



23 December 2008
Ref: 08GTE346

Mrs Fay Geitona
CEER Secretary General
E-Mail: fay.geitona@ceer.eu

Dear Fay,

Subject: ERGEG / CEER “Implementing the third energy package” (C08-GA-45-08)

Clarity about how the proposed Third Package will be implemented is essential to ensure that we make timely and efficient progress towards a better functioning single European gas market. This consultation is therefore welcomed and the opportunity for responsive conclusions affords a significant opportunity to define the most appropriate way forward.

The relationships, role and responsibilities of the Commission, Agency, ENTSOs and stakeholders should be consistent with the Commission’s proposal. For example GTE believes that the responsibility for priority setting should reside with the Commission with the Agency in an advisory role and that the Agency should provide opinion, rather than approve, ENTSOGs Statutes. Disproportionate influence should not accrue to the Agency either in the transition or post-implementation periods.

GTE respects that the regulators have positioned themselves as guardians of the public interest. The enhanced regulatory co-ordination envisaged within the third package should therefore afford greater opportunity to ensure that TSOs’ incentives, particularly in respect of establishing a sound investment climate, are aligned with the public interest.

The Framework Guidelines and the codes development processes must recognise and remove regulatory and legal inconsistency.

Our recent Annual Work Programme consultation confirms that inclusive development and consultation processes will be essential to deliver outcomes that fairly balance the interests and aspirations of all stakeholders. It is therefore essential to develop a clear understanding of how “end to end” processes will work to both establish the initial framework of European network codes and how they might be refined as we progress towards the single European market.

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Gas Infrastructure Europe (GIE) represents the interest of the infrastructure industry in the natural gas business such as Transmission System Operators, Storage System Operators and LNG Terminal Operators. GTE+ is a working group within GTE set up to indicate the first step towards creating the ENTSOG envisaged by the Third Package.

The lead responsibilities associated with the different stages in the initial development of the codes are allocated to the Agency and to the ENTSOs. This is appropriate but each stage must involve inclusive and participative processes to ensure favourable outcomes and timely progress. GTE believes that it must be the regulators' responsibility to ensure that stakeholders are mobilised to play their part, together with ENTSG and the Agency in developing the Framework Guidelines. GTE believes its proposal outlined at Madrid XV (and attached as Appendix 1) for the ENTSG led gas network code development and consultation processes provides a model to assist more detailed definition of the Agency proposals. Specifically, for example, GTE believes that the Agency's Framework Guideline development processes should feature the use of a "core group" to contribute to development in a similar way as GTE envisages within the Stakeholder Joint Working Session phase of the ENTSG led part of the processes.

GTE notes that ERGEG / CEER attach significant importance to the number of code areas and the opportunity for consolidation. What is important is to establish the scope of the priority codes with the market to ensure good and timely progress. The initial codes should be focussed no broader than is necessary to ensure that they do not impinge on matters that should be dealt with by technical specialists (e.g. CEN in respect of technical standards) or are better left to the market (e.g. development of trading and market rules that are not necessary within the network codes). However when determining the scoping area for each of the 11 areas we should take the opportunity to minimise overlaps to ensure consistency across the codes and to facilitate later refinement (if necessary).

Whilst GTE aspires that the first European network codes will deliver substantial progress it is unlikely to represent the "end game".

Therefore there will be a requirement for change processes that might need to refine both Framework Guidelines and the European network codes. Where such changes might be substantial the processes should reflect similar responsibilities and accountabilities to those used to establish the initial European network code. Additionally the change process will need to find an appropriate balance between flexibility (to facilitate rapid evolution) and stability (to allow for implementation, learning and to avoid costs of rapidly changing systems/processes).

GTE acknowledges that the implementation timescales of the Third Package imply that ENTSG could not be established and fully operational before 2011.

Whilst delivery of the Third Package is essential to create the environment to ensure efficient and timely progress it is essential that appropriate foundations are laid during the interim period. GTE will therefore continue with its 2009 AWP which is focussed on delivering the ENTSG's organisational design as well as some tangible projects aimed at delivering short term benefits to the market.

