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Dear Mrs Geitona

Re: C08-GA-45-08 – Implementing the third energy package – An initial consultation paper by the European Energy Regulators.

Thank you for the opportunity to respond to the issues raised in this paper. The comments contained in this response are offered on behalf of Shell Energy Europe BV (SEE BV) and Shell Exploration and Production BV (“Shell”), both of whom welcome the opportunity to provide input to this consultation.

Please note, this response is not confidential. Our views may therefore be published on your website.

Shell’s answers to the specific questions raised in the document are attached in Appendix 1. However, the following general comments are intended to provide additional input that we would ask you take into account.

Shell is supportive of the creation of a European Regulatory Agency, with the main aim of the Agency being to facilitate decisions on matters affecting two or more Member States. It is important that in doing so, the proposed new Agency ensures it promotes an attractive, stable and predictable investment climate and one that minimises bureaucracy.

In looking to prioritise issues to be developed further, we believe it would be appropriate and efficient if ERGEG built upon the work already carried out by the European Gas Value Chain. Since the Madrid Forum initiated EASEE-gas in 2002, this workstream has created more than 14 Common Business Practises covering all the 11 prioritised areas suggested by the EU Commission in preparation for the 3rd Gas Directive. We would emphasise that through this process, industry participants have already laid the ground for much of the work to come through developing necessary common business practices.

Any inefficient subsequent implementation of the output from EASEE-gas’ work has been the result of a lack of necessary legal enforcement by the relevant authorities rather the output of such a model for developing network codes being defective per se. As such, we believe the valuable experience gained from EASEE-gas’ work to date would a useful basis for ERGEG’s subsequent work in prioritising and developing network codes and business practices.

With regards to any consultation process, it is imperative that all relevant market participants have an equal right to:

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- Participate in the process - anything else would be unacceptable.;
- An equal opportunity to influence the initial process of suggesting and prioritising the network code framework guidelines and development of the codes themselves;
- The right to engage via a full and comprehensive consultation process with respect to code development, approval and any subsequent amendment. This involvement should not preclude any involvement of industry associations; and
- A transparent appeals process that can be used in the event that the Agency's findings are challenged must be implemented.

Regarding the specific issue of the nature of the codes themselves, in broad terms it is our view that the role of the Agency should be focused on and restricted to:

- Setting boundary conditions for the development of codes but allow the actual development to be proposed by relevant stakeholders;
- Acting as an arbiter when escalation is required; and
- Consulting with gas market stakeholders on satisfaction with the process and outcome prior to the approval and implementation of the codes

Shell broadly shares both ERGEG's interpretation of the governance model necessary to secure successful implementation of network codes and the view that only legally binding codes will meet the ambition of implementing the simplification and streamlining of the physical transfer and trading of gas across Europe. However, the references to network codes lack, in certain respects, enough clarity to allow for any useful and productive drafting to begin; until this issue is resolved, any work on the codes could become both an unnecessarily lengthy and resource-intensive process, placing a burden on all concerned.

Indeed, we note that the consultation document itself comments that:

'It is important to reach a common understanding on the legal nature and type of codes envisaged before the drafting begins.' (para 10, Appendix 2, Framework Guidelines and European Codes).

In this context, an obvious issue to resolve, and one that will manage stakeholders' expectations, is to determine what the codes are meant to represent? At one end of the spectrum, some will view the codes as a high-level set of arrangements, not prone to frequent changes or revision and essentially designed to provide a relatively static framework to help facilitate cross-border gas flows between markets at different states of liberalisation.

However, at the other extreme, the codes could be viewed as a detailed and prescriptive document used by regulators to govern the behaviour of TSOs, shippers or other code signatories; this model disregards the fundamental point that the code is the TSO's and not the regulator's. In this type of environment, codes are typically subject to frequent amendment or revision.

Under either model, some parties will face a legal obligation; we assume that this will be the TSOs, although the consultation document is silent on this issue. Alternatively, some parties will face a commercial/operational exposure as a result of being Network Users or 'code signatories'; in looking at

many of the areas to be included within the scope of the codes this will typically be parties who contract for transportation services.

However, where there is a difference between the two models is that under the latter option the code effectively becomes a 'living document' that will be subject to change as and when code proposals are raised. As such, the attendant legal obligations and operational/commercial exposure faced by the above parties are subject to change.

