

Implementing the 3rd Package: The next steps

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INFORMATION PAGE

Abstract

This document (C09-GA-52-06a) is a European energy regulators review of key practical issues which will need to be considered in view of the implementation of the European Union's third package of legislative measures concerning the internal energy market (hereafter "3rd Package"). ERGEG status review of the definitions of vulnerable customer, default supplier and supplier of last resort.

This paper should be considered as an analysis of practical aspects of the implementation of key provisions of the 3rd Package, including the preparation of Framework Guidelines and Network Codes; the consultation and cooperation with stakeholders; the role of the Regional Initiatives; and preparatory work which can be undertaken during the interim period (18 months) in the run up to the Agency's establishment. The ideas presented in this paper will be further developed as a result of practical experience and the transposition of the legislative acts.

Target Audience

Transmission system operators, energy suppliers, traders, electricity customers, electricity industry, consumer representative groups, policy-makers, power exchanges, academics and other interested parties are the target audience for this status review.

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Related Documents

CEER/ERGEG documents

- Implementing the third energy package - An initial consultation paper by the European Energy Regulators: OVERVIEW, (C08-GA-45-08) October 2008. http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Implementing%20the%203rd%20Energy%20Package/CD/C08-GA-45-08_CP_final.pdf
 - Appendix 1 - The Agency for the Cooperation of the Energy Regulators. http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Implementing%20the%203rd%20Energy%20Package/CD/C08-GA-45-08_CP_AX1-Final-2.pdf
 - Appendix 2 - Framework Guidelines and European Codes External documents. http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Implementing%20the%203rd%20Energy%20Package/CD/C08-GA-45-08_CP_AX2-Final-2.pdf

[20Energy%20Package/CD/C08-GA-45-08_CP_AX2-Final.pdf](#)

- Appendix 3 - Co-ordination of Decisions at Regional and European level.
http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Implementing%20the%203rd%20Energy%20Package/CD/C08-GA-45-08_CP_AX3-Final.pdf
- Implementing the Third Package - A conclusions paper (C09-ADG-04-03), March 2009.
http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Implementing%20the%203rd%20Energy%20Package/CD/C09-ADG-04-03_Implementing3EP_Conclusions_11-Mar-09.pdf
 - Annex 1 - Guidelines on ERGEG's Public Consultation Practices.
http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Implementing%20the%203rd%20Energy%20Package/CD/C09-ADG-04-03a_Implementing3EP_AX1-PC-Guidelines.pdf
 - Annex 2: summary of responses. http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Implementing%20the%203rd%20Energy%20Package/CD/C09-ADG-04-03b_Implementing3EP_AX2-Responses.pdf

External documents

- DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC. <http://register.consilium.europa.eu/pdf/en/09/st03/st03648.en09.pdf>
- REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003. <http://register.consilium.europa.eu/pdf/en/09/st03/st03651.en09.pdf>
- REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing an Agency for the Cooperation of Energy Regulators. <http://register.consilium.europa.eu/pdf/en/09/st03/st03650.en09.pdf>
- DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC. <http://register.consilium.europa.eu/pdf/en/09/st03/st03649.en09.pdf>
- REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005. <http://register.consilium.europa.eu/pdf/en/09/st03/st03652.en09.pdf>
- European Commission Impact Assessment Guidelines, (SEC(2009) 92) 15 January 2009. http://ec.europa.eu/governance/impact/docs/key_docs/iag_2009_en.pdf

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1. Executive Summary

- 1.1 This paper confirms the conclusions reached by European energy regulators in respect of the conclusions we reached following our consultation on the implementation of the 3rd Package now that agreement has been reached by the institutions. We have given further thought to a number of issues relating to the processes that need to be established during the interim period in order to make progress (without prejudicing the position of the Agency), and also as a potential basis for the future operations of the Agency. Important among these are the identification of topics for undertaking a 'pilot' - one each in electricity and gas - for the development of Framework Guidelines and network codes in order to test the proposed 'end to end' processes. We also make proposals for the establishment and operation of ad hoc expert groups, the way we intend to manage our interactions with ENTSO-E and GTEplus, and the future role of the Regional Initiatives.
- 1.2 We have spent considerable effort in developing processes which will ensure a sound basis for making progress under the 3rd Package towards a single European energy market with the full involvement of stakeholders. We consider that this preparatory phase is now substantially over. European energy regulators will commence work on the substance of the pilot topics, and in parallel will work on other priority topics, many as an input to future Framework Guidelines.
- 1.3 We intend to issue a further document at the beginning of 2010 to provide stakeholders with an update of progress and planned actions on the implementation of the 3rd Package during the interim period.

2. Purpose of the Paper

- 1.4 In anticipation of the adoption of the proposed 3rd Package of legislation on the electricity and gas markets, on 21 October 2008 European energy regulators published a consultation document¹ giving an outline of their initial thinking on how the challenges of implementation might be addressed and, in particular, how stakeholders might engage effectively with the proposed processes. The consultation was based on the first reading text of the European Parliament. On 11 March 2009 European energy regulators published their conclusions² following that consultation.
- 1.5 At that time we indicated that we would publish a further document confirming our conclusions once the negotiations on the 3rd Package were complete, indicating any changes which might result from the remaining stages of the negotiations. The present paper fulfils that commitment. It also provides information on our further thinking, and on further work undertaken and planned, on the following range of implementation issues:
- (a) Process and priorities for Framework Guidelines and network codes;
 - (b) Liaison arrangements for Agency and ENTSOs (and ERGEG/ENTSO-E/GTEplus in the interim period);
 - (c) Arrangements for ad hoc expert working groups;
 - (d) Future role of the Regional Initiatives.

3. Summary of Conclusions

- 1.6 The final stages of the negotiation of the 3rd Package resulted in a few changes to the text. However, our analysis indicates that none of these changes are material to our original conclusions in the Conclusion paper. Therefore, we consider that the conclusions in that document need not be changed and therefore are final.
- 1.7 In summary the main conclusions were:
- An 'end to end' process which covers the development of both the Framework Guidelines and the relevant network codes should be developed by European energy regulators in liaison with the Commission, ENTSO-E and GTEplus.
 - A common understanding should be established on the nature of Framework Guidelines and network codes.

¹ "Implementing the third energy package - an initial consultation paper by the European Energy Regulators" (C08-GA-45-08).