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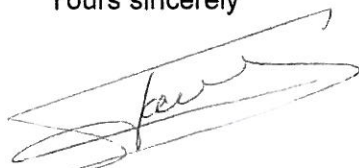
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GTE again offers to work with regulators and wider stakeholders to develop some early Framework Guidelines. Furthermore GTE would welcome the opportunity to work with regulators and other actors to establish the necessary conditions that would be needed to enable the start of detailed code development activity during the interim period.

This response also includes an Appendix describing our proposals for Network Code development & consultation processes based upon GTE's Madrid XV presentation. GTE believes these proposals, which have been warmly received by stakeholders, should inform the development of the Agency's Framework Guideline development process. The response also contains a second Appendix providing some specific comments on questions raised in this consultation.

GTE looks forward to further discussion during the finalisation of your conclusions document.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Laurelut', is written over a light blue horizontal line.

Jacques Laurelut

GTE President and GTE+ Transition Manager

Appendices:

1. Network Code Development & Consultation processes (ENTSOG Led parts)
2. Feedback on specific questions

Appendix 1

GTE Proposals for post – Third Package Consultation & Development Processes

GTE presented the attached presentation material and provided the explanation attached at the Madrid Forum XV on 6th November 2008.

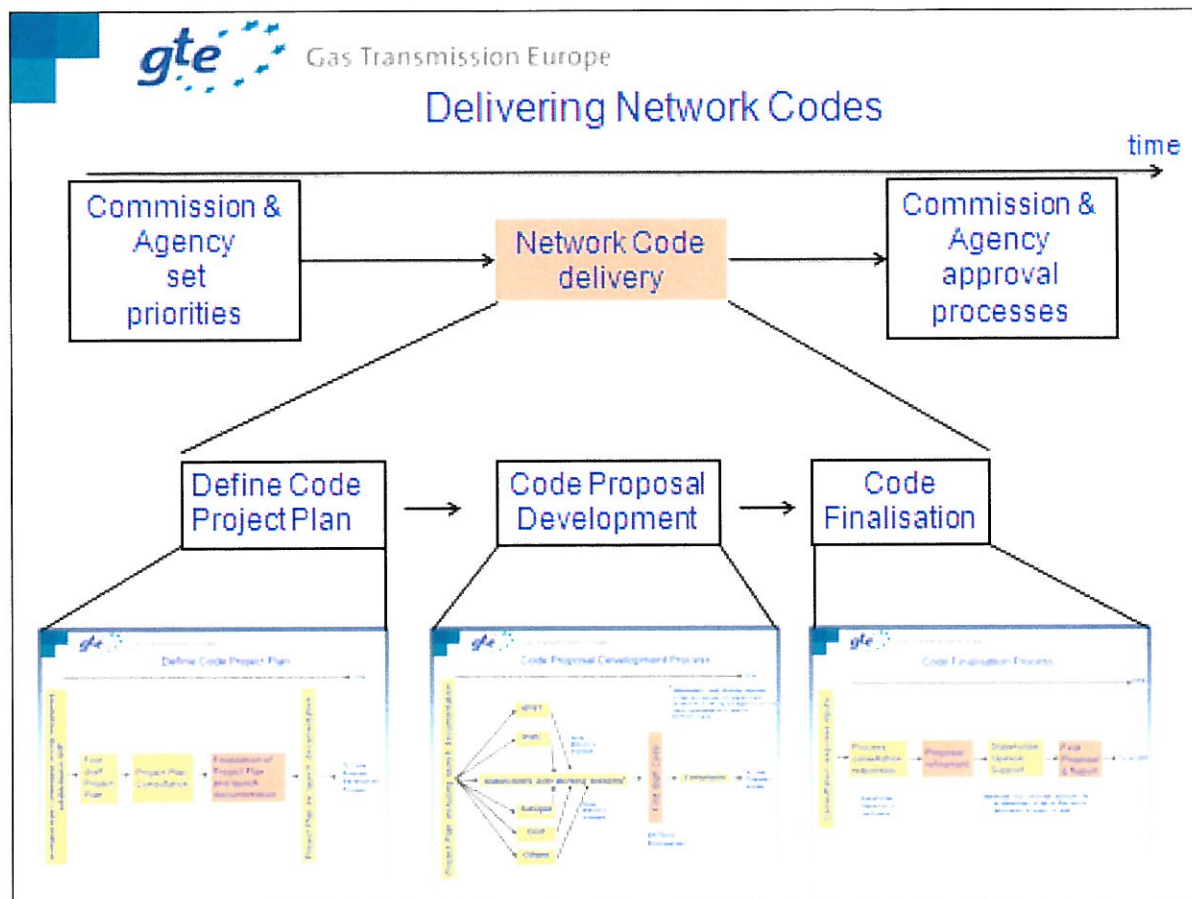
The material focuses on the part of the process labelled Network Code delivery for which ENTSG will have the lead responsibility. As GTE suggested at Madrid XV it is now essential that the other elements of the process are outlined at a similar level of specification.

