

# Response to the ERGEG Consultation on Implementing the Third Energy Package

(21 October 2008, C08-GA-45-08)

## Introduction and highlights

1. IFIEC Europe welcomes ERGEG's initiative to consult stakeholders on the implementation of the Third Energy Package (hereafter TEP). The objective of the TEP is to speed up the process of market integration in Europe and competition among energy suppliers on behalf of end consumers. Therefore the TEP contains measures for the removal of cross border barriers by investments, TSO-cooperation, harmonization of capacity calculation and allocation procedures and transparency. Also the TEP contains instruments to improve conditions for access to the grid and harmonization of balancing rules and transmission tariff structures on behalf of grid users.
2. It is IFIEC's strong belief that the effectiveness of the measures proposed in the TEP depend on the method of implementation. Defining clear and binding European Codes on the availability, access and use of infrastructure, with a clear framework for multi-year infrastructure planning and investment will be crucial to the creation of a truly European energy market for the benefit of energy consumers. Priority setting and meaningful consultation of stakeholders will be essential for successful implementation.
3. IFIEC is willing to actively participate in the consultation process with the objective of creating fully integrated energy markets through an effective and efficient implementation of the TEP. To ensure meaningful involvement of all relevant stakeholders in the implementation process, IFIEC strongly advises including the following key elements:
4. Representative organizations, representing different groups of market parties should be invited to respond to consultations or participate in panels related to implementing the TEP, instead of individual companies, TSOs, regulators etc. This would reduce the number of participants and make consultations much more effective. Also, keeping representative organizations involved can help to build knowledge and continuity. Finally it will ensure that all interests can be taken into account.
5. Representative organizations should 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, including a more detailed analysis for the different European regions or countries. 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.
6. The proposals made by ENTSO and sent to the Agency (the Codes, the network development plan, the ENTSO Statutes and the Rules and Procedures for consultation), should be accompanied with formal minutes of all the meetings held with stakeholders along with responses made. All stakeholders attending the meeting should approve these minutes, before the proposal and minutes can be sent to the Agency. Also ENTSO proposals should include extensive explanation on the way ENTSO took into consideration the remarks and questions made by stakeholders and - when applicable - the reasons why remarks have not been taken into account or questions have not been answered.

7. The Agency should not actively take part in meetings between ENTSO and stakeholders, where proposals (e.g. draft Codes) are being discussed on which the Agency would have to give its opinion later during the process. This could compromise the independent position of the Agency. If necessary, the Agency could participate through an observer.
8. Stakeholders should be consulted by the Agency on the ENTSO proposals sent to the Agency on Codes, the network development plan, the ENTSO Statutes and the Rules and Procedures for consultation, because these proposals may differ from the initial proposals discussed. In addition, stakeholder should be consulted by the Agency on any proposals for framework guidelines and the proposals for binding guidelines, which are drafted and set through the comitology process. For these consultation processes by the Agency, time and information are crucial, as highlighted above, (see paragraph 5).
9. There should be clarity on the different positions and roles of the European Commission, the Agency and ENTSO.
10. IFIEC Europe trusts the European Commission, the Agency and ENTSO to keep the number of consultations manageable, and to coordinate processes in order to prevent parallel consultations on the same topic.

