

EuroPEX Response to the
“European Commission Discussion Paper of 21
September 2009 on the Third Energy Package
Guidelines and Codes”

10 November 2009

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Methodology

EuroPEX response to the European Commission (EC) consultation of the “*Discussion Paper on the Third Energy Package Guidelines and Codes*” is divided in three parts including the introduction, process to develop Framework guidelines and codes and priority of guidelines and codes. This document does cover only the points of the proposed *Discussion Paper* which are more relevant to EuroPEX and the response to the consultation aims to contribute the preparation of the work of the EC in particular for the presentation in the 17th meetings of the European Electricity and Gas Regulatory Forums.

I. Introduction

1. On 21st September 2009, the EC launched a public consultation on the Third Energy Package Guidelines and Codes. The consultation aims to collect the views of interested parties on the proposed *Discussion Paper* which briefly describes the Art.6, Art.8 and Art.18 of the Electricity Regulation (Reg. (EC) No 714/2009) and art.6, Art.8 and Art.23 of the Gas Regulations (Reg. (EC) No 715/2009). The document also provides a simplified diagram of the process to develop framework guidelines and codes and proposes some areas where development of codes may happen.
2. EuroPEX welcomes the opportunity offered by the EC to comment on and provide input to the “*Discussion Paper on the Third Energy Package Guidelines and Codes*”. Power exchanges are major actors and are the vital vehicle toward the development of the integrated energy market. EuroPEX members are committed to the objective of creating a more transparent, efficient and integrated energy market.
3. EuroPEX had in the past the opportunity to welcome the Third Energy Package in 2007 and prepared a position paper in 2008. The possibility now given by the EC to all stakeholders to comment on the “*Discussion Paper on the Third Energy Package Guidelines and Codes*” after the adoption of the Reg. (EC) No 713-714-715/2009 is the acknowledgement of role that the stakeholders will play along the implementation of the Third Energy Package. This is indeed a very positive approach which EuroPEX and its members in particular appreciate.

II. Process to Develop Framework Guidelines and Codes

4. EuroPEX proposes the diagram depicted below (Fig.1) for the process to develop framework guidelines and codes which is more in line with the articles of the regulation.

II.a *Annual Work Programme and Process Diagram*

5. Art.8 (3d) of the Reg. (EC) No 714/2009 states the need for ENTSO to adopt an annual work programme. That work programme unavoidably interferes with the work programme of ACER. In this context, although the Reg. (EC) No 714/2009 and Reg. (EC) No 715/2009 are limitative to the work programme of ENTSO, it should also consider the work programme of ACER and part of both work programmes should contain the same topics that will be subject to the preparation of network guidelines and

the preparation of codes. The work programmes of ENTSO and ACER and the objectives of the European Commission need as well to be in line¹.

