

Joint Public Consultation ACER/ENTSO-E on the establishment of European Network Code Stakeholder Committees

Evaluation of Responses

[PC_2014_E_08]

[29 May 2015]

Table of Contents

| | | |
|----------|---|-----------|
| 1 | Introduction..... | 3 |
| 2 | Consultation topics | 3 |
| 3 | Evaluation of responses..... | 4 |
| 4 | Next Steps | 22 |
| | Annex 1 – About the Agency and ENTSO-E | 23 |
| | Annex 2 List of respondents | 24 |

1 Introduction

This paper summarises the responses received, and provides a detailed evaluation of the points raised, in relation to the Agency for the Cooperation of Energy Regulators (the Agency) and the European Network of Transmission System Operators for Electricity (ENTSO-E) joint consultation document “Role of stakeholders in the implementation of network codes and related guidelines, and in particular the establishment of European Stakeholder Committees (ESCs) for network code implementation”¹.

The joint public consultation launched by the Agency and ENTSO-E solicited feedback from various stakeholders on the consultation paper as published on 12 December 2014 on the Agency’s and ENTSO-E’s website. In particular, it aimed at finding the best way to involve stakeholders in the process of implementing the network codes and sought reactions to the structure proposed in the document for additional stakeholder engagement in the implementation process. The joint public consultation lasted six weeks and closed on the 23rd January 2015.

The consultation resulted in a total of 33 responses. 14 of these were provided by European energy and consumer umbrella organisations, representing the industry and consumers across Europe, one by a Nordic association. The remaining 18 responses represented a range of stakeholders from 10 countries of varying sizes, including from the energy industry, consumer associations, DSOs, traders and retailers. The Annex lists the names of all the respondents including their country of origin and the nature of their activity. The full responses to this and the pre-consultation can be read on our or ENTSO-E’s website.

In the present document we explain how the responses received will be taken into account for the future network codes’ implementation process. The steps following the results of this public consultation are also outlined in this document.

2 Consultation topics

Our formal consultation document outlined a proposal for the structure for additional stakeholder engagement in the implementation process. Stakeholder input was sought in particular on the structure, composition, organisation, deliverables and purpose of the three permanent ESCs.

¹ To view the document, please visit http://www.acer.europa.eu/Official_documents/Public_consultations/PC_2014_E_08/Joint%20Public%20Consultation%20ACER_ENTSOE%20on%20the%20establishment%20of%20European%20Network%20Code%20Stakeholder%20Committees.pdf or https://www.entsoe.eu/Documents/Consultations/Joint_Public_Consultation_ACER_ENTSO-E_on_the_establishment_of_European_Network_Code_Stakeholder_Committees.pdf.

3 Evaluation of responses

Below we provide a detailed summary and analysis of the responses received, broken down by the general principles of the functioning of the SCs. It should be noted that the following table provides a high level analysis of the responses received in the public consultation and focuses on key issues raised by the respondents. Where relevant and practical, the Agency has provided the category of respondent that raised a particular point or in some cases the specific stakeholder.

| Respondents' feedback on the consultation document | Our views |
|--|---|
| 1. General feedback received on the PC | |
| <p>A large majority of stakeholders expressed their appreciation of the joint public consultation on stakeholder engagement in the implementation process i.e. on what they believed to be an important topic, especially considering the challenges ahead. In line with this, several stakeholders emphasised the importance of a balanced position required for the NC implementation process, together with transparency, efficiency, sharing of expertise and collaboration with stakeholders as envisaged in the document.</p> | <p>The Agency and ENTSO-E welcome the broad stakeholders' support to our joint initiative.</p> <p>The Agency and ENTSO-E also agree on the importance of a transparent and efficient stakeholder engagement in the NC implementation process.</p> |
| <p>In general, stakeholders shared the Agency's and ENTSO-E's idea to create three permanent ESCs, one per family of codes. Some stakeholders conditioned the support to the three-European-SC structure with a sufficient level of structural flexibility allowed for the future creation of additional SCs for individual Network Code if needed, the others subjected it to transparent communication, whilst some emphasised the importance of all industry and customer views being taken into account. Unlike the majority, one respondent believed that</p> | <p>Agree. The Agency and ENTSO-E believe that the proposal to create three permanent ESCs, one for each family of NCs, is a pragmatic approach to engage stakeholders efficiently in the NC implementation process at EU level. This approach will allow, for each family of NCs, putting together the relevant experts of the EU associations.</p> <p>Throughout the process, the Agency and ENTSO-E will remain open to any suggestions aiming at improving the functioning of these ESCs or to</p> |

