

ACER-ENTSO-E consultation – “Role of stakeholders in the implementation of network codes and related guidelines, and in particular the establishment of European Stakeholder Committees for network code implementation”

EDF Response

2014, 23 January

First of all, EDF would like to stress the importance of stakeholders' involvement all along the process of development, adoption, implementation and review of network codes and guidelines. We therefore welcome this joint ACER-ENTSO-E consultation on a critical governance issue related to the 3rd Energy package and more specifically to the implementation of network codes and guidelines.

- Regarding the development phase, network users and market players have considerable experience of markets dynamics/needs and management of their facilities and can provide valuable expertise. Improvements could come along the inclusion of experienced market stakeholders in the ENTSOE's drafting teams in the early stages of the network codes' development.
- Regarding the adoption phase of the network codes/guidelines, it is important that also the Comitology process remain transparent for stakeholders. The publication of updated versions of the codes together with explanations of the amendments introduced is important with view to the implementation stage.
- Regarding the implementation phase, we welcome the creation of bodies enabling organised stakeholder involvement in the implementation of the network codes and guidelines. The definition of clear Terms of References for the various Committees to be set up will be crucial as the implementation of network codes is a heavy process. We understand that the scope of these consultative Committees could be (i) to share views on the national implementation processes (sharing and spreading best practices, highlighting and discussing some problems that might occur and find potential solutions), and (ii) to contribute to define the methodologies and rules still to be developed as foreseen in some codes and guidelines (CACM for example). The expert groups to be created also need to have clear mandates (objectives and associated timelines) and they could also be tasked to carry out studies whenever necessary (instead of resorting to consultants) as they would gather all the relevant expertise.
- Regarding the review process, the proposals that could emerge from these Committees could facilitate a faster review process but should be without prejudice of the process described by ACER in its Recommendations.

Beyond these general remarks, we wish to highlight the following comments:

Stakeholder Groups' set up and chairing

- EDF supports the creation of one Committee per family of codes or guidelines, as proposed, but remains open to more Committees in the future if the workload, the complexity in handling agendas and membership get too high.
- EDF believes that all the proposed European Stakeholder Committees should be chaired by ACER. This supervisory and steering role overseeing the implementation of both market and technical rules foreseen in the network codes and guidelines must be given to a body granted with the authority to supervise a proper implementation. This is in addition to its role to ensure a well functioning electricity market with a view to preserve the general interest while promoting non-discriminatory and cost-efficient solutions. NRAs and ACER are best placed to ensure the level playing field while monitoring the implementation of the network codes and guidelines across Europe and, eventually, pursuing an effective and efficient harmonisation of electricity markets rules. That is why ACER should be responsible to set up and chair the Stakeholder Committees which can contribute facilitating the Agency's work in its monitoring tasks.
- ENTSO-E has been granted responsibility to draft European Network Codes. Implementation is managed by TSOs at national level or, in a coordinated way, at regional or European scale (through ENTSO-E). Article 9 of the Electricity Regulation 714/2009 states that "*the Agency plays a fundamental role in monitoring the implementation by ENTSO-E of the European Network Code*" and it is therefore important that it exercises this role by monitoring the implementation and the activity envisaged for the proposed Stakeholder Committees. Besides, it is important to separate the monitoring responsibilities from the implementation functions even for most technical issues, where ACER can anyway rely on the expertise of ENTSO-E and other industry associations.
- EDF believes that ACER should be present in all expert groups. In principle, it should chair them. However depending on the issues and for practical reasons, it could also choose to delegate the chair, while keeping final oversight over the work undertaken.
- The identification of an enhanced role for the ENTSOs within the framework of increased European integration must be considered in the context of the current ENTSO-E structure which does not guarantee that the general interest of the EU electricity system prevails over the interest of the TSOs they represent. In our opinion, a governance decision is urgently needed to separate the electricity TSOs trade association from the ENTSO-E institutional role (as was done since the start in the case of GIE and ENTSO-G). This would ensure that a truly European systemic vision is taken into account by TSOs while carrying out the tasks assigned by the 3rd Energy Package (e.g. NCs, TYNDP etc.).

