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Position Paper of Stadtwerke München GmbH and MVV Energie AG

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

CO8-GA-45-08

The Stadtwerke Munich GmbH is the major municipal utility company of the Bavarian capital city of Munich and has around 6,600 employees. The Group sales is totalled to € 4.7 billion in 2007. The Stadtwerke Munich GmbH uses a mix of energy generation, based on combined heat and power (CHP) and renewable electricity generation. According to the national law the electricity and gas network is legally unbundled in the SWM infrastructure GmbH.

With an annual turnover of Euro 2.3 billion and around 6,400 employees, the MVV Energie Group is Germany's largest publicly listed municipal utility network. Our value-driven approach to company management enables us to increase the earnings power of our shareholdings – and thus the overall value of the Group. Our business model is based on the horizontal networking and integration of multidivisional municipal utility companies. In our solid core business – the supply of electricity, district heating, gas and water – we have a high degree of technical expertise, a superb knowledge of the market and traditionally close links to our customers.

The Stadtwerke Munich GmbH and MVV Energie AG appreciate the opportunity to comment on the way for 3rd package implementation.

General remarks:

- Adequate and early involvement of DSO's in developing and implementing framework guidelines and networks code, if they are affected directly or indirectly.
- Independency of ACER (the Agency) from the EU-Commission to make sure the division of powers.
- Concentrate the competence of the Agency on cross-border network issues, cross-border energy trade and harmonised essential European requirements; clear division of tasks between the Agency (only cross-border issues) and the National Regulation Agencies (NRA) (only national grid issues, without cross-border reference).

Part I The work of the Agency

Questions

- A ***Please comment on the Consultation Arrangements proposed in this paper (see Appendix 1 Annex 2) as a basis for the interim period and for later decision by the Agency as its own process.***
- B ***Could the fora (i.e Florence, Madrid, London) be further enhanced to allow stakeholders to make an effective contribution to the development of the single European energy market? How could this be done in a practical way?***
- C ***Could focused ‘ad hoc panels’ of interested expert stakeholders assist the Agency in the development of regulatory policies? Should they be linked (though without full representation) to the Florence, Madrid, and the new London Fora to avoid the proliferation of consultation structures, ensure the effective delivery of stakeholder views and proper representation? Or should the ad hoc panels be organized independently of the Fora in close cooperation with energy consumer and network user representatives?***
- D ***Are proposed measures to ensure the proper public accountability of the Agency broadly adequate?***
- E ***What do you consider to be the key elements for the successful establishment of the Agency? What are the most important issues relating to the NRAs and their role within the Agency?***

The proposed arrangements for the interim period are in our point of view a good basis to start the Agency. The Agency can help to create a harmonised European energy market and to consider the interests of the stakeholders. Therefore we think, it is relevant to implement a high level of transparency in the work of the Agency and in the consultation process.

We agree in principle with the proposed way of consultation and the ways of improving. Under cipher 15 it is stated that the objective of ERGEG is the optimal involvement of all network user and customer representatives and that they must be effectively and appropriately engaged in the development and implementation of the European regulatory framework. Regarding the development of the ENTSO network codes we think it is very important not to involve only the TSO's but also the DSO's. To implement a functioning and harmonised European energy market there is also a need to involve the DSO's as they are important stakeholders in all the grid-issues.

Appendix 1 Number 2 Consultation during the interim period:

Regarding the proposed consultation guidelines for the Interim Period we think it is necessary, that all the preparatory work of ERGEG and all the taken decisions in the Interim Period should be adopted by the Agency. If not, it could prevent the market participants during the Interim period from supporting, implementing and participating at the proposed arrangements. Only if there are

fundamental reasons not to adopt the proposed arrangement there should be the possibility to drop arrangements proposed by the ERGEG in the Interim Period.

Appendix 1 Number 3 Consultation procedures of the Agency:

In Appendix 1 Number 3 it is stated that according to the draft Regulation the Agency shall consult extensively and at an early stage with market participants, TSO consumers, end-users (...) in an open and transparent manner. We welcome the decision in the draft Regulation to implement a extensive, open and transparent consultation process in an early stage with all the market participants. But it has to make sure, that in deed all the relevant market participants are involved in the developing process of relevant methods, procedures and network codes. In our point of view it is very important, that the network codes developed by ENTSO are in a very early state coordinated with the DSO's in case that the network codes could affect their issues in any way.