| Respondents' feedback on the consultation document | Our views |
|--|---|
| <p>three SCs in place are too many.</p> | <p>consider other (more appropriate) forms of stakeholders engagement if need be.</p> <p>The Agency and ENTSO-E would like to underline that the ESCs are not deemed to replace neither the formal consultation process foreseen in the various NCs, nor the stakeholder engagement process at local level, which will remain indispensable.</p> |
| <p>Several respondents clearly stated that the three SCs should be chaired by an independent, neutral body, as opposed to the proposal from the consultation document whereby ACER would set up and chair the SC on market NCs and ENTSO-E would be responsible for setting up and chairing the SC for the two other families of codes. Out of these respondents a majority believed that ACER should be chairing all three SCs, two stakeholders propose ACER or the EC as the chairs, whilst one respondent proposes NEMO to chair the relevant SC. A few respondents suggested ENTSO-E to take on an important secretarial role in the process instead.</p> | <p>Agree. The Agency will be chairing the three ESCs. The Agency will nominate the Chairperson of each subgroup having consulted the respective ESC.</p> <p>ENTSO-E will be the main provider of secretarial services, will organise the meetings in close cooperation with the Chairpersons, and maintain the IT platform.</p> <p>With respect to the ESCs, the agenda, minutes of previous meetings and all material will be made transparently available on one single platform.</p> |
| <p>With regards to the ESCs and their liaising with existing structures, one respondent believed that as implementation is more of a national issue, the structure should be more nationally/regionally-weighted².</p> | <p>Partly agree. The ESCs will support the Agency and the NRAs in performing their monitoring tasks on the implementation status of each NC within each country and to identify any gap, inconsistencies, overlaps or inefficiencies from a European perspective. The ESCs will help to monitor any failure or lack of stakeholder engagement at local level and identify</p> |

² More comments relating to the European vs. regional/national EG level are included in the feedback on the Role and representation of EGs.

| Respondents' feedback on the consultation document | Our views |
|--|--|
| | appropriate measures as well as in sharing best practices. |
| <p>ACER and ENTSO-E were called upon by one stakeholder to dedicate their resources to engage with smaller players, NGOs of the future, who are likely to be excluded from the process, by proactively flagging the timing and key elements of the NCs under discussion. A few stakeholders believed that ACER and ENTSO-E should engage their national bodies to enhance the dialogue (rather than information sharing only) with stakeholders throughout the process, through an early engagement.</p> | <p>Partly agree. ACER and ENTSO-E do not have the resources to liaise with stakeholders at national level. However, they can definitely push their respective members for enhancing dialogue with stakeholders at national level when and where needed.</p> |
| <p>Several respondents found the consultation document to be vague with regards to the role of the ESCs, the definition (or rather the absence of it) of their rules, procedures, deliverables and responsibilities, the responsibilities of their members, their ultimate status, their functioning, vertical coordination and liaising between the organisations at EU-, regional- and national level and representation of individual Member States together with Norway. In addition to this, question on whether the decisions from the ESCs would be legally binding should also be addressed. Further, one respondent expressed the need for more clarity on how the input from the SCs feed into the NC/Guideline implementation and amendment process and posed a question why – considering the amendment procedures for both gas and electricity NCs are the same, the consultation document focussed solely on the</p> | <p>Partly agree. The role of the ESCs, their rules, deliverables, responsibilities, etc. will be further defined in the ToRs. However, it can already be clarified that:</p> <ul style="list-style-type: none"> - the ESCs are not supposed to have any decision power, but could for example contribute to a more informed decision-making process for the methodologies and rules still to be defined. - as explained in the public consultation document, the ESCs will cover both the Network Codes and related Guidelines. The term “network codes” is mainly used in this document to define any set of common rules for electricity markets, be it “network codes” or “binding guidelines”, as defined by Regulation (EC) N°714/2009. |

| Respondents' feedback on the consultation document | Our views |
|---|--|
| <p>electricity Network Codes. Further, one respondent stated, there is no link in the public consultation to the announced guidelines of the EC and the relation between codes and guidelines. A few respondents believed that the area of the NC drafting should be within the scope of this PC. A suggestion was made that a complete reorganisation should have been taken into account i.e. also the governance issue would have been included in the PC.</p> | <ul style="list-style-type: none"> - the main focus of the ESCs will be on the NC implementation process. When necessary, the ESCs will provide an effective and responsive mechanism to monitor the operation of the arrangements established according to the NC. - the NC drafting process is not in the scope of these ESCs. - the NCs in the Gas sector do not include the same obligation for ACER and ENTSO-E regarding the involvement of stakeholders in the NC implementation process |
| <p>The stakeholders urged the Agency and ENTSO-E to address the above concerns first. One stakeholder called for an evaluation of the stakeholder work performed so far to be completed before the public consultation on the future stakeholder engagement. A question was raised on the future role of AESAG considering the new ESC proposal.</p> | <p>Disagree. The Agency already performed an informal evaluation of the AESAG process (whose purpose was exactly the same as the one discussed here). The feedback received was generally very positive with some room for improvements (in particular with regard to the circulation of documents ahead of the meetings).</p> <p>The future ESC dealing with the implementation of the market-related NCs will be replacing the AESAG structure.</p> |
| <p>Two stakeholders mentioned a possibility of another public consultation on the topic, this time however on a more elaborate document.</p> | <p>Disagree. The Agency and ENTSO-E do not see the need for another formal public consultation. The draft ToRs will be presented at the Florence Forum at the beginning of June.</p> |