## **The work of the Agency**

*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.*

11. In its Public Consultation Practices, ERGEG in particular attributes importance to the input and views of “experts” and a “flexible approach” to consultation. It is not clear to IFIEC what this practically means. We believe it is of great importance that ERGEG has all relevant information available and hence can create an objective analysis from that information available. Hiring independent consultants to improve the knowledge base and requesting information from market participants is therefore welcomed. However, when it comes to giving an opinion and interpretation, all representative organizations should be able to participate in the process equally. Groups in which experts from stakeholder organizations participate should be open to all representative organizations, and results of these meetings should be published.
12. Also ERGEG plans to target consultations towards those “more directly affected”. In IFIEC’s view representative organizations should always be invited to respond to consultations, even though they might not be considered as directly affected in the view of ERGEG. It is likely that individual organizations are better equipped to evaluate and decide whether the topic is important enough for them to participate in the consultation. Therefore, 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.
13. ERGEG uses an eight weeks minimum period for consultation. IFIEC supports this minimum period, because it will take some time to collect the necessary information from the different member states and to carefully draft a response to the consultation. The technical nature of much of the coming work means that differing experience of our members across EU States needs to be gained on specific points for effective recommendations to be made. Quality is to be preferred above time.
14. ERGEG includes impact assessments in the consultations, wherever possible. IFIEC stresses that the impact of proposals, especially for end consumers, (including industrial consumers) should be included in each consultation. The major objective of the TEP is to promote competitive costs in a European market and fair access conditions to the grid on behalf of consumers. An impact assessment of the effect of proposals on end consumers is therefore a crucial element, and should therefore be included in every consultation.

15. 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. The consultation principles should be taken into account by the Agency while developing an opinion on the ENTSO Statutes and the Rules and Procedures for Consultation.

*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?*

16. In working out the Codes and a network development plan, consultations should be focussed on concrete and detailed proposals. The fora, in which the developments of voluntary programs are discussed on a framework level, in broad lines with many stakeholders, member states and national regulators, are probably less suitable for the development of Codes. IFIEC strongly advises to set up a specific platform for the Codes, in which only representative organizations participate and where the ENTSO proposals can be thoroughly discussed with them. The fora should remain as a yearly event, in which an overview of all developments, including the progress with regard to the establishment of grid Codes, can be presented and discussed.

*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?*

17. ERGEG proposes “ad hoc panels” with sector experts to develop and evaluate proposals for the network Codes. IFIEC is of the opinion that ad-hoc panels seem to be better suited than the existing fora to guarantee the involvement of the most appropriate stakeholders in the process of setting up network Codes or framework guidelines etc.
18. However the proposal by ERGEG in which sector experts - appointed by the Agency - develop and evaluate Codes could erode the consultation of stakeholders. Also it would reduce the transparency of the process. The role of these “ad hoc panels” in this process is not clear.
19. In IFIEC’s view, much knowledge and expertise is available within ENTSO (in drafting a grid Code proposal) and the representative organizations and its members, the grid users. ENTSO and representative organizations should be able to appoint their best experts available in each consultation. Therefore the participants in “ad hoc panels” should be people designated by representative organizations.
20. In addition of course the Agency should be able to involve consultants to improve its knowledge and use this for discussions in the “ad hoc panels”. This is welcomed by IFIEC, especially to make clear what the effects of the proposals are for end consumers, and how they might be adapted to improve effectiveness.

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

21. ERGEG proposes to explore the possibility of improving accountability of the Agency towards stakeholders by setting up a “Quality Charter”. This Charter would set standards regarding the quality of decisions, accessibility and timeliness. IFIEC supports measures in these areas, but it is not clear which concrete standards ERGEG would propose and what status these standards would have. It is therefore not possible to comment whether the proposed measures are adequate. In addition it is not clear what legal instruments stakeholders would have, to ensure the accountability of the Agency.

*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?*

22. Apart from the Agency's responsibility relating to priority setting with regard to the Codes and a network development plan, the enforcement of these rules is of utmost importance. ERGEG's evaluation of the compliance of Regulation 1228/2003 for example shows quite clearly that there is hardly any rule which has been properly implemented and enforced. A critical factor in the success of Agency will be strict compliance and enforcement of EU regulation. The Agency will have the legal responsibility and ability to address national regulators to improve the enforcement. However, from this consultation it is not clear what priority the Agency would give to enforcing regulation. IFIEC is of the opinion that ERGEG should give more attention to this important topic. Also the Agency needs to be well-equipped both in terms of authority and staff.

