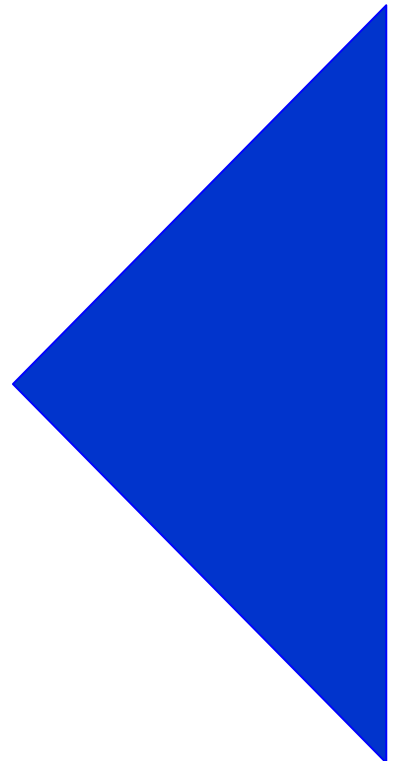

**EURELECTRIC Response to ERGEG
Consultation on Implementing
3rd Energy Package**

TF Florence Forum





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EURELECTRIC Response to ERGEG Consultation on Implementing 3rd Energy Package

This paper has been prepared by the TF Florence Forum.

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GENERAL PRINCIPLES

EURELECTRIC welcomes the ERGEG consultation on “Implementing the third energy package” and sees it vital to ensure that progress is made in a timely manner during the interim period. **We much value the opportunity of having wide discussions on the potential challenges of the third package implementation in good time before the final adoption of the legislation.** Reducing lead times and getting agreement on the priorities and the principles underlying the most necessary framework guidelines and network codes will be essential. **If properly designed, the development of framework guidelines and European network codes will play a key role in facilitating market integration.**

With regard to the implementation process of the third energy package **EURELECTRIC strongly argues for the development of an EU “market integration roadmap” with milestones as guidance for establishing key priorities** and for taking appropriate steps. Once priorities have been agreed, we believe that they should be translated into framework guidelines by using a project management approach with clear deadlines for each region. In this context, clear assignment of tasks will be the basis for effective decision making and implementation. The timeframe of the roadmap should be ambitious, but at the same time remain realistic. In defining a stepwise roadmap, particular attention should be paid to the development of market fundamentals still missing in certain markets which are prerequisites for further market integration.

We believe **it is important to avoid unnecessary delays** and put the time available before the effective implementation of the new regulation to the best use. First of all **a clear understanding as to the roles and responsibilities of the various stakeholders** involved will have to be clarified by the final version the third package. Nevertheless, in order not to lose time during this interim period, we propose that **during the first half of 2009 stakeholders should agree on the EU “market integration roadmap” and the relative key priorities** as a fundamental first step to streamline their work.

Against this backdrop, EURELECTRIC stresses the importance of stakeholder consultation arrangements: principles of stakeholder involvement will have a significant impact on the speed and direction of market development and integration. **The legislation should be primarily defined by market needs and accepted by market stakeholders, so it is important to ensure that market stakeholders are involved early and extensively in the process.** The objective is clearly the quality of consultation conducted (eg. detailed formulation of the codes); this should not be confused with increased quantity.

SPECIFIC COMMENTS

Framework guidelines and European codes

EURELECTRIC welcomes the regulators' initiative to develop a common understanding of the principles and priorities underpinning the framework guidelines and European network codes.

We believe that **the first step will be to agree on key priorities for market development**. As part of its proposal to the Florence Forum, EURELECTRIC developed a European Regional Initiatives (ERI) matrix that represents a list of the core priority issues to be addressed in order to facilitate the development of a well functioning European market and regional market integration. In addition to this, we see it crucial to define clearly the end objective (ie. emergence of a pan-European market and related underlying principles) so as to derive the means and actions to achieve this.

Framework guidelines

We believe **the proposed framework guidelines should translate agreed priorities into guiding principles as a basis for the elaboration of network codes**. Framework guidelines should define for each priority what solutions need to be achieved through the implementation of codes. However, their drafting should not unduly delay the whole process. Moreover, we see at this point a strong need to set a clear definition of the scope and depth of the framework guidelines and European network codes.

Market stakeholders should be involved very early in the process, and should contribute to the work even before the first drafting takes place. For instance, consultations should be carried out when framework guidelines are developed as well as at the initial stages of codes development. EURELECTRIC proposes to contribute to this work and believes that its position papers¹ on key market design issues, particularly EURELECTRIC's Paper "Towards Regional Independent Operators: a main driver for successful market integration" (May 2007), could be effectively used as input for the development of framework guidelines on the corresponding issues.

