

**Response of
EURELECTRIC and VGB PowerTech**
(and further referred to as the Associations)
to

ENTSO-E's & ACER's call for comments on:

**Role of stakeholders in the implementation of
network codes and related guidelines, and in
particular the establishment of European Stakeholder
Committees for network code implementation**

Brussels, 28 January 2015

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Introduction

The Associations have already expressed in the past the need for a stakeholder platform regarding the implementation of the network codes and have also asked the Commission to not wait to establish them until the first codes are published and enter into force. We therefore welcome ACER's and ENTSO-E's joint public consultation on the role of stakeholders in the implementation of network codes and the establishment of EU Stakeholder Committees.

As stated in the introduction of the consultation, experts from all our member companies have indeed devoted considerable time over the past few years to the development of the network codes for electricity.

With the first codes/guidelines that will probably enter into force in 2015, the Associations are equally convinced that an even greater challenge lies in front of us, namely their national (and regional/local) implementation and monitoring. The codes/guidelines define a lot of requirements – some of them are non-exhaustive, meaning that choices will have to be made in order to define what still has to be developed, such as regional agreements, common methodologies, etc.

As proposed in the consultation and since consistency and transparency are crucial, it is thus vital that the implementation process actively involves all relevant stakeholders both at local/regional and European levels. We consider that this consultation is mainly aimed at setting up a structure to ensure efficient stakeholders' involvement in NC implementation at European level. However, efficient structures should also be set up at local/regional level as implementation issues will be raised first at this level. We therefore urge ACER and ENTSO-E to put pressure on the National Regulatory Agencies and the local TSOs to actually set up National Structures and Regional Stakeholder Committees in Members States where these are still missing. The links and the coordination process between the Stakeholders' structures set up at local/regional and European levels should be further clarified.

To manage this implementation (and monitoring) work at European level, an efficient structure is fundamental. In this sense, we support ACER and ENTSO-E in their consideration to only create three Stakeholder Committees, one for each family of codes (Connection codes, Operational codes and Market codes). Our view is that all committees should be chaired by ACER, body in charge of monitoring the implementation of network codes. Regarding the expert groups, an ACER chair should also be the rule but in practice the chair could be delegated on a case by case basis (i.e. Chair to be appointed by the relevant Stakeholder Committee). Our view is that Chairs of the Stakeholder Committees shall be obliged to take on board Stakeholder Committees' proposals and advices in the implementation process of the Network Codes and to justify in written form, if they decide not to do. While the stakeholder committee does not have decision making powers, it should provide a forum for exchange of views on amendments, and provide when appropriate amendment proposals into the formal process led by ACER.

The Associations also support the aim of setting up a perennial TSO/DSO expert group to discuss system operator-specific issues. We think this expert group should not only focus on the implementation of the network codes, but discuss the TSO-DSO interface in a broader scope, covering e.g. roles and responsibilities of TSOs and DSOs in the energy system, coordinated planning

of TSO-DSO network development, etc. At the same time, the Associations do also consider a perennial TSO/generator expert group of equal importance not only reflecting their large role in system stability, but also because market participants are particularly affected by the network code drafting and implementation process. This group should be governed by the corresponding regulatory bodies. All information related to these groups should also be made available on the IT-platform – under the format of a publicly accessible website.

In the following more detailed comments, we encourage both organisations to clarify some elements of their proposal such as how to ensure stakeholder engagement, how to coordinate most efficiently the different stakeholder committees and expert groups and how to liaise with local structures directly involved in the implementation process

EURELECTRIC and VGB also support the three European DSOs (EDSO for Smart Grids, CEDEC and GEODE) associations response to this consultation.

General Comments

Stakeholder Committees: How to make sure stakeholder engagement will be significant, what is the outcome?

The Associations support the idea that the Stakeholder Committees will serve as a platform to 'share views' on network codes and guidelines implementation thereby contributing to facilitate NRAs' and ACER's monitoring role. In our view the role of stakeholder Committees should be determined more clearly. For legal reasons, it cannot be expected that binding rules will be decided in these Stakeholder Committees but as an outcome we could at least expect clear interpretations and guidance documents – in which stakeholders' common views are expressed on different topics – which can be used by all parties involved in network codes and guidelines implementation across Europe.

The interaction of (regional) expert groups and Stakeholder Committees needs to be clarified.

To make the stakeholder committees an effective body in the network process, it will be necessary to create sufficient information stream on ongoing evolutions regarding implementations. This information will be needed both ex-ante and ex-post to be sufficiently aware of the status of the implementation in all member states.

