

POSITIONS



Implementing the third energy package - An initial consultation paper by the European Energy Regulators

Ref. CO8-GA-45-08

Introduction:

8KU is the political platform of eight communal utilities in Germany:

- *HEAG Südthessische Energie AG, Darmstadt*
- *Mainova AG, Frankfurt*
- *MVV Energie AG, Mannheim*
- *N-ERGIE Aktiengesellschaft, Nürnberg*
- *RheinEnergieAG, Köln*
- *Stadtwerke Hannover AG, Hannover*
- *Stadtwerke München GmbH, München*
- *Stadtwerke Leipzig GmbH, Leipzig*

With an annual turnover of about € 17 bn and 27.000 employees altogether, the eight companies are of considerable importance for the competitive environment in Germany's energy sector.

Given the fact of the importance of encouraging energy trade for our business, we would like to comment on several of the questions asked in this consultation.

In general we would like to call attention to a few crucial elements of regulation that are addressed in the 3rd Energy Package:

The ultimate goal of the package is the achievement of a single European gas and electricity market. Energy shall flow as freely in the single market as it flows in the member states.

Therefore, it is also crucial that the European energy infrastructure allows all market participants to take an active part in competition and to have access to liquidity prerequisite to a proper market development.

It has to be accentuated firstly that the independence of the Agency proposed in the energy package has to be encour-

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aged; the Agency should be independent from the Commission for reasons of transparency and separation of influence,

Secondly, we need a clear distinction between the competences of the Agency and the NRAs,

Thirdly, in line with the ambition of the package to create a *European* market, the Agency should focus on cross border issues,

Fourthly, there is a strong need to harmonize basic grid related structures of cross-border trade, e.g. capacity allocation and congestion management.

**Comments on:
Part 2 - 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.*
- 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?*
- 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?*
- D *Are proposed measures to ensure the proper public accountability of the Agency broadly adequate?*
- 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?*

In general we agree with the way of consultation proposed in the document.

However, in line with what is stated under cipher 15 with regard to the involvement of “all network users”, one should also involve DSOs, because any development of network codes will also affect them.

With regard to consultation during the interim period (Appendix 1 Number 2) we would like to emphasize that a continuity of decision-making is crucial. Therefore the preparatory work of ERGEG and the decisions in the interim period should be adopted by the Agency.

We agree with what is pointed out under cipher 6 on the importance of consultation for any good policy development. Therefore – as pointed out earlier – we suggest to consult extensively and at an early stage with market participants, including DSOs.

In general, it is important to cover the following issues:

- Commission priority list
- ACER Guidelines
- ENTSO 10 year investment plan
- ENTSO draft technical and market codes
- ENTSO final technical and market codes

The inclusion of DSOs, we suggest, should also be taken into account when changing #4.1) of the ERGEG Guidelines referred to in cipher 10.

We suggest the following wording:

“In 4.1) consult the full range of interested parties including market participants, TSO’s (including the EU TSO bodies), DSO’s, grid users (Generators, Suppliers and Traders), stakeholder platforms/associations, consumers, end-users and...”

Regarding Annex 1 we would like to point out that the competence of the Agency should be limited to cross-border issues in grid regulation as well as to requirements that need a pan-European harmonisation like cross-border trade and balance energy et cetera. All requirements that have no cross-border reference should not be covered by the Agency. This has to be observed when defining the tasks and powers of the Agency. Distinct decision-making mainly depends on effective structures. It is important to bolster the considerable progress which has been made during in the last years on a wide

range of issues such as the development of regional initiatives or the creation of appropriate structures (which we strongly support).

In general - as already pointed out in the consultation paper - a permanent stakeholder panel cannot replace written consultations. A combination of both permanent and "ad-hoc" panels would probably be the best. As in all consultation procedures, transparency will be crucial for the legitimacy of these new structures.

**Comments on:
Part 3 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?*
- B *Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If so, what could the groupings be?*
- C *Which aspects of market design or network operation should be fully harmonised across the Union through the first set of codes?*
- 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?*

General remarks on questions A to D:

Cipher 26 points out that the European network codes should be limited to what is necessary to achieve the objective of creating a seamless interaction between national transmission networks which, together, will form a European grid as the basis for a single European market. We are strongly in favour of this perception.

Even if one takes into account that major steps towards a European energy market are under way - e.g. the development of regional markets - there is a significant lack of consistency and distinctiveness in the process of defining and implementing codes and in complying with them.

As the interests of TSOs can differ from the DSO's interests we worry that the system of self-regulation in the ENTSO develop-

ing the net codes is not sufficient to fulfil the requirements of the 3rd Energy Package to implement a European energy market in the true sense of the word.

Of course it is reasonable that the TSO/ENTSO develop net codes,; however we think it is necessary that the Agency should not only comment on the draft codes but should also put them into force after a detailed and transparent consultation with all applying market participants to make sure that their interests are considered in an appropriate way.

Comments on:

Part 4 The ENTSOs and European Energy Regulators

Questions

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?*

See the comments on part 3.

Comments on:

Part 5 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?*

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?*

In the central-western market, the regional initiative has resulted in measurable progress in the last years on a range of subjects. We strongly support the further development of the regional initiatives and the creation of appropriate structures within ERGEG/ACER as a means to facilitate decision-making, e. g. task forces for specific decisions concerning only the region in question.

Also see comments on part 3.