

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)

Axpo Holding AG, comprising Axpo Power AG, Axpo Trading AG and Centralschweizerische Kraftwerke AG (CKW AG), is a Swiss energy firm with a strong local base and a European presence ("Axpo"). Axpo is wholly owned by the cantons of Northeastern Switzerland and, together with its partners, supplies electricity to around three million people. Axpo is active along the value chain from electricity production to distribution and sales, and is also involved in international energy trading. In addition, Axpo offers innovative energy services to customers in Switzerland and Europe.

Axpo Holding AG is registered organization with EU Transparency Register under number 08171556938-65 and agrees with its contributions to be published on the Internet.

- 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

Yes. In particular Axpo focuses on the following ENTSO-E Network Codes and the overarching ACER Framework Guidelines:

- Capacity Allocation and Congestion Management
- Forward Capacity Allocation
- Electricity Balancing
- Requirements for Generators
- Demand Connection
- HVDC Connection
- Operational Security
- Operational Planning and Scheduling
- Load Frequency Control and Reserves

Please compare our detailed comments attached below.

- 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)

Yes. Please compare our detailed comments on REMIT attached below.

- 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)

Third country issues including possible discrimination of market participants from non-EU and non-EEA countries.

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?

In our view, ACER performed so far well in guiding the integration of the European power market by providing generally good guidelines, consistent with the Target Model. The establishment of AESAG is also a useful platform for guiding this integration process and trying to ensure consistency between implementation projects and regulatory framework development.

- 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?

We think that the power market related Framework Guidelines are of good quality and represent a good fundament for the development of the respective Network Codes.

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

d1) Framework Guidelines and Network Codes

- The sequence of development of Framework Guidelines and Network Codes was not fully comprehensible. In our view, the development should have been geared by a top down approach, beginning with defining the objectives of safe and secure grid operation.
- With the objective of developing a compilation of self-consistent Network Codes, an underlying set of consistent definitions for all Framework Guidelines and Network Codes would have been very useful. The lack of such a set led to a plurality of inconsistent definitions, causing needless misunderstandings and ambiguities, especially during public consultations.
- Axpo would have appreciated a much closer supervision of the work of ENTSO-E by ACER. In particular and probably inherent to the institutional setting, the expert opinions of DSOs and producers were sometimes not paid appropriate attention. Too often, the Network Codes reflect the views of TSOs alone. As a result, several important technical arguments did not find its way into the Network Codes. In combination with the relatively short timeframes, important technical issues have not been treated properly and clarified (cf. also answer to question 5c).

- Furthermore, we have the impression that the task of ensuring consistency between Framework Guidelines and Network Codes development could have been executed in a timelier manner. (cf. also answer to question 5c))

d2) Third Country Discrimination Clauses

- Whilst most of the view presented by Axpo on the ENTSO-E Network Codes are shared by the whole power industry and have also been expressed by the relevant industry associations such as Eurelectric and VGB Powertech, some specific points are of particular concern to Axpo being a non-EU based market participant. This includes the so called third country discrimination clauses as discussed within the framework of the ENTSO-E Network Code on Capacity Allocation and Congestion Management in combination with the Guidelines on Governance. The principle described would in fact discriminate against Swiss based market participants only since Switzerland is probably the only non-EU and non-EEA country which could participate in Market Coupling in the short to medium term.
- Axpo considers that there are no further conditions to be fulfilled beyond the application of the ENTSO-E Network Code on Capacity Allocation and Congestion Management by the country willing to participate in the Market Coupling in order for its market participants to take part in the European single day ahead and intraday market. Third country discrimination clauses as the one discussed within the framework of the ENTSO-E Network Code on Capacity Allocation and Congestion Management are detrimental to market development since they arbitrarily limit the geographic scope of the market coupling to EU or EEA Member States and will thereby reduce the benefit of larger ID and D-1 markets.
- The clause does also interfere with EU External Energy Policy since most non-EU countries have already formalized their energy policy relations with the EU (e. g. Energy Community) or are in the process of formalizing them (e. g. ongoing drafting of a bilateral agreement on power between EU and CH); this kind of third country discrimination clause would interfere with the EUs foreign policy and jeopardizes existing and future agreements.
- Axpo also considers that there the legal basis is lacking: Defining the participants to Market Coupling is beyond the scope of the Network Codes and should not be defined within the process for establishing Network Codes nor in an explanatory document attached to a Network Code.
- Finally it would create a regulatory risk for non-EU companies making their participation in the Market Coupling dependent on unclear criteria ("the main provisions"). It would induce uncertainty for longstanding non-EU market participants and for non-EU infrastructure operators (including power producers) whose assets widely contribute to enhancing security of supply and flexibility in the EU energy markets and allow for cross-border power exchange between non-adjacent EU Member States.