² "Implementing the Third Package – A conclusions paper" (C09-ADG-04-03), 11 March 2009.

- ERGEG's public consultation Guidelines³, as revised in the light of consultation, form a good basis for consultations to be undertaken by European energy regulators during the interim period before the Agency becomes operational.
- Ad hoc expert groups could be used to assist the Agency. We will publish a note on how we intend to create and manage such groups during the interim period to assist ERGEG in its work to prepare inputs to Framework Guidelines.
- The proposal that ad hoc expert working groups might be used by the ENTSOs in the development of network codes will be taken forward by European energy regulators in developing, in liaison with the Commission, ENTSO-E and GTEplus, the end to end process for Framework Guidelines and network codes.
- The range of measures we have proposed to ensure the accountability of the Agency for its activities is sufficient.
- We will clarify the roles of the Agency and NRAs, including in relation to the Regional Initiatives.
- Regional Initiatives should continue to operate.
- The priority list we proposed for the areas identified in the 3rd Package to develop Framework Guidelines as set out in the conclusions paper was confirmed in the consultation⁴.
- The issue of whether and how to group areas into codes will be considered as the process of drafting the Framework Guidelines develops.
- We will produce, in liaison with the Commission, ENTSO-E and GTEplus, a public document defining the interaction between ERGEG and ENTSO-E/GTEplus to facilitate an efficient approach for the end to end development of Framework Guidelines and network codes whilst safeguarding the independence of ERGEG and, later, of the Agency.
- We will refocus the Regional Initiatives in the light of the measures contained in the 3rd Package. We should clearly establish the role that the Regional Initiatives should play as a stepping stone to a single European market.

³ E07-EP-16-03, 11 March 2009, Guidelines on ERGEG's Public Consultation Practices.

⁴ For electricity; Priority I: security and reliability rules; interoperability rules; and operational procedures in an emergency. Priority II: grid connection and access rules; capacity allocation and congestion management rules; and transparency rules. Priority III: balancing rules including reserve power rules; and data exchange and settlement rules; and Priority IV: rules regarding harmonised transportation tariff structures including locational signals and inter-TSO compensation rules; energy efficiency regarding electricity networks.

For gas: Priority I: capacity allocation and congestion management; transparency; and balancing rules. Priority II: rules regarding harmonised transmission tariff structures; interoperability rules. Priority III: security and reliability rules; grid connection and access rules; data exchange (although aspects of this area may have relevance to other, higher priority areas) and settlement rules; rules for trading related to technical and operational provision of network access services and system balancing; and Priority IV: operational procedures in an emergency, energy efficiency regarding gas networks.

4. Next steps: Framework Guidelines and Network Codes

1.8 European legislation provides for a number of ways to develop and introduce binding guidelines and network codes, both under existing legislation and in the 3rd Package. Nevertheless, one of the central parts of the 3rd Package is for a European regulatory framework based upon a set of potentially binding network codes drafted by the ENTSOs. The codes must be consistent with relevant Framework Guidelines prepared in advance by the Agency and reviewed by the Commission. The European energy regulators have given further thought both to the process for the development of Framework Guidelines and network codes, and to the content of the initial documents.

Process

1.9 A major objective of the European energy regulators is to ensure that stakeholders are properly involved and consulted during the development of the Framework Guidelines and network codes. Good coordination with the ENTSOs and with the Commission is needed to develop an effective, efficient and flexible process producing legally binding network codes. In particular, time-consuming duplication of consultation and impact assessments should be avoided.

1.10 In response to views expressed by stakeholders, in relation to our consultation on the implementation of the 3rd Package, that an 'end to end' process should be developed for the preparation of Framework Guidelines and network codes, European energy regulators have developed views on how Framework Guidelines and network codes should be developed.

1.11 It is important that the process for the development of Framework Guidelines and network codes meets the best regulatory practice which includes undertaking impact assessments (IA) when necessary and at the appropriate stages. The Commission is required to carry out an IA on its initiatives (including legislative proposals and implementation measures – the so-called comitology items)⁵. We expect that the Commission will be able to base its work on the initial impact assessment/impact assessment (IIA/IA) prepared during the process.

1.12 It is proposed that Framework Guidelines be developed in two steps: Initial Impact Assessment (IIA)/justification (step 1); and drafting of a Framework Guideline, including 2 months of public consultation (step 2). It is our view that an impact assessment should be undertaken by the ENTSOs under the supervision of the Agency or the Commission as part of their process for the development of network codes. This is consistent with the use of impact assessments as an integral part of the policy development process. It will be the legal responsibility of the Agency, once established,

⁵ According to the Commission's Impact Assessment Guidelines (15 January 2009), "In general, IAs are necessary for the most important Commission initiatives and those which will have the most far-reaching impacts. This will be the case for all legislative proposals of the Commission's Legislative and Work Programme (CLWP) and for all non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts (with the exception of routine implementing legislation) and for non-legislative initiatives (such as white papers, action plans, expenditure programmes, negotiating guidelines for international agreements) which define future policies. It will also be the case for certain implementing measures (so-called 'comitology' items) which are likely to have significant impacts".

to formally draft and consult on the Framework Guidelines, although we expect it will be able to draw on the preparatory work undertaken during the interim period by European energy regulators.

- 1.13 An explanation of our detailed proposals of the process for the preparation of Framework Guidelines and network codes is attached at Annex I. It is the intention of European energy regulators to apply the process during the interim period, as far as possible, in the same way as is proposed for the Agency.

Content

- 1.14 The aim of the 3rd Package is to achieve a single European electricity and gas market. The role of the Framework Guidelines and network codes is to establish a cross border regulatory framework which will enable cross border trade and competition to develop. The creation of this cross border regulatory framework is a major task which will take some time to complete. Further, market developments will mean that the network codes, even when established, will need to change over time.
- 1.15 When considering the content of the Framework Guidelines and network codes it is, therefore, necessary to reach decisions on:
 - The priority to be given to the areas listed in the 3rd Package which are to be covered by Framework Guidelines and network codes; and
 - The specific cross-border problems which should be addressed within each of the priority areas.
- 1.16 European energy regulators have identified which of the areas listed in the 3rd Package should be treated with priority for the drafting of the initial Framework Guidelines (see section 3). We are currently considering which specific cross-border problems should be tackled first within these priority areas, but we have not yet reached a conclusion on the full list. Our intention is to identify a list of initial proposals based on existing studies and our own experience, and then to discuss those proposals with the Commission (who have the legal responsibility to decide on priorities under the 3rd Package) and the TSO bodies.
- 1.17 In order to establish an effective and efficient 'end to end' approach for the development of Framework Guidelines and network codes, it is our intention to use the initial priority areas and an initial set of cross-border problems as the basis for two 'pilots' (one in electricity and the other in gas) in co-operation with the Commission, ENTSO-E and GTEplus over the coming months. In the case of electricity, the topic proposed for the pilot is grid connection. In the case of gas, the topic for the proposed pilot project is capacity allocation in respect of new infrastructure. These topics have been selected, in part, because of their suitability as a basis for testing the process we have developed. It is important to recognise that we will continue to work on other priority topics in parallel with the pilots.