A unique and neutral coordinator is needed to steer the Stakeholder Committees

It is important to guarantee coherence and consistency between the Stakeholder Committees by providing sufficient coordination. In this regard, an ACER chair in its monitoring role should be the rule and therefore we question the choice of having two different organisations chairing the Stakeholder Committees – ACER for the Stakeholder Committee on Market codes and ENTSO-E for the Stakeholder Committees on Connection and Operational codes.

Acknowledging ENTSO-Es expertise, we still find this division of task worrying. ENTSO-E has been drafting the codes, mainly within their own domain. It is somewhat unusual that the regulated entity gets to draft the rules concerning its own area of actions. TSO's are stakeholders for most of the codes with clear financial interests that could be conflicting with the interests of other stakeholders. Thus it is crucial to ensure that the implementation phase should have oversights from other entities, and the power structure must reflect an honest intent of safeguarding all interests.

For these reasons the overall structure should be balanced: committees should be set up and chaired by independent parties (i.e. ACER) as fair and well-balanced consideration of all interests is crucial. Regarding the expert groups, an ACER chair should also be the rule but in practice the chair could be delegated on a case by case basis (i.e. Chair to be appointed by the relevant Stakeholder Committee). To support the Chairs of the various Committees and Expert Groups, ENTSO-E should play an important secretarial function.

Steering the three Stakeholder Committees from ACER also facilitates coherence between the different network codes: indeed (for instance), there is a clear link between some of the operational codes (e.g. LFCR) and some of the market codes (e.g. balancing). Having all chairs from ACER will definitively enhance the mutual understanding of what is discussed in the different stakeholder

committees. Coordination among the three Stakeholders Committees must be ensured (periodical meetings) to share experiences and to learn from each other.

We also encourage ENTSO-E and ACER to have only one set of Terms of Reference (ToR) for the three Stakeholder Committees. If AESAG (Ad hoc Electricity Stakeholder Advisory Group) is transposed to one of the Stakeholder Committees (for Market Codes) we expect that its scope will be extended to meet the tasks of the Stakeholder Committee and that stakeholders not represented today in this group will be able to participate.

Assessment of Stakeholder Committee structure and functioning

A periodic assessment of Stakeholder Committee structure and functioning shall be made, based on transparent and impartial indicators. The assessment shall be reported to the European Commission.

Expert groups' importance must be recognised and fostered

The creation of issue/network code specific expert groups seems very useful to tackle one specific network code or specific topics of the network codes and opens the possibility to include the right experts in the discussions. The expert groups should benefit from regional/local expertise, hence the participation of local/regional experts – next to representatives of relevant European associations - should be guaranteed in these groups.

In addition, the coordination between the expert groups and their respective Stakeholder Committee is very important, because all input from the expert groups needs to be taken into account in the relevant Stakeholder Committees.

ACER should be fully in charge of the amendment process

Regarding the amendment process for the network codes the Associations insist that a clear distinction is made between:

- On the one hand, informal discussions between 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 Stakeholder Committees;
- On the other hand, the formal process of amendment of the codes steered by ACER (or in some cases the Commission) and in which all interested parties can introduce amendments to the codes (and regulations) independently. While the stakeholder committee does not have decision making powers, it should provide a forum for exchange of views on amendments, and provide when appropriate amendment proposals into the formal process led by ACER.

What to expect from National structures and Regional stakeholder committees?

The consultation document speaks about the Stakeholder Committees *liaising* with existing National Structures and Regional stakeholder committees. It should be clarified what role those existing structures and committees have to play and how they will liaise with each other.

As a starting point, those National Structures and Regional stakeholder committees should be identified and listed and this list should be updated on a regular basis. We urge ACER and ENTSO-E to

