

We speak for more than 3,500 companies in power generation, distribution, and supply.

We Stand For:

Carbon-neutral electricity by 2050

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of **smart grids** and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

Competitive electricity for our customers

We support well-functioning, distortion-free **energy and carbon markets** as the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full **EU-wide competition**, and increase **customer choice**.

Continent-wide electricity through a coherent European approach

Europe's energy and climate challenges can only be solved by **European – or even global – policies**, not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment** to ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

EURELECTRIC. Electricity for Europe.

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KEY MESSAGES

- Since its establishment in March 2011, ACER has become a credible and respected institution playing a prominent role in the European energy policy arena. ACER shows its strong commitment to ensuring the development of the internal energy market and increasing harmonisation of rules and coordination between national NRAs
- ACER has demonstrated its leadership in promoting the market integration process and ensuring an effective dialogue with stakeholders in the so-called AESAG. The role of AESAG as a platform for dialogue has proved its value in terms of ensuring transparency of the market integration projects, fostering stronger accountability of various stakeholders with regard to assumed commitments and facilitating better incorporation of market views in the process.
- In the area of network codes, ACER (together with the Commission) should give a stronger priority to developing a global and strategic vision on all the network codes and their interrelationship during the comitology process. ACER should also develop a formal process for amending Network Code's and Guidelines that have been agreed through comitology, in conjunction with the EU and all its stakeholders.
- ACER should have sufficient resources at its disposal to carry out a wide range of its tasks and pursue a clear European approach in its work.
- ACER should play a more active part in resolving disputes on cross-border issues between NRAs. The Regulation No 713/2009 should be reviewed in terms of giving ACER powers to intervene in such disputes on its own initiative

Markets Committee
Juan Jose ALBA RIOS (ES), Chair

With input from the Energy Policy & Generation
Committee and DSO Committee.

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EURELECTRIC response to the DG Energy's Public Consultation on the ACER evaluation under Article 34 of Regulation 713/2009

GENERAL INFORMATION

1. Please specify which institution/organization you represent

- a) ~~EU Institution~~
- b) ~~National Regulatory Authority/Association of Regulators~~
- c) ~~Transmission system operator~~
- d) ~~Consumers' representatives~~
- e) **Industry representatives (companies, associations)**
- f) ~~Academia~~
- g) ~~Other, please specify~~

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

- a) **Development of Framework Guidelines and Network Codes for gas and electricity**
- b) **Regional Initiatives**
- c) **Infrastructure and Ten Year Network Development Plans (TYNDPs)**
- d) **Monitoring and reporting on the electricity and gas sectors**
- e) **Monitoring of wholesale energy trading and market integrity (under REMIT)**
- 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?

Since its set-up in March 2011, ACER has very quickly become a credible and respected institution playing a prominent role in the European energy policy arena. In general, the results of ACER's work during the past years can be rated as satisfactory. ACER has demonstrated its strong commitment to ensuring the development of the internal energy market and increasing harmonisation of rules and coordination between national NRAs. In addition, ACER is also actively contributing to other important discussions, like generation adequacy and CRM. At the same time, we would like to address a number of areas where further improvements could be made (see our answers below).

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

We highly appreciate all the efforts made by ACER since its establishment and its contribution to meeting the objectives of establishing common rules for the internal market in electricity and gas as defined in the 3rd Energy Package. The drafting of framework guidelines is progressing on schedule; opinions and recommendations on the network codes/ ENTSO-E work program are also produced according to the agreed deadlines. What is further needed to ensure the common market rules, is ACER's initiative to develop a global and strategic vision on all the European network codes in view of ensuring coherence between them.

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

EURELECTRIC considers that one of the main achievements of ACER was to assume a prominent role in leading the market integration process and to ensure continuity of the work of the stakeholder group AESAG on the basis of the AHAG/PCG's work in the previous years. ACER has been doing its utmost to ensure steady progress in the NWE Day-Ahead and Intraday market integration projects despite the persisting difficulties with the implementation. The role of AESAG as a dialogue platform between all the stakeholders involved into the process of establishing the Internal Energy Market has demonstrated its significant value in terms of ensuring transparency regarding the market integration projects, stronger accountability of various stakeholders with regard to assumed commitments and obligations, and facilitating better incorporation of market views and needs in the whole process. However, the persisting difficulties in meeting the market

deadlines (NWE region DA/ID integration in 2012) in time should lead to strengthening the process towards a more mandatory and top-down approach.

