
ENTSO-E response to ACER's European Energy Regulation – A Bridge to 2025

- Final document -

16 June 2014

Executive Summary

ENTSO-E response to the ACER consultation *European Energy Regulation: A Bridge to 2025*, issued on 29 April:

Market Design

The rapid shift from conventional to renewable generation technologies makes system operations more challenging and increases the need for electricity markets to deliver efficient outcomes in line with physical needs, namely capacity, flexibility and system services. Any market redesign must review the nature and need for support for technologies given their impact on the system and on market outcomes. Currently wind and solar have significant effects on markets and grids, they create risks that must be resolved. For instance RES producers could be incentivised to act in accordance with rules on 'balance responsibility'. Priority dispatch should be reserved only for emerging technologies. While ensuring integration of RES in the market, other improvements to market rules should be introduced to ensure effective price signals for investments. For instance enhancing balancing markets with cost-reflective pricing could incentivise generators and demand to provide system flexibility. In either case, flexibility on the demand as well as the generation side needs to be integrated into a competitive market framework.

TSO-DSO Coordination

The sharp rise in RES generation will require greater coordination between TSOs and also between TSOs and DSOs to facilitate the development and deployment of the full potential of demand-side response. Because of the importance of embedded generation and demand-side response on operational stability of the transmission system, TSOs must have a clear and firm role in communication and interaction with DSOs and DSO-connected users. National regulatory authorities (NRAs) and ACER should ensure that a corresponding regulatory framework supports this development.

Finance and Permitting

Developing infrastructure is essential to accommodate the increasing RES share of energy produced in Europe. Initiatives to enhance coordination between regulatory authorities are vital if infrastructure is to be built; ACER should intervene and coordinate NRAs when no agreement on a shared regulatory framework can be found. Today TSOs still struggle to build this urgently required infrastructure due to a lack of public acceptance, lengthy permit granting procedures or due to financial challenges. Financial needs of TSOs must be better recognised by NRAs. Without the appropriate conditions, the execution of both the size and the pace of the necessary investments are at risk. The regulatory environment must be stable and foster the financeability of the investment challenge. Regulatory regimes should enable TSOs to finance their capital expenditures with the true risks of financing, building, maintaining and operating assets.

Network Codes

The implementation of network codes requires regulatory decision-making on regional and pan-European scales. ACER will need to develop ways to amend and modify network codes in an efficient and timely manner and with a strong stakeholder involvement. The priority is implementation of the network codes rather than evaluating the processes and initiating changes. EU legislation – mainly the Third Energy Package – is the baseline and ENTSO-E does not support ACER's proposed new layer of legislation or binding rules concerning enforcement of network codes.

Governance

A particular concern for ENTSO-E in relation to the consultation document is ACER's ambition for new governance introducing 'regulatory oversight' – or even control – of the ENTSOs. We do not understand any logic behind this ambition, as ENTSO-E is not a natural monopoly whose profits need to be regulated, especially since ENTSO-E has been delivering the expected results – content-wise as well as timing-wise – and is performing comprehensive and continuously improving consultation processes with a deep and engaged involvement of all stakeholders.

Review of Question 1: Comments on energy trends identified by ACER

Integration of Electricity Wholesale Markets

2.2. – ACER has correctly identified a number of substantial changes to the market dynamics. Such changes are often examples of general market distortions leading to incorrect price signals. In turn, such price signals can be insufficient to drive investments effectively. Achieving efficient market outcomes should be the main goal for any further changes in the electricity wholesale market to the maximum extent possible, and measures that distort the market should be avoided. At the same time, however, the market should operate within security constraints posed by physical limitations of the energy infrastructure, interconnected transmission grids and user interactions that underpin the resilience of the power system. Taking this into account, ENTSO-E agrees with ACER's analysis that the full and effective implementation of the current suite of electricity network codes is key to fostering the development of a harmonised and integrated European wholesale electricity market. As such, we call for a quick EC adoption of the network codes already delivered by ENTSO-E and recommended by ACER.