This is essential to ensure that the processes are understood and the extent of actor involvement in the processes is appreciated; success will require substantial resource commitment from TSOs, regulators and stakeholders.

Specifically ENTSG believes that a “core group” (including ENTSG and/or TSOs and stakeholders) should contribute to the Agency’s framework development process.

GTE advocates that the regulators need to develop far more inclusive processes involving stakeholders and ENTSG/TSOs, particularly during the Framework Guideline development process. The ENTSG led parts of the process are now well understood, and welcomed, by stakeholders. Building a comprehensive end-to-end description of the process, highlighting how ENTSG/TSOs and stakeholders will be involved is therefore essential.

(See “Delivering Network Codes” slide on page 5/28.)



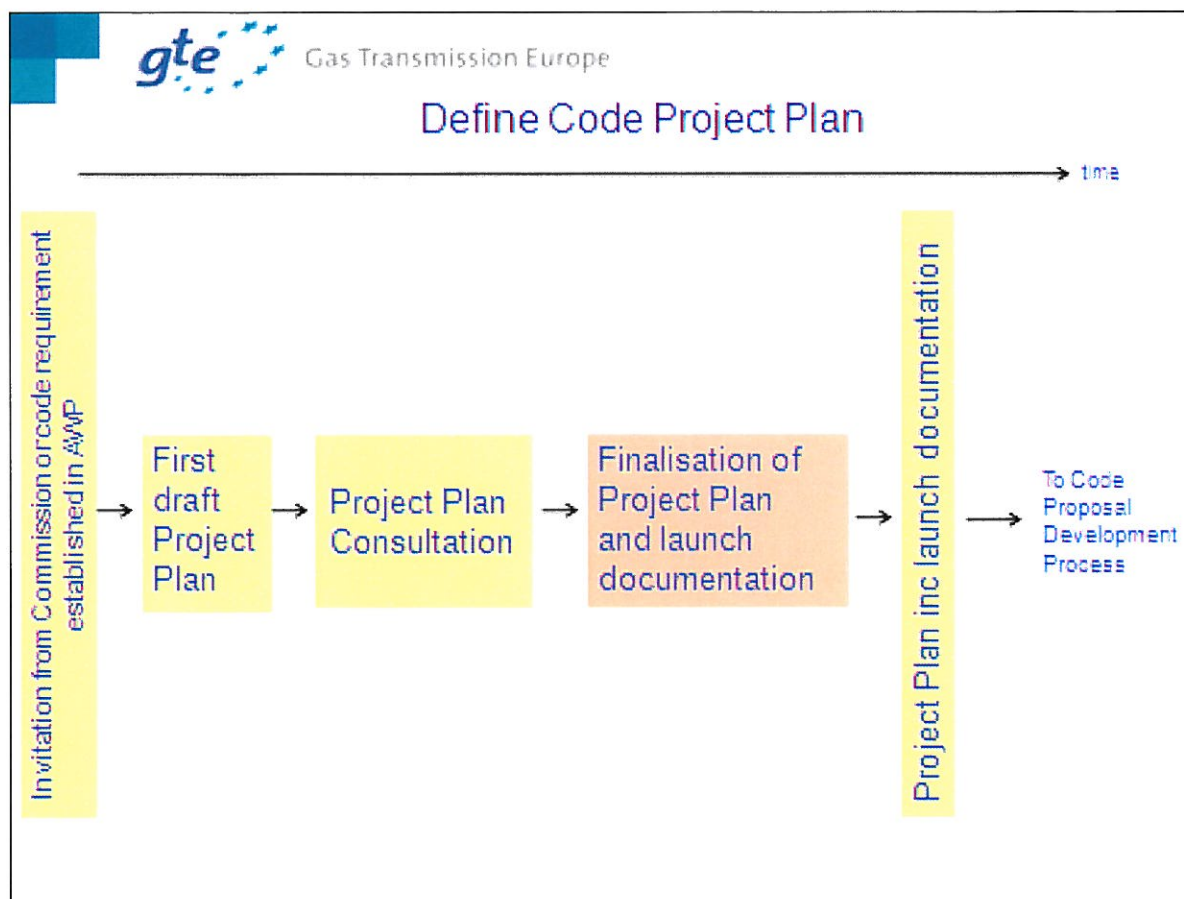
Context slide

The (European) Network Code process is best considered in three phases:

- Initiation & completion of Framework Guidelines**
 The responsibility for establishing **priorities** rests with the Commission
 Commission will instruct Agency to generate **Framework Guidelines**
 Commission issue **invitation** to ENTSOG to develop the Code
- Network Code delivery**
ENTSOG Responsibility to deliver Code proposal to Agency
Comprehensive stakeholder involvement within the process
Presentation/description focussed on steps in this part of the process
- Approval and implementation processes**
 Agency to **receive Code proposal**
 May **consult** stakeholders and seek ENTSOG refinement
 Final Code to **Commission**; perhaps **comitology**

Envisage three phases to (ENTSOG led) Network Code delivery process:

- **Define a plan (“the Code Project Plan”)**
 - Enables stakeholder inputs to inform/shape plan
 - Establishes aspiration / ambition level
