

By email to: [REDACTED]

Response from:

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ELEXON LTD'S RESPONSE TO THE ACER AND ENTSO-E JOINT CONSULTATION ON THE ROLE OF STAKEHOLDERS IN THE IMPLEMENTATION OF NETWORK CODES AND RELATED GUIDELINES (PC_2014_E_08)

Dear Sir/Madam,

We welcome the opportunity to respond to this consultation.

What is ELEXON Ltd's role and experience of stakeholder committees?

ELEXON Ltd delivers the centrally-mandated electricity settlement services that are critical to the successful operation of Great Britain's electricity trading arrangements under the national GB Balancing and Settlement Code (BSC). We manage processes and systems from electricity meter to bank, handling over £1.5 billion of transactions and interacting with over 250 companies in the British electricity industry. As part of this we administer the settlement of the GB Balancing Mechanism and GB imbalance settlement for generators and suppliers in respect of each half hour of each day. We are independent of any specific interests within the electricity sector.

Of relevance to this particular consultation, we have nearly twenty-five years' experience¹ of providing the secretariat, administrative support and guidance, to the main governing committees of the electricity trading arrangements in England and Wales and from 2005, in Britain. In particular we provide the secretariat to the main BSC committee, the BSC Panel, which is mandated by the BSC, and we chair several of the sub-committees. The Chairman of ELEXON chairs the BSC Panel. The NRA (Ofgem), the TSO (National Grid), members from industry, members from consumer organisations and independent members form the BSC Panel – full details on its role and membership can be found here <http://www.elexon.co.uk/group/the-panel/>

¹ ELEXON from 2001, and its predecessor the Pool Chief Executive's Office, from 1990 to 2001. Some of our employees have worked for, and with, both organisations, so our experience stretches back to 1990.

Should you wish, we are happy at any time to discuss our experience further with you, or to answer any questions you may have on this.

What is our interest in the Network Codes and Guidelines?

Besides our experience of the governance of the BSC in Britain, we are interested in several of the Network Codes and Guidelines, in particular the Network Code on Electricity Balancing, and also parts of CACM and the Emergency and Restoration Network Code, because they will impact our core business of the settlement of balancing trades and imbalance settlement.

Our comments on your consultation

Role and powers of the stakeholder committees

We fully support the concept of stakeholder committees but we are unsure what the role and powers of these committees are intended to be. For example, the deliverables and outputs from these committees are unclear – the diagram on page 6 of the consultation shows only inputs.

The role, purpose and powers of these committees needs to be made clear as a starting point, because, depending the answers to these questions, the response to the other questions below could be very different.

We assume that these committees would at least be a forum for:

- the sharing of information between all stakeholders on the implementation and, once implemented, the operation of the various Codes and Guidelines;
- the monitoring of the progress towards implementation of the various Codes and Guidelines and the provision of information to ACER and NRAs;
- the discussion of issues related to the implementation and/or operation of the Codes and Guidelines;
- the discussion of potential solutions to those issues and/or the setting up of expert groups (including their terms of reference) to discuss those issues and make recommendations to the committee;
- the discussion of potential changes to the Codes, Guidelines and subsidiary methodologies (resulting from the above bullet point) and the making of recommendations to ACER, or whichever body is appropriate for the given issue, that would have formal legal powers to implement or assess the recommendations.

We have experience in GB of operating with this type of committee – the Joint European Standing Group (JESG) which we and other stakeholders have found extremely useful in the sharing of information and thoughts, so we would strongly support at least this role for the stakeholder committees.

However, one of the reasons that the JESG is so successful and, we believe, well-regarded by all stakeholders, is that it is open to any stakeholder to attend and speak. We have found that it is not always easy for individual stakeholders, particularly those who are not members of a trade association or have a unique perspective, to be heard in the pan-European debates even if they have relevant information, evidence or views to contribute.

While we understand that the central bodies are not able to discuss the Codes and Guidelines with every affected stakeholder in Europe, partly because of the sheer number of such stakeholders, we do think that the stakeholder committees should at least be open to all stakeholders, e.g. via web links.

Our experience has been that this is manageable, because not all stakeholders take up the offer. We have further comments on transparency below.

At this stage we are assuming that the committees will not be decision making, but this raises a question: given that the committee is advisory to whom does it give advice and on what matters? If however, the committees are decision making, it would be helpful to know this and on what matters they can decide and what legal status (if any) such decisions would have.

As noted above, the role, purpose and powers of these committees needs to be made clear as a starting point before considering the other attributes of these committees. For example, if the committees are decision making, the membership will need to be precisely defined such that all stakeholders impacted by that particular Code or Guideline are properly represented². On the other hand if the committees are discussion fora, then the membership could in principle be self-selecting and vary between meetings, depending on the subject matter being discussed.

What stakeholder committees should there be?

We think that, at least initially, there should not be a single committee covering all the market codes, for the following reason³.

The stakeholders are different for each market Network Code/Guideline and undue weight could be given to the views of a particular stakeholder group that has no role in a particular market Network Code/Guideline. In relation to the Network Code on Electricity Balancing, for example, BSPs and NEMOs play no role in imbalance settlement, whereas BRPs do and we are aware of BRPs who are not BSPs. Similarly NEMOs play a key role in CACM, but BRPs and any third parties concerned with the settlement of balancing trades and imbalance settlement, such as ELEXON, do not. A wider range of committees also allows for a broader (more stakeholders can participate) and targeted (those impacted by that particular code can participate) stakeholder engagement.