Who can suggest changes to codes or the means by which changes will be approved then becomes an important issue as otherwise these areas could start representing a potential source of commercial or operational uncertainty. It is therefore important that this fact and the position of code signatories are acknowledged when developing an appropriate initial code drafting process and the subsequent modification process.

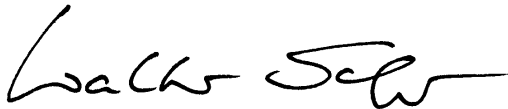
This consideration also applies to end customers. While we suggest that in the majority of cases the direct code relationship will be between the TSO and parties contracting for transportation services or those involved in trading, there are cases where the end consumer may have this relationship with the TSO. For example, with respect to grid connection issues – an area for inclusion within the scope of the codes – this will be the case. We are therefore glad to see that the current consultation document implicitly recognizes this point by numerous references to the role of network users and consumers.

Bearing this point in mind, we suggest in our detailed response there may be some merit in trying to reorganise the codes into two groups based on issues that directly affect: end consumers; and parties contracting for transportation services. In each case, there could be further sub-groupings (this is more likely to be the case with the codes covering transportation services). This may also help the Agency in monitoring that the interests of different stakeholders are being adequately considered.

I trust that you find our comments useful. Please do not hesitate to contact me should you have any questions or require further clarification.

Yours sincerely,

Shell Energy Europe B.V.

A handwritten signature in black ink, appearing to read 'Walter Schaefer', written in a cursive style.

Walter Schaefer
Regulatory & External Affairs Manager
Shell Energy Europe

Appendix 1

Please comment on the Consultation Arrangements proposed in this paper (see Appendix 1 Annex 2) as a basis for the interim period and for later decision by the Agency as its own process.

With regards to ERGEG's general consultation process as part of developing the general regulatory framework, Shell supports the intention to involve all stakeholders and to incorporate Better Regulation Principles. Such commitments are important as they send a welcome signal to market participants that they will be able to contribute to the broader regulatory debate.

It is not immediately clear, though, whether this proposed consultation process will be sufficient to meet the pledge to consult with stakeholders when drafting the Framework Guidelines (see para 38, Appendix 2 – Framework Guidelines and European Codes. On a point of principle, we believe that the delivery of the codes requires the involvement of market participants, EU Commission, Agency (and ERGEG in the interim period), and ENTSO-g. However, the suggested process of consultation presented in ERGEG's proposal is unsatisfactory in this regard.

Our concern relates to the insufficient influence that market participants would have in the setting of priorities; the general consultation process described places no obligation on the regulator to incorporate the views of the market participants.

Instead, Shell believes that market participants – and this could be via their industry associations - should be present in an initial joint priorities-setting process. Firm implementation of network codes in the marketplace requires the buy-in of those affected by the terms, conditions and obligations of the codes, so their early involvement is therefore crucial.

Moreover, it is our belief that the development of network codes requires a different approach than that used in the areas hitherto historically covered by ERGEG's consultations. The development of network codes is characterized by high demand on access to business experts; this involvement throughout the development phase secures a higher quality outcome than using such experts later on in the process, essentially in an outcome-verification exercise, and reduces the risk for extra iterative steps and prolonged development phase. Our suggested approach would allow the different market participants to select which areas and the extent of their engagement, recognizing the fact that not all network code issues would have the same significance to all participants.

Finally, a transparent appeals process is vital. Such a mechanism would help to reduce investment risk to and to secure participants' confidence to the process.

We would also stress the importance of building upon the experience of over 6 years operation of EASEE-gas and are happy to see that GTE+, in the initial work of setting-up a network code development process, has incorporated this experience in its proposals. A process where market participants who will be subject to some or all of the provisions of a code are entitled to engage in its development (also with the opportunity of allocating dedicated resources when appropriate) can be expected to lead to an efficient process and one most likely to result in an outcome of optimum benefit to all concerned.

The role for the Agency should be clearly defined and limited. In this case, there would only be a role for the Agency in the event that it has not been possible to reach consensus, with it having a right to intervene and make a final decision.

At this early stage, we would make a general but vital observation. That is, we would caution against a tendency towards any view that market participants have limitless resources they can devote to this work. Such a view can have negative outcomes as it could leave market participants unable to appreciate the detailed impact of regulatory change on their businesses. Consequently, we would suggest that the

Agency commits itself to letting new regulatory arrangements ‘settle in’ before embarking on further wholesale regulatory reform.