☞ What the Electricity Regulation says

The Regulation does not explicitly provide ENTSO-E with a role to monitor the implementation of all network codes. The responsibility of monitoring network code implementation belongs to regulators. The Regulation is clear:

. There are two types of network codes : the network codes under articles 8(1) and 8(2) of the Electricity Regulation of the 3rd Package (general case of codes to be developed by ENTSO-E) and the network codes developed directly by the Commission under article 6(11).

. Regarding, the network codes developed under 8(1) and 8(2), the general case of network codes developed by ENTSO-E so far, the Regulation does not mention in article 8 related to the tasks of ENTSO-E the monitoring of the implementation of network codes. Furthermore Article 9

(1) relating to the powers of NRAs clearly says : *“The Agency shall monitor the implementation by the ENTSO for Electricity of network codes under 8(2).*

. Regarding the codes under 6 (11), article 8 (8) says that *“the ENTSO for Electricity shall monitor and analyse the implementation of the network codes under article 6 (11)... and shall report its findings to the Agency...”*. And article 9 (1) says the same but for the Agency: *“The Agency shall monitor and analyse the implementation of the network codes under article 6 (11)”*. In this case, the responsibility seems to be shared. In any case, we are not in this scenario with the network codes already developed or being developed.

For these reasons we believe that Stakeholder Committees should be chaired by ACER, to ensure a neutral approach towards a European vision.

Membership of the committees and expert groups

- It is important that the market and institutional stakeholders that are impacted by the implementation of each network code can participate in the activities of the respective Committees and expert groups. The membership of these Committees and expert groups could be set on the basis of the subject treated.
- We agree that, in order to work efficiently, these Stakeholder Committees cannot be too large assemblies. However, if the Committees are to be restricted to a limited number of representatives (25 to 30 people), membership should give priority to the various European Trade and Customer associations. The opportunity to allow additional market participants should be assessed on a case by case basis (see below). Moreover, we consider that, depending of the issue studied, the membership as well as the number of representatives per association within committees and groups should vary from a committee/group to another.
- Membership rules need to be clarified with the objective to ensure proper quantitative and qualitative representation. Indeed, it is important to define how many people per association would be able to attend. Then, the overall composition should also provide for an adequate regional representativeness, as regional specificities are to be understood and taken into account, in order to bring harmonisation forward.
- The European Commission should also be granted a seat in those Stakeholder Committees as it is in charge of preserving the general interest. The European Commission’s involvement could be a good means to ensure that Member States are informed and updated about major developments or issues to be handled, upstream of any comitology process. Furthermore, in the implementation of some provisions, Member States may sometimes be the relevant regulatory authority.
- Regarding dedicated expert groups on the other hand, it is important that the composition is enlarged, beyond association representatives, also to individual experts. Indeed, at this level, detailed knowledge of an issue is priority. The composition should allow if necessary enlarged representation (beyond associations to individual experts) to facilitate discussion on potential specific local issues. The number of expert groups should not be limited as long as their task is clearly defined in content and in timeline.
- Customer associations should be involved where the network codes and guidelines may affect end consumers. However, it is important to:
 - not confuse the general interest (benefits for the whole European system, including customers) with customer specific interests (customers are a stakeholder among others). It is the role of the regulators (ACER and NRAs) and the European Commission to ensure the general interest is pursued (including the legitimate European customers’ interests).

ACER's chairmanship of the Stakeholder Committees and European Commission participation would be a guarantee for that.

- not confuse the improvement of customer associations' general knowledge about wholesale market issues (as these can impact retail markets and specific customer interest) with an active participation in the development of wholesale market regulation. For the time being, European Network Codes are mainly focused on wholesale market and upstream issues rather than on retail markets' design. The most impacted stakeholders are power generators, system and market operators and wholesale market participants. Thus, customer associations do not appear pivotal stakeholders in many of the network codes' implementation processes (except where final customers are directly impacted, e.g. as regards the Network Code on Demand Connection (DC)).

