



E.ON SE

Avenue de Cortenbergh, 60
B-1000 Bruxelles
www.eon.com

Register ID: 72760517350-57

Contact:

Political & Regulatory
Affairs
Phone: +49-211-4579 4804
marketregulation@eon.com

E.ON Position on

ACER evaluation under Article 34 of Regulation 713/2009

Düsseldorf, 12 September 2013

1 General Remarks

E.ON welcomes the establishment of a European regulatory authority and the process of framework guidelines and network codes laid down in the directives 2009/72/EC and 2009/73/EC. However, the involvement of the Agency within this process and the independency from NRAs can be improved.

2 Specific Remarks

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?

We welcome the establishment of a European regulatory authority moving forward to a true European energy market with harmonized market rules. However, still large influence by NRAs on ACER's activities via the Board of Regulators and personal secondments could be observed. A stronger intervention to ensure well and clearly defined harmonized market rules would be preferable from our point of view.

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

We observe large differences between the electricity and gas framework guidelines and network codes in terms of harmonization, commitment and stakeholder involvement. By trend, the

framework guidelines by ACER for gas seem to be more into detail and give adequate guidance. In consequence, the network codes by ENTOG give in general precise market rules leaving only little room for different national implementation. Also the involvement of market participants seems to be taken largely into account when drafting the network code. For the electricity sector the process for developing the framework guidelines and network codes has to be clearly improved. The framework guidelines contain in most cases only the headlines but not any direction nor any guidance. As a result the respective network code continues being mostly vague and delay the decision for a harmonized product or threshold to a later point of time (e.g. products within the CACM NC). This leads often to a situation in which the network code is developed but the crucial questions are still open and harmonization has yet not been reached. Furthermore, the vacuum in the framework guidelines is frequently used by TSOs to steer the requirements to their own advantage (e.g. NC for DCC containing in a first proposal the obligation for new cooling devices to be equipped by control devices to manage frequency thresholds by TSOs). We would therefore appreciate it if the framework guidelines by ACER, in particular for the electricity market, give more guidance. ACER should be involved in the network code drafting process just from the start and ensure that the network code is restricted to the scope defined in the framework guideline. Issues for harmonization should be developed within this drafting process and not be subject to NRAs or to be postponed. The feedback from market participant should be closer taken into account as in the past and problems not be solved to the burden of other market participants (e.g. Network Code on Requirements for Grid connection applicable to all Generators).

We appreciate therefore the initiative recently launched by Mr. Boltz to monitor the national implementation of current network codes by ACER. We furthermore support any legal requirement which ensures a close cooperation between ACER and ENTSOs during the entire drafting process.

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?

ACER should put more attention to a common approach for generation adequacy assessment, i.e. call for common standards and methodologies to assess generation adequacy and common methodologies for a reserve margin, agree how interconnection are taken into account, ensure free flow of electricity also during times of scarcity and strengthen regional approaches to encourage further coordination among Member States.

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?

As stated under 3d) one of ACER's key priority for 2014 should be on a common approach of generation adequacy as well the implication on different market designs, in particular due to the introduction of different capacity remuneration mechanisms, on the common energy market.

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?

ACER seems still be strongly influenced by NRAs by the Board of Regulators and the secondments. The impression is given that solutions are reached only on the lowest common level. We would appreciate a - from national interests - fully independent and well-staffed European authority providing regulatory expertise that is deeply engaged in the drafting process of network codes.

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?

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?

As stated in a) we would appreciate a fully independent agency with its own independent resources. Secondments from NRAs should be avoided where possible.

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?

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?

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?

We would appreciate it if the documents published by ACER would ring-fence the current topics at an early stage and give guidance within the discussion. E.g the report on “CRMs and the IEM”, published in July 2013, came to a very late stage in the discussion at which any other stakeholder already positioned himself. The report itself was neutral and did not give further impulses nor a clear direction on that topic.

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?

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