2.3. – ENTSO-E would like to emphasise that, while it hopes market integration will indeed continue, there is a non-negligible risk to see a partial renationalisation of energy market and policy decisions, due to different priorities in the Member States, different criteria to assess generation adequacy, different security of supply criteria and objectives, etc. The NRAs have a major role in facilitating market integration, but they could also find themselves exposed to political expectations towards renationalised market decisions. We encourage NRAs and ACER to continue supporting European market integration via increased cooperation.

Renewables growth driving changes in generation

2.4. – ENTSO-E agrees that the shift from conventional to renewable generation technologies over the next decade poses a number of challenges to the traditional approaches to market design, power system operation and transmission investments.

2.5. – ACER recognises correctly that flexibility needs are increasing. To address these needs a number of improvements to today's markets are necessary: integration of RES, integration of demand participation, and more cost reflective balancing markets. RES providers should be fully integrated into the market and thus have the same duties to be balanced as other generators, the demand side should participate in all markets, and balancing prices should be reflective of full system costs. These measures appear already now to be consensus among the vast majority of policy makers and stakeholders, and should be driven forward as soon as possible. ENTSO-E will make a contribution towards these measures, e.g. for imbalance pricing in the Network Code Electricity Balancing and by facilitating demand participation. But national governments and NRAs also have major tasks in this direction.

The need for system flexibility and performance will become more pronounced with more variable renewable generation in the power system; therefore, it is important that any market reform – while avoiding non-market based subsidies for specific mature technologies (including priority dispatch) or distortive state interventions – ensures that generators are adequately incentivised to provide system performance.

Other measures such as flexibility markets may be assessed to address the challenges to the extent the above measures may not be sufficient. It is important to note that the flexibility (which can be provided by generation, demand or storage) is a decisive factor for the successful integration of renewable energy.

2.6. – ENTSO-E agrees that strong penetration of RES generation connected to different voltage levels will require greater coordination between TSOs and also between TSOs and DSOs. At the same time closer cooperation will be required between TSOs and DSOs to facilitate the development and deployment of the full potential of DSR and any other flexibility service providers that may come from actors connected to the distribution grids. As mentioned earlier, this will require NRA and ACER support for the TSO-DSO cooperation and for the substantial software developments, which will need to be built on the on-going definition of smart grid roles and standardisation of use cases, while respecting existing standards.

Given that RES integration will require many technological changes, ACER and NRAs will need to ensure adequate regulatory treatment for TSOs' investments in specific R&D as well.

Policy interventions to ensure adequacy

2.7.- 2.8. ENTSO-E and its member TSOs are actively developing the tools and techniques to address and add more transparency to concerns about generation adequacy: national adequacy assessments are already prepared in accordance with Regulation (EC) 714/2009 by Member State TSOs. These are utilised by ENTSO-E in developing European-wide ten-year network development plans, including a European generation adequacy outlook.

Out of concerns over generation adequacy, several Member States already decided to introduce capacity mechanisms in very different ways. ENTSO-E would favour an approach that allows for a high degree of cross-border coordination where Member States are planning to implement a capacity mechanism, in order to minimise the potential for market distortions. In particular, cross-border participation to capacity mechanisms should be allowed when implementing such mechanisms. In the context of the EC's Electricity Coordination Group, ENTSO-E is already working intensively on major methodological advances in adequacy analyses to form this harmonised approach to security of supply. In that matter, we welcome the coordination role of ACER to ensure that NRAs agree with a more European-wide generation adequacy assessment.

2.9. ENTSO-E agrees that the Network Code on Electricity Balancing lays the foundation with respect to market designs that support price discovery for products which can be activated quickly, and that provide efficient price signals for investment in new flexible capacity as required (on either the generation or the demand side). ENTSO-E would like to emphasise that both flexibility measures on the generation side as well as on demand side need to be integrated into a competitive market framework. As mentioned above, ENTSO-E intends to use the current resubmission of the Balancing Network Code – and possibly as the market develops future amendments – to ensure the cross-border balancing markets play a major role to ensure security of supply and to give proper generation and demand-response investment signals.