Could the fora (i.e Florence, Madrid, London) be further enhanced to allow stakeholders to make an effective contribution to the development of the single European energy market? How could this be done in a practical way?

It is clearly the case that such mechanisms will continue to play an important role in discussing relevant issues for the gas market place; discussing suggested areas for prioritization may well be such an area. However, the strength of such fora is in addressing what might be termed a ‘strategic’ role regarding the work of ERGEG (or, in the longer term, the Agency).

By contrast, the use of these fora with respect to the specific issue of network code development is limited at best. Based on our experience through our membership of relevant industry associations, Shell does not believe these meetings could satisfy the requirements set forth for work on the framework guidelines or the development of network codes.

By its very nature, work on such issues will be detailed in scope. Given that some market participants will be impacted either legally or operationally/commercially by the codes, it is crucial that the development of the framework guidelines or the drafting of the codes themselves is done at this ‘operational’ level.

Could focused ‘ad hoc panels’ of interested expert stakeholders assist the Agency in the development of regulatory policies? Should they be linked (though without full representation) to the Florence, Madrid, and the new London Fora to avoid the proliferation of consultation structures, ensure the effective delivery of stakeholder views and proper representation? Or should the ad hoc panels be organized independently of the Fora in close cooperation with energy consumer and network user representatives?

There may well be a role for the use of such panels. While this proposal is therefore worthy of further development, there are issues to be resolved that should be flagged-up now.

For instance, even at this early stage it is necessary to underline that the use of advisory panels would require fully transparent processes and the invitation to all relevant market participants to take part. While many might choose to do so through their relevant industry associations – and some might view this as a more practical solution in terms of resources - nothing should exclude the involvement of individual Network Users.

In any event, we believe such a dialogue would increase the quality of suggested framework changes and speed up the implementation process. Furthermore, the use of ad hoc panels could also be used in preparing input to a priority list, both with respect to framework guidelines and network codes.

There may be a natural link to the Madrid, Florence and London fora. However, at this early stage, it is unclear that any role would extend beyond final proposals being presented at these fora.

Additionally, we would like to emphasise that it is organisations such as the Commission, Parliament and Council that should make policies and decide what needs regulating, while leaving the Agency and regulators more widely to develop the means of enforcing those policies and monitoring their implementation. In this context, the term “Regulatory Policies” is somewhat of a misnomer.

Are proposed measures to ensure the proper public accountability of the Agency broadly adequate?

Shell is supportive of the establishment of the Agency. While the Agency’s proposed role is consistent with the aim of furthering a single market, it does have its natural limits. In making this comment, we would, in particular, emphasise that the Agency should not go beyond setting the boundaries of code development; the executive responsibility for developing the codes sits with the future ENTSO-g.

The Agency should also not have a role in raising code proposals. One obvious factor is that the Agency will not be impacted legally, operationally or commercially by the codes in the same way as would TSOs or Network Users.

Moreover, if the Agency is allowed to raise code proposals, it is difficult to see how it will not fetter its discretion with respect to recommending whether or not to support implementation of a code amendment. In effect, the Agency will become ‘judge and jury’ on its own code modification proposals.

Finally, and as we make clear elsewhere in our response, the introduction of a pan-European regulatory institution requires the clarification of roles and responsibility between Agency and Member States – the definition of which areas the Agency will be accountable and where each NRA will be accountable is still not described fully. This must be presented in a clear and unbiased way to all stakeholders.

**What do you consider to be the key elements for the successful establishment of the Agency?
What are the most important issues relating to the NRAs and their role within the Agency?**

First and foremost, the remit of the Agency needs to be set out clearly and unambiguously. This is especially the case with respect to the interaction of the Agency with the Commission, ENTSOG and NRAs.

In broad terms, we understand and support the Agency’s main competence being to facilitate decisions on inter-Member State matters. However, at its very inception the Agency needs to ensure:

- its activities will not overlap with those of other relevant organisations, eg. the NRAs;
- its decisions and those of such organisations are not contradictory;
- it facilitates an attractive and stable investment climate, with minimal bureaucracy;
- it always considers that its primary interests lie with the users of monopoly networks; and
- it understands the impact of its decisions before embarking on further change.