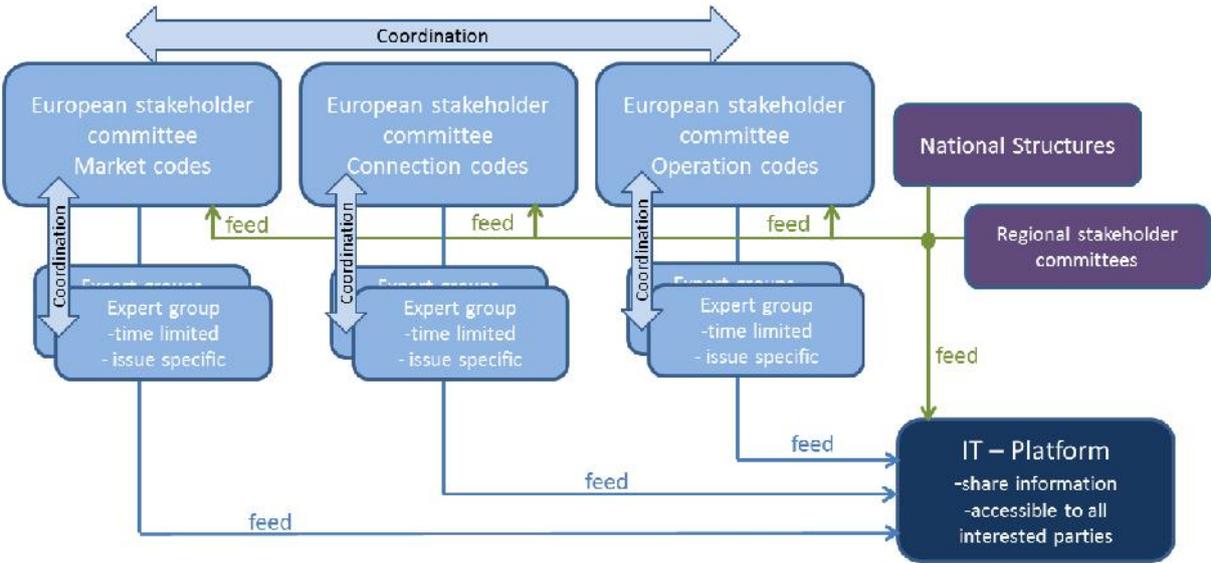
also put pressure on the National Regulatory Agencies and the local TSOs to actually set up these structures in Member States where these are still missing. As some of the early implementation projects show (e.g. balancing pilot projects), the local stakeholder involvement is currently almost non-existent. Balancing pilot projects also show how important it is to have regional expertise present. It is highly difficult to find people who have enough deep level understanding to discuss all different pilot projects.

For each of these structures and committees, it is also important to know what input might be expected from them (implementation issues, interpretation issues, MS choices, derogations, ...) and for which code(s) and/or guideline(s), to be sure that relevant information and/or feedback is to be expected.

Furthermore, it must be clear that all Stakeholder Committees are organised independently from any National Structure or Regional Stakeholder Committee, which does not exclude that these later can be informed and contribute to point out local implementation problems. The views of the Stakeholder committees shall be based on the inputs of the expert groups, on inputs by national structures or Regional Stakeholder Committees and on the contributions of the Stakeholders. The advice and proposals of the Stakeholder Committees should however be established as an independent opinion from regional and national committees input.

Proposal for Terms of Reference (ToR)

In this part, the Associations propose the structure and content for the ToR of the Stakeholder Committees and the Expert Groups. The figure below (*figure 1 from the consultation document*), should be part of both TORs as an introduction, showing the overall organizational structure and the links between the components.



Stakeholder Committee

1. Purpose of the Committee

- Serve as a platform to share general views on network codes and guidelines, drafting, implementation and thereby contributing to facilitate NRAs' and ACERs monitoring role – and formulating interpretations and guidance;
- Be based on simple predefined rules and procedures, to avoid bureaucracy and maximize the benefit from stakeholder engagement;
- Define responsibilities to ensure clear leadership;
- Have the appropriate composition based on expertise , efficiency and regional balance;
- Ensure close links between the different groups;
- Ensure transparency;
- Periodically, bring their views, expertise and experience to the amendment process.

2. Structure and Membership

The structure of the Committee is as follows:

- Chairperson: ACER, body in charge of monitoring the implementation of network codes. The Chairperson shall facilitate the meeting and act in a neutral way.

- Permanent members: in order for the Committee to be able to work actively and efficiently the number of participants should be limited to around 20. Participating relevant European organizations are allowed to nominate one representative (and one replacement) as main contact. Priority should be given to representatives of relevant European organizations but participation can vary according to the issues. Participation should be extended to individual companies on invitation for specific topics or on their request addressed to the Stakeholder Committee for relevant topics. As far as possible, an adequate geographical representation should be taken into account. The membership of the Committee should be balanced and on equal footing, representing all part of the value chain. At least the following relevant European associations should be represented:
 - TSO's representative associations;
 - DSOs' representative r associations;
 - Generators' representative associations;
 - Electricity traders' representative associations;
 - Consumers representative associations (industrial consumers, households);
 - Electrical equipment manufacturers/suppliers representative associations;
 - Power Exchanges' representative associations;
 - ...
- Observers: the European Commission;
- ENTSO-E secretariat as permanent support/organiser.

3. *Role of participants*

The stakeholder members shall commit to:

- Consistently attend meetings (with a stable membership);
- Actively participate in meetings and in the common agreed tasks;
- Contact their own members/stakeholders to update on implementation and monitoring;
- Give feedback and represent their views and concerns.