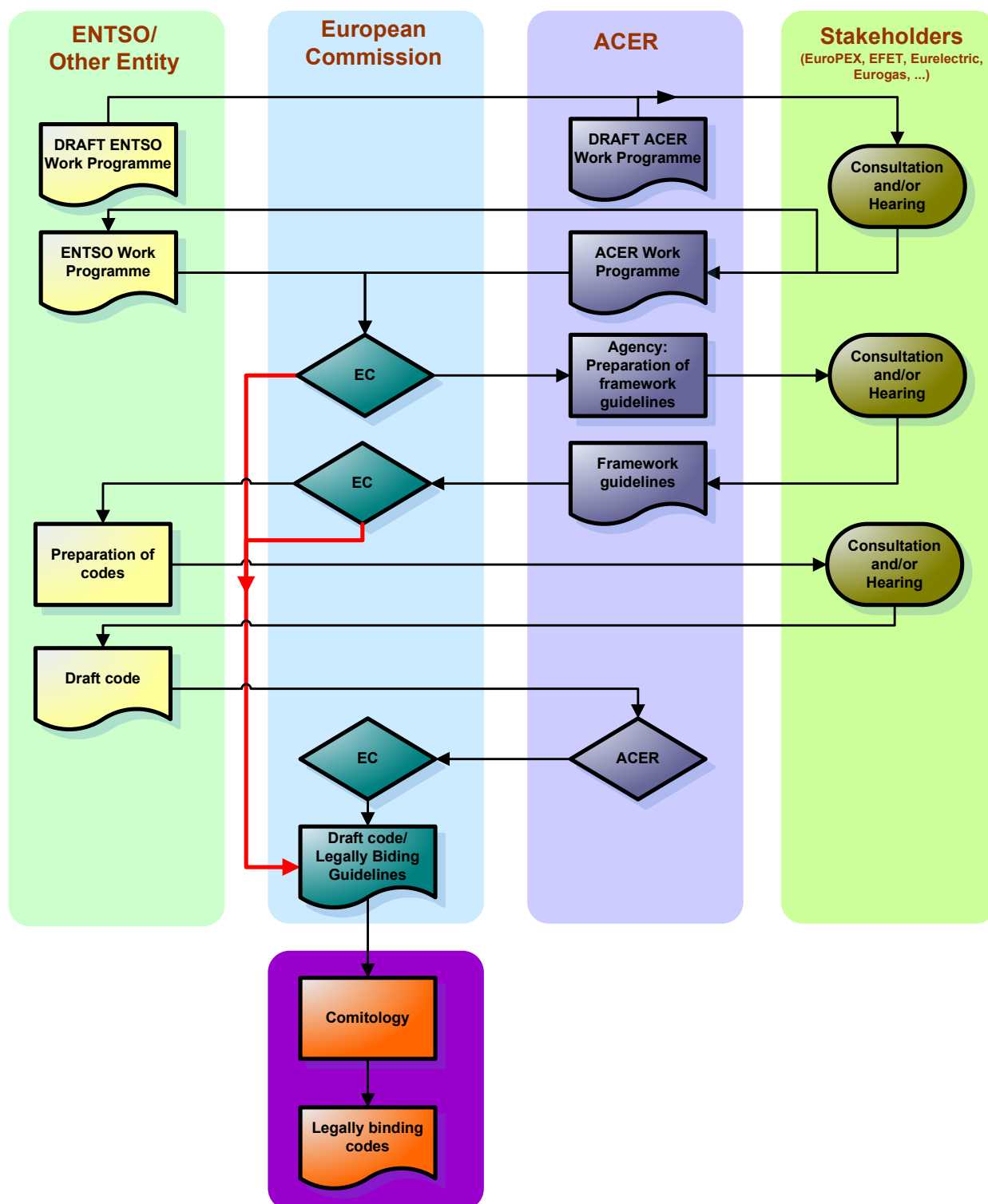


Fig. 1: EuroPEX proposal of the process to develop Framework Guidelines and Codes.

¹ The work programme for ACER and consultation has been introduced in the diagram of the process to develop framework guidelines and codes (Fig. 1).

6. The annual work programme of ENTSO is subject to supervision by ACER (Art. 9(2) of the Reg. (EC) No 714/2009) to assure that it reflects non-discrimination, contributes to effective competition and to efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access. Further to this, according to the same article, the work programme should follow the consultation process. In order to allow higher level of transparency, ACER should also monitor and assure that the work programme submitted by ENTSO has fully considered the feedback of the stakeholders from the consultation.

II.b Consultation Process

7. EuroPEX believes that it is indeed essential that consultations remain at the core of the regulators working methodology, and are applied in an efficient, non-discriminatory and systematic way. According to Art.10 (1) of the Reg. (EC) No 714/2009, ENTSO should conduct an extensive consultation process at an earlier stage and in open and transparent manner, involving all relevant market participants. ERGEG already adapted this for their work programme 2010 and EuroPEX proposes that the same should apply for the work programme of ACER, and both ERGEG/ACER and ENTSO should at earlier stage consult the main stakeholders, as depicted in Fig.1 above.
8. Although Art.10 (3) of the Reg. (EC) No 714/2009 states the need for ENTSO to indicate how the feedback from consultation has been taken into account and provide the reasons where observations from consultations were not considered, this should as well apply for the consultations carried out by ACER (ref. 7.). Additionally, in case of non satisfaction of the reasons provided by ENTSO and/or ACER or lack of transparency, this article should not be limitative and/or impeditive for the stakeholders to approach the EC and explain the situation which in turn the EC should consider evaluating.
9. The adopted Reg. (EC) No 713/2009, 714/2009 and 715/2009 are more generic in terms of the parties that shall be involved for the implementation of the Third Energy Package and particularly the Art.10 (1) of Reg. (EC) No 714/2009 defines the stakeholders comprising the national regulatory authorities and other national authorities, supply and generation undertakings, system users including customers, distribution system operators, including relevant industry associations, technical bodies and stakeholder platforms. The EC knows and has been working closely with some well identified stakeholders, including those participating in the Florence and Madrid Forums. It is curious to note that “Whereas (8)” of the Reg. (EC) No 714/2009 attributes role of consultation to an association (UCTE²) that does not exist anymore and did not even exist at the time of the publication of the above regulation. It is therefore not