Second, the Agency should seek to minimise the costs it imposes on market participants. It should therefore only consult when it has to and not merely because it is able to do so. In that context, the Agency should set out clearly at the beginning of every year its budget and proposed work plan. In the spirit of fairness, there is enough in the consultation document to suggest that this will be the case.

The Agency Boards should include independent industry experts. In this way, there is more of an opportunity for network users to:

- a) say what they want as customers of the monopoly networks; and
- b) contribute their industry and market experience to the work of the Agency.

With regards to the second question, at this stage the most important issue is to guard against the drive to harmonise arrangements at a pan-European level resulting in a ‘one-size-fits-all’ policy that effectively drags back those Member States where market development is at an advanced stage.

Are the proposed priorities for the codes and technical areas the right ones? If not, what should the priorities be?

In general, we have no objections to the proposed areas of prioritisation. We would, however, draw ERGEG’s attention to the 14 Common Business Practices [CBP] developed by EASEE-gas in the period 2002 to 2008.

These CBPs cover the areas presented as priorities by the Commission in the latter’s September 2007 proposals and are examples of the areas that ENTSOG will typically develop into codes. Hence, comparable reasoning for prioritisation exists through the EASEE-gas platform.

Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If so, what could the groupings be?

We refer to our position on the above question. Furthermore, we also would like to emphasise that the urgent need to simplify and streamline business processes between the stakeholders should be the driving force in setting a priority list of which network codes to develop. In that regard, we very much welcome the commitment to make use of Impact Assessments, with a recommendation that such mechanisms be used for code *and* framework guideline issues.

A subtle variation on the proposed grouping would be to have one group that incorporates all those issues where the end consumer has a direct relationship with the TSO. In short, this would lead to a 'Consumer Issues' section or sub-section of the network codes. Logically, the remainder of the codes would then focus on 'Shipper/Trader' areas.

A key benefit of such a move would be to force TSOs to have a separate and devoted focus on end consumer issues. Subsequently, there would be less likelihood of TSO/end consumer code areas getting drowned out by the significantly greater resources that shippers and traders will typically be able to devote to code development that impact on them.

Which aspects of market design or network operation should be fully harmonised across the Union through the first set of codes?

We refer to our position on the above question. The proposal for prioritisation should be an output from a joint effort by ERGEG (Agency on an ongoing basis) and market participants speaking with equal voice.

Annex 1 of Appendix 2 we describe the content of each area mentioned in the Commission's initial proposals. Do you think the description is complete? If not, what aspects should be elaborated within the areas?

We have no substantive comments to make. The guidelines from the Commission form a good starting point.

Are the mechanisms and observations outlined above – notably in relation to the interaction between the Agency and the ENTSOs (and CEER and GTEplus/ENTSO-E) adequate? Are there changes that should be considered for their improvement?

It is imperative that regional suboptimal solutions do not preclude common pan-European solutions. The three regional initiatives have shown deviating approaches and degrees of maturity with respect to the issues in question. Hence, we are reluctant to support a regional focus in consulting with stakeholders.

For reasons of practicality, the bulk of industry input may come via the respective industry associations. This is not a problem and, to the extent that it increases industry involvement, should be welcomed; pan-European alignment might be easier to achieve via this method.

However, nothing should stop individual market participants, not all of whom will be member of industry associations, from taking part in this engagement process. Moreover, industry associations cannot always represent their entire membership; there can be any number of specific issues where an association member feels unable to support the association's general position.

Are the proposals in paragraph 69 to ensure the regional level involvement of stakeholders adequate? If not, how could they be further improved?

Shell is broadly content with the proposals. In particular, we note that great importance is placed on the engagement of stakeholders (para 26, p7) and agree on the need to ensure that this takes place.

How do you envisage the Regional Initiatives operating after the entry into force of the 3rd package legislation? Will their role become less important, given the development of network codes at EU level?

Notwithstanding what we say above, the regional initiatives will still play an important role, particularly as an area for handling implementation issues that are especially relevant for a limited number of Member States and reflect geographically specific problems. Also, since individual regions are at different stages in implementing business practices, it would be easier to assist implementation of network codes when a limited number of participants are involved and these participants are facing same issues.

The Agency's role will be particularly important at a regional level in guiding relevant NRA's in handling relevant cross border disputes.