Modification of established network codes

- 1.18 Once network codes have been prepared by the ENTSOs consistent with the relevant Framework Guidelines, the Agency must submit them to the Commission which, in turn, may propose their adoption through the comitology arrangements in order that they be made binding. Modifications to network codes may be proposed to the Agency by those

who are likely to have an interest in that network code, including the ENTSOs, TSOs, network users and consumers. The Agency may also propose modifications to the Commission on its own initiative. The Agency shall establish, in its Rules of Procedure, efficient processes for assessment and thorough consultation on draft modifications. Modifications to the network codes will also have to be adopted via comitology by the Commission.

- 1.19 This is an issue that European energy regulators will return to at a later date as modification procedures will not become operational until the first network codes are in place. However, we recognise the importance of this issue. The achievement of a single European market continues to be an evolutionary process where there is no 'blueprint'. Progress is made step by step, drawing on experience gained at each stage. Modifications to the network codes will have a major influence on the direction of market integration and it will be important to understand the overall direction of integration when considering individual modification proposals with a view to avoiding conflicting and potentially divergent modifications to the codes. To enable individual modifications to be assessed against the overall objective of achieving a single European market, a set of criteria – or 'statement of objectives' - will need to be developed. Such a 'statement of objectives' should enable individual (or even competing) modification proposals to be assessed. The scope and status of this statement of objectives, the process for its development and subsequent modification will be included in a future consultation.

5. Next steps: Liaison arrangements for the Agency and ENTSOs

- 1.20 Interaction between the Agency and the ENTSOs (and, in the interim period, between European energy regulators and GTEplus and ENTSO-E), in addition to the formal consultation processes would assist in ensuring that the codes achieve their overall objectives and respond best to stakeholder needs. This would not, however, supplant the need for the written consultation process. Co-ordination between the regulatory and TSO organisations would assist in achieving an efficient process for the development of Framework Guidelines and network codes which would help to minimise the potential for duplication and the consequent burden on stakeholders.
- 1.21 Such interaction should be agreed jointly by the European regulators, the bodies representing the European TSOs, ENTSO-E and GTEplus and the European Commission. There are various options that could be envisaged which include:
- Ad-hoc discussion or working groups. The Agency (or CEER/EREG in the interim period) could invite representatives of the ENTSOs (or GTEplus and/or ENTSO-E in the interim period) to discuss the framework guidelines (in addition to the more formal obligation to consult them). Similarly, the TSOs (or GTEplus and/or ENTSO-E in the interim period) could call on the Agency (or CEER/EREG in the interim period) to explain or give more detailed input during the code drafting process.
 - The Agency (or CEER/EREG in the interim period) with the ENTSOs (or GTEplus and/or ENTSO-E in the interim period) could establish regular sessions to discuss the Framework Guidelines and the network codes.
- 1.22 However, it must be recognised that there are important conditions which must be fulfilled in any interaction between the Agency and the ENTSOs (and the European energy regulators and ENTSO-E/GTEplus during the interim period). It is the responsibility of the Agency to provide independent advice on the outcome of many of

the activities of the ENTSOs, such as the network codes, the 10-year network development plan, and the ENTSOs rules of procedure. The responsibility of the Agency is to advise the Commission on the final proposals of the ENTSOs taking into account stakeholders' views received through consultation. The Agency can therefore only reach a final view on these matters once the final ENTSO proposal is available, and in the light of consultation. Consequently, it is not possible for regulators to reach decisions on elements of the work of the ENTSOs before the final outcome is available. Regulators' representatives will not be able to commit the Agency through their participation in joint drafting groups or other forms of interaction. European energy regulators in the interim period will not give formal advice to the Commission on the areas contained in the 3rd Package because this is the formal responsibility of the Agency. However, we consider that if the Agency is to be able to utilise the preparatory work undertaken by CEER/EREG during the interim period, then similarly high standards of independence are required of European energy regulators during this period.

- 1.23 However it is also sensible, within these constraints, for the Agency (and European energy regulators in the interim period) to interact with the ENTSOs on such issues as:
- Developing co-ordinated processes where appropriate;
 - Gaining a shared understanding of the issues and the approaches taken to tackle them.
- 1.24 We also recognise that there may be occasions where specific decisions may need to be taken by the ENTSOs, possibly early on in the process of developing network codes, the 10-year development plan, or rules of procedure, where clarity on the view of the European energy regulators/Agency would avoid a major risk that subsequent work would be nugatory if the Agency, at the end of the process, disagrees. This could apply, for example, where at the beginning of the ENTSOs' work there are a range of different approaches from which they must choose one. In this example, all of the remaining work and resources will be committed on the basis of that decision. In such cases we consider that on a specific issue a formal arrangement could be implemented to allow the Agency, if it deems it appropriate, to reach a formal decision on the request of the ENTSOs. This arrangement would need to ensure the independence of the Agency and include appropriate consultation procedures which are consistent with the Agency's general consultation rules. It will be for the Agency to formally consider such an arrangement, and to implement it should it decide to do so.
- 1.25 We consider that one or more public documents could be developed to define the scope of the Agency's actions during its interactions with the ENTSOs in order to ensure that there is wide confidence in the independence of the Agency, whilst facilitating efficient processes. This public document(s) could address two distinct areas:
- A document – or 'statement of principles' - issued by the Agency (and by the European regulators in respect of their work with ENTSO-E and GTEplus during the interim period) stipulating the principles and practices it will adopt in its dealings with the ENTSOs to preserve the Agency's independence; and
 - Documents issued jointly by the Agency and each of the ENTSOs (or possibly a single document between the Agency and both ENTSOs) which describe the standing arrangements for liaison, co-ordination of consultation arrangements and practices, and transparency. In particular, the documents would contain details of the how the end to end process for the development of Framework Guidelines and

network codes will operate including, where appropriate, the co-ordinated use of expert groups. These documents could take the form of 'co-operation agreements'. Similar co-operation agreement(s) should be produced for the interim period.