² UCTE is the acronym for Union for the Coordination of Transmission of Electricity.

understandable that associations such as EuroPEX, Eurelectric, etc, which are very active in the overall process of the Third Energy Package are never mentioned in the official documents referring the published regulation. EuroPEX is of the opinion and suggest that the main stakeholders, currently contributing in the Florence and Madrid Forum, and more importantly also in the PCG³, should be expressly mentioned instead of being named in generic terms “stakeholders”.

II.c Preparation of Codes

10. The EC shall be aware that the scope of the codes in the charge of the ENTSO-E, as referred to in Art.5 (6) and Art.8 (6) of the Reg. (EC) No 714/2009, should be limited only to the specific tasks related to transmission system operation and grid access, including security and reliability rules, operational procedures in an emergency, energy efficiency regarding electricity networks, grid connection and access rules, interoperability rules, balancing and reserve power rules, dispatching rules, transmission tariffs structures, data exchange and settlement rules.
11. It is important to acknowledge that there are shared competences⁴: areas such as capacity allocation and congestion management rules, gate closure times for implicit mechanisms and transparency on generation and distribution related information; although they are in the scope of TSOs competences, should imply full involvement of ACER and Power Exchanges during the drafting, consultation and implementation. It is therefore necessary to specify, in the process to develop Framework Guidelines and Codes, that the preparation of the codes and related consultation should be the role of ENTSO or ENTSO together with Power Exchanges or even another entity as it may justify (in Fig.1 above this is represented as “ENTSO/Other entity”).
12. The EC in the “*Discussion Paper on the Third Energy Package Guidelines and Codes*” annexes two diagrams, namely the “European Electricity Rules” and “European Gas Rules”.

Although many rules and codes impact Day-Ahead and Intraday markets rules in Europe, the reason why EuroPEX does not see binding Market Codes being relevant is that market rules cannot be limited to congestion management rules, which is the scope of competencies of ENTSO. Market rules are rather shared competences between market operators and regulators.

For the European Electricity Rules, the document proposes under “Market Rules” the preparation of the “Wholesale Market Framework Guideline” which consequently anticipates the drafting of “Day-Ahead and Intraday Market Code”:

³ PCG is the acronym for Project Coordination Group.

⁴ Some of these competencies are defined in the Art.8 (6) of the Regulation No 714/2009 as being “tasks of the ENTSO-E”.

- A. Art.8 (6) of the Reg. (EC) No 714/2009 is precise and lists twelve (12) areas which cover the network codes that shall be elaborated as mentioned in the same article (also described in the EC's Discussion Paper). Among these areas there is neither "Market Rules" nor "Wholesale Market Framework Guideline" described as fields to be transposed into codes. Although Art.18 of the Reg. (EC) No 714/2009 gives the possibility to the EC to adopt legally binding guidelines on its own initiative, including details of rules for the trading respectively electricity, EuroPEX strongly recommends deleting those added areas from the diagram.
- B. The diagram presented in the "Discussion Paper" and entitled "European Electricity Rules" is misleading and should simply be based on the areas defined in the Reg. (EC) No 714/2009 and therefore the additional areas proposed in that "Discussion Paper" should not be considered. EuroPEX proposes the diagram depicted here below (Fig.2) since it presents what the above regulation describes as areas in which codes shall be elaborated.