Network codes

EURELECTRIC welcomes the proposals regarding setting a defined priority order when developing the network codes. We would like to comment, however, on the electricity-related priority list, as outlined in paragraph 22 of Appendix 2.

From our point of view, **the issues outlined in priorities II (capacity allocation and congestion management rules; and transparency rules) and III (balancing rules including reserve power rules; and data exchange and**

¹ EURELECTRIC Position Paper "Towards Market Integration of Reserves & Balancing Markets" – July 2008; EURELECTRIC Position Paper "Towards European intra-day and balancing markets" – November 2006; EURELECTRIC Position Paper on "Market Transparency" – February 2006

settlement rules) are of crucial importance for proper market functioning as well as market integration **and should not be unnecessarily delayed.**

We believe that **security and reliability issues are already addressed at national level². However, from the European perspective, these issues should be considered in conjunction with the RES integration and regional grid planning** (defining appropriate model to share costs).

In addition to the abovementioned priority issues, we believe that **ACER should play a proactive role in favouring investment in cross border related transmission**, both by assessing and ensuring correct monitoring of implementation of the 10-years investment plan, and by providing support, when opportune, to bilateral regulatory cooperation in the case of merchant lines. As far as regulated cross border capacity is concerned, the Agency should develop framework guidelines for the evaluation of the ten year investment plans and how costs shall be allocated between TSOs.

For the reasons set out above, we propose to regroup the priorities for network codes as follows:

1. Capacity allocation / congestion management / intra-day / balancing and reserve power / transparency;
2. Security and reliability / grid investment plan with regional perspective / integration of RES /;
3. Grid connection and access rules / data exchange;
4. Inter- TSO compensation and tariff harmonisation.

EURELECTRIC supports the regulators' proposal with regard to the European network codes being legally binding, directly applicable and enforceable to ensure implementation of concrete actions. The codes should be written in legally precise terms and be made binding through the comitology process.

With regard to paragraph 28 (first bullet point) in the overview paper of the consultation, we have doubts about the need of differentiated national and EU network codes to accommodate regional differences, at least in the medium-long term horizons. However we consider appropriate to temporarily maintain the co-existence of the European and regional/national network codes provided their gradual convergence is ensured. Moreover, we believe that "legally binding, directly applicable" codes should not be subjected to NRAs enforcement but should be immediately implemented.

We support the view that **the work on relevant codes should be started parallel to each other**, but it is important to ensure that the logic of market design is reflected in the sequence in which the codes are drafted. This can be illustrated by

² Moreover, given the very technical nature of network security criteria and standards, EURELECTRIC argues that role of ACER should be to define overall system security objectives while ENTSO should develop the appropriate tools and processes to achieve them.

the following example: the intra-day trading arrangements should be put in place before the cross border balancing market can function, which naturally implies the need for a regulatory framework for intraday trading before balancing services.

Effective stakeholder arrangements

Stakeholder consultation process

EURELECTRIC shares with the regulators the view that current consultation arrangements can and must be improved and welcomes ERGEG's proposals to further amend its guidelines concerning the key principles of consultation. We strongly believe that the stakeholder consultation process should be regarded as one of the key tools to make the decision making process of the regulatory bodies more effective and in line with market realities. **Stakeholder involvement is necessary to ensure that market development will be driven by market needs and that process will be conducive to market integration in an effective and timely manner.**

The stakeholder consultation process should meet a number of requirements in order to maximize its positive impact on regulatory decisions. Relevance of topics, transparency of participation procedure, consistency between topics and the invited stakeholders as well as adequacy of response to stakeholders' contributions are key aspects of an effective consultation process.

Calls for Evidence are often a good tool to assess the possible implications of a certain legislative proposal: we believe the Commission and ACER should make use of these to give market stakeholders a chance to support decision making bodies in selecting the best available options. In addition, we recognize the value of impact assessments and believe that costs and benefits should be carefully considered when making proposals.

We want also to stress that stakeholders' consultations should be extensive and take place from the early stages: from when regulatory documents are first drafted to when the codes have been finalized, including their periodical revisions and updates.

The occurrence of possible problems due to the strict deadlines set out in the Third Package documents has been correctly identified by ERGEG³. In our opinion, having proper stakeholder consultations is a paramount priority: respecting the procedure timetables shall therefore not be at detriment of good-quality consultations, allowing stakeholders to express their views in an informed manner and with sufficient time at their disposal.

