

VIK's response

to

**ERGEG Public Consultation:
Implementing the 3rd Energy Package (C08-GA-45-08)**

Essen, 22.12.2008

General remarks

VIK welcomes ERGEG's initiative to consult stakeholders on the implementation of the third energy package. The objective of the third package is to speed up the process of market integration in Europe and competition among energy suppliers on behalf of end consumers. Therefore the third package contains measures for the removal of cross border barriers by investments, TSO-cooperation, harmonization of calculation and allocation procedures and transparency. Also the third package contains instruments to improve conditions for access to the grid and balancing on behalf of grid users.

Defining clear and binding European codes on the availability, access and use of infrastructure and a clear framework for multi-year infrastructure planning and investment will be crucial to create a truly European energy market for the benefit of energy consumers. Priority setting and meaningful consultation of stakeholders are key for a successful implementation.

To ensure meaningful involvement of all relevant stakeholders in the implementation process, VIK suggests to include the following key elements:

- All representative organizations, representing all groups of market parties, should be involved in the consultation process. Stakeholder organizations themselves are in a position to evaluate whether the topic is important enough for them to participate in the consultation or not.
- Representative organizations need to have the time and information to respond effectively to proposals from ENTSO and the Agency. This requires clear proposals, with extensive argumentation, including background studies of alternatives, explanation of choices made and an impact analysis on the market and network users. These documents should be made public and sent to the representative organizations at least 8 weeks before discussing them, or before a written response is asked. This time is needed for internal discussions with members of the representative organizations from different EU countries.
- ENTSO's proposals should include extensive explanation on the way ENTSO took into consideration the remarks and questions made by stakeholders and the reasons why remarks have not been taken into account or questions have not been answered.
- Stakeholders should be consulted by the Agency on the ENTSO's proposals sent to the Agency. These proposals could differ from the initial proposals. For this consultation process also time and information are crucial, like mentioned above.
- The number of consultations needs to be kept manageable and well coordinated by the European Commission, the Agency and ENTSO. Parallel consultations on the same topic should be avoided.

The work of the Agency

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 laid down in Appendix 1 Annex 2 are generally welcomed with regard to how the regulators (the Agency) will consult and how it will respond to consultations. In particular, the publication of a summary of responses received is a very useful tool for stakeholders to find out why the Agency has accepted or dismissed certain remarks made by the stakeholders.

With regard to the question whom to consult, in no. 4.i) of Appendix 1 Annex 2, the group of network users should be separately added. Also, stakeholder organizations should be addressed

directly when a new consultation is launched. It is not sufficient to publish a new consultation on the internet.

Moreover, enough time to respond should be given. A minimum period of eight weeks, as suggested in the consultation agreements, seems appropriate.

It is important to note that full stakeholder representation through consultation procedures should not only be guaranteed at the level of the Agency but also at the ENTSO-level. Therefore, also during the process of drafting network codes within ENTSO, the consultation principles as laid down in Appendix 1 Annex 2 should be observed.

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?

We consider the existing fora (Florence, Madrid, London) to be inadequate to allow for an effective stakeholder participation. These fora take place once a year which is certainly not enough to guarantee an effective involvement e.g. in the process of creating network codes.

Moreover the meetings of these fora gather a large group of people. Therefore they are well suited as a tool for providing information about the progress of certain projects to the different participants, but it not realistic to expect that within these for a, detailed work can be done in terms of drafting network codes.

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?

Such ad-hoc panels seem to be better suited to guarantee the involvement of stakeholders in the process of setting up network codes or framework guidelines etc. These panels should be assigned a specific task and consist of experts in the respective field. For every specific topic (e.g. each network code) there should set up be a different panel. These panels should not comprise too many participants, but full representation of all groups of market actors must be guaranteed, depending on the topic in question (organizations may choose to participate in some but not all of these topics). These panels could be linked to the fora in such a way that a representative from each panel reports to the respective forum.

In any case, these expert panels can not replace formal consultations (see question A), but be complemented by these consultations.

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

In general, the proposed measures seem adequate.

Moreover, an impact assessment constitutes an essential part of each process, after receiving the responses to the consultations and before giving advice to the Commission or before taking specific decisions. This impact assessment needs to be published, as well as the summary of responses received within each consultation.

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?

Besides the Agency's responsibility relating to the setting up of codes and a network development plan, the enforcement of these rules is of utmost importance. A critical factor in the success of the Agency will be strict compliance and enforcement of EU regulation. However, from this consultation it is not clear what priority the Agency would give to enforcing regulation, according to ERGEG. Also the Agency needs to be well-equipped both in terms of authority and staff.

Framework Guidelines, Codes and Other Cross-Border regulatory Issues

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

It should be made clear that the prioritisation must not lead to a situation that progress on lower priorities is delayed until all codes with a higher priority level have been finally adopted.

For industrial grid users, the most important aim is a secure grid which supports an integrated European Energy market.

- Therefore, the highest priority should be attached to the topic of congestion management, including capacity calculation and capacity allocation, as well as security and reliability rules and emergency procedures.
- Within the next priority group, there are balancing and reserve power, transparency and interoperability rules.
- Issues of grid connection should follow.
- The lowest priority should be assigned to harmonization of tariff structures including locational signals, issues of data exchange and settlement, and energy efficiency within the grid.

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

The proposed approach of grouping the different areas seems practical, since it may help to reach synchronicity between different codes. The following groups are conceivable:

- Congestion management (including capacity calculation and allocation)
- Network security (security and reliability rules, emergency procedures, interoperability)
- Balancing rules and reserve power
- Data issues (transparency, data exchange, settlement)
- Grid access (grid connection and access, harmonization of tariff structures including locational signals)
- Energy efficiency

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

We suggest to follow the priorities identified above (see question A)

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?

We mainly agree with the descriptions given in the text. Nevertheless, regarding certain issues some additional remarks are necessary:

- Within the issue of security and reliability, special attention should be placed on the options to improve the quality of the grid in terms of duration and frequency of interruptions as well as voltage characteristics.
- Regarding automatic load shedding systems (no. 13), procedures should be designed that make sure that end users which are part of automatic load shedding schemes are involved in the process of setting up these systems, e.g. in terms of determining the sequence of load shedding.

The ENTSOs and European Energy Regulators

A 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?

A published document outlining the interaction processes between the Agency and ENTSO would be welcomed.

With regard to the participation of experts from the Agency or the Commission in working groups of ENTSO, there are some reservations: Such an involvement of Agency and Commission could entail the danger of compromising the independence of the Agency or the Commission, at least in the public perception. This should be avoided.

Regional considerations in moving to a single European market

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

It should be added that stakeholder involvement / consultation procedures at the regional level should follow the same standards as the Agency's consultation processes (see above, ch. 2).

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?

Even after the creation of the Agency and ENTSO, the regional initiatives could play a role in creating an integrated European market. Their future role may be to involving stakeholders on a regional level and making proposals to ENTSO or the Agency. The task of the Agency is to ensure

that the regional proposals and improvements do not lead to the regional markets diverging, but to ensure that regional integration remains compatible with European-wide harmonized integration.