ENTSO-E and ACER shall commit to:

- Act in an open and transparent manner to inform stakeholders;
- Provide information both ex-ante and ex-post to any national/regional implementation to facilitate participant's understanding; Initiate and provide information on aspects where participants input is expected:
 - in particular inform on a regular basis the Stakeholder committees on the state of implementation of guidelines and network codes. This reporting shall be sufficiently detailed, and also be provided in due time

to give the Stakeholder committees an opportunity to contribute to a consistent implementation, discuss potential problems and work on methodologies to be produced according to the requirements in network codes and guidelines;

- For the same purpose, also ENTSO-E and ACER shall inform in due time (i.e. sufficiently before any implementation) the Stakeholder committees of any new or updated methodology, study, arguments, consultations, etc.. with regards the network codes and guidelines.

4. Frequency of meetings - location

The Stakeholder Committee will physically meet at least four times per year. The frequency of the meetings can be higher if needed, in particular during the early implementation of network codes and guidelines when more frequent discussions are appropriate, and commonly agreed within the Stakeholder Committee.

The dates of the meetings will be agreed among members and will preferably be fixed for a whole year. More meetings will be organised via call or webconference when appropriate.

The dates of the different Stakeholder Committees will not coincide.

Physical Stakeholder Committee meetings will take place in the ENTSO-E premises in Brussels for a full day (10h30 – 16h00 CET) allowing for easy access and travel arrangements.

5. Meeting Agenda

The meeting agenda, objective of the meeting and working documents shall be sent to the participants and made public on the IT-platform at least two weeks ahead of the meeting.

Any relevant agenda point brought up by one of the members of a Stakeholder committee shall be properly discussed in the Committees; the chairs shall not (unduly) refuse to put such subjects on the agenda.

6. Meeting minutes

ACER, supported by ENTSO-E, shall produce minutes of each meeting which accurately reflects the discussed points, maximum 2 weeks after the meeting.

Participants have two weeks to make comments on the minutes. Comments received, when justified, shall be incorporated and published as final draft.

The minutes will be approved in the next meeting and published as final.

In case Stakeholder Committee's members do not have the same opinion, minutes will contain all opinions next to each other, and the clear reason why the Stakeholder Committee could not come to a unique advise. ACER will take up these issues for further analysis and consultation, and if needed, it will result in launching a process to amend network codes or guidelines.

7. Publication of information

All information related to the Stakeholder Committee, the related Expert Groups and perennial TSO/DSO and TSO/generator expert groups will be made available on the IT-platform – under the format of a publicly accessible website – managed by ENTSO-E (or ACER). Confidential information will be treated as such.

The IT-platform will at least – as a starting point – include following documents per network code/guideline:

- Current state of implementation of guidelines/ network codes and published version of them in English (and hyperlink to other languages). If not available, latest available version of the network code/guideline available;
- ENTSO-E's justification and supporting documents;
- ACER's reasoned opinion and recommendation;
- Commission's impact assessment if available;
- Guidance on implementation if existing.

Further documents to be published:

- Meeting agendas and meeting minutes;
- Yearly report (cf. tasks);
- Status of implementation of Network Codes in different Member States;
- Status of requested, granted or rejected derogations;
- Letters to/from the Stakeholder Committees;
- Presentations brought in or forwarded to the Stakeholder Committee (keeping in mind confidentiality requests);
- Ongoing consultations at EU and MS/regional level.

8. Tasks

- As a starting point, each Stakeholder Committee' members should:
 - read the relevant network codes and guidelines connected with this Stakeholder Committee:
 - Stakeholder Committee Connection: NC RfG, NC DCC, NC HVDC.
 - Stakeholder Committee Operation: NC OS, NC OPS, NC LFCR, NC ER.
 - Stakeholder Committee Market: Guideline CACM, NC FCA, NC EB.
 - indicate national choices to be made for non-exhaustive requirements;
 - indicate methodologies to be developed + timeline;
 - indicate attention points regarding implementation;
 - list all topics to be treated within the respective Stakeholder committee, depending on the family of codes.
- Draft a yearly report on the status of the implementation on MS-level of the network codes and regulations (informal reporting should be provided every six months) and publish it on the IT-platform;