In the area of network codes, we can mention as a positive example, ACER's high level ambition for the key aspects of the network code for electricity balancing outlined in the relevant Framework Guidelines. EURELECTRIC strongly supports ACER guidelines' clear preference for harmonization of balancing rules, cost-effectiveness, and cross-border trade as a good basis for developing an EU-wide balancing market. Another example could be ACER's determination in promoting the concept of firmness in the Forward Capacity Allocation network code.

Finally, we think that ACER's first market monitoring report in 2012 and its report on gas transit contracts earlier this year were impressive pieces of work and proved to be very useful for the market.

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

In our view, so far ACER (together with the Commission) has not given a sufficient priority to developing a global and strategic vision on all the network codes and their interrelationship (including a single set of agreed definitions). As a result, the Framework guidelines issued by ACER and their opinion concerning network codes focused on each code separately and did not sufficiently take in account the links between them. Framework guidelines need to develop from a system view with focus on functions, not details. ACER has a key role in evaluating the codes and ensuring that the codes are efficient, properly developed, and that they meet the original target of supporting cross border exchanges. Therefore EURELECTRIC calls upon the Commission and ACER during the comitology process to work closely together and to ensure that the network codes all together are effectively contributing to the ultimate goal of developing common market rules. Furthermore, ACER should also highlight possible inconsistencies between the codes and other legislative instruments of the EU energy policy and should ensure that they do not foreclose future system solutions that are currently being investigated in RD&D projects co-financed by the EC (e.g. as regards smart grids).

In some cases, when ACER has not proposed or anticipated to regulate certain issues or situations, the need for amending the code becomes relevant already before the code has entered into force. Therefore the 2014 Annual Work Program should include a requirement on ACER to develop a formal process for amending Network Code's and Guidelines that have been agreed through comitology, in conjunction with the EU and all its stakeholders. As Network Codes and Guidelines are going to be implemented over the coming years, it is possible that some of those measures prove to be unworkable or inefficient, or need to be supplemented with complementary obligations. Specific processes are sometimes described within the codes, for instance the possibility of amending target models is foreseen in the network code for Electricity Balancing, but having a defined process to deal with such circumstances will provide the necessary transparency and a degree of reassurance to all stakeholders that market rules will continue to be fit for purpose over the long term.

Moreover, the entry into force of network codes which is not applicable for many member states would result in a massive attribution of derogations, which will complicate and slow down the process of harmonization.

Finally, ACER'S role in resolving various disputes between NRAs on cross-border issues should become more prominent. In order to achieve this, a review of the Regulation No 713/2009 should be considered. More specifically, the Article 8 that currently allows ACER to intervene in cross-border issues on which NRAs fail to reach agreement only upon a joint request from these NRAs, should be amended and give ACER powers to intervene based on its own initiative. For example, the French NRA strongly supports OTC for cross-border intraday trading, while the Belgian NRA does not allow it. Finding a common approach to this issue should be in the remit and initiative of ACER.

In this context, ACER should strive for taking a clearer position on market rules applicable in all markets and on all borders. In the example of cross-border intraday, the framework guidelines only state: "Where applicable, as a transitional arrangement, the capacity management module may provide direct explicit access". Such a formulation does not take a clear position and leaves the door open to NRAs for further accepting direct explicit access on one side of the border and refusing it on the other side of the border. This will lead to market and competition distortions. At the same time, we recognize that many technical issues¹ should not be treated in one way across all borders due to differences in national arrangements. Such issues should be clearly identified and agreed.

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

a) Do you follow the development of the ACER Annual Work Programs (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 Programs?

In general, EURELECTRIC agrees with the proposed high-level priorities as mentioned in the program: Framework guidelines, evaluation of network codes, monitoring of Internal Energy Market integration, network codes development and implementation, implementation of

¹ Technical network codes impacting distribution networks and users connected to these networks should be formulated in a flexible way in order to avoid inefficiencies and to ensure openness to future developments in this fast-developing part of the system as well as regional and national implementations.

REMIT, implementation of the TEN-E and the future target model for electricity and gas markets.