European Electricity Rules

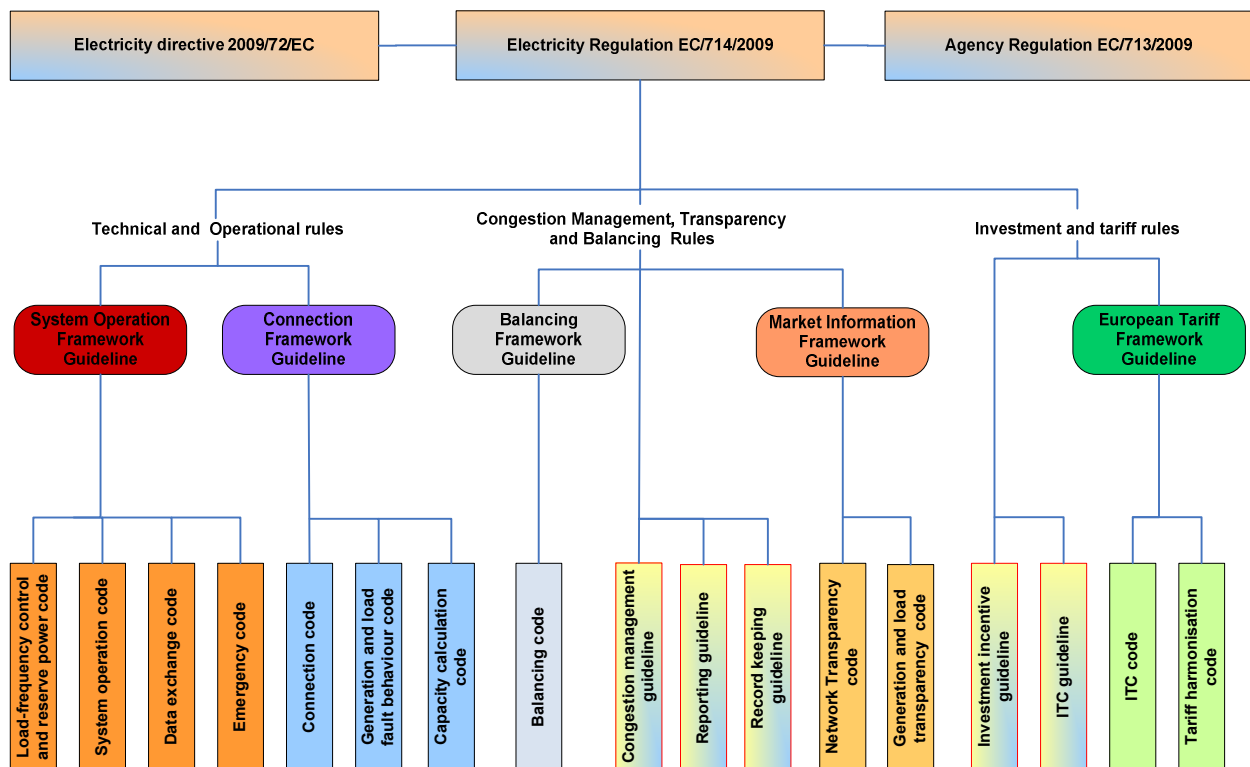


Fig. 2: EuroPEX proposal for drafting of the Framework Guidelines and Codes for electricity.

For the European Gas Rules, the document also proposes under "Market Rules" the preparation of the "Wholesale Market Framework Guideline" which consequently

anticipates the drafting of “Day-Ahead and Intraday Market Code” and “Congestion Management Code”:

- C. Art.8 (6) of the Reg. (EC) No 715/2009 is also precise in this matter and lists twelve (12) areas which cover the network codes that shall be elaborated as mentioned in the same article (also described in the EC’s Discussion Paper). Among these areas there is neither “Market Rules” nor “Wholesale Market Framework Guideline” described as fields to be transposed into codes. Although Art. 23 of the Reg. (EC) No 715/2009 gives the possibility to the EC to adopt legally binding guidelines on its own initiative, including details of rules for the trading gas, EuroPEX therefore strongly recommends deleting those additional areas from the diagram.
- D. The diagram presented in the “Discussion Paper” and entitled “European Gas Rules” is also misleading and should be based on the areas defined in the Reg. (EC) No 715/2009 and therefore the additional areas proposed in the EC’s Discussion Paper should not be considered. EuroPEX proposes the diagram depicted here below (Fig.3) since it presents what the above regulation describes as areas in which codes shall be elaborated.
- E. EuroPEX proposes that Congestion Management rules should be drafted as guidelines instead of codes.