 - Confirms and/or defines inputs to process
 - Ensures resources / commitments from all stakeholders understood
- **Code proposal development process**
 - Interactive and responsive working/development sessions
 - Seek to establish widely acceptable process; consistent with Framework Guidelines
 - Establish initial code proposal and consult
- **Code finalisation process**
 - Taking account of feedback
 - Refining Proposal
 - Seeking opinion of stakeholders (particularly Associations)
 - Delivery **ENTSOG** proposal (because it is an ENTSOG responsibility)



Define Code Project Plan

- **"Trigger"**

Most likely from Commission invitation and delivery of Framework Guideline
Scope for "voluntary code" as well
Annual Work Programme will have foreseen project

- **Why a plan?**

Sound basis for work; establishing viability, securing resources,
Project plan elements

- Objective
- Background material including work already undertaken, assumptions, etc
- Timelines for development phases/milestones
- Detailed description of resources required ("core team requirements" including identification of participants (including stakeholder resources) and commitments to do "pre-work" and to be responsive to outputs from the process (e.g. developing, analysing, refining proposals)
- To include "launch material" – necessary material to be prepared (within ENTSG but informed by Stakeholder inputs) to ensure Joint Working Sessions can immediately start work and be productive

Project plan a necessary investment to ensure robust ambition, commitment and confidence

- **First draft project plan**

Builds on stakeholder material and decisions from Commission priority setting process; ENTSG Annual Work Programme (AWP), Framework Guideline, more recent stakeholder (including TSO) inputs

- **Project Plan Consultation**

Rapid /short Consultation about Plan; about process/plan not proposed code itself