In this context, we want to emphasize the need for a holistic view in the development of the energy market and the energy system. We would also like to stress the importance to analyze consequences of all new reform regulations and demands. Cost-benefit analysis is essential to safeguard efficient market development. For example, ACER should consider (even better than before) efficiency of the costs incurred by the network codes that will be borne by the society as a whole/network tariff payers as regards obligations placed on regulated part of the electricity business. This is particularly important in times when electricity prices for industrial as well as residential customers in many countries are already rising.

We believe that the current list of priorities should be complemented by a “compatibility check” of the network codes. This analysis should be done before the already completed codes are made legally binding. This could practically imply putting on hold some of the network codes closely related to the codes that are still in the pipeline. As an example, we believe that there is a close interrelation between network codes that describe the System Operation like the LFC&R network code and the network codes on connection requirements, like the RfG network code. It is not possible to understand the requirements under the RfG code as long as the LFC&R code is not finalized. On the same basis, there is a strong link between the balancing code and the LFC&R code. Both network codes should be finalized together to avoid gaps between the commercial and technical aspects that are being addressed separately in these two network codes. If not consistency-proven before the legal adoption, the codes will have to be amended directly after entering into force. Starting the review process directly after the adoption does not appear as an efficient way of developing a stable regulatory environment for the market participants.

Furthermore, we believe that the working plans of ACER and CEER should be consistent with each other, focusing on a holistic view of the energy system. Thus, CEERs focus should also be reflected in ACER’s plan and activities.

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

Yes.

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

Yes. The only small exception could be the delay of submitting the final Framework Guideline on gas tariff harmonization in 2012.

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, and Director)? If yes, do you consider the governance arrangements suited for the fulfillment of ACER's objectives, mandate and tasks?**

The governance structure gives a lot of weight to the national regulators in the internal decision process within ACER when preparing its opinions and recommendations. In our view, ACER should be allowed to issue an opinion based purely on its European view, and be less influenced by the NRAs national agendas or interests.

- 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?**

ACER is an important platform for NRAs to meet and exchange views on various regulatory issues. However, as already indicated, the network codes in many aspects are allowed to leave a far too long list of issues in the hands of NRAs, often due to the lack of consensus between NRAs within ACER. EURELECTRIC considers it highly important that ACER takes a stronger European approach to key aspects of market rules that are necessary to achieve an integrated European market while keeping other less important (often technical) rules for subsidiarity. The lack of a European perspective may jeopardize the creation of a truly integrated market and introduce further distortions into cross-border trade.

- 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?**

ACER's working relationship with stakeholders is constructive and ACER appears to be genuinely committed to pursue its task of developing framework guidelines in a collaborative manner. Furthermore, the functioning of AESAG positively contributes to promoting a necessary dialogue between market stakeholders, ENTSO-E, ACER, PXs, and the European Commission. EURELECTRIC also appreciates ACER's openness to bilateral consultations with the market on various issues.

As for the relationship between ACER and ENTSO-E in the framework of developing the network codes, EURELECTRIC believes that ACER has made good progress in terms of providing a counter balance to ENTSO-E as the drafter of the codes. ACER's opinions have in a number of cases proved useful to point out to the areas for improvement of the drafting and nevertheless ensured a better reflection of stakeholders' interests.

ACER should continue its efforts in this area, in particularly during the implementation phase when a large number of detailed concepts, rules, and obligations will be proposed by ENTSO-E/TSOs. The main principle should be to support cost-efficient and market-based solutions.

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)?

We have no concerns about ACER's independence from gas and electricity companies or TSOs. However, ACER does still appear to be influenced by individual NRAs (who in turn may be influenced or operating under the agenda of national governments). We believe that ACER's analysis and proposals should be truly independent, pursue the European objectives, and be influenced to a minimum degree by the national regulatory agendas.

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

In our opinion, ACER is too strongly dependent on the resources of NRAs. This creates as such a certain negative impact on ACER's work load because not all NRAs have in their turn sufficient staff to contribute. Only a handful of active NRAs are really involved in the ACER's work and have thus a strong impact on the outcome of this work. We consider that this situation where some NRAs have a strong de-facto decision making power in ACER can and in some cases already does lead to a stronger national focus that wins over a more global European view. Some examples of national NRA decisions going against the interests of building an Internal Energy Market were already mentioned earlier in the response.