- 1.26 European energy regulators intend to publish a 'statement of principles' relating to their interactions with ENTSO-E and GTEplus for the interim period. Once established, the Agency may decide to adopt these public documents for its own use, modified as necessary to reflect the experience gained. We have considered whether to prepare a 'co-operation agreement' between the European energy regulators and ENTSO-E/GTEplus for the interim period, but have concluded that in practice it would have little utility as it would take some time to agree and the interim period is of limited duration. We have therefore decided, for these practical reasons, not to proceed with the development of such a document.
- 1.27 An initial outline of the proposed public document "statement of principles" for the interim period, drawn up by European energy regulators, is attached at Annex II.

6. Next steps: Ad Hoc Expert Groups

- 1.28 In our Conclusions paper on the implementation of the 3rd Package, we concluded that ad hoc groups of experts should be used, where appropriate, to assist the Agency. Ad hoc expert groups will be one way (but not the only way) for the Agency (and European energy regulators in the interim period) to call in expertise and technical know-how. The basic model for these groups is that they should be created on an ad hoc basis when a need for expert input is required. They should consist of individuals who are best qualified to provide expert advice, and the members should not participate in expert groups as representatives of the interests of any organisation or region. We said that, on this basis, we would publish a paper on how we propose to manage the creation and operation of ad hoc expert groups and the note would be updated in the light of practical experience. This document includes our ideas on that issue and fulfils that commitment.
- 1.29 In **Annex I**, we explain at which stage of the process the ad hoc expert groups could be formed. We would also propose that the same ad hoc expert groups provide assistance to the Agency when assessing whether a network code is in line with the relevant Framework Guideline.
- 1.30 Although not representative of particular organisations, we consider that, as far as is practicable, the membership of ad hoc expert groups should include (where appropriate) experts from network users, network operators, and industrial customers. Regarding the development of Framework Guidelines and network codes, we are discussing with ENTSO-E and GTEplus how the members of relevant expert groups used in the development of Framework Guidelines might be engaged on expert groups used by the ENTSOs in the development of network codes. We propose that the work of the ad hoc expert groups be reported to the Florence and Madrid Fora, as appropriate, on a regular basis to ensure transparency in their operation.
- 1.31 We propose that the expert groups be organised as follows:

(a) Purpose of Expert Groups

The role of expert groups is to provide expert support to the Agency (and CEER/EREG during the interim period) in the development of regulatory policies and proposals. The status

of the advice of the expert groups is that of advice to the Agency (and CEER/ERGEG). The Agency (and CEER/ERGEG) should receive this advice, but the resulting regulatory policies and proposals are those of the Agency (and CEER/ERGEG) alone.

(b) Role of Agency (and CEER/ERGEG in interim period)

The Agency will decide when to create an ad hoc expert group. Groups will only be created to provide expert advice in the development of specific and defined policy proposals. The term of the group will be limited to the duration of the development of the specific policy proposal. It will normally terminate, therefore, upon the publication of the relevant concluding document.

(c) Which bodies will be able to propose experts

Network users, network operators and industrial customers will be among those eligible to nominate a suitably qualified expert should they choose to do so.

(d) How experts will be chosen

When an expert group is being established (or additional members for an existing group are required) the Agency (and CEER/ERGEG during the interim period) will issue a requirement specification which will consist of a description of the policy area that the expert group will be active in, the expected duration of the work, and a detailed set of requirements relating to the relevant qualifications and expertise that is required. A period of time (one month where possible) will be allowed for nominations.

Once all nominations have been received, the Agency (and CEER/ERGEG during the interim period) will assess all of the nominations against the criteria in the requirement specification. The main criteria will be based upon the relevant expertise and qualifications of the candidates. As far as is reasonably practicable, experts will include, among others (and where appropriate), experts from network users, network operators and customers.

The number of experts in any group will not exceed ten.

(e) Organisation of the business of Expert Groups

The Agency (and CEER/ERGEG during the interim period) will arrange meetings of the expert groups and provide the secretariat and premises for meetings if possible. Maximum use will be made of electronic means of communication as well as virtual meetings. The secretariat will draw up the agenda for meetings in consultation with the Chair of the group, taking proposals from members. The Agency (and CEER/ERGEG during the interim period) will chair the group. The Commission may be invited to all meetings of expert groups.

Meetings of the expert groups will be minuted in a summary form and comments will not be attributed to individual members. Minutes will be published as quickly as possible following each expert group meeting.

(f) Costs

Experts will bear their own costs.

7. Next steps: Future role of the Regional Initiatives

1.32 A regional approach to the achievement of a single European energy market is now an established part of European energy policy and the European legal framework. For example, Article 6 of the Electricity Directive and Article 7 of the Gas Directive state:

“Member States as well as the regulatory authorities shall cooperate among themselves for the purpose of integrating their national markets at one or more regional levels, as a first step towards a fully liberalised internal market.”

1.33 It is also clear from the practical experience of the Regional Initiatives that the regional approach has the potential to accelerate progress.

1.34 There remains, however, an apparent dichotomy between the Regional Initiatives and the pursuit of a single market and the specific approach proposed in the 3rd Package. The 3rd Package envisages essentially a top-down approach of network codes which apply Europe-wide, whilst the regional approach could be described as bottom-up. Exactly how these two different approaches can be made to complement one another must be analysed and articulated.

1.35 Although the 3rd Package contains powerful tools for the encouragement of a single energy market – notably potentially binding network codes – there is no ‘blueprint’ which can guide the application of these tools in a top-down way. The route to a single energy market has been, and continues to be, an evolutionary one where each step has allowed us to learn and evaluate progress so that the next step can be taken. In this light the Regional Initiatives are an essential element to the achievement of a single market as they allow a managed process of development and trialling of ideas which simply would not be possible on a Europe-wide scale.

1.36 Key advantages of the regional approach are that it:

- provides a relatively dynamic environment for developing real world solutions;
- harnesses local expertise;
- takes account of local specificities;
- enables pilot studies to be undertaken testing solutions which may have wider application.