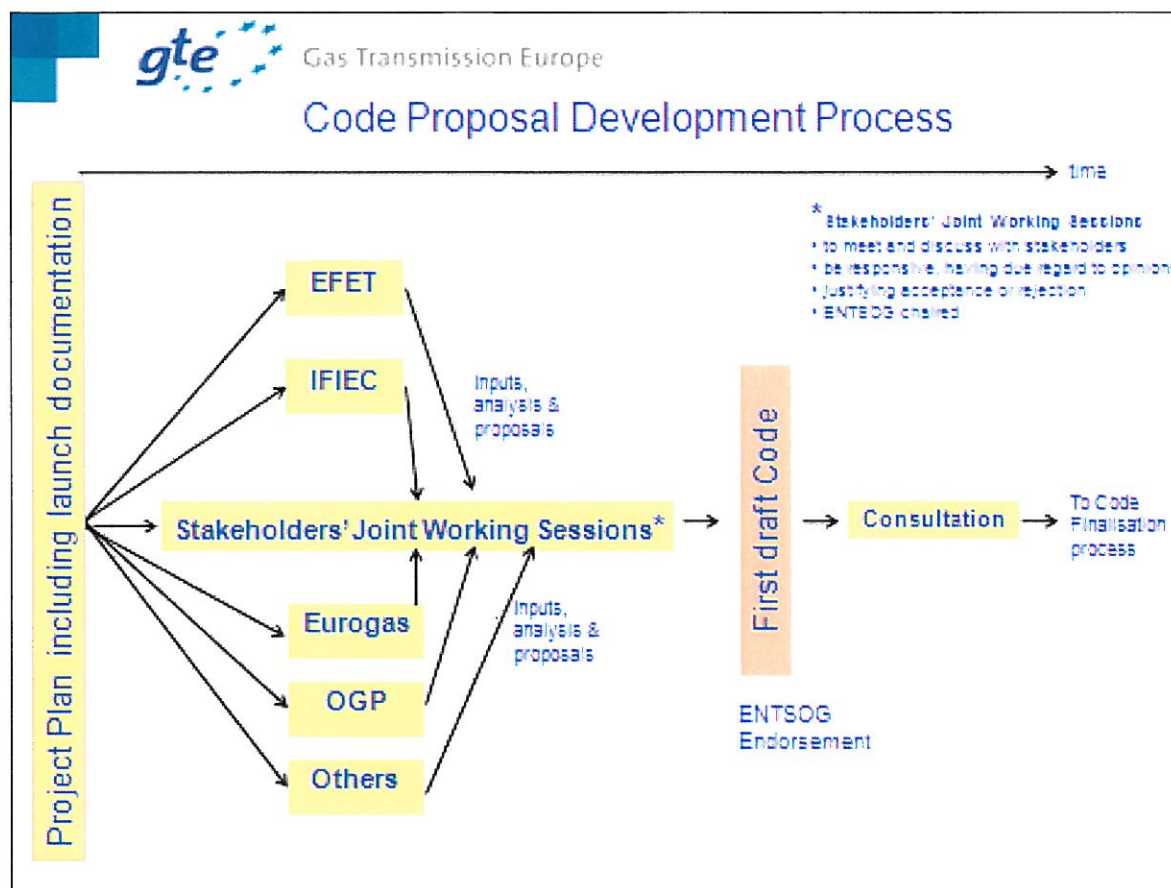
To establish a robust and acceptable plan; secure stakeholder commitment

To confirm "core development team" – named persons from individual stakeholders, Associations, TSOs and ENTSG (as appropriate) – desire to have strong, diverse team at the core of developments to be complemented with "open access" to all

- **Finalisation of Project Plan and launch documentation**

To take account (wherever possible) of feedback

ENTSG governance to sign-off on plan; indicates commitment to Code



Code Proposal Development Process

• Cornerstone for this phase – Stakeholders' Joint Working Sessions

To develop and make progress with comprehensive stakeholder involvement

Will require substantial commitment from relevant stakeholders – intensive development activity with both “pre-work” and “homework” – not a passive activity

To be responsive, having due regard to opinions/positions expressed – justification of acceptances / rejection – process to capture this on an “ongoing basis”

Aspiration to expose major challenges / differences, and seek resolution at this stage, or at least to justify acceptance/rejection – philosophy is to address issues as early as possible in the process and preferably before the formal code consultation stages