We believe that ACER should have at its disposal adequate level of resources to ensure good quality work and a better balance should be found between a pure ACER staff and the amount of human resources involved from the NRAs. Increasing the ACER staff for such cross-border dossiers as the network codes, REMIT implementation should be very helpful to achieve this balance.

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?

EURELECTRIC recognizes ACER's efforts in the area of communication. Apart from classical mailings of information (ACER's Info Flash emails are an effective method of informing stakeholders about newly released publications and relevant events); EURELECTRIC welcomes usual updates from ACER in the framework of AESAG and other public events. In the area of network codes, the participation of ACER in the public discussions on some of the draft codes was particularly useful for stakeholders as it helped clarify divergences in the positions between ENTSO-E and ACER. However, we are obliged to note that this practice

has not been the same for all the codes, and in some instances, ACER has had difficulties taking a clear position on the topics in question.

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?

ACER's website is the principal means of communication with stakeholders in general and is extensively used by EURELECTRIC and its members. In our view, the website could be improved in terms of finding the required information (on-going consultations, latest and up-coming workshops, events, etc.). In particular, the public consultations section could be better presented and documents that are located within "Acts of the Agency" should be integrated into the relevant work areas (e.g. gas, electricity, REMIT). The timetable for the upcoming activities should be kept up-to-date.

We have also noticed that ACER has three separate web addresses:

- 1) <http://www.acer.europa.eu/Pages/ACER.aspx> (which is the core web site)
- 2) http://www.energy-regulator.eu/portal/page/portal/ACER_HOME and
- 3) http://acernet.acer.europa.eu/portal/page/portal/ACER_HOME

ACER should have just one website and internet addresses 2) and 3) should be directed to the core website.

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?

Yes and we carefully read all documents concerning the network codes.

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?

The quality of the ACER's documents is fully satisfactory. With regard to the clarity of its position, it is normally better formulated in ACER's recommendations and opinions, than in the framework guidelines. We assume that this is related to that framework guidelines are drafted by committees that are obliged to take into due account the existence of different market rules and regulatory frameworks which currently exist throughout the EU. We believe closer involvement of ACER's lawyers into the early stage of the work on the framework guidelines may prove to be helpful in order to minimize ambiguities at a later date.

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?

EURELECTRIC generally welcomes ACER's open and constructive approach to dealing with stakeholders. As mentioned earlier, the work of AESAG should be considered as a positive experience in this respect.

At the same time, some aspects around ACER's consultation arrangements could still be improved. ACER should inform stakeholders sufficiently in advance about its public consultations, format, and timetable. At the moment, public workshops are organized on a rather ad-hoc basis. Where ACER sets up ad-hoc expert groups (ex. for gas tariffs, or for the electricity balancing network code), the principles of the experts' selection and the selection process itself should be made much more transparent for stakeholders. At the moment, it is often unclear how the selection is done, a launch of such groups is not properly and timely announced, and no clarity is provided about how the recommendations and opinions delivered in these expert groups are taken on board.

Finally, ACER should seek to use web-stream technologies more frequently and effectively. This will provide opportunities for stakeholders to participate in meetings and workshops interactively without having to attend in person, especially if these meetings are rather short (half day) and hosted in Ljubljana.

7. Suggestions for improvement to ACER's working methods

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

- Improve objectivity in the network codes and listen more keenly to stakeholders'
- Consider publishing the agenda and minutes of ACER's working and expert groups on a consistent basis
- Organize and plan in advance workshops and bilateral meetings with stakeholders
- Be more directly involved in the drafting of NC in cooperation with stakeholders and ENTSO and develop a clear view about the implementation phase and the review process
- The public workshops on important issues should be organized in more convenient places than Ljubljana (e.g. Brussels, other European capitals) to give indeed the target audience sufficient opportunities to attend the workshops. Moreover, ACER should seek to use web-stream technology more frequently and effectively

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

We consider that the Article 8 of the Regulation that currently allows ACER to intervene in cross-border issues on which NRAs fail to reach agreement only upon a joint request from these NRAs, should be amended and give ACER powers to intervene based on its proper initiative

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability



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