

Energy Networks Association – ENA

**Response to ERGEG's consultation on the implementation
of the 3rd Energy Package**

22 December 2008

ENA - BACKGROUND

The Energy Networks Association is the trade association for UK energy (gas and electricity) transmission and distribution licence holders and operators.

ENA welcomes this timely consultation from ERGEG on the practical implementation of the 3rd Package proposals which relate to the work of the new EU regulatory Agency and, in particular, its effective interaction with key stakeholders, such as our networks members.

ADVISORY ROLE

The exact tasks and powers of the Agency have yet to be finally determined. But, on the basis of the current negotiations on the 3rd Package, its advisory role should be restricted to preparing the framework guidelines which set out the objectives of the network codes, and then advising the Commission on the network codes produced by the ENTSOs, and whether they should be made binding.

REGULATORY PRINCIPLE

ERGEG says the Agency will be “the acknowledged guardian of the public interest”. Nevertheless, the Agency, in the exercise of its duties, will need to respect the principle of subsidiarity, and not take action in areas which can be more effectively addressed at national level. The Agency must operate in accordance with the principles of better regulation, with actions that are transparent, accountable, proportionate, consistent and targeted.

As a matter of regulatory principle, the actions of the Agency should not unduly increase the overall burden of regulation. There should be a formal obligation placed on the Agency to conduct regulatory impact assessments on every significant proposal, framework guideline, network code, and modification to the codes.

PUBLIC ACCOUNTABILITY

We agree that the Agency should produce both an annual and an evaluation report. Furthermore, we believe the Agency should have to account for its expenditure, hence its budgets should be carefully reviewed by the Commission each year.

STAKEHOLDER INTERACTION WITH THE AGENCY

Consultations must be open, transparent, and responsive, involving all affected stakeholders.

Key stakeholders, for example the Transmission System Operators (TSOs), are explicitly referred to in the revised list of consultees. Distribution Network Operators (DNOs) are not mentioned. A properly functioning European grid will naturally require TSOs, and DNOs, to work very closely together. There should therefore be an explicit obligation placed on ERGEG, during the interim period, and, thereafter, on the Agency, to consult the DNOs.

In fact there is some cross over between different Member States' definitions of transmission and distribution, and there is no single, consistent approach. In the UK, there are two thresholds for electricity transmission. In England and Wales, a distribution network is 132KV and below. In Scotland, 132kv and above is considered to be transmission. In the UK, gas transmission is anything above 7 bar pressure.

The 3rd Package proposals give the TSO organisations, the ENTSOs, the lead role in developing the network codes. The ENTSOs' focus must be on the development of codes needed to define the interaction between TSOs, facilitating a pan-European energy network. The resourcing associated with this work, including the costs of any stakeholder consultations, should be recognised by the National Regulatory Authorities as an additional operating cost for the companies concerned.

At the end of the consultation process, a proper analysis of stakeholder feedback and proposals, with the rationale for the inclusion or rejection of any proposal, must be provided by the Agency. Any stakeholder affected by the Agency's decisions, should have the right of appeal on the grounds of due process, commerciality, or the merits of the decision.

The previously established EU regulatory Forums, namely Florence, Madrid and now London, cannot easily be adapted for the necessary stakeholder consultations, with too many representatives and infrequent meetings. We would therefore support the setting up of specialist ad hoc panels, when needed, to provide additional focused, expert, input, reviewing specific technical points. But the output from these panels would have to be supplementary to, and not replacing, a comprehensive process of wide consultation, formalised in the Agency's own rules of procedure.

DEVELOPING FRAMEWORK GUIDELINES AND PRIORITISING NETWORK CODES

The framework guidelines that the Agency develops, and the network codes produced by the ENTSOs, must not be over-prescriptive, but limited to only those that are directly relevant to the access to, and operation of, cross-border networks.

ERGEG's suggested priorities for the network codes, and the proposed groupings for code development, for both electricity and gas markets, seem sensible, and reflect the greater progress made by the electricity sector. But, included in the Grid connection and access rules, there should be a reference to the integration of generation connected directly to the distribution networks, such as renewables, combined heat and power and microgeneration, which will have a major impact on the working of the grid as we work to meet the 2020 targets.

We agree that the first priority grouping for electricity should include security and reliability rules. But we would sound a word of caution that grid security and reliability must be properly balanced by safety considerations. Planning standards and operational standards applied to the networks must be consistent. If a higher level of security is required, the regulators cannot expect this to be delivered by the networks without additional investment.

We support the ERGEG proposal that, under the new Agency, the network codes should be legally binding, directly applicable and enforceable, part of the Community 'acquis' and hence overriding national legislation. If we are to make the move away from voluntary codes, now is the time. However, we accept that variations or options to accommodate national and regional differences should be allowed, for an initial period, reducing over time as the convergence towards a single market gathers pace.

TIMELINES

Estimates for timelines suggest the Agency would have perhaps six months to draft the framework guidelines, and the ENTSOs perhaps a year to develop the network codes. What is not clear is what period of time might be allowed for stakeholder consultation.

We ask that the consultation process, whilst allowing time for proper consultation with all the relevant stakeholders, be streamlined. Time will be at a premium, particularly if ambitious climate change targets are to be met, and investment decisions made in good time. There is a potential dissonance between the suggested timelines for the Agency, and the 2020 targets.

CO-ORDINATION OF REGIONAL AND NATIONAL APPROACHES INTO THE EUROPEAN REGULATORY FRAMEWORK

The development of regional markets is crucial, and ERGEG's Regional Initiatives are showing real progress. Regional differences, for example different voltages/pressures for distribution and transmission must be properly taken into account in the drafting of the network codes.

The 3rd Package will require better co-ordination of network planning and decision making in respect of major cross-border infrastructure investments. The process proposed by ERGEG for the Agency to help enhance co-ordination and monitoring at regional and EU level, based on the existing Regional Initiative arrangements, seem sensible.

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