ENTSOG chaired

Open meetings but aspiration to have dedicated “core team” to provide continuity

Communication of all relevant material via website with e-mail alert services

Principles for engagement to be defined – might envisage a “Code of Conduct” (for ENTSG / TSOs / other stakeholders)

Agency/regulators to have option to attend SJWS

Outputs need to provide high quality draft code or sufficient detail to enable writing of code

- **First draft code**

To be the subject of internal ENTSG governance; consistent with ENTSG having the obligation to produce the Code

To be developed in the context of SJWS outputs having due regard to opinions expressed in that development phase

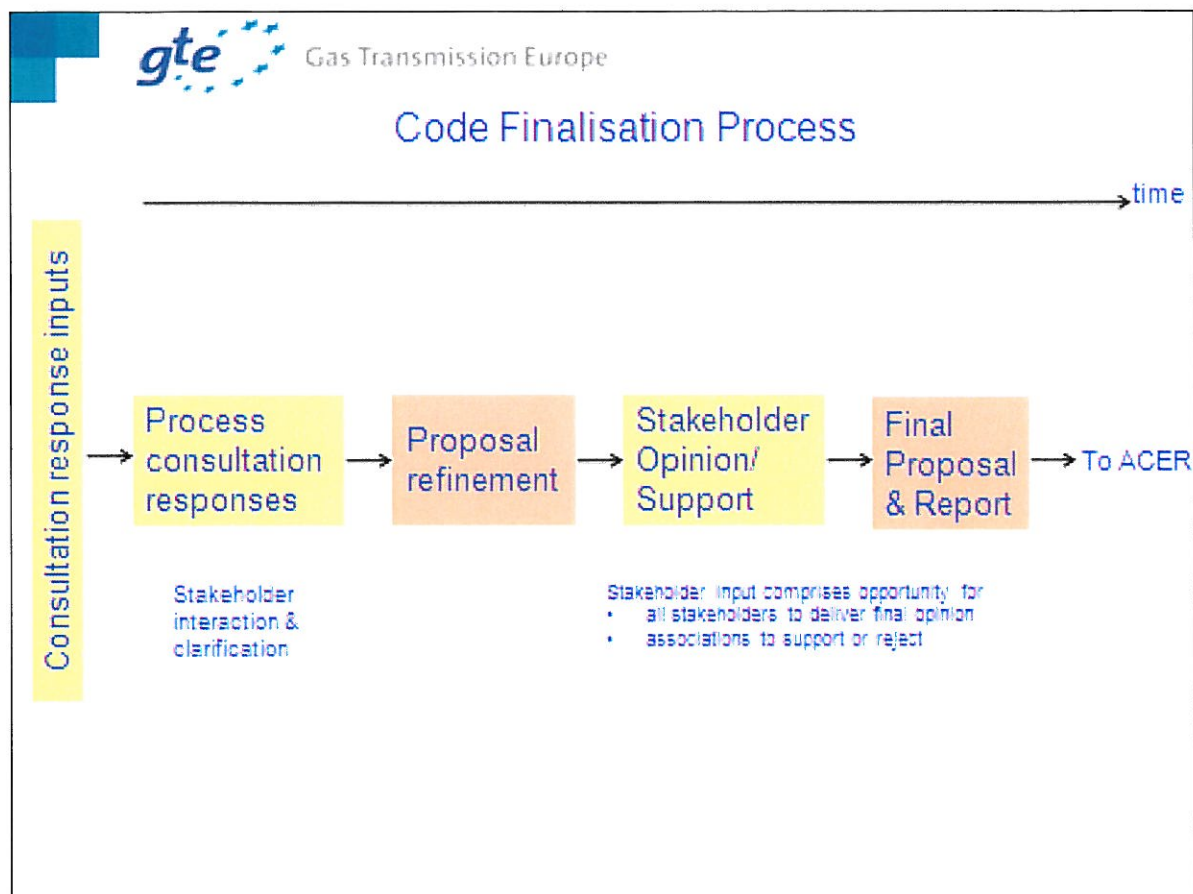
Document to include description of work and findings of SJWS, key differences of opinions (if they have emerged), justifications and rationale for choices made in the proposal. The document will include draft code text that could be submitted to the Agency if no further changes arise from the consultation process

- **Code Consultation**

The consultation would be public

To be circulated/notified to stakeholders on e-mail distribution lists (via e-mail alert services) – ENTSG would expect to contact any major players obviously missing from SJWS process or e-mail subscriber lists.