- Discuss duly notified proposals for implementations and if necessary write common guidance, give feedback on implementations and make suggestions for improvements;
- Discuss feedback on requests for derogations and if necessary write common guidance;
- Install and instruct Expert Groups to deliver their views on specific topics. The task(s) shall be clearly described as well as the deadline for delivery. The number of Expert Groups working at the same time under one Stakeholder Committee will be limited and managed by the Stakeholder Committee;
- Discuss and take into account the feedback from the Expert Group(s) and decide on further actions if needed;
- Ensure links with the other Stakeholder Committees, by informing them about results of the discussions and possible links/impacts on other network codes;
- Liaise with National and Regional structures and exchange information where relevant. All different National and Regional structures need to be clearly defined;
- Write clear interpretations and guidance on implementation, with the help of Expert Group(s) if needed;
- Organize a yearly common public workshop (of all Stakeholder Committees) to highlight the most important elements regarding the implementation of the network codes and the guidelines;
- Periodically, bring its views, expertise and experience to the amendment process which has to be defined later on in detail. While the stakeholder committee does not have decision making powers, it should provide a forum for exchange of views on amendments, and provide when appropriate amendment proposals into the formal process led by ACER;
- Publish all documents without delay on the IT-Platform.

Expert Group

1. Purpose of the Expert Group

- 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 Stakeholder Committee;
- Several Expert groups can work in parallel under the umbrella of each Stakeholder Committee.

2. Structure and Membership

The structure of the Expert Group is as follows:

- Chairperson: Regarding the expert groups, ACER chair should also be the rule but in practice the chair could be delegated on a case by case basis. Chair to be appointed by the relevant Stakeholder Committee. The Chairperson shall facilitate the meeting and act in a neutral way.
- Members: in order for the Expert Group to be able to work actively and efficiently the number of participants should be limited to around 15. The

membership of the Expert Group should be as much as possible geographically/regionally balanced but should in the first place gather the experts (i.e. from European relevant associations but also from local/regional experts) in the domains to be handled in the expert group. The membership will end with solving the problem. For new topics a new Expert Group is to be installed.

- Observers: the European Commission;
- ENTSO-E secretariat as permanent support.

3. Role of participants

The stakeholder members shall commit to:

- Once appointed, to consistently attend meetings (for that specific topic);
- Actively participate in meetings and in the tasks received from the Stakeholder Committee;
- Contact their own members/stakeholders to update on implementation and monitoring;
- Give feedback and represent their views and concerns.

ACER and ENTSO-E shall commit to:

- Act in an open and transparent manner to inform stakeholders;
- Provide information to facilitate participant's understanding;
- Initiate and provide information on aspects where participants input is expected.

4. Frequency of meetings – location

The Expert Group will physically meet at a frequency depending on the topic and minimum twice a year, in particular during the early implementation of network codes and guidelines when more frequent discussions are appropriate.

The dates of the meetings will be agreed among members and will be fixed beforehand.

The dates of the different meetings of Expert Groups under the umbrella of the same Stakeholder Committee will not coincide.

Expert Group meetings will normally take place in the ENTSO-E premises in Brussels allowing for easy access and travel arrangements unless agreed otherwise by the participants for a half or a full day depending on the agenda. Tele- and/or videoconference can also be considered when appropriate.

5. Meeting Agenda

The meeting agenda, objective of the meeting – based on instructions from the Stakeholder Committee - including also working documents shall be sent to the participants and made public on the IT-platform at least two weeks ahead of the meeting.

Any relevant agenda point brought up by one of the members of a Stakeholder committee shall be properly discussed in the Committees; the chairs shall not (unduly) refuse to put such subjects on the agenda.

6. Meeting minutes

Minutes of each meeting shall be produced and shall accurately reflect the discussed points, maximum two weeks after the meeting.

Participants have two weeks to make comments on the minutes. Comments received, when justified, shall be incorporated and published as final draft.

The minutes will be approved in the next meeting and published as final.

In case Expert Groups' members do not have the same opinion, minutes will contain all opinions next to each other, and the clear reason why the Expert Group could not come to a unique advise. The relevant Stakeholder Committee will take up these issues for further analysis and consultation, and if needed, it will result in launching a process to amend network codes or guidelines.

7. Publication of information

All information related to the Expert Groups will be made available on the IT-platform – under the format of a publicly accessible website – managed by ENTSO-E (or ACER). Confidential information will be treated as such.

8. Tasks

- Follow the instructions and assignments given by the Stakeholder Committee;
- Discuss feedback on the topic(s) to be handled;
- Make a report (inform about results of the discussions), ask for further instructions if needed, make suggestions to the Stakeholder Committee;
- On demand of the Stakeholder Committee, help writing interpretations and guidance on implementation;
- On demand of the Stakeholder Committee give feedback on possible amendments of codes and guidelines;
- Publish all documents without delay on the IT-Platform;
- Analyse and advise the European Commission on the coherence and consistency of network codes and guidelines that are being drafted with other legislation prior to the adoption of the Commission proposal.