On one particular aspect, the proposed matching of steering committees to families of codes is particularly problematic. The Network Code on Emergency and Restoration is now a hybrid operational and market code through the inclusion of Chapter 4 (market interactions). Therefore including the whole of this particular Network Code in an operational stakeholder committee's scope would not be appropriate.

Ideally Chapter 4 should be moved into the respective parts of the market codes depending on which market is being suspended and restored. For example, the Network Code on Electricity Balancing should cover the suspension and restoration of balancing markets, and the CACM Guideline should cover the suspension and restoration of single day-ahead coupling, etc. But given that the CACM Guideline is now complete, we suggest that Chapter 4 alone should fall under the governance of a special stakeholder group with market expertise.

² Although see our comments on membership of the stakeholder committees for a possible alternative where members are all independent.

³ We do not have a view on the families of operational and connection codes, though see our specific comment above on Chapter 4 of the Network Code on Emergency and Restoration, which is an anomalous position through being in the family of operational codes, but being focussed on markets.

While we believe that there should be one committee for each individual market code, not one for the entire family of market codes, we also believe that the structure of such committees should be sufficiently flexible that it can be changed in the light of experience, e.g. if it proves, contrary to our view now, that a single committee might be a better structure. So we suggest that the initial arrangement should be a committee for each market code but evaluate how well this has worked after a period of actual operating experience.

Indeed, this is a general comment that the terms of reference of such committees should be flexible so that adjustments can be made in future in the light of experience, and changing needs. Any proposed change of terms of reference should, however, be subject to public consultation.

Chairing of the stakeholder committees

We suggest that the chair of the market committees should be independent of, or disinterested in any outcome for, any particular industry stakeholder or stakeholder group. So we agree with your proposal that ACER should chair the market committees.

We also suggest that the chairing of any expert groups that are concerned with any of the market Codes or Guidelines (and Chapter 4 of the Network Code on Emergency and Restoration) should follow this same principle.

This is particularly important if a committee or expert group enables voting and the chair has the casting vote.

Membership of the stakeholder committees

The membership of the committees depends on the role of those committees. If they are solely information sharing, membership could even be self-selecting such as the JESG in GB. In this case, only the chair and the supporting secretariat would be permanent members.

However, if they have any formal role the membership needs to be pre-defined. And in that case there needs to be an appointment and removal procedure for members.

There are at least two models of membership – representative or independent. The representative model is obvious, in that certain constituencies or stakeholder groups are allowed to appoint members to the committee that represent that constituency or group's views. An obvious example could be a member representing ENTSO-E.

If the representation on the committee is by function (for example from industry, one committee member may be there to represent TSOs, another to represent DSOs, and others for each of NEMOs, BSPs and BRPs etc.) it may be that that it requires some stakeholders to consider membership of a trade association as the vehicle to represent them when they would not otherwise have done so. For example, if the seat on the committee is allocated to a particular trade association. Such stakeholders may still not be certain that their view will reach the committee via their representative, but not joining the trade association could mean that they are effectively disenfranchised from stakeholder engagement at the pan-European level.

Our suggestion is that if the representative model is chosen, and particularly if there is any voting, representation should be at Member State level. This permits any stakeholder to approach its Member State representative to represent its views. It also allows for Qualified Majority Voting if this is desired.

The GB BSC runs a different, independent model, where members of the BSC Panel and its sub-committees are drawn from stakeholders but explicitly required not to represent any particular stakeholder but to act as experts governed by a set of principles that all members must adhere to

when making decisions. This could also be adopted as the model for the stakeholder committees and expert groups.

Transparency of the committees' work for stakeholders

We strongly agree with transparency of the operation of the stakeholder committees but publication of information (draft and final minutes, committee documents, etc.) should be for all stakeholders simultaneously. Timing of the provision of information to stakeholders is key to proper transparency. And to avoid some stakeholders/competitors who sit on the stakeholder committees and expert groups having advantage over others who do not, the documents should be published on an appropriate public website at the same time as they are made available to the committee and group members themselves. This should be supported by email notifications of website updates to those who subscribe to such updates.

Special Stakeholder Groups

We note from the consultation that ENTSO-E suggests setting up a perennial TSO/DSO expert group to discuss system operator-specific issues throughout the implementation of network codes. If such groups exist, which appear to exclude other stakeholders from participating, their terms of reference need to be tightly specified and limited in scope. We suggest this for two reasons:

- It is very unlikely that any European Internal Energy Market issue will be limited in its impact to just a few stakeholder groups such as TSOs or DSOs alone. For example, any "technical" issue would often have an element of commercial impact on another, non-represented, stakeholder somewhere.
- Such limited membership groups raise some stakeholders above others, to the detriment of a transparent and open debate on the issues with all stakeholders who might be impacted. However, if such groups are established they should, even more, follow the suggestions outlined above regarding transparency, i.e. that all the information open to such stakeholders who are members should be made public at the same time.

Further consultation

We suggest that ACER/ENTSO-E might consider a subsequent public consultation on the detailed terms of reference for the stakeholder committees when they have been drafted. This will allow more in-depth consideration of the questions above, once the proposed role and powers of the various stakeholder committees have been specified in detail.

In conclusion

We hope that our comments are helpful to the development of the stakeholder committees. As noted above we have nearly 25 year's practical experience of working with and for similar committees in our electricity market.

If you would like to discuss our response, please do not hesitate to contact me on [REDACTED] or by email at [REDACTED]

Yours faithfully

[REDACTED]

[REDACTED]

European Coordination Manager for ELEXON