ENTSG commit to take into account all opinion expressed and to explain rationale for acceptance and rejection of suggestions



Code Finalisation process

Process steps at ensuring stakeholder involvement in the code finalisation stages and to ensure that stakeholder views about the proposal inform ENTSOG's recommendation and the Agency's subsequent deliberations.

- **Process consultation responses**

Experience already suggests that dialogue is necessary to ensure full understanding of submitted consultation response

Dialogue will be used to ensure understanding and to explore scope for refinements

- **Proposal refinement**

Wherever practical seek to involve stakeholders in the refinement process

Internal governance within ENTSOG to ensure TSO buy-in to the proposal

- **Stakeholder opinion / support**

Having produced a refined (where necessary) proposal seek stakeholder opinion

Seek opinions from all stakeholders (with rationale if stakeholder is not supportive)

Seek (Madrid Forum) Associations support or rejection of the code

Views and support/rejection positions to inform ENTSOG's final recommendation

Envisage only minor changes possible between refined and final proposals – otherwise would invalidate stakeholder opinions and Association support/reject views.

- Final Code Proposal (including report)

To include recommend code text plus a report on the rationale underpinning the proposal

To be delivered via the ENTSOG governance processes having been subject to governance arrangements of the ENTSOG's General Assembly

Appendix 2 Feedback on specific questions

The Work of the Agency

Questions

- A *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.*

The consultation arrangements for the Agency led processes need to be considered in the context of the "end-to-end" process.

Specifically with regard to the initial development and refinement of codes the processes need to ensure efficient co-operation between Agency/ENTSO avoiding unnecessary overlaps (for example by defining circumstances when Agency might consult at the end of the code development process).

The Agency led processes must involve more than just consultation. It is important that both the Agency and the ENTSOs led inclusive development processes. The voice and ideas of stakeholders must inform outcomes; regulators and/or TSOs do not, and cannot be expected to, know the most appropriate way forward.

Continuity in Agency and ENTSO led processes will be critical. Within each major subject area we envisage that a "core group" concept should be introduced as explained in Appendix 1. The aspiration to convene a consistent group to work throughout the process (Framework Guidelines, code development, implementation, refinement) should enhance development efficiency and provide the necessary continuity within TSOs and stakeholders to enable well understood and beneficial proposals well aligned with fostering the improved operation of the market.

- B *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?*

In gas the Madrid Forum embraces the associations that GTE considers must be involved in the development of the single European energy market. However the Madrid Forum is infrequent and can therefore only play a small, but important, part of the process. The Madrid Forum therefore should have a role as a sounding board.

The delivery of the single European market will require a step change in stakeholder participation levels; stakeholders have a major role to inform the way forward. The associations represented in the Madrid Forum need to consider how they can better co-ordinate their members to ensure their members' interests are best represented. However the development and consultation processes will need to ensure that individual companies can participate and inform outcomes.

In relation to gas Madrid could serve to report on progress, hearing feedback, providing a forum for exchanging views on policy. However Madrid in its current form will be unlikely to facilitate extensive deliberation so most detailed work/inputs will occur outside of Madrid Forum.

- C *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?*

Ad hoc panels (perhaps similar to the “core group” proposal outlined in Appendix 1) are likely to be essential for each major subject area. These panels should inform but should not determine policy; policy should be produced taking account of wider views provided by wider consultation.

The Commission might wish to appoint panel members or to issue invitations to attend. Given ENTSGs role it is essential that any ad hoc panel must include ENTSG and/or TSO representation. The “ad hoc panels” should:

- comprise technical experts (N.B.: Agency / Commission may require more generalist strategic panel) and be expected to continue into the ENTSG led activities (probably with significant numbers of individuals from “ad hoc panel” featuring in the “core group” for SJWS)
- comprise relevant associations/stakeholders as invited by Commission
- be viewed as independently organised not as sub-groups or delegations of the major Fora.