| Respondents' feedback on the consultation document | Our views |
|---|--|
| 1. On the role, functioning of and representation in the SCs | |
| <p><i>The Role and Functioning of SCs</i></p> <p>With regards to the content-related tasks of the ESCs, several respondents clearly supported the idea from the consultation document that ESCs should serve as a platform to share general views on NC implementation and monitoring. As such, they would contribute to facilitate NRAs' and the Agency's monitoring role. Two respondents suggested imposing an obligation on the Chairs of the ESCs to take on board ESC's proposals and advice in the implementation process of the NCs and to justify in written form, if they decide not to do.</p> | <p>Agree. The main tasks of the ESCs will consist in:</p> <ul style="list-style-type: none"> - Helping NRAs and the Agency to perform their monitoring tasks by taking stock of the implementation status of each NC within each MS and identifying, from the European perspective, any gap, inconsistencies or inefficiencies; - When relevant (in particular for the NCs which will be adopted as Guidelines), contributing to a more informed decision-making process for the methodologies and rules still to be developed. <p>The Agency and ENTSO-E will discuss proposals and advice from stakeholders' organisation at the ESC meetings. All stakeholders' proposals, as well as the way they will be handled, will have to be reflected in the minutes of the ESC meetings.</p> |
| <p>In addition to this, some respondents believed that ESCs should act as an effective and responsive mechanism for the future revision and amendment of ENTSO-E NCs. Two respondents believed that the ESCs should contribute to define the methodologies and rules still to be developed as foreseen in some codes and guidelines. One respondent suggested ESCs to take part in drafting of the NC too. Two respondents believed that the role of the ESCs should not be limited to 'sharing views' only as envisaged in the document, but should be</p> | <p>Agree. It is indeed the Agency's intention to use these ESCs as an effective and responsive mechanism for the future revision and amendment of the NCs.</p> <p>As explained above, the ESCs will allow collecting stakeholders' views on the methodologies and rules still to be developed as foreseen in some NCs and Guidelines and contribute to a more informed decision-making process.</p> |

| Respondents' feedback on the consultation document | Our views |
|---|---|
| strengthened. | Please also refer to section 6 on the Stakeholder involvement and the NC amendment process. |
| <p>Individual proposals for the ESCs' area of work envisaged, among others, a role for ESC in the development of the implementing regulation in individual countries, examination of the interactions between the provisions in the Network Codes and the potential for the emergence of robust energy services markets that reward flexible and highly-efficient generation, alignment of the Network Codes with the EED (Energy Efficiency Directive) requirements, and the implementation of certain provisions in the NC RfG which require monitoring, information sharing or co-ordination at the EU level, including the Emerging Technologies Classification or the derogation procedure in the NC RfG. One respondent believed that future ESCs should also be mandatory in cases, where network codes are drafted, amended or implemented as guidelines.</p> | <p>Partly agree. As explained before, the main task of the ESCs will be to contribute to monitoring the NC implementation process at EU and regional levels as well as derogations at national level and help identify any gap, inconsistencies and inefficiencies.</p> <p>The ESCs will also contribute (in particular for the Network Codes which will be adopted as Guidelines) to a more informed decision-making process for the methodologies and rules still to be developed.</p> <p>In other words, the ESCs are expected to play a role where the Network Codes and Guidelines provide for cooperation at European or regional level. ESCs are not meant to be involved in the implementation process of Network codes and Guidelines requiring the development of terms and conditions (and where applicable their submission to regulatory oversight) at national level only.</p> <p>Regarding the alignment of the Network Codes with the EED, the Member States were required to transpose the EED's provisions into their national laws by 5 June 2014 whereas the Network Codes have been drafted pursuant to Regulation (EC) No 714/2009.</p> |
| With regards to the ESCs' rules of conduct a few respondents expressed their agreement with the proposed principle from the consultation document that the ESCs should be based on simple | Agree. The Agency and ENTSO-E agree on the necessity to maximise the benefit from stakeholder engagement. To that aim, the Agency and |