We support the opinion of ERGEG pointed out in cipher 9 of Appendix 1 that the Agency should always consult when providing an Opinion to the European Commission and minimize the discretion on when a consultation should be launched, even if this means higher burden on the stakeholder resources. Then it has to make sure, that the replies on the consultation are considered by the Agency when providing an Opinion to the European Commission. Especially we think, that the Agency should consult in any case in the following issues:

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

Regarding cipher 10 of Appendix 1 we state that the consultation process must be:

- **Transparent:** clear definition of consultation objectives, issues to be addressed, stakeholders invited, deadlines, future steps, etc.
- **Consistent:** issues raised during consultation must be in line with its main objectives
- **Inclusive:** all relevant stakeholders must be informed and invited
- **Responsive:** it must be ensured that stakeholders responses will be adequately considered or that reasons will be provided for not taking them into account
- **Timely:** stakeholders must be early and extensively consulted from the beginning of the decision making process and should have sufficient time to prepare their inputs

Regarding the proposal for change on whom the ERGEG consult we propose to add a part from the TSO's in the same manner the DSO, Grid Users like Generators, Suppliers and Traders and stakeholder platforms/associations to consider their interests as market participants. We propose the following change:

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

Regarding proposal for change on how the ERGEG consult we propose that the consultation should be released in the same time in the main languages English, French and German. Furthermore we propose to implement the opportunity to subscribe for an newsletter where all the subscribed participants receive the relevant information about the opened consultation without delay (like it is practised today with the ERGEG-consultations) and other interesting documents via email.

To make sure that the interested parties have an appropriate opportunity to participate the consultation regarding the current requirements of the 3rd package and the national regulation obligations it has to make sure, that there is enough time to comment on the proposed measures. Especially when complex and important issues are consulted. The time to comment on a consultation should be the longer, the more complex and important the consultation is. Furthermore holiday time should be considered.

As interests of market participants may differ considerably, we propose to organize hearings in separate panels (i. e. one panel each for traders/newcomers and generators/incumbents). This will ensure that all stakeholders can express their views in an appropriate manner.

In CIPHER 13 of Appendix 1 ERGEG a Call of Evidence is stated. In our point of view a detailed consultation paper is useful to have an idea about the concrete requirements, amendments and proposals of the Agency. But the Call of Evidence has indeed the advantage, that the stakeholder can spread their ideas, issues and needs without influence of a detailed topic. Therefore we think, that additional Calls of Evidence prior to a consultation could be very useful. But regarding the limited resources of the market participants additional Calls of Evidence should be used only in special and important cases.

Regarding the implementation of a stakeholder panel or several ad hoc panels we prefer the idea of permanent stakeholder panel under the umbrella of the existing Florence, Madrid and London Fora where representative stakeholders can discuss the current issues. But as it is already stated in the consultation paper the panel can't replace the written consultations. But it can be helpful to establish additional to the stakeholder panel the proposed "ad hoc panels" for special themes with appropriate experts on these issues. A good combination of both models would lead in our point of view to the best results. In any case it has to make sure, that the interests of all stakeholders could be covered by the panels and that the discussed themes in the panels are published and monitored in a transparent manner.

Even if according CIPHER 22 in Appendix 1 it is stated the Agency may have to derogate from the normal consultation process, it has to make sure, that nevertheless the highest possible consultation period can be exhausted by the stakeholder. In this connection it is even more important, that the relevant stakeholders are immediately informed about the opening of a consultation (as already pointed out above via email after accordant subscription)

Appendix 1 Number 4 Accountability and Reporting

Regarding cipher 29 we appreciate the proposed desk for questions coming from stakeholder to comment if not only the issues of consumers and end-users are considered but also the ideas and proposals of TSOs, DSOs and grid users (Generators, Suppliers and Traders).

Appendix 1 Number 5 Implications for the agency

Given the fact, that the 3rd Energy Package enhance and level up the powers and independence of the Agency, the Agency should nevertheless act only on transnational and cross-border network and regulation issues as well as requirements that need a pan-European harmonisation like cross-border trade and balancing rules including reserve power rules. But there has to be clear rules regarding the competences between the Agency and the NRA's. In our opinion, the competence of the Agency should therefore cover only cross-border problems, whereas the competence of the NRA's should cover all national regulation issues, without cross-border reference. There has to be a clear task sharing between the national and European Level.

Furthermore the independence of the Agency from the Commission is important to make sure the division of powers.

Regarding the working programme and priorities according to cipher 33 of Appendix 1 we would appreciate, if the Agency would in a very early state inform the market participants. As already proposed it would be helpful to inform the interested stakeholder by email after accordant subscription.

Annex 1:

Implementing the requirements of the 3rd Energy Package it is as already stated as important, that the competence of the Agency is limited on cross-border issues in grid regulation as well as requirements that need a pan-European harmonisation like cross-border trade and balance energy cross-border issues. All requirements that have no cross-border reference should not be covered by the Agency. Regarding the cross-border issues and necessary pan-European harmonisation we support the important function of the agency. This has to be kept in mind while defining the exact split of roles and responsibilities between the Agency and the NRA's like stated under cipher 6 in Annex 1. It is important to define exactly the competence of the agency and the NRA to avoid an overlapping of competences and in consequence inefficiency between the Agency and the NRA's.