1.37 However, we must recognise that a regional approach also contains challenges which must be actively managed as the regions may choose divergent approaches which may not lead to a single European energy market.

1.38 The Regional Initiatives, launched by European energy regulators with the support of the Commission in spring 2006, have been an initiative of the energy regulators to speed up the integration of Europe's national energy markets⁶. European energy regulators have already taken steps to enhance the central oversight and co-ordination of the Regional Initiatives through the creation of the Regional Initiative Working Group (RIG). Enhanced mechanisms for monitoring progress to ensure convergence of

⁶ The Regional Initiatives create 7 electricity and 3 gas regional markets as a staging post towards a single-EU energy market.

approaches are being implemented. The lack of regulatory tools has been a major factor inhibiting faster progress in many regional initiative areas. We believe that the 3rd Package contains enhanced regulatory tools for national regulatory authorities who will enable greater progress in the future (although the issues remain large and extremely complex). We consider that the creation of the Regional Initiative Working Group will enable us to maintain central control over the Regional Initiatives in these circumstances. It will also provide a mechanism to ensure that there is proper co-ordination between regional developments and, in particular, the development of Framework Guidelines and network codes. We explained the details of how this co-ordination would happen in our consultation paper on the implementation of the 3rd Package.

- 1.39 European energy regulators will, in the coming months, develop a detailed paper to define the role of the Regional Initiatives in relation to the 3rd Package for presentation at the Annual Conference on the Regional Initiatives which is planned for November 2009. European energy regulators are also developing ways to enhance the reporting of developments in the regions. The aim of this work is to enable regional developments and planned work to be seen in the context of the regulatory framework arrangements contained in the 3rd Package (notably in relation to the development of Framework Guidelines, network codes, the 10-year network development plans and annual work plans of the Agency and the ENTSOs). We have decided that the reporting of regional developments will in future be mainly based on progress in each topic area across all of the regions, rather than reporting on progress in each of the regions individually. This will enhance co-ordination across the regions on each topic area and improve the monitoring of convergence. In future we will prepare a single annual progress report on the Regional Initiatives on this basis.

ANNEX I

PROCESS FOR DEVELOPING FRAMEWORK GUIDELINES AND NETWORK CODES⁷

1. Overview

The general procedure applicable to the development of Framework Guidelines and network codes is set out in the 3rd Package. The purpose of this annex is to consider how these processes could work in practice.

The development of Framework Guidelines is the first step towards legally binding European network codes. These have the potential to contribute significantly to non-discrimination, effective competition and the achievement, and efficient functioning, of the internal energy market. The Framework Guidelines and network codes will affect TSOs (who will have to implement the provisions of the subsequent network codes), network users, and the market in general. It is therefore important to outline the key elements of the process that could be used to develop Framework Guidelines and network codes.

In defining a process for developing Framework Guidelines and network codes, the experience gained from the ongoing and past work by the European energy regulators must be taken into account. However, given the legally binding nature of the codes, they are materially different from existing documents such as the ERGEG Guidelines of Good Practice (GGP). Whilst the current non-binding ERGEG GGP provide a good basis for the substance of the Framework Guidelines (and possibly for network codes), they may require redrafting to suit a legally enforceable framework.

Time-frame

The Framework Guidelines development phase will be led by the Agency. The network codes development phase will be led by the ENTSOs (or by the Agency if the ENTSOs are not able to deliver in time or according to the requirements).

It is important to note that only the Agency can formally consult upon and prepare Framework Guidelines. The Agency will not be legally in a position to exercise its tasks until the end of the 18 months “interim period” which is foreseen by the 3rd Package⁸ (hereafter when the Agency is referred to as fully operational this means following the end of the interim period). **At the earliest, the first Framework Guidelines could thus be adopted in Q2**

⁷ See para 4.6 of the main document

⁸ According to Article 34 of the Regulation establishing an Agency for the Cooperation of Energy Regulators, Article 10 on consultation and transparency, as well as Article 6 on tasks as regards the cooperation of transmission system operators, shall apply from 18 months after the entry into force of the Regulation.

2011. Any work during the interim period by the European energy regulators or the Agency should be seen as “input” to the Framework Guidelines or preparatory work.

The first network codes will be developed once the 3rd Package has been adopted and the first Framework Guidelines produced.

The process

A major objective of the European energy regulators is to ensure that stakeholders are properly involved and consulted during the development of the Framework Guidelines and network codes. Good coordination with the ENTSOs and with the Commission is needed to develop an effective and efficient process producing legally binding network codes. In particular, time-consuming duplication of consultation and impact assessments should be avoided.

Framework Guidelines

It is proposed to develop Framework Guidelines in two steps: Initial Impact Assessment (IIA)/justification (step 1); and drafting of a Framework Guideline, including 2 months of public consultation (step 2).

Step 1: Initial Impact Assessment (IIA)/justification in order to identify problems, objectives and policy options for one particular area/group of areas. The pros and cons of the major options should be assessed if possible. The IIA should serve as preparatory work for the drafting of a Framework Guideline.

In order to speed up the whole process and make it more efficient, the European energy regulators will develop IIAs on priority areas/group of areas for the Framework Guidelines **during the interim period** (the so-called “input for the Framework Guidelines”). The extent of this work will depend on the complexity and priority of a given specific issue and will take fully into account the previous work done by the European energy regulators as well as the results of public consultations and monitoring exercises. The input for the Framework Guidelines will cover most of the areas for the network codes, as outlined in the European Energy Regulators’ Work Programme 2009.

IIA may also be undertaken by the Agency, once it is fully operational.

Step 2: Drafting of Framework Guidelines

As explained above, it is a task of the Agency – once it is fully operational – to prepare Framework Guidelines, including 2 months of public consultation.

However, to evaluate the efficiency of the process, at least one Framework Guideline for electricity and one for gas will be drafted during the interim period (hereafter the “pilot” Framework Guidelines). This will allow for adjustments if there are problems in implementing the proposed steps in the Framework Guideline development process.

In particular, the following mechanisms will be tested during the interim period:

- Engaging with stakeholders at an early stage – for example using workshops;

- Early discussions with the ENTSOs, to ensure that the process of developing Framework Guidelines and network codes is smooth, consistent, efficient and flexible;
- Ad hoc expert groups.