d3) ACER public consultation on "Draft ACER Guidelines for the registration of Registered Reporting Mechanisms and for the registration of Regulated Information Services for ensuring operational reliability according to Article 8 of Regulation (EU) No 1227/2011"

- The non-discriminatory access to the European gas and power markets is crucial for market participants domiciled in Switzerland. For this reason, Axpo is concerned about ACER's proposal that only organizations with legal status in an EU Member State or an EEA country should be eligible to become a Registered Reporting Mechanism (RRM) or Regulated Information Service (RIS). It seems to Axpo that such a restriction is not justified and would go against the ambition of creating a level playing field for all market participants active in the EU gas and power markets.
- Axpo therefore believes that market participants domiciled outside the European Union or the European Economic Area must be eligible to become an RRM or RIS under REMIT provided that they conform to the operational requirements set out by EU legislation

d4) REMIT registration process

- According to Article 9 (1) REMIT, „Market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall register ... , if they are not established or resident in the Union, in a Member State in which they are active." In a letter by CEER to EFET dated 17 June 2013 – which is not legally binding as such – it is stated that "If a market participant is not established or resident in an EU Member State, registration should be in the Member State in which they are most active." So far no explanation is given on how to define "most active".
- ACER has not validated the information provided by CEER, thereby creating uncertainty amongst non-EU market participants about where they can register. ACER has indicated that it would cover this issue in the registration user manual and in the 3rd Guidance Document on REMIT to be available by the end of 2013 leaving market participants very little to time to complete the registration process – which is supposed to start in Q1 2014.

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)?
- b) Do you consider that ACER has set the right priorities in its Annual Work Programmes?
Broadly yes. However, the sequence of development of Framework Guidelines and Network Codes was incomprehensible (cf. answer to question 3d1) above).
- c) Do you follow the Work Programme implementation through the reporting published by ACER in its Annual Activity Reports?
- 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?
- 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?

With view to governance of the process, Axpo believes that further improvements are possible. In particular, the working relationship of ACER and ENTSO-E on the development of Network Codes was not completely satisfactory. More specifically:

- There seems to be a lack of respect on the part of ENTSO-E for the fundamental principles drawn up in the ACER Framework Guidelines in the case of parts of the draft Network Codes introducing market arrangements.
- In some cases ENTSO-E Network Code drafts related to market design features were not consistent with the ACER's Framework Guidelines, which is not acceptable and harms the Network Code development process. We have the impression also that the interaction between ENTSO-E and ACER within the Network Code development phase could have started earlier with the consequence to avoid to discuss basic principles at the end of the Network Code drafting period.
- Stakeholders should be able to deliver their inputs to ACER also during the drafting phase of the Network Codes development. A better consideration of the inputs would then be achieved. Furthermore, there should be no time pressure during the evaluation phase in order for the Stakeholders to have the opportunity to discuss their inputs to a satisfactory degree directly with ACER and for ACER to provide concrete proposals to ENTSO-E.
- Sometimes, we missed transparency from ENTSO-E and ACER. It was not always clear, why strong technical arguments were not considered.
- Axpo believes the consultation exercises conducted in relation to Framework Guidelines have become theoretical exercises in some cases. Axpo deplores the tendency to make statistical analysis of the content of responses without distinguishing the (1) quality, (2) representative status and (3) closeness to the subject matter of various responders.
- Furthermore, the consultations run by ENTSO-E and the quality of the drafts circulated could be improved.

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

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?

Axpo considers to be sufficiently informed about ACER's activities

- 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?

The website is clearly arranged in order to find the documents needed.

- 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?

Framework Guidelines, consultation documents, opinions etc. Axpo considers reading ACERs documents both necessary and useful.

- 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?

Most of the documents are of high quality and include clear positions; still, the accuracy of the terminology and sense in English of some provisions in 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?

7. Suggestions for improvement to ACER's working methods

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

ACER should interact with ENTSO-E and Stakeholders during the whole development process and should ensure that the market participants interests are considered during the drafting of the Network Codes yet coming, especially during the drafting of HVDC Connection Code.

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

Axpo sees a need for change. 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 ENTSO-E Network Codes is not subject to voting within the general assembly of an association; electricity market related ENTSO-E Network Codes (and probably all other codes which bind third parties other than TSOs) should in the future preferably be handled in a way that ensures the participation of all concerned market participants.