Therefore it is important to create structures of a decision making process, that enables the respective authority to make quick and effective decisions.

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

Even though it looks like that the comitology procedure will not be implemented in the 3rd Energy Package like stated in Annex 1 under “Advisory tasks” it is in any case important to consider in the advice of the Agency to the Commission not only the interests of the TSO’s by supporting the draft network codes, but as well the interests of DSO’s and grid-users like generators, suppliers and traders.

Annex 2:

Regarding the Principles of Consultation we propose the following amendments:

- Cipher 4, ii:

“make consultation proposals widely known and available through all appropriate mean but most particularly, the Internet; ***after subscription the interested stakeholders are informed about all relevant information and starting consultations directly via email.***“

- Cipher 5 to add:

“vi) if possible to spread the consultations throughout the year and to avoid conduct several consultations in the same time;

vii) if possible consider holiday times when starting or ending consultations”

- Cipher 6, vi:

“most commonly, interned based consultation ***and informing the interested stakeholders about starting a consultation via email after subscription***”

Part II Framework Guidelines, Codes and Other Cross-Border regulatory Issues

Questions

- A ***Are the proposed priorities for the codes and technical areas the right ones? If not, what should the priorities be?***
- B ***Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If so, what could the groupings be?***
- C ***Which aspects of market design or network operation should be fully harmonised across the Union through the first set of codes?***
- D ***Annex 1 of Appendix 2 we describe the content of each area mentioned in the Commission's initial proposals. Do you think the description is complete? If not, what aspects should be elaborated within the areas?***

General remarks on questions A to D:

We fully agree with the statement under Number 3 Framework Guidelines, Codes and Other Cross-Border regulatory Issues, cipher 26, that the European network codes should be limited to what is necessary to achieve the objective of creating a seamless interaction between national transmission networks. We see the task of the Agency concentrated like already stated in cross-border network issues and cross-border energy trade.

Regarding the described developing process for improving or modifying the codes by the Agency we understand that the rules maybe amended or modified, but in this case it has to be kept in mind, that every change of former rules means higher costs for the market participants that have to implement the amendments and modifications.

The ERGEG describes under cipher 28 the different sorts of codes and state according cipher 29 that it prefers legally binding codes which are directly enforceable. In our point of view, the network codes drafted and developed by the ENTSO fail in two aspects:

- failure of an effective control of the codes, that makes sure the development of the codes regarding a non-discriminatory and effective functioning of energy market
- insufficient involvement and consideration of market participants interests

The failure of these aspects results in a lack of effective control of the codes by appropriate authorities and the lack of possibilities of direct influence in developing the network codes by the affected market participants.

In the 3rd Package the only way to adjust and control the codes is actually the abatement of framework guidelines. But the character of framework guidelines is –a part from during a long time- is more general and for this reason not applicable to correct the detailed arrangements of the codes. The codes are developed by the ENTSO, a association of TSO's. Even if the ENTSO is obliged to consult the affected market participants, there is no obligation to consider the interests of the interests. As the interests of TSO can differ from the DSO interests we worry that the system of self-regulation in the ENTSO developing the net codes isn't sufficient to fulfil the requirements of the 3rd Energy Package of implementing an European harmonised, functioning and competitive energy market.

Even so it is in our point of view reasonable that the TSO/ENTSO develops the net codes, we think it is necessary that ACER should not only comment on the draft codes but permit the codes after an detailed and transparent consultation of all affected market participants to make sure that their interests are considered as well.

Regarding the cross-border network issues of the accordant network codes it should be ACER and not the NRA that should control the compliance with this codes.

Part III The ENTOSOs and European Energy Regulators

Questions

- A ***Are the mechanisms and observations outlined above – notably in relation to the interaction between the Agency and the ENTOSOs (and CEER and GTEplus/ENTSO-E) adequate? Are there changes that should be considered for their improvement?***

Please consider as well our remarks under Part II to this question, that apply in equal measure for Part III.

Part IV Regional considerations in moving to a single European market

Questions

- A ***Are the proposals in paragraph 69 to ensure the regional level involvement of stakeholders adequate? If not, how could they be further improved?***
- B ***How do you envisage the Regional Initiatives operating after the entry into force of the 3rd package legislation? Will their role become less important, given the development of network codes at EU level?***

Please consider as well our remarks under Part II to this question, that apply in equal measure for Part IV.

Replying on question A, Part IV we want to stress out once again especially the importance of an adequate and early involvement of DSO's and not only TSO's or TSO bodies in defining the Regional Initiatives if interests of DSO's may be affected directly or indirectly.