## **Framework Guidelines, Codes and Other Cross-Border regulatory Issues**

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

23. IFIEC supports setting priorities for the Codes and technical areas. However we would like to stress that this should not delay the progress on topics with lower priority until all Codes with a higher priority have been finally adopted. For industrial grid users, the most important aim is a secure grid which supports an integrated European energy market.
24. In the consultation paper, ERGEG proposes a "most ambitious timetable" regarding the Codes and network development plan. The timetable proposed for the 10-year network development plan is January 2013. This would mean that energy consumers would still have to wait for more than 4 years from now before this plan will be presented. The period needed for actual implementation would even be much greater. IFIEC is of the opinion that this timetable is unacceptable, as planning new infrastructure to remove barriers for the European energy market is crucial. Key points to open the market as quickly as possible need to be agreed, developed, consulted on and implemented.

### Electricity

25. The first priority for electricity, security and reliability rules, should be complemented with rules on capacity calculation and congestion management, based on a transparent common grid model. An important reason for combining these topics, is the high inter-relationship between these topics, which is also recognized in ERGEG's consultation (Appendix 2, p. 14). The inter-relationship is also clear from article 6.3 of Regulation 1228/2003:

*The maximum capacity of the interconnections and/or the transmission networks affecting cross-border flows shall be made available to market participants, complying with safety standards of secure network operation.*

26. In addition, the improvement of regulation on the calculation and maximisation of cross border capacities is an important recommendation in ERGEG's Compliance Monitoring Report on adapting the existing guidelines.<sup>1</sup>
27. The second priority should include balancing rules and reserve power rules. The increasing volumes of intermittent renewable energy can cause huge balancing problems in the European grid. This issue should be dealt with and needs a higher priority than ERGEG suggests in the consultation.

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<sup>1</sup> Regulation (EC) 1228/2003 Compliance Monitoring, Second Report, ERGEG, 10 September 2008, p.54

Gas:

28. For gas the first priority should be transparency. IFIEC Europe proposes the following priorities:

- 28.1. Priority 1: Transparency rules, as presented by IFIEC in the GRI NNW and in the Madrid Forum;
- 28.2. Priority 2: Capacity allocation and cross border capacity allocation: primary and secondary capacity. Common grid model on capacity available for operational grid safety and the market;
- 28.3. Priority 3: Rules for system balancing (balancing regimes) and (other) interoperability rules (starting point: EASEE Gas' CBP's);
- 28.4. Priority 4: Security and reliability rules, grid connection and access rules, data exchange and settlement rules, rules for trading related to technical and operational provision of network access services and system balancing;
- 28.5. Priority 5: Operational procedures in an emergency, energy efficiency regarding gas networks;
- 28.6. Priority 6: Rules regarding harmonized transmission tariff structures;
- 28.7. Priority 7: Rules regarding access to storage and LNG facilities;
- 28.8. Priority 8: Rules regarding investments in grid maintenance and extending capacity, both transmission lines and interconnectors, preferably within the rTPA regime.

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

Electricity:

29. Based on our response to the question on priorities, IFIEC suggests the following grouping of Codes:
- 29.1. Network security and cross border capacities (including capacity calculation and allocation);
  - 29.2. Balancing rules and reserve power;
  - 29.3. Data and transparency;
  - 29.4. Grid access;
  - 29.5. Energy efficiency.

Gas:

30. IFIEC has no remarks on the grouping of Codes.

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

31. We suggest following the priorities identified above.

*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?*

32. We mainly agree with the descriptions given in the text. Nevertheless, regarding certain issues some additional remarks are necessary:
- 32.1. 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;
  - 32.2. 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 and characteristics of load shedding.

## The ENTSOs and European Energy Regulators

*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?*

33. A published document outlining the interaction processes between the Agency and ENTSO would be welcomed.
34. With regard to the participation of experts from the Agency or the Commission in working groups of ENTSO, there are some reservations: Such an early involvement of the Agency and Commission could entail the danger of compromising the independence of the Agency or the Commission in a later stage, at least in the public perception. This should be avoided.

## Regional considerations in moving to a single European market

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

35. 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).

*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?*

36. 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 involve stakeholders on a regional level and to discuss the implementation and enforcement of EU rules. 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.

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