Network codes

According to the 3rd Package, the Agency needs to be satisfied that a network code is in line with the relevant Framework Guideline.

The following points explain – from the point of view of the European energy regulators – how the network codes should be developed:

- The ENTSOs should keep the Agency informed of progress on a regular basis. Representatives from the Agency could participate in meetings or working groups set up by the ENTSOs during the network codes development phase, in an observer capacity. If observers from the Agency attend such meetings, the presence of the observer should not prejudice the Agency's opinion on the network codes. Furthermore, the Agency could provide formal input to the development of network codes – to clarify for example what a particular provision of a Framework Guideline means – following a request by the ENTSOs or stakeholders involved in the development of a network code;
- If the ENTSOs choose to establish working groups involving stakeholders, members of the ad hoc expert groups could participate in the ENTSOs' working groups and subsequently report to the Agency. The Agency may decide to consult the same ad hoc expert groups that accompanied the development of Framework Guidelines, to provide some input/assistance when evaluating the network codes;
- A written public consultation open to all stakeholders should take place on each of the network codes. This consultation should be conducted by the ENTSOs or by the Agency e.g. if stakeholders have not been properly consulted. The above-mentioned working groups should not be a substitute for written consultation;
- An impact assessment (IA) on the network codes should be undertaken. This should be the continuation of the IIA developed during the Framework Guidelines development process. The IA could be carried out by the ENTSO under the guidance of the Agency. The Agency will verify that the IA meets the requirements of the European Commission's Guidelines on Impact Assessment.

The Commission has to carry out an IA on its initiatives (including legislative proposals and implementation measures – the so-called comitology items)⁹. The Commission should be able to base its work on the IIA/IA prepared during the process.

⁹ According to the Commission's Impact Assessment Guidelines (15 January 2009), "In general, IAs are necessary for the most important Commission initiatives and those which will have the most far-reaching impacts. This will be the case for all legislative proposals of the Commission's Legislative and Work Programme (CLWP) and for all non-CLWP legislative proposals which have clearly identifiable economic, social and environmental impacts (with the exception of routine implementing legislation) and for non-legislative initiatives (such as white papers, action plans, expenditure programmes, negotiating guidelines for international agreements) which define future policies. It will also be the case for certain implementing measures (so-called 'comitology' items) which are likely to have significant impacts".

2. Proposed steps to be followed in developing Framework Guidelines

This section considers the development of Framework Guidelines. It is a task of the Agency to prepare the Framework Guidelines, but the European energy regulators could usefully contribute during the interim period – i.e. before the Agency is fully operational – by preparing input which could serve as preparatory work for the Framework Guidelines.

Framework Guidelines

There is no clear definition of what a Framework Guideline is in the 3rd Package. Nevertheless, according to Articles 6(2) and 6(9) of the Electricity and Gas Regulations, Framework Guidelines:

- must set out clear and objective principles (for the subsequent development of each network code relating to the areas identified in the priority list);
- are non-binding;
- shall contribute to non-discrimination, effective competition and the efficient functioning of the market.

Time-frame

The Agency will have 6 months to prepare a Framework Guideline. A mandatory public consultation of at least two months is foreseen by the text. However, the 6 months deadline will only run from the moment the Agency has received a formal request from the Commission to prepare a Framework Guideline.

Some preparatory work on the Framework Guidelines could be undertaken earlier. This work could be done by:

- The European energy regulators or the Agency, during the interim period;
- The Agency, before it has received a request from the Commission. For example, where the Agency has identified in its Work Programme that a particular area deserves attention;
- The Agency, after it has received a request by the Commission. It may not always be possible for the Agency to undertake some preparatory work and prepare, draft and consult on a Framework Guideline in 6 months. However, if the Agency considers that more than 6 months are needed to prepare a Framework Guideline, it may request an extension of the time frame to the Commission.

Proposed steps

A two-step approach could be followed to develop Framework Guidelines: step 1 with preparatory work in the form of an initial impact assessment (IIA)/justification; and step 2 with the preparation/drafting of Framework Guidelines by the Agency.

Evidently, some flexibility will be needed in implementing the proposed steps, and the procedures should be adapted to the complexity and scope of each of the Framework Guidelines, taking into consideration the problems, objectives and timeframe of each in turn.

Step 1: Initial Impact Assessment (IIA)

An Impact Assessment¹⁰ on Framework Guidelines (or network codes) is not foreseen explicitly in the 3rd Package. However, it is important to emphasise here that the European energy regulators and the Agency are/will be fully committed to the principles of Better Regulation, which implies that they will consider views of all possibly affected parties and stakeholders, and normally conduct an Impact Assessment for important initiatives (including Framework Guidelines and network codes).

At this stage, the IIA should be seen as essentially providing a framework for the development of Framework Guidelines. The IIA should be seen as a justification of why regulatory intervention is needed. The IIA should focus on the following:

- **The identification of problems** that need to be addressed within one particular area/group (description of the nature and extent of the problem; identification of the key players affected; establishment of the drivers and the underlying causes).
- **The identification of objectives** that correspond to the problems or the root cause in each area/group. The focus of this exercise should be to ensure that the objectives are coherent with non-discrimination, effective competition and the efficient functioning of the market, as set out in the text of the Regulation. These “high level objectives” are valid for all the areas. Area-specific objectives shall be also set to introduce measurable objectives. These objectives can be divided in three levels: general objectives, specific objectives and operational objectives.
- **The identification of several practical policy options** to meet the criteria/objectives that have been identified. It is good practice to consider a range of options including a “status quo” or “do-nothing” option as well as different approaches to addressing a problem. This is because it is generally important to be in a position to measure all the options against the status quo, and to justify why regulatory intervention is necessary. However, as the Regulations determine the areas where network codes have to be developed by the ENTSOs, the “do-nothing” option in this case will serve to assess the exact scope of a Framework Guideline (within one particular area, some problems may be solved only through the development of legally binding rules, but this may not be the case for all), and whether the Framework Guideline should be deep or shallow (proportionality principle).
- **The selection of one policy option** or, if appropriate, of several policy options, which will serve as a basis for the development of a draft Framework Guideline.

The selection should be based on an analysis of the pros and cons of each identified option. However, for certain areas, it may not be possible to conduct an in-depth assessment.

