

## **CEER Response to the Energy Community consultation on**

### **Draft Policy Guidelines "On the Promotion of Organised Electricity Markets in the Contracting Parties"**

21 September 2015

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#### **Introduction**

The Council of European Energy Regulators (CEER) is pleased to contribute to the Energy Community's thinking on the establishment of an organised market in South East Europe. We welcome the identified link with the EU's recently adopted Regulation establishing a Guideline on Capacity Allocation and Congestion Management (CACM). Building from European regulators' experience of and ongoing implementation of the CACM Regulation, CEER has provided our views on the questions raised in the consultation.

We hope our input will be of interest and would be pleased to discuss relevant regulatory aspects with our Energy Community colleagues as we each continue our efforts to support the achievement of an internal electricity market through these important cross-border provisions.

#### ***1a. Is the Draft Policy Guidelines' approach in focusing at the adoption and implementation of the CACM Regulation in the Contracting Parties the right one?***

Yes. The CACM Regulation has been published, therefore the Contracting Parties can start implementing stepwise the key elements of this Regulation as a way to build regional market integration converging to the target model of the EU.

#### ***1b. Or, should the establishment of organised markets happen through other means? Please, elaborate.***

No. However, it is important to note that the CACM Regulation is not self-sufficient in order to establish a well-functioning organised market. This objective will be ensured by setting a detailed framework where buyers and sellers can compete in a fair way. The basis for proper competition outlined in Directive 2009/72 and Regulation 714/2009 must be pursued as a pre-requisite.

#### ***2. Should the Draft Policy Guidelines recommend the early implementation of the NEMO designation process envisaged in the CACM Regulation, before the adoption into the Energy Community acquis?***

Yes. It would be a good option to follow the NEMO designation process if the Contracting Parties are ready to implement it. Other intermediate options may be valid too.

#### ***3. What elements that are crucial for the establishment, operation and coupling of organised markets are not contained in the Draft Policy Guidelines?***

More emphasis should be placed on the need to ensure effective competition within the area covered by the Energy Community. In particular, it is important to have fair competition rules and independent competition and regulatory authorities to enforce them. This is linked to the discussion on measures that could be imposed on vertically-integrated undertakings and state-owned companies that may distort the wholesale market. Guidance will also be needed on the organisation and definition of trading areas (bidding zones), in due course.

#### **4. What is the best means to promote liquidity in trading of an organised market (before coupling), a) in general, and b) out of the three optional recommendations presented in the Draft Policy Guidelines?**

At the beginning, in order to pave the way for a significant exchange of electricity in a regional coupled market, an obligation to trade at least part of the energy in the organised market (quotas) is the most effective way. Otherwise, incumbents will try to avoid competition and to retain the control of their customers. Indeed, incentives to participate in the market may not be enough to effectively promote liquidity in the organised market.

A combination of bilateral physical contracts and spot market may be valid, but those bilateral contracts should ideally be traded in an open and competitive way so that there is competition between bilateral contracts and the spot market. Also, bilateral contracts must be available for secondary trading and resale to the spot market.

It is important to note that in some small countries, the creation of an organised market occurred in parallel to the coupling of this market with neighbours. Local liquidity was not enough to have a viable project.

Finally, it is important to pay attention to the demand side. Customers (probably through retailers) must play an active role in the market. This will happen only if they are able to benefit from competition by having easy and swift access to the most competitive prices.

#### **5. Should the NRAs and TSOs of the Contracting Parties be invited to start early work on the implementation of the decision processes envisaged in the CACM Regulation?**

Yes. Voluntary cooperation (between NRAs, TSOs and market actors) and pilot implementation efforts across Europe, ahead of the adoption of the CACM Regulation, played a major role in the progress achieved to date in day-ahead market coupling across 22 countries<sup>1</sup> and over 75% of Europe's electricity demand.

#### **6. Should the Policy Guidelines contain more recommendations on the governance structure of an operator of an organised market, e.g. towards ownership questions, or be explicitly silent on that matter?**

At least, the Policy Guidelines could recall the main lines set out in the 3rd Package legislation regarding this issue (i.e. avoidance of cross-subsidies). Though several valid governance options for operators exist, anti-competitive behaviour in organised markets must in any case be avoided by proper ex ante regulation and ex post monitoring.

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<sup>1</sup> This includes the 4M Market Coupling project: between the Czech Republic, Hungary, Romania and Slovakia.