| Respondents' feedback on the consultation document | Our views |
|--|---|
| <p>predefined rules and procedures, to avoid bureaucracy and maximize the benefit from stakeholder engagement. Limited number of responses on the functioning of the ESCs included suggestions that the ESCs could support early communication and - where necessary- training for external stakeholder groups on the (upcoming) market changes. The ESCs should set up Expert Groups (EGs) (including their terms of reference) to discuss any issues raised and make recommendations to the committee on the basis of which ESCs should then take concrete steps and actions based on a fair and well balanced consideration of all stakeholder interest. One respondent suggested the ESCs to be provided with an exhaustive reporting detailing all the positions expressed and the reasons of disagreement in the absence of formal unanimous position reached within the EG.</p> | <p>ENTSO-E commit to:</p> <ul style="list-style-type: none"> - put their best effort to an as early as possible communication of the material before the meetings (ideally 2 weeks or at least 5 working days before any meeting) - to set up EGs, where appropriate, to discuss any issues and report to the relevant ESC -to ensure that all views, representing a majority or minority of members, can be expressed and easily passed to the parties responsible for implementation (ENTSO-E, ACER, TSOs, NRAs or NEMOs and others) |
| <p>Two respondents stated that ESCs should be organised independently from any National Structure or Regional SC, which should not exclude a possibility that these could later be informed and contribute to point out local implementation problems.</p> | <p>Agree. As explained before, the main task of the ESCs will be to contribute to monitoring the NC implementation at the EU level, regional (where relevant) and national level and help identify any gap, inconsistencies and inefficiencies at EU level.</p> |
| <p><i>Representation in the ESCs</i></p> <p>A significant proportion of the respondents believe that all views, irrespective of whether they represent the industry or not, should be represented in the ESCs, including all relevant industry sectors and experts, member states, regions, markets and synchronous areas,</p> | <p>Partly agree. In order to ensure a manageable process, the ESCs will be open to the EC and representatives from all EU associations interested. Each EU association will have a fixed number of seats and will be free to select their representatives within their organisations. The number of representatives per association will be limited with the aim to keep the total</p> |

| Respondents' feedback on the consultation document | Our views |
|---|---|
| <p>consumer organisations and similar. This is to guarantee appropriate involvement and representation of interest of the various addressees of NCs. In addition to this, a few respondents suggested putting effort in including the NGOs, other demand side representatives and new energy market entrants in the process.</p> <p>In addition, a few respondents highlighted the importance of relevant representation per type of stakeholders (generators, DSOs, TSOs, consumers, the EC, the Agency and other) which should be guaranteed, as well as characteristics of a stakeholder considered (for example, in some countries DSOs are relatively large compared to DSOs in other countries). One respondent suggested these groups to be represented in every ESC as a NC never affects one stakeholder group only, however the weight a stakeholder would have, could differ according to the topic. A few respondents believed that the EC should be closely involved in the work of the three SCs and as already stated above, the EC should event participate in the chairing.</p> <p>Other, mostly individual suggestions on the ESC representation, included larger trade bodies as well as the lead role of market participants in the market ESC; individual companies as opposed to associations only, whereby transparent, neutral and non-discriminatory rules regarding call for representation, duration of membership should be established.</p> <p>Some respondents shared their idea of the ESCs not being too large of</p> | <p>number of members below 25.</p> <p>The participation of individual companies into the ESCs will only be allowed on an ad-hoc basis and by invitation only, e.g. when one ESC will agree upon shedding light on one particular aspect of the NC implementation process in one MS and will therefore require the expertise of an external member to the ESC.</p> |

| Respondents' feedback on the consultation document | Our views |
|--|--|
| <p>assemblies (i.e composed of 20-25 experts and thus limited to the representation of European associations only). One respondent suggested the Agency to establish representation in the ESCs, whilst the other suggested applying the guidelines similar to those used by the EC, in guaranteeing a minimum number of seats for each stakeholder group needed to provide legitimacy to a decision-making process.</p> | |
| <p>According to a few respondents the ESCs should meet at least four times a year, one respondent suggested the ESCs' meeting at least once a year.</p> | <p>Disagree. The frequency of meetings will be determined according to the needs of each ESC. The Chairperson will, in close collaboration with ENTSO-E and the other parties responsible for implementation, determine a calendar each year, to be attached to the annual work programme of each ESC. Extraordinary meetings can be convened by the chairperson acting together with the ESC.</p> |
| <p>With regards to the permanence of membership and decision-making procedures, one respondent conditioned these with the role of the ESCs. If the ESCs are solely information sharing, membership could be self-selecting. In this case, only the chair and the supporting secretariat would be permanent members. However, if they have any formal role the membership needs to be pre-defined. With regards to the decision making, there are two possibilities. If the representative model is chosen, and particularly if there is any voting, representation should be at a Member State level. This permits any stakeholder to approach its</p> | <p>Disagree. The ESCs will not have any decision-making powers. Where relevant however, they could contribute to a more informed decision-making process for the methodologies and rules still to be developed.</p> <p>The ESCs will be open to the EC and representatives from all EU associations interested. Each EU association will have a fixed number of seats and will be free to select their representatives within their organisations.</p> |