¹⁰ An IA is a set of logical steps which structure the preparation of policy proposals. Doing an IA involves answering a number of basic analytical questions: What is the nature, magnitude and evolution of the problem? What should be the objectives pursued? What are the main policy options for reaching these objectives? What are the likely economic, social and environmental impacts of those options? What are the advantages and disadvantages of the main options? And, last but not least: How could future monitoring and evaluation be organised? An IA does not need to involve a long and detailed study in every case, but it should allow for an informed debate in all cases. An IA is an aid to decision-making, not a substitute for it.

Depending on the areas, and on whether the Framework Guideline is shallow (a set of high level principles, a range of options) or deep (a selected option), the analysis will be qualitative or qualitative and quantitative.

Depending on the objective pursued and the issue at stake, broad stakeholder involvement should be ensured on different items of the impact assessment (nature of the problem, objectives and policy options, impacts, comparison of policy options, pros and cons for each option).

In terms of output, where significant work has already been done on a particular area (for example if the European energy regulators have already developed a GGP, consulted stakeholders and/or carried out monitoring exercises) it may be possible to produce a single document at once, which would cover the whole scope of the IIA.

Step 2: Preparation/drafting of a Framework Guideline by the Agency, once it is operational

A draft Framework Guideline should be prepared by the Agency, based on the policy option selected at the end of step 1. Whereas it will be for the Agency to decide based on the priorities or requirements from the Commission, the first public consultation could be conducted on the “pilot” Framework Guideline as mentioned in the overview.

A public consultation of at least two months is provided for by the text (Article 6(3) of the Electricity and Gas Regulations).

The draft Framework Guideline will be subject to public consultation. The result of the analysis gathered during the IIA will be published as an annex to the public consultation document.

Following the consultation, finalised Framework Guidelines should be published.

As a preliminary step, and according to Article 6(1) of the Regulations, the Commission shall, after consulting the Agency, the ENTSOs and the other relevant stakeholders, establish an annual priority list identifying the areas to be included in the development of network codes.

3. Procedural tools which may support the development of Framework Guidelines

1.40 Public consultation tools

Calls for Evidence, ad hoc expert groups, workshops and public hearings could be used to complement – but not to substitute – the IIA or the drafting of the Framework Guideline. This is to better target those who will be particularly affected by the regulatory policies being developed.

A Call for Evidence may be needed only for new areas, where no relevant work has previously been undertaken by the European energy regulators/Agency.

Engaging with stakeholders at an early stage – using workshops or other tools for public consultation – will be particularly important.

1.41 Public consultation

According to Article 10 of the Regulation for the establishment of an Agency for the Cooperation of Energy Regulators (Agency) Regulation, “in carrying out its tasks, in particular in the process of developing Framework Guidelines (...) the Agency shall consult extensively and at an early stage with market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner, in particular when its tasks concern transmission system operators”.

1.42 Ad hoc expert groups

Where necessary and depending on the specific area for the Framework Guideline, an ad hoc expert group might be set up (among other options). The purpose of this group should be to provide an input/assistance to the European energy regulators/Agency in relation to certain issues relevant to a particular area/group. In any case, only the Agency – and the Commission – may in the end adopt a Framework Guideline and such decision would under no circumstances be bound by the input/assistance provided by an ad hoc expert group.

The main outcomes of the meetings should be made public.

It is the intention of the European energy regulators to set up ad hoc expert groups during the interim period for some priority areas, when developing their input for the Framework Guidelines (preparatory work or IIA).

1.43 Early discussions with the ENTSOs and other stakeholders

It will be important to involve ENTSOs at an early stage, given that they will be responsible for developing the network codes. Early discussions between the European energy regulators (and later the Agency) and ENTSOs could take place, which should help to develop a workable process.

This cooperation could be formalised through a published ‘co-operation agreement’ and Statement of principles’.

4. Proposed steps to be followed in developing network codes

This part considers how ENTSOs should develop the network codes, based on Framework Guidelines prepared by the Agency, and following a request by the Commission. The “approval” of the network codes is a duty of the Agency and of the Commission. Should the ENTSOs fail to deliver, the Agency will have to develop the network code.

A clarification mechanism between the Agency and the ENTSOs will need to be implemented, to ensure that the Framework Guidelines are properly understood and taken into account by the ENTSOs.

Network codes

Network codes should be developed by the ENTSOs (or the Agency if the ENTSOs failed to deliver) on a basis consistent with the relevant Framework Guidelines.

Following the request by the Commission, the network codes must be developed and submitted to the Agency within a period not exceeding 12 months.

Even if there is no clear definition of what network codes are, according to some provisions of the Regulations the network codes shall:

- Provide and manage effective access to the transmission networks across borders;
- Promote cooperation and coordination among TSOs;
- Be without prejudice to the Member States' rights to establish national codes for issues with no relevance for cross-border coordination; and
- Cover a number of areas, which are set out in the text of the Regulations taking into account if appropriate, regional specificities.

Generally speaking, in terms of the network codes development phase, the work should start from the point reached by the Agency in its final version of the related Framework Guidelines. There should be no duplication of work or consultation.

The ENTSOs should keep the Agency informed on progress on a regular basis.

1.44 Participation of the Agency in working groups to be set up by ENTSOs/Clarifications mechanism

ENTSO-E and GTEplus have announced that they intend to set up working groups – open to stakeholders – to develop the network codes. They have also suggested that representatives of the Agency should be invited to these working groups.

Whilst the participation of the Agency in the ENTSOs' process is desirable to ensure a smooth flow of information between the Framework Guidelines and the network codes development phases, representatives from the Agency would participate in meetings or working groups set up by the ENTSOs in an observer capacity. If observers from the Agency attend such meetings, the presence of the observer should not prejudice the Agency's opinion on the final draft network codes. Furthermore, the Agency could provide formal input to the development of network codes – to clarify for example what a particular provision of a Framework Guideline means – following a request by the ENTSOs or stakeholders involved in the development of a network code.

1.45 Ad hoc expert groups

If the ENTSOs choose to establish working groups involving stakeholders, members of the ad hoc expert groups could participate in the ENTSOs working groups and subsequently report to the Agency. The Agency, when evaluating a network code, may decide to consult the same ad hoc expert group that accompanied the development of the relevant Framework Guidelines.