Energy Sector Trends: Gas wholesale markets

2.18. – Gas-fired plants are likely to be an important source of flexible generation in many Member States, combined with other forms of flexibility on the demand side. The current shut down and mothballing of gas fired power plants, and the flexibility such plants could deliver, underline the need for improving the current electricity market design, setting the right incentives and contributing to the security of supply. In this respect the closure of gas-fired power plants, is of concern from a system stability perspective.

Energy Sector Trends: Infrastructure investments

2.19. -2.21. Developing infrastructure is essential to accommodate, in an affordable way, the new paradigm from the increasing RES share; the energy and climate policy objectives can only be achieved if the required infrastructure is actually built. In this regard ENTSO-E would like to emphasize that an efficient long-term regulatory framework and a predictable and risk adequate remuneration are key to meet the objectives for investments in energy infrastructure. ENTSO-E strongly supports a more active intervention of ACER in coordinating neighbouring NRAs that cannot agree on a shared regulatory framework, which in turn results in delays in necessary infrastructure investments.

Today, TSOs still struggle to build urgently required infrastructure projects due to a lack of public acceptance and understanding of the need for such projects. For this reason, the EC and Member States should develop appropriate solutions to support the realisation of prioritised grid investments and to further address the permitting constraints which TSOs are facing. NRAs may be able to support the TSOs in the national and local discussions on infrastructure permitting by pointing out their public benefits.

Another common cause for delay is the securing of financing: the €104 billion investment needs identified by the 2012 TYNDP only represent a subset of the entire investment challenge for TSOs. This amounts to unprecedented capital requirements for TSOs. To maintain TSOs' credit ratings and financial ratios in a

period of increased investment need, it is of utmost importance that the national regulatory frameworks are stable and sufficiently harmonised to attract investors and improve TSOs' ability to raise funds on international markets.

Thus, it is essential that any regulatory work with a view to 2025 and beyond supports the further development of the interconnected European network by way of smooth adoption of the network codes, appropriate regulatory regimes and permit granting procedures so as to enable TSOs to make the required investments on time. Regulatory regimes for cross-border projects need to be sufficiently harmonised to remove administrative barriers and reduce risks for investors.

Energy Sector Trends: Consumer retail markets and the role of DSOs

2.23.- 2.25. – ENTSO-E agrees that rising consumer prices are of a major concern. In our view the competition in the market is the main factor in delivering benefits to consumers in the form of competitive consumer prices. In this regard, the TSO component of network costs (which in turn is one part of the final end consumer price) across the EU has increased by only 11.5% over the five years 2008-2013. They presently represent approximately 4-6% of end-consumers' bills. These costs are related to the required infrastructure investments, driven by the EU's energy policy agenda (i.e. market integration, renewables integrating and security of supply). At the same time, the non-TSO component of network costs (including levies and/or other regulatory charges) rose by up to 109%. It should therefore be emphasised that the TSO-component of network costs is not the main driver for increasing end-consumer prices when compared to the increase of the non-TSO components, i.e. levies, taxes, subsidy schemes and public service charges.

Enabling Demand Response

2.31.-2.32. – ENTSO-E supports demand side response (DSR) as a tool to increase system and market efficiency. The electricity network codes – in particular the Demand Connection Code (DCC) provide provisions to allow this, both for technical requirements and market rules. This will allow market participants to financially benefit from providing this flexibility to the market, based on their genuine contribution.

Demand side integration will also facilitate greater market liquidity and competition, with a downward pressure on wholesale energy prices. These are positive long-term benefits for the electricity consumer and society at large. The definition of technical standards and regulation to ensure measurability and allow controllability of DSR should therefore be considered a priority.

The future role of DSOs

2.33 - 2.34. – This very important topic has been addressed at the very beginning of our comments. In addition to those remarks, we need to point out that new regulatory and market arrangements concerning DSR and the role of TSOs are being developed via network codes. While the Electricity Balancing Network Code primarily deals with the question to what extent DSR could help TSOs in balancing transmission grids, the Demand Connection Code focuses on bringing more competition to the ancillary services market and ultimately allowing TSOs and DSOs greater possibilities for managing their control area. It is therefore of essence that the DCC's provisions on demand-side response are maintained. Any future regulation needs to be minded of these network codes and their implications.