| Respondents' feedback on the consultation document | Our views |
|--|--|
| <p>Member State representative to represent its views. It also allows for Qualified Majority Voting if this is desired. With independent model, members would not represent any particular stakeholder but act as experts governed by a set of principles that all members must adhere to. This could also be adopted as the model for the ESCs and EGs, suggested the respondent.</p> | |
| <p>2. On the role and representation of the EGs</p> | |
| <p>Whilst the respondents mostly commented on the representation and technical coverage of the work by the future EGs only, a limited number of respondents proposed EGs to serve as a platform to study a specific topic regarding the drafting and implementation of the network codes and guidelines on instruction from the relevant ESC. They should carry out studies on specific topics, according to one stakeholder.</p> | <p>Partly agree. The ESCs will have to be complemented, firstly at local level, by appropriate structures to engage stakeholders at local level, but also, where relevant, at EU or regional level to go more deeply into specific issues, which require further discussions before their implementation (this might particularly be the case for the methodologies and rules still to be defined). These ad-hoc structures will report to the ESCs.</p> |
| <p>Some stakeholders explicitly expressed their support to the proposed perennial TSO/DSO EG and the DSO-TSO level playing field, whilst the other see a possibility or a need for different EGs to be created (for example TSO/generators, TSO or ENTSO-E/wind industry experts, TSO/wholesale market trading EG, DA market coupling-PCR monitoring-Euphemia algorithm EG, Flow-based market coupling EG, Intraday market coupling- XBID Platform – LIPs EG and XB balancing EG).</p> | <p>Partly agree. It is important that the EGs established under the ESCs umbrella efficiently and effectively contribute to their overall mission: monitoring the implementation of NCs across Europe.</p> <p>To the extent they are deemed useful by the involved parties, the existing bilateral or multilateral structures or groups should obviously be continued and encouraged in parallel and outside of the ESCs umbrella.</p> |

| Respondents' feedback on the consultation document | Our views |
|--|--|
| <p>The most widely expressed support by some respondents with regards to EGs concerns the idea of enlarged representation through individual as opposed to through exclusive representation through associations. NGOs should also participate, respondents state. Two respondents called for a limited number of experts active in an EG, one respondent suggested EGs to build on the established user groups (as for example for the day-ahead and intraday coupling solutions). One respondent proposed to remove a limitation for composition of SCs and EGs, which as per current proposal is limited in scope to experts from 'industry and customer associations' to ensure a broad participation of stakeholders.</p> <p>Some respondents emphasised the importance of the EGs benefiting from regional/local expertise and thus the importance of the local/regional experts' participation – beside representatives of relevant European associations – in them. Similarly, two respondents pointed to the importance of geographically and regionally balanced participation, however, in the first place there should be experts in the relevant domain treated, they warned.</p> | <p>Partly agree. The creation of these EGs will be supported by the ESCs, on an ad-hoc basis according to the needs of each ESC.</p> |
| <p>One respondent proposed ACER to chair EGs, a role which could be delegated in practice, according to one respondent, or – as suggested by another respondent – chairmanship could fall in the hands of the lead regulators responsible for the four areas from the regional initiatives roadmap.</p> | <p>Partly agree. The chairmanship of the EGs will be agreed upon amongst the nominees by the ESCs on an ad-hoc basis according to the specific issue to be dealt with.</p> <p>The Agency will chair all Committees and nominate the Chairperson of each subgroup after consulting the ESC.</p> |

| Respondents' feedback on the consultation document | Our views |
|---|---|
| <p>One respondent suggested EG should meet at least twice a year, whilst another proposal envisaged meetings to take place when/if needed.</p> | <p>Disagree. The number of meetings will be according to the needs.</p> |
| <p>3. On the importance of involvement of national and regional structures</p> | |
| <p>Several respondents emphasised the importance of proper local representation in the stakeholder dialogue (in particular DSOs according to one respondent) as the NC implementation process is essentially a local domain. To achieve this, a dialogue between the major building blocks – the Agency, the members of ENTSO-E and the direct stakeholders, must be in place.</p> <p>The respondents therefore called upon the Agency and ENTSO-E to ensure adequate involvement and input from the national and regional structures. The process should be underpinned by a strong and effective two-way liaison between the European EGs and Committees with national structures responsible for network code implementation as it will ensure that national and regional positions and needs will be adequately reflected and taken into account in the work of ESCs and EGs. In particular, new national structures/stakeholder groups created ad-hoc for the implementation of a network code should have the possibility to liaise with the ESCs and vice versa to ensure that.</p> <p>Several respondents indicated that in many countries local, national structures are non-existent. Due to this and in such cases, they</p> | <p>Partly agree. The ESCs will help to monitor any failure or lack in stakeholder engagement at local level and identify appropriate measures as well as in sharing best practices.</p> <p>ENTSO-E, in close coordination with the Agency commits to prepare and publish prior to the first meeting of each ESC a list of all existing national and regional structures responsible for stakeholder engagement during network codes implementation.</p> |

| Respondents' feedback on the consultation document | Our views |
|---|--|
| <p>believed, the Agency and ENTSO-E should put pressure on NRAs and local TSOs to actually set up national structures in these MSs. Further, a few respondents believed that the Agency should assure regional setting up of the NC-specific stakeholder groups to avoid too centralisation of the process, there should however be MS contact points.</p> <p>To facilitate the process, a few respondents believed that national structures and regional SCs should be identified and listed and this list should be updated on a regular basis. The input, which might be expected from each of these structures and committees for a specific code or a group of codes and or/guidelines, should be known, for example NC implementation, interpretation, MS choices/decisions, derogations, ...</p> | |
| <p>One respondent expressed their reservations about the need for regional bodies unless their usefulness is clearly demonstrated for the implementation of market rules by a group of early movers. The Agency and ENTSO-E should be the prime supporters of the harmonisation of European market rules, in particular so as issues can be dealt within EGs.</p> | <p>Partly agree. Some regional structures will be needed to help define the regional methodologies and rules still to be defined pursuant to Network Codes or Guidelines.</p> <p>The ESCs will be help to monitor these regional developments and their consistency.</p> |
| 4. On the Terms of Reference (ToRs) | |
| <p>A few respondents comment on the possible ToR which should be supporting the functioning of SCs and EGs. Some believed that there</p> | <p>Partly agree. Most of the comments have been implemented in the draft ToR accompanying this evaluation paper.</p> |

| Respondents' feedback on the consultation document | Our views |
|---|---|
| <p>should only be one set of ToRs for all three ESCs. Two respondents provide detailed drafts of the ToRs for the ESCs.</p> <p>According to a few respondents who comment on the ToRs, the latter should among other:</p> <ul style="list-style-type: none"> • Include simple and predefined rules and procedures for stakeholder engagement, including minimum standards on the time span between Committee and EG meetings, timely mailing of documents with deadlines for circulation, public availability of minutes of meetings, decisions, process for changes to the ToRs and proposals etc.; • Focus on output and functions with clear interpretations and guidance documents expressing stakeholder views on different topics (one respondent suggested the ToRs should include the rules of the headline reporting for outputs, summarising key themes discussed, an action log and log of any issues raised by stakeholders); • Be developed in a dialogue with stakeholders on the relevant level (one respondent particularly warns that this dialogue should be ensured throughout the process of developing the proposals and not be limited to a consultation); • Be flexible for future adjustments and clear for ESCs and EGs. | <p>Particular attention will be paid to the transparency of the process. Please see our response in Section 5.</p> |
| <p>One respondent proposed any change of the ToRs to be subject to a public consultation.</p> | <p>Disagree. The Agency and ENTSO-E do not foresee another public consultation on this issue. The draft ToR and evaluation paper will be presented and discussed at the next Florence Forum. The draft ToR will</p> |

| Respondents' feedback on the consultation document | Our views |
|--|--|
| | be approved by each ESC at the first meeting. |
| <p>Another respondent suggested having a clear procedure in place for changing proposals. In case of cost implications, a detailed Cost-Benefit-Analysis (CBA) should be provided to a change proposal. The change proposal should be adopted by unanimity within the stakeholder group. For particularly contentious cases, they suggest, the neutral party chairing the committee should aim to facilitate a compromise between the concerned stakeholders directly.</p> | <p>Disagree. The ESCs will be tasked of taking stock of the implementation status of each NC within each MS and identifying any gap, inconsistencies or inefficiencies from European perspective.</p> <p>The ESCs will not have any decision power but could contribute to a more informed decision-making process.</p> |
| <p>Among other individual responses on the topic, a respondent proposed establishing an umbrella structure of formalised communication between the ESCs. A further consideration should be given to the elaboration of one of the EGs into a forum operating across all three of the proposed code families.</p> | <p>Partly agree. The ESCs will pay particular attention to possible interactions and cooperation between the 3 ESCs. This interaction should be facilitated thanks to the chairmanship of the 3 SCs by the Agency. The Agency and ENTSO-E do not exclude to convene joint meetings of some ESCs or their respective EGs if so required to address common issues.</p> |
| 5. On Transparency | |
| <p>A large group of respondents supported the transparency principles from the consultation document, in line with which a common, single IT platform to share information in time should be made available. They further stated that all information related to the ESCs, the related and perennial EGs was to be made available on the IT-platform – under the format of a publicly accessible website, which would be managed by ENTSO-E or ACER. One respondent believed that this IT platform should however be simplified compared to the current online tool by</p> | <p>ENTSO-E will put in place a dedicated IT platform for each ESC in close collaboration with the Agency. All documents, deliverables, minutes, lists of participants and agenda will be published on this platform. The IT platform will also allow stakeholders, members or non-members of the ESCs, to express comments on the main deliverables and will allow members to register to the meetings. If technically possible, live streaming of each meeting will be publicly available.</p> <p>To the extent possible, all the material will be available before the meetings (ideally 2 weeks or at least 5 working days before any meeting).</p> |

| Respondents' feedback on the consultation document | Our views |
|--|--|
| <p>ENTSO-E, enabling fully transparent access to the contributions of all parties, with individual TSOs being required to submit comments online rather than using their involvement in ENTSO-E to advocate their position.</p> <p>A few respondents emphasised that full transparency is in particular to be ensured with regards to the documentation used, the decisions taken and the dynamics between EGs and ESCs. One respondent stated explicitly that commercially sensitive data though should not be made publicly available.</p> <p>Some respondents believed that a single IT platform or weblink should accommodate input by all representatives without necessitating full participation in all the meetings, for example via webinars, tele- or videoconference in order to reduce travel for parties. One respondent emphasised consideration which should be given to the way the burden on the subject-matter experts can be managed, for example, using the ENTSO-E secretariat to report on behalf of TSOs, seeking questions to be submitted in advance so that responses can be provided by the relevant subject-matter expert, and when establishing the schedule for topics to be discussed at each meeting, considering the potential burden on all parties.</p> | <p>The chairpersons, assisted by ENTSO-E, will produce minutes of each meeting which will accurately reflect discussions. Participants shall be provided with a reasonable time period in which to comment on the minutes. In the event that no comments are received, the minutes shall be deemed to be approved. In the event comments are received, they shall be incorporated when justified, into a final version of the minutes. Minutes from the precedent meeting, as well as the meetings agendas and annual work program should be validated by a show of hands.</p> <p>Each ESC should publish after each meeting conclusions with main action points summarising the key themes discussed, an action log, and a log of any issues raised by stakeholders that may require further investigation. At each meeting, the Chairperson will be responsible for ensuring that clear answers and reports on each item included in the issues and action logs are given by responsible parties to ESC members.</p> <p>The Agency and ENTSO-E expect that the representatives designated by all organisations interested will be attending the meetings physically and will be representing the views of their members. Each organisation represented in the various ESCs will have to organise themselves internally to present their views.</p> |
| <p>A few respondents emphasised the importance of open and transparent selection process for representation in the ESCs and EGs to ensure a fair representation for all parties in the process. One of the</p> | <p>Partly agree. Please refer to section on "<i>Representation in the ESCs</i>"</p> |

| Respondents' feedback on the consultation document | Our views |
|---|--|
| <p>respondents emphasised the importance of basing any decision taken on transparent, neutral and non-discriminatory criteria.</p> | |
| <p>6. On the Stakeholder involvement and the NC amendment process</p> | |
| <p>One respondent expressed the idea which was broadly agreed upon by some other respondents, stating that 'the Network Codes should be approached as "living documents" which will require revision. The stakeholder discussions will hopefully inform the Agency and ENTSO-E of the effectiveness of the Network Code implementation and will generate ideas that feed into the amendment process of the European NCs. Similarly and supportive of this, several stakeholders emphasised the importance of the contributions from the ESCs to the NC implementation process, they however pointed out to the distinction which exists and should continue to exist between the:</p> <ul style="list-style-type: none"> • Consultative informal discussions among stakeholders regarding lessons learnt from the implementation of the codes and guidelines, which may lead to evolution of these codes and guidelines and which can be discussed in the ESCs; and • Formal process of amendment of the codes steered by the Agency (or in some cases the EC) and in which all interested parties can introduce amendments to the codes (and | <p>Partly agree. The Agency and ENTSO-E agree on the beneficial role that the stakeholder committees, consisting of European stakeholders associations, could play for the NC amendment process. This form of stakeholders' involvement will be a useful complement to the formal amendment process, accessible to all stakeholders, as foreseen in Article 7 of Regulation 714/2009, and which will be steered by the Agency (for more information on the NC amendment process, see the Agency's Guidance paper³).</p> <p>However, for practical reasons and because of the importance and magnitude of the implementation tasks ahead, the scope of involvement of the stakeholder committees will not include amendment proposals at first. In due time and based on the return of experience of the stakeholder committee meetings on the implementation monitoring, the Agency may involve the ESCs in the NC amendment process.</p> |

³ [Add link](#)

| Respondents' feedback on the consultation document | Our views |
|---|-----------|
| <p>regulations) independently.</p> <p>One respondent was of the opinion that the rules of procedure should distinguish which, if not all, eventual changes discussed in the SCs would have to go through comitology or be part of other accompanying documents, such as the implementation guidelines and be agreed, therefore, in a less formal manner. Further, a respondent highlighted the importance of setting up the process for timely and appropriate consideration of network code amendments, reflecting the technical nature of the network codes, the need for the broadest stakeholder engagement and establishing an advisory role for the ESCs in the process.</p> <p>A suggestion was made that ex-ante and ex-post consultations among the stakeholders on amending of the rules or on the implementation proposals should be done.</p> | |

4 Next Steps

In June, the draft Terms of Reference will be presented at the Florence Forum.

A call for interest to participate in the Market ESC will be launched late summer, with the 1st meeting envisaged to take place in autumn 2015.

The two other ESCs will follow.

Annex 1 – About the Agency and ENTSO-E

The Agency for the Cooperation of the Energy Regulators (ACER) is a European Union body established in 2010. ACER's mission is to assist National Regulatory Authorities in exercising, at Community level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action.

The work of ACER is structured according to a number of working groups, composed of ACER staff members and staff members of the National Regulatory Authorities. These working groups deal with different topics, according to their member's fields of expertise.

ENTSO-E is the legally mandated body of electricity TSOs at the European level. ENTSO-E's mission is to fulfil its various legal mandates for the benefit of electricity customers, and to leverage its mandated work products to shape future energy policy for the benefit of society at large in the face of significant challenges in the areas of:

- **Security** - pursuing coordinated, reliable and secure operations of the interconnected electricity transmission network, while anticipating the decision to cope with upcoming system evolutions.
- **Market** - providing a platform for the market by proposing and implementing standardised market integration and transparency frameworks that facilitate competitive and integrated continental wholesale and retail markets.
- **Sustainability** - facilitating secure integration of new generation sources, particularly renewable energy, as well as significantly contributing to the EU's greenhouse gases reduction and renewable energy supply goals.

These challenges also imply addressing:

- **Network Adequacy** - promoting the adequate development of the interconnected European grid and investments for a reliable, efficient and sustainable power system.

Annex 2 List of respondents

Below is a table displaying the names of the respondents to the formal joint public consultation. The full responses can be found published on our websites (www.acer.europa.eu and www.entose.eu).

| No | Respondent | Type | Country |
|----|---|--|----------------------|
| 1 | ANEC and BEUC | Consumer associations | Europe-wide |
| 2 | AXPO Group | Energy industry | Switzerland |
| 3 | CEDEC, EDSO and GEODE | DSO/local utilities | Europe-wide, Belgium |
| 4 | Citizens Advice Bureau, Consumer Futures Unit | Consumer association | UK |
| 5 | COGEN Europe | European association, promotion of cogeneration | Europe-wide |
| 6 | E.ON | Energy industry | Germany |
| 7 | E3G | European association, sustainable development | Europe-wide |
| 8 | ECOS | European environmental consumer association | Europe-wide |
| 9 | EDF | Energy industry | France |
| 10 | Edison SpA | Energy industry | Italy |
| 11 | EFET | Energy trader | Europe-wide |
| 12 | EHI | European association, heating industry | Europe-wide |
| 13 | Elexon Ltd | Energy industry, other | UK |
| 14 | EnBW | Energy industry | Germany |
| 15 | ENEL SpA | Energy industry | Italy |
| 16 | Energy UK | Energy industry | UK |
| 17 | ESB GWM | Energy industry | Ireland |
| 18 | ESTELA | European association, Solar Thermal Electricity | Europe-wide |
| 19 | EUGINE and EUROPGEN | European associations, engine power plant industry | Europe-wide |
| 20 | Eurelectric | Energy industry | Europe-wide |
| 21 | Europex | Energy trader | Europe-wide |
| 22 | EUTurbines | European association, turbine manufacturing | Europe-wide |
| 23 | EWEA | European association, wind industry | Europe-wide |
| 24 | Goteborg Energi | Energy industry | Sweden |
| 25 | Individual | Various | Finland |
| 26 | National Grid | TSO | UK |
| 27 | Nordenergi | Energy industry | Nordic association |

| | | | |
|----|--------------------------------|---|-------------|
| 28 | Orgalime | European association, Engineering industries | Europe-wide |
| 29 | RWE | Energy industry | Germany |
| 30 | Statkraft | Energy industry | Norway |
| 31 | Svensk Energi | Energy industry | Sweden |
| 32 | Vattenfall AB, European office | Energy industry | Belgium |
| 33 | Wärtsilä Corporation | Energy industry | Finland |