5. Approval of the network codes by the Agency/Commission

The Agency has three months to assess a network code submitted to it by the ENTSOs, during which it may consult, if there is the necessity to do so (divergences between ENTSO and Agency, or no consultation by ENTSO). The Agency should ensure that certain standards are met in terms of consulting stakeholders. In particular, the above mentioned working groups to be set up by the ENTSOs should be seen as a complement, but not a substitute to a written public consultation on the network codes. This is because, according to good practice, the process for consultation should be open to all stakeholders (individual companies and their organisations).

It is the task of the Agency to assess the compliance of a network code to the relevant Framework Guideline. After having assessed its adequacy with the Framework Guideline the Agency must provide a reasoned opinion to the ENTSOs on the adherence of the network code to the Framework Guideline. This opinion can conclude that:

- 1) The network code is not in line with the Framework Guideline. In that case the Agency can propose changes and the ENTSOs may amend the network codes and resubmit them to the Agency.
- 2) The network code is in line with the Framework Guideline. In that case, the Agency:
 - Shall submit the network code to the Commission, and
 - May recommend that it is adopted within a reasonable period of time.

The Commission may adopt the network code following the comitology procedure. If the Commission does not adopt the code it shall state the reason why.

1.46 Impact Assessment (IA)

Network codes will be more detailed than the Framework Guidelines and because they will become legally binding, it will be extremely important to assess their impact (including costs and benefits) on all market participants.

The Agency and the ENTSOs will develop the policies behind the network codes and therefore are best placed to collect evidence throughout the process to feed into the IA. The IA should also inform the decisions to be taken by the ENTSOs – in submitting a network code to the Agency – and by the Agency – in assessing a network code and making a recommendation to the Commission. More specifically, the IA could be prepared by the ENTSOs, under the supervision of the Agency. The Agency would then need to check the IA and to verify that it is in line with requirements set in the European Commission's Guidelines on Impact Assessment.

If the Agency considers that the IA was not carried out properly, it would need to re-do the IA subject to the availability of sufficient funds and resources.

During the Framework Guidelines development process, problems, objectives, options and the pros and cons of each option considered for a network code will have been assessed.

The IA on a network code should be the continuation of the IIA conducted for the relevant Framework Guidelines. At this stage, and according to the Commission's Guidelines, the IA should focus on the following:

- A thorough assessment of impacts in relation to specific and operational objectives, taking full account of relevance of technical detail and **using quantification as far as possible**. The following questions should usually be answered in an IA: what impact, positive or negative does the option have? Will it lead to an increase in consumer choice, lower or competitive prices due to increased competition, the reduction of entry barriers for new suppliers and service providers, the prevention of anti-competitive behaviour or emergence of monopolies, etc? What impact does the option have on barriers to competition? Will it reduce additional adjustment, compliance or transaction costs on businesses? Will it entail stricter/less regulation?
- Developing the arrangements for future monitoring and evaluation.

A draft IA should be annexed to the public consultation document on the network code, whether the consultation is undertaken by the Agency or by the ENTSO. The IA could be finalised based on the results collected during the public consultation.

If the Commission is satisfied that a proper IA (in the sense of the Commission's Impact Assessment Guidelines) has been undertaken, it would not need to re-do the exercise.

1.47 Comitology

The Commission may adopt the network code following the comitology procedure. If the Commission does not adopt the code it shall state the reason why.

2 Modification of the network codes

Once produced legally binding network codes, according to the Regulations, modifications to network codes may be proposed to the Agency by persons who are likely to have an interest in that network code, including the ENTSOs, TSOs, network users and consumers. The Agency may also propose modifications to the Commission on its own initiative. The Agency shall establish, in its Rules of Procedure, efficient processes for assessment and thorough consultation on draft modifications. Modifications to the network codes will also have to be adopted via comitology by the Commission.

ANNEX II

STATEMENT OF PRINCIPLES FOR THE ENGAGEMENT OF EUROPEAN ENERGY REGULATORS WITH ENTSO-E /GTEplus DURING THE INTERIM PERIOD¹¹

Statement of Principles for Interactions

- Scope
 - Applies to any interaction between European energy regulators and ENTSO-E or GTEplus where there may subsequently be a formal regulatory position or advice to the Commission.
 - This would include:
 - Framework Guideline development;
 - Network code development;
 - 10-year network development plan development;
 - Draft Statutes and draft rules of procedure development for the ENTSOs.
- Key principles:
 - No statement by a representative of European energy regulators may be taken to prejudge the final regulatory position or advice by European energy regulators taken collectively (within ERGEG or CEER) which must be taken at the end of the process in the light of all consultation.
 - Where ENTSO-E or GTEplus require a formal decision to assist them to efficiently fulfil their responsibilities at a point before their final proposals have been prepared, then a formal request must be submitted to the European energy regulators. The European energy regulators will consider the request and if they conclude that a position should be given then they will reach such a position having followed the normal established process, including consultation where appropriate.
 - Representatives of European energy regulators that participate (through meetings, etc.) in interactions with ENTSO-E/GTEplus on matters within the scope of this note may do so as observers. They may, when requested to do so, offer clarifications on established statements of regulatory policy (such as Framework Guidelines).

This statement may be adopted by the Agency when established, as the basis for its own statement of principles, possibly with amendments to take account of the experience gained.

¹¹ See paragraph 5.8 of the main document

ANNEX III

ERGEG: The European Regulators for Electricity and Gas (ERGEG) was set up by the European Commission in 2003 as its advisory group on internal energy market issues. Its members are the energy regulatory authorities of Europe. The work of the CEER and ERGEG is structured according to a number of working groups, composed of staff members of the national energy regulatory authorities. These working groups deal with different topics, according to their members' fields of expertise.

CEER: In 2000, ten national energy regulatory authorities signed the "Memorandum of Understanding for the establishment of the Council of European Energy Regulators" (CEER). They had voluntarily formed the council to facilitate cooperation in their common interests for the promotion of the internal electricity and gas market. In order to cope with a growing number of issues and to improve cooperation at the operational level, the regulators decided in 2003 to formally establish themselves as a not-for-profit association under Belgian law and to set up a small secretariat in Brussels. The Statutes were published in the annex of the Belgian State Gazette on October 21st, 2003. The CEER now has 29 members - the energy regulators from the 27 EU-Member States plus Iceland and Norway. CEER and the European Regulators Group for Electricity and Gas (ERGEG) share similar objectives and the work and achievements of the CEER and ERGEG are intrinsically linked.