Moreover, we would recommend at this stage to distinguish between industrial and residential customers.

- We finally want to stress the importance of the interactions and links between the expert groups and the Committee (notably an efficient and complete reporting), on the one hand, and of these bodies with national structures on the other hand. Notably, whenever an expert group cannot reach an agreement on a single proposal, a detailed reporting on the various positions/proposals expressed should be reported to the Committee.

Liaison with national structures

- The consultation document states that Stakeholder Committees can play a significant role in liaising with local structures to effectively monitor the progress in the Network Code implementation at all levels. This role is necessary to ensure an effective and efficient harmonisation of European electricity market rules and to avoid possible discrimination of market participants based on their geographical location. As a result EDF believes that national and regional positions and needs should be adequately reflected and taken into account in the work of Stakeholder Committees and expert groups (see Membership paragraph). A strong liaison between the European expert groups and Committees with national structures responsible of network code implementation will facilitate a two-way communication between European and national stakeholders.
- The consultation document puts emphasis on this liaison with existing national structures. It is important to keep in mind that existing structures may need to evolve or restructure in some countries – or are evolving at the time. Indeed, what is usually to be found at national level is a grid users' committee, which does not necessarily embark all the stakeholders potentially concerned by the network codes, and whose efficiency might differ from one country to another, notably depending on the adequate level of regulatory oversight of the works. Therefore, new national structures/stakeholder groups created ad-hoc for the implementation of network code should have the possibility to liaise with the Stakeholder Committees acting at European level.

Internal governance of stakeholder committees

- EDF agrees with the need to simplify the internal governance and procedures of the Committees and expert groups in order to facilitate the exchange and the return of experience from stakeholders. Nevertheless, it is necessary that full transparency be ensured concerning the documentation used, the decisions taken and the dynamics between expert groups and Stakeholder Committees. In particular, it should be clear how decisions and

analyses carried out at expert group level are treated in the Committees especially in the cases where diverging views emerge. We believe that where no formal unanimous position can be reached within the expert group, the Stakeholder Committee should be provided with an exhaustive reporting detailing all the positions expressed and the reasons of disagreement.

- Committees should meet regularly (at least 4 times a year) in order to ensure proper exchanges (both downward and upward information and reaction) with stakeholders, as well as proper analysis and endorsement of the works of the experts groups. Less frequent meetings may make these Committees less effective with limited influence (just information exchange places). Experts groups should meet as much as necessary to meet their obligation according to their mandate. Reasonable timelines for the circulation of agendas, documents and minutes should be foreseen by Committees and expert groups, in order to ensure stakeholders have time to analyse these and participate fully in the debates.
- It is essential that a high level of transparency is ensured, notably through the IT platform whose access should be granted to all stakeholders (as it could also be a means for any stakeholders, and Member States, not attending the committees or groups to follow the developments). All the relevant documents (agendas, works, studies and minutes of expert groups' meetings; reporting from expert groups to Stakeholder Committee ; agendas, works and minutes of Stakeholder Committees, etc.) should therefore be made available in due time to all stakeholders requesting the access the IT Platform.
- The same level of transparency regarding the works of any TSO/DSO working group would also be necessary, as all grid users are legitimately concerned.

Revision process of the network codes

- It will indeed be useful for ACER to discuss potential amendment proposals to network codes with the relevant Stakeholder Committees. Though, we would like to underline that it is necessary to preserve the revision process foreseen by ACER and article 7 of the Electricity Regulation, i.e. without prejudice to the fact that any affected party can propose amendments and that any amendment proposals must be subject to public consultation. In this sense, the opinion delivered by the Stakeholder Committee should remain consultative. Of course, this process could be a facilitating step in the preparation of amendment proposals as such amendments with large support could be handled faster.