In order to avoid that legally binding codes leave excessive room for interpretation⁴ (as is the case with the current CM Guidelines), the Commission should ensure

³ See for instance par. 29 of Appendix 2 on Framework Guidelines and European Codes: "The Agency is obliged to deliver a justified opinion on the draft codes within a period of just two months, which includes a public consultation. Careful preparation will be essential if this timetable is to be met, and without appropriate and sufficiently detailed framework guidelines prepared in advance it will not be possible for the Agency to meet the strict deadlines and the delay in the process will be inevitable".

⁴ Where necessary, explanatory notes should be appended to minimize interpretation gaps by Member States.

that the codes are legally sound and precise, consulting with its legal experts but also with market parties if appropriate.

Finally, we believe ACER should ensure the effective coordination of relevant NRAs' consultations at regional and national level, as well as the effective involvement of all relevant market stakeholders. The creation of a new European Agency should in fact be the chance to better organize consultation processes and avoid the risk of uncoordinated or overlapping consultations on different markets and issues.

Stakeholder consultation structure

EURELECTRIC considers a standing market panel a good solution for a balanced and efficient consultation process and believes that it would deliver market based solutions and reflect stakeholders' needs. Nevertheless, EURELECTRIC recognises that setting up such a panel would require a significant amount of worthwhile effort.

With regard to the proposal to use the Florence Forum as representative market panel, we would like to indicate our skepticism. The Florence Forum cannot be considered as a "standing market panel" due to the wide range of participants and its low frequency of meetings. The Florence Forum was built as a broad arena for the exchange of views, where participants normally present prepared positions, which leaves limited opportunity for debate and detailed discussions and revisions. However, EURELECTRIC considers that the Florence Forum would be an appropriate platform to present and ensure high level coordination of the results of the consultation processes; however it cannot replace more focused events such as hearings.

We recognise that the proposal from the regulators with regard to **setting up various "ad hoc groups" to assist ACER will be a good way to start improving the consultation process**. We also believe that ad hoc group of experts could be useful for the development of specific EU market framework issues like for instance the experience of the ESME group and the CESR/ERGEG Consultative Working Group on Energy. In our view, **the existence of ad-hoc groups should be complemented with the creation of a more structured and representative model** in order to ensure that priorities and guiding principles are in line with market stakeholders' needs.

We want to stress in this context that **ad hoc groups of experts should be authoritative**, in that they should be **composed of industry experts, appointed through their correspondent European stakeholders associations**, who have proven experience and are acknowledged as leading specialists in the relevant areas of expertise.

Finally, EURELECTRIC considers it important to emphasize here once more that **neither the creation of expert groups nor the standing market panel should replace consultation arrangements**: every relevant stakeholder should have the chance to express their views. Moreover, the current arrangements should be improved with the addition of hearings where the inputs provided to the consultations can be discussed.

Coordination of decisions on European and regional level

European level

EURELECTRIC reiterates its call for a balanced governance process. It is of primary importance to find a **proper equilibrium between rule making and supervision** and to ensure that no entity finds itself in a position of a judge and a party to a decision at the same time. We therefore consider clarification of the roles and responsibilities of the entities essential, as is finding **a clear dividing line between ACER and ENTSO** in order to achieve progress during the interim period and beyond. It is also important to make a clear distinction between the competencies of NRA and ACER.

EURELECTRIC generally supports the proposed division of decision making powers between ACER and ENTSO with regard to drafting the framework regulations and network codes. We also believe that **closer interaction of ACER and ENTSO will prove to have a positive impact** on the speed of the decision making process, coherence of the decisions on different levels and clarity of the messages to the market with regard to the commitment to developing a single integrated European market.

Regional level

In order to facilitate the coordination work on market integration we find it necessary to establish **regional committees within ACER and ENTSO**. The tasks of these committees will not be limited to coordination, but will also focus on developing common policies at a regional level bearing in mind the different economic and productive structures of the member States concerned.

With the new regulatory framework designed by the third package we believe that **EREG Regional Initiatives should from now on be used as a pure implementation tool to translate into concrete actions what has been agreed in the decision making process shared by ACER and ENTSO** with appropriate involvement of market stakeholders. ACER and ENTSO should therefore represent the main interfaces at EU level to dialogue with stakeholders and coordinate the regional market integration process. **The overall goal of creating a single European market must be kept in mind**: it is very important that the regional work is coordinated at European level possibly through European Committees under ACER and ENTSO.

As a last point, we would like to highlight that the role and competences of ACER in relation to other authorities both at national and European level, (e.g. competition and financial authorities) will have to be defined very clearly in order to be consistent with accountability principles. This means that an authority having responsibility to monitor a specific function of the market should also have the competence of enforcing and taking legal action in case of alleged breaching of the rules.