European Gas Rules

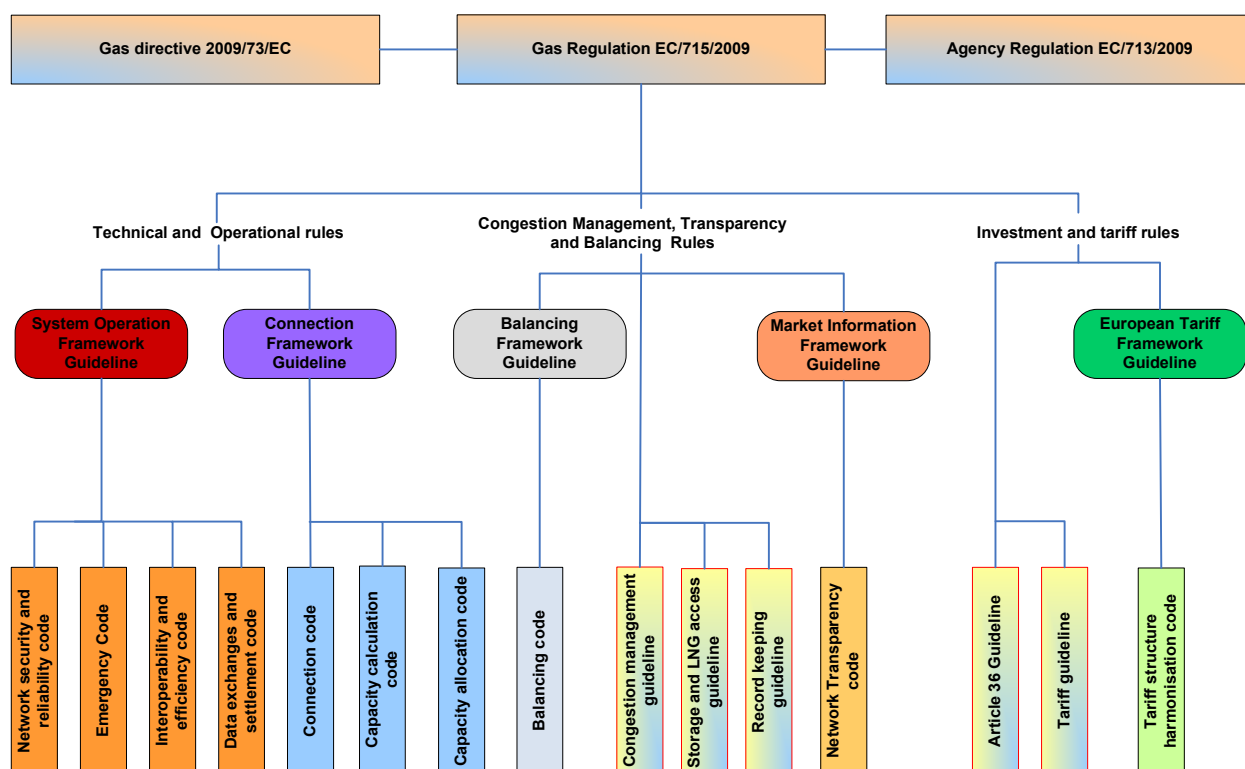


Fig. 3: EuroPEX proposal for drafting of the Framework Guidelines and Codes for gas.

III. Priority of Guidelines and Codes

13. EuroPEX welcomes the priorities aligned by the EC for the pilot projects. For electricity, the Grid connection and access framework guidelines and wind connection network code is indeed a good starting point and for gas the invitation addressed to ERGEG (as if ACER) to draft a pilot framework guideline on capacity allocation in gas transmission network is as well regarded positive step forward.
14. The priorities for the codes and technical areas should be established by reference to a clear set of overall criteria and/or objectives. However, prioritising item by item may lead to inconsistency and incompatibility in different regional/local markets since there may be a need for simultaneous changes of rules in different areas. Priorities should therefore firstly be based on the regional/local needs and assessment of compatibility at Europe wide should be necessary.
15. In any case, priorities should allow non-discrimination, effective competition and the efficient functioning of the market. Priorities should also be grounded on the Network codes that would serve to remove the aforementioned drawbacks in order to permit consistent integration of different regions and eliminate the existing difference between different legislations. Further, priorities should always take into account the existing frameworks.
16. Among different areas, Transparency rules and Capacity Allocation rules seem to be of higher priority. By contrast, new modifications to the European legislation already in place regarding cross-border congestion management is of lower priority since there is less evidence of benefits to be gained from transposing the current Regulation and Guidelines into Codes.