

European Commission consultation - "ACER evaluation under Article 34 of Regulation 713/2009"

EDF Response

18 September 2013

EDF welcomes this consultation on the evaluation of the activities of the Agency for the Cooperation of Energy Regulators (ACER). EDF, and more generally the EDF Group, has been fully involved and committed in the integration of the European electricity and gas markets and, as such, has closely followed and participated to the works aiming at defining the European regulatory framework for energy, deriving from the 3rd Energy Package and other pieces of legislation. Of course, we have been following all ACER works since its entry into function in 2011 (even during the preparatory phase starting after the adoption of the 3rd Package until 2011 under ERGEG monitoring).

Area of work followed

EDF has been mostly involved in the following major work stream: (i) development of Framework Guidelines (FG) and Network codes (NC) for gas and electricity, (ii) Regional Initiatives (with among others the implementation of the four electricity cross-regional roadmaps towards the target model) and (iii) monitoring of wholesale energy trading and market integrity (REMIT) and other transparency related issues.

EDF has been participating to the highest extent possible, by answering nearly all public consultations launched by ACER (*and ENTSO-E & G*), attending nearly all workshops and even applying successfully to some ACER expert groups.

EDF is also closely following the work on: (i) Infrastructure and the Ten Year Network Development Plans and (ii) monitoring and reporting on the electricity and gas sectors.

We are thankful to ACER for setting up experts groups, organizing workshops and for the usually rather good quality of its documents and reports.

- The expert group and the stakeholder advisory groups set up by ACER are important (e.g. AESAG for market design issues) and interesting tools when they are intended to foster debate among stakeholders. It is of lower interest if just aimed at validating already prepared proposals.

- ACER's consultation arrangements are satisfying and can be considered as good practice with interesting and valuable evaluations of the comments received. However, we regret that in many cases the impact assessment of the proposals submitted to consultation were released only afterwards.
- ACER organizes a lot of workshops where interesting and valuable discussions take place even if the quality of the exchange could be very uneven from a workshop to another. We also appreciate the recent move towards sessions taking place simultaneously in Ljubljana and in Brussels with video transmission, allowing all the parts of Europe to actively participate. We could may be suggest on some topics more interactive sessions (simulations, etc.) rather than the usual presentations/questions sessions as there is sometimes need to leave theory and get into practice.
- ACER produces good quality reports (ACER/CEER monitoring report, quarterly reports on the progress made in ERIs and GRIs, etc.) and documents, given the large scope of expertise to be covered. In some cases however, embarking market players'expertise from the start could help improve the relevance and the robustness of proposals.

Organizational structure and resource

From that perspective, EDF is indeed each year following the development of the ACER's annual work programme. This document is valuable as it gives stakeholders some visibility on the issues to be dealt with. However, because of the numerous and important additional challenges to be met, ACER's workload has steadily increased over the years. And we perceive that performing all that was planned may have, in some cases, been slowed down or degraded by a lack of resources. This was obviously the case for the implementation of REMIT, for which ACER was under-staffed until the beginning of 2013 and not in a position to properly develop Guidance, recommendations and tools to implement this regulation. We also suspect that it is the case for the development of the Framework Guidelines and the monitoring of the development of Network Codes.

Indeed, this lack of resources may have had various consequences.

- First, it may have curbed the consultation process of the stakeholders when it would have been necessary to consult them on substantial evolution of FG or NC provisions.
- Second, it may have given ACER less time to closely work upstream with the ENTSOs, notably on the very technical aspects of NC in order to avoid sending into comitology rather incomplete NC, with often not duly justified provisions.
- Finally, the lack of resources may have also sometimes led to an extensive use of external consultants on some topics. And this might explain situations in which ACER members (representatives) faced difficulties to explain to stakeholders the positions conveyed in official ACER documents such as Guidance or during workshops.

Despite this situation and given the huge amount of work to be done, the work organization of ACER has steadily and significantly improved since its creation in 2011 and accordingly the

working relationship with the stakeholders. However, in case this lack of adequacy between the workload and the resources was to persist, we would recommend either to limit the objectives in the work program or to slow down the implementation pace in order to improve the robustness and sustainability of the provisions (notably regarding the network codes).

Independence and ACER's role

We consider that ACER is independent from gas and electricity companies, governments and TSOs. As regards to the Commission, we believe that, within the framework of the 3rd Energy Package, ACER should remain in a position to take opinions (notably on FG or NC) not necessarily aligned with the Commission's ones if appropriate. It would be even more legitimate when this position is shared by NRAs and market participants.

We also believe that the development process of NC needs to better comply with the requirements of the 3rd Energy Package (e.g. impact assessments, effective consultation of stakeholders, etc.). In this perspective, ACER's role may need to be extended so as to be entrusted with a kind of supervision role on ENTSOs' work. We would like to mention the fact that ENTSO-E is also the association representing TSOs' interests -former ETSO merged into ENTSO-E- which might be conflicting with the mission of developing sustainable rules with the involvement of other stakeholder, as defined in the 3rd Package, and which might partly explain the difficult dialogue on some network codes. This is not the case for ENTSO-G, where an open and constructive dialogue with stakeholders could take place, which is to be considered as good practice.

Another weakness in this process is that there are probably not enough in depth technical discussions between all the parties: ENTSOs/stakeholders, ENTSOs/ACER and ACER/stakeholders. Stakeholders are really seeking to have these discussions and it does not seem to be fully accepted yet. TSOs indeed have the best knowledge of their grids, but grid users have developed an expertise too. In addition, they have the best knowledge of their own facilities.

We would like to highlight the fact that ACER will also have a very important role to play in the implementation of the network codes. In this respect, ensuring the common interpretation as well as the consistent and proper implementation of the various provisions by the NRAs at national level, as well as spreading the best practices in the processes (stakeholder consultations) will be crucial.

Governance

As a market participant, EDF is aware of the activities of the different ACER Boards. EDF welcomes the publication of the minutes of the Board of Regulators and the initiative to have quarterly debriefing meetings in the presence of Lord John Mogg and Alberto Pototschnig for feedback and open discussions, as was organized in Brussels on 17th July 2013.

EDF also welcomes the Board of Regulators' intention to commit into more long term strategic thinking as the energy industry is a long term oriented industry and the regulatory framework should allow for visibility accordingly.

We would like to emphasize the importance that the decision and vote processes on FG and NC taken by NRAs in Board meetings (i) remain transparent, (ii) always give rise to an open vote process and (iii) reflect their positions at the end of the day.

Communication

Finally, EDF visits ACER's website and reads every information or document posted on it. This second version of the ACER's website, while graphically nicer, unfortunately remains not "user-friendly" enough, so that the previous version appeared much more efficient and easy to use. We already had the opportunity to tell to ACER about the following shortcomings: publications of new documents or information are insufficiently mentioned on the home page and often hard to find in the sectoral heading where we expect to find them. Push mails are not very often used as a tool of information for market participants. The website needs definitely to be improved.

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