Review of Question 2: Have we identified an appropriate regulatory response?

Regulatory Impacts: Electricity wholesale markets

3.1. - 3.5. – As stated earlier, ENTSO-E agrees that the full implementation of the EU Target Model and the associated network infrastructure are essential for efficient market outcomes. The implementation of the target model with the proposed improvements (RES providers should be fully integrated into the market, demand-side should participate in all markets and balancing prices should be reflective of full system costs) is an important but potentially not the only step to solve current challenges.

Continued development of electricity markets

3.4-3.5. – The main tools to implement the target model in all time frames and further develop the electricity markets are network codes along with regional initiatives, in particular in the day-ahead and intra-day time horizons. The regulatory focus should therefore be on finalising and implementing the network codes and regional market coupling projects. ACER should ensure a co-ordinated regulatory approach to enable the huge investments this requires; to incentivise the development of adequate power system resilience requirements; flexible capacity. ENTSO-E underlines that the timely implementation of network codes and the completion of the IEM will require coordinated action from NRAs to provide support to the projects and approval of the related methodologies and processes when required. ACER's coordinating role could be enhanced with the aim of achieving consistent NRA decisions in that respect.

Intervention in electricity markets

3.6. – ENTSO-E agrees that any market redesign must review the nature and need for support for given technologies, particularly RES, which primarily due to their support have significant effects on market and grids. As a minimum, RES producers should be incentivised to act in accordance with rules on 'balance responsibility'. Further, priority dispatch arrangements should be reserved only for emerging RES technologies as they limit the system operator's ability to respond in emergency situations. Indeed, having RES exempted from balancing and scheduling obligations increases operational complexity for TSOs and can represent a threat for the security of the electricity system in extreme circumstances.

Capacity mechanisms may be an instrument to enhance the target model, but need to respect some key principles. They should be market-based, non-discriminatory, forward looking and transparent. Moreover, generation, cross-border exchanges and demand-response all contribute to the security of supply and should therefore all be eligible to participate in capacity mechanism regimes, taking into account their technical specificities and limitations.

3.8. – ENTSO-E welcomes the Agency's ambition to promote cross-border solutions to address problems of generation adequacy. However, we are not convinced that the Agency should take a position on any of the possible policies options on carbon-reduction. Decisions on policy options remain with the Member States and the European Parliament. The Agency, along with the ENTSOs should focus on helping implement the chosen policies.

Improved Coordination

3.9. – ENTSO-E shares the view that the identified challenges and energy trends will require improved coordination, cooperation and collaboration among NRAs and welcomes ACER's initiative to ensure that day-to-day regulatory practices are aligned to deliver as consistent an approach to regulating the Internal Energy Market as possible. One important instance from TSOs' perspective – as already briefly mentioned – is a more coordinated regulatory treatment of cross-border infrastructure investments, where several regulatory authorities are involved and a more harmonised approach would benefit the investments.

3.10. – TSO coordination is an important aspect of system operations in the European electricity interconnected system. This coordination takes places in different time frames and covers operational security as well as capacity calculation. In this respect, RSCIs are regionally formed organisational schemes to coordinate operational security related tasks. They have been pioneered and developed by TSOs on a voluntary basis thanks to innovative tools and processes. They act as service providers for TSOs with a decision-making support role (the responsibility of decisions remains with the TSOs). These services do not include real time control actions; such actions are coordinated between TSOs.

Any initiative to add or review a regulatory framework for RSCIs risks hindering further innovation. It needs to take full account of the provisions on RSCIs already provided through ENTSO-E's operations network codes. The RSCI activities are monitored through the TSOs that are being supported by these RSCIs. In this regard, we are looking forward to address in some more detail the issue of cost-recovery as part of that discussion: costs incurred to TSOs through the services provided by RSCIs – with added value for consumers – need