

This vision is ENTSO-E's response to the Energy Union Communication

ENTSO-E's 'Vision package' includes four executive papers on an augmented market design, on regional co-operation to complete the Internal Energy Market, on better regulation for energy in the EU and on the interaction of security of supply and European markets. These papers, launched at the Annual Conference of ENTSO-E on 20 November 2015, formulate high-level recommendations accompanying the Energy Union implementation, 'from promise to practice'.

REGULATORY GOVERNANCE FOR THE ENERGY UNION: IMPLEMENT AND UPDATE



The energy system has been changing in the past decades and continues its transition journey towards more renewables, flexibility, new technologies and a much more active customer. This requires policy-makers, regulators and network operators to think of the next steps and to update existing legislation while pursuing the implementation of the agreed upon goals.

The Third Package has delivered. It delivered a more integrated wholesale market, defined ACER and the ENTSOs and pushed NRAs and TSOs to work more closely together.

It saw network codes elaborated in close interaction with stakeholders, the firsts of which are now adopted.

This policy paper summarises ENTSO-E's assessment of the effectiveness of the current regulatory governance since the Third Package and shares recommendations for update in view of the forthcoming legislative changes in 2016. Our recommendations address the time frame up to 2020.

The paper is based on a five-month iterative process with ENTSO-E members, stakeholders, regulators and policy-makers through a series of Chatham House workshops. It is structured as follows: The introductory paragraph describes better regulation paradigms and the value-added of voluntary cooperation. It emphasises the implementation imperative,

addresses the changing roles of ACER and ENTSO-E, and highlights regulatory gaps occurring in markets, regional cooperation, and security of electricity supply. Here, the main regulatory recommendations of the other papers are summarised in view of inspiring both forthcoming legislation and voluntary actions.

1 THE STARTING POINT: WHAT BETTER REGULATION MEANS

European energy regulation refers to the well-established trilateral process among the European Commission, the European Parliament, and the European Council, with a complementary role, since 2009, for ACER, as well as for the ENTSOs as outlined in Regulations 713/2009, 714/2009 and 715/2009.

Regulatory action is benchmarked against its contribution to reliability, affordability, simplicity, and protection and empowerment of the customer¹⁾. The efficient cooperation of Member States and NRAs is critical for efficient TSO action. It should be stressed at once that the potential benefits of more regulation should always be analysed against the costs of non-intervention and the benefits and risks of possible voluntary or market approaches.

Voluntary cooperation has brought significant progress and enabled new ideas to be tested by TSOs, regulators, industries, market participants and Member States. TSOs cooperate voluntarily, for instance, through Regional Security Coordinators (RSCs) or capacity allocation offices. Regulators cooperate through CEER, and some Member States have set up cooperation structures such as NSCOGI, BEMIP and the Pentalateral Energy Forum (PLEF)²⁾. In many cases, voluntary approaches prepare the ground

¹⁾ For so-called RASP principles, see CEER, Council of the European Energy Regulators, https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/2310178/SessionIII_-_2020_Consumer_Vision_-_Patricia_deSuzzoni.pdf

²⁾ See the vision paper “Where the Energy Union starts: regions” for details on these regional organisations, and how they should be further developed throughout all Europe.

for sound new legislation or regulation. Likewise, a permanently improving exchange with stakeholders is key for ensuring better regulation. Mixed approaches combining voluntary and regulatory actions can also deliver very effectively: For example, market coupling grew organically and expanded

quickly in Europe, driven by regional cooperation and the sheer interest of market participants. The Network Code on Capacity Allocation and Congestion Management, which entered into force in 2015, will ensure that maximum benefits are delivered to all European consumers.

There are numerous examples of successful voluntary approaches and they often constitute a first step to later on following legislation. For instance, the **TSO community** developed the UCTE Handbook and the Multilateral Agreement, which has remained an essential element of Continental European system operation and Regional Security Coordination Initiatives (RSCIs), without a top-down regulation push. In the future, TSOs due to their view on the whole electricity system and their responsibility for the overall electric balance and stability of the system could propose requirements for demand-side response (DSR) services, as is the case in other parts of the world.