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

The Agency is accountable to the Commission.

However a high degree of transparency associated with the Agency's processes, particularly with regard to the conduct of its consultation processes and its decisions with regard to Framework Guidelines and codes should increase confidence and therefore the efficiency of these processes.

- E *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?*

The Agency needs to deliver open and inclusive processes that ensure efficient participation of all actors in the work prescribed in the Third Package.

A primary objective of the Third Package is to enhance regulatory co-ordination. NRAs need to be bound to comply with Agency decisions, including seeking to abide by and to implement Framework Guidelines and European network codes. TSOs need assurance that they will be properly funded to implement the codes and comply with requirements arising from the third package processes.

Framework Guidelines, Codes and Other Cross-Border regulatory Issues

Questions

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

There is general agreement amongst regulators/stakeholders/TSOs that the three main gas priorities are transparency, investment and capacity. However what is less clear is what needs to be done now and later in respect of each of these areas.

The Commission should use Madrid XVI to confirm these priorities, or to set alternatives, for the interim period.

An inclusive process should then be used to define the scope of both the priority work and other activities within the 11 areas during the rest of 2009. Where appropriate this work should inform the development of framework guidelines in the confirmed priority areas. During the later part of 2009 we should contemplate what work to support network code development should take place in the interim before ENTSG is created.

GTE is ready to work with ERGEG and stakeholders to enable progress in the interim.

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

It is premature to define any groupings at this stage. The aspiration should be to develop the codes on a progressive basis to deliver a timely and coherent framework. It is critical that the subject matter is well defined for each code development process so that the interactions between separate developments can be well managed.

To ensure efficiency we may need developments to span and include subsets of 11 areas identified in the proposals. This is why the Commission's priority setting process is critical to define the appropriate scope for each initiative.

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

Attention must be focussed on removing unwarranted barriers to the single European market

Whilst harmonization is desirable the essentials for the market are access to gas, access to capacity (the networks) and freedom of choice for customers; ENTSG's role is primarily about capacity and network access.

It still requires clarification as to what extent harmonization of network access is credible in the initial codes. However the framework guidelines and network codes should enable migration towards greater harmonization where it is economic and efficient to do so.

It is essential that Agency and ENTSG work with stakeholders to deliver tangible progress in the short to medium term. The aspiration to achieve full harmonization, which would involve substantial changes to many aspects to the existing regime (and particularly the legal and regulatory frameworks) is not credible as a first step. Pragmatism is necessary; an unrealistic aspiration for harmonization, with its attendant delays, must not be allowed to frustrate progress.

- D *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?*

GTE, regulators and stakeholders need to identify priorities within each area.

Regional considerations in moving to a single European market

Questions

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

Ensuring consistency between European and regional initiatives is critical; we must make efficient use of all resources (regulatory, TSO, stakeholder).

The third package envisages a holistic approach: involving framework guidelines, code development, implementation, refinement. The processes associated with each should be used to ensure efficient outcomes at both European and regional level.

Regional developments should arise from both top-down considerations (ie early implementation of European approaches on a sub-geographic basis (ie localised fast track approaches) and bottom-up situations (where pilot studies are used to test the validity of approaches that might have wider application following evaluation and roll-out).

Regions should therefore be defined on a case-by-case basis for each subject area and the governance structures within ENTSG and Agency should be structured to best facilitate regional co-ordination. For some work areas the regions might not be defined on a contiguous basis; specific environmental considerations eg: regulatory, legal or market framework issues might imply that a "differential" approach is necessary, at least as an interim approach.

However where regional approaches are used it is crucial that developments should not advocate diverging approaches which may then hinder subsequent delivery of the single European market.

- B *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?*

Work which has started within the GRI and which is progress well should continue to fruition. However once the third package is implemented GTE would expect, on a progressive basis, the GRI initiative to be replaced by the co-operation (both (European and regional) envisaged within the third package).