2 THE IMPLEMENTATION IMPERATIVE: GET IT DONE

The full implementation of the Third Package has to be the basis on which the Energy Union is built. Implementation, particularly of the network codes, which are the rules of the game of the internal energy market, has to remain a priority for all parties involved.

Network codes cover, in the broadest way, the experience, knowledge and needs of the system gained in an impressive process of co-operation throughout all of Europe. This achievement needs to be preserved and implemented. To improve the way this is done, the experience of the six years should be efficiently exploited by all parties involved to increase effectiveness and transparency further on and to learn for the next steps.

With regard to infrastructure and Projects of Common Interests (PCIs), ENTSO-E sees a vital need to focus on 'getting it done': on getting the infrastructure built, since it is the bottleneck for deploying large amounts of RES and ensuring that customers all across Europe benefit from reliable and competitive power. However, after several consecutive TYNDPs and PCI processes, it must be acknowledged that only one-third of the planned lines is on schedule. This gap is the consequence of overly complex permitting processes. ENTSO-E therefore welcomes the establishment of the Copenhagen Infrastructure Forum. We recommend a specific role for the Forum in developing solutions for getting the trans-European energy infrastructure from promise to practice. Furthermore, it is a prerequisite to address financing issues, providing the right incentives to enable the investments in an efficient manner. These obstacles must be overcome through strong European and national action on the regulatory side.

RECOMMENDATIONS

1. The EC and Member States should adopt all European network codes with no delay.
2. The EC and ACER should consider in a non-binding manner how best to coordinate infrastructure permitting regionally so cross-border impacts are taken into account appropriately.
3. Member States should voluntarily reinforce regional coordination of energy policy with potential trans-national effects. ENTSO-E's adequacy analyses can be a useful basis for Member States' discussions on security of supply issues.
4. Incentive regulation in EU Member States has to include budget for public acceptance actions, as well as for innovation. This is largely not the case today. As a first step, ACER should benchmark best practice of regulatory treatment in these areas.

3 MANDATES OF ACER AND ENTSO-E: BROADLY APPROPRIATE, BUT...

The initial regulatory gap observed in 2007 is shrinking, largely through the mandated actions of the ENTSOs and ACER – e.g., network codes, the TYNDP, market coupling – and through the Infrastructure and Transparency Regulations.

To close the gap further, the implementation of both the Third Package and the network codes is decisive. The entire European electricity market will be significantly further developed in the sense of the common European interest by the implementation of the connection codes, the operational codes, the market codes, the tools for fostering investment to integrate the European electricity market, like the TYNDP, and the transparency platform. The implementation of the codes will lead naturally to the adaptation of the roles of NRAs, TSOs, ENTSO-E and ACER.

The establishment of ACER and the ENTSOs through the Third Package has proven both necessary and efficient on the way forward to fully implementing the Internal Energy Market. Broadly, the mandates of both are appropriate. There is a need to increase efficiency further through the full use of the existing provisions. Beyond this implementation imperative, ENTSO-E sees a few but vital new areas for regulation: they relate to retail-wholesale integration, as well as the regional and European system adequacy assessment.



4 THE ROLE OF ACER

ACER should monitor the progress of national NRAs in implementing the Third Package, enhance existing and contribute to new regional NRA cooperation and activities, and promote regulatory best practices across Europe.

In the short term, it is important that ACER is enabled and encouraged to carry out its existing mandate of coordinating national regulatory policies to its fullest extent, to be a pro-active facilitator among NRAs for cross-border projects and to define to what extent and how it handles joint regional NRA decision processes as foreseen in the network codes with regards to 'all NRAs' decisions.

The implementation of network codes and guidelines will be extremely demanding for ACER in the coming years. A high level of availability of teams from ACER, the EC and the ENTSOs will be necessary to deliver the best possible products within the ambitious time frame set in the network codes and to finalise the implementation of the Third Package.

ENTSO-E sees potentially a role for ACER in distributed flexibility. European legislation may be required in the future with regards to retail market improvements as a response to the increasing integration of retail and wholesale markets.

ACER's current powers but also conceivable increased powers would not, by themselves, achieve these retail market improvements. Any future ACER action in this direction needs to be founded on legislation about the interactions between wholesale and retail markets.

The competitive activities of power exchanges are already subject to regulatory oversight by NRAs (be it financial or energy regulators). However, future experience with day-ahead and intraday market coupling processes will reveal the effectiveness of the current regulatory oversight of power exchanges with regard to their functions as market coupling operators (MCOs). There appear to be areas in which the role of individual NRAs in their oversight function is not yet clear or consistent. One example is currently applied cost recovery mechanisms via TSOs. ACER could carry out a regulatory oversight by reviewing annually the line of competition versus cooperation between PXs in market coupling operation and ensure that any identified regulatory gaps are filled without hampering market development.

RECOMMENDATIONS

5. ACER/CEER and NRAs should enhance regional regulatory coordination.
6. ACER should monitor the implementation of the Third Package by NRAs, namely on the measures that enable wholesale and retail markets interactions.
7. ACER needs to dispose of adequate resources for fulfilling its mandate.

5 THE ROLE OF ENTSO-E

The Third Package has created a well-functioning TSO cooperation that delivers every day and develops dynamically. To respond adequately to its mandates, ENTSO-E needs the full depth and knowledge of its member TSOs as much as TSOs need a strong ENTSO-E through which to identify and further develop efficient solutions at a regional and European level.

The ENTSO-E platform combines its strong orientation towards the European view, the system view and benefits to customers and society at large with the expertise and responsibility for security of supply of each of its member TSOs. ENTSO-E is not a political organisation, and its notion of Europe is based on physical realities and therefore stretches well beyond the EU borders, as is reflected through a broad membership of 41 TSOs from 34 countries. Last but not least, ENTSO-E and ENTSSOG interact and ex-

change on best practice, taking stock of their similar mandates while taking the fundamental differences between gas- and power systems into account.

In view of the objectives of the Energy Union Strategy, and to give stakeholders the possibility to assess ENTSO-E's commitment to the Internal Energy Market and to society at large, we propose several adjustments to ENTSO-E's mandate and governance through a set of proactive voluntary measures.

RECOMMENDATIONS

- 8.** ENTSO-E will further improve stakeholder interaction, develop co-creation of network codes and increase transparency (such as the publication of assembly minutes and response on integration or rejection of stakeholder input).
- 9.** ENTSO-E will set up an independent advisory board to provide advice on the deliverables of ENTSO-E.
- 10.** ENTSO-E will keep coordinating and shaping the development of Regional Security Coordination Initiatives (RSCIs) and their interoperability and will organise the mandatory participation of all TSOs. ENTSO-E will ensure that regional structures deliver in due time and ensure the interoperability of all RSCIs.
- 11.** ENTSO-E's regional and Europe-wide system adequacy methodology should become the basis for enhancements of market design, security of supply and market integration at a regional and European level, providing a consistent approach for more detailed Member States' assessments.

6 ADDRESSING REGULATORY GAPS

Three areas of regulatory and voluntary action have been identified by ENTSO-E: distributed flexibility, regional cooperation and security of supply and system adequacy.

The three vision papers on “Markets and innovation deliver the Energy Union”, “Where the Energy Union starts – regions”, and “Where markets meet Security of Supply” address these three dimensions in greater detail and deliver recommendations for the forthcoming legislative initiatives.

While addressing the current challenges of markets, regions, and security of supply through these papers, the increasing interdependence of markets and operations with respect to power systems became evident again and again. Security of power supply, for example, can be widely addressed through adequate market mechanisms. With potentially shorter gate closure times in the future, markets and operations will move even closer together, while preserving the time needed to operate the system securely.

More efficiency will come from the regional initiatives and from the update of the market framework, so that flexibility is at reach from various sources. To ensure a truly regional and European approach, a regional and European-wide system adequacy approach is needed and should become an element of the new provisions on electricity security.

A seamless regulatory and operational framework is needed, anticipating forthcoming change and the consequences of the continuing energy transition. The European power system will continue to be on the move, with increasingly linked wholesale and retail markets. The debate on demand side response and active customers will shift to centre stage, together with such issues as Big Data and reliability in the age of sustainable electricity replacing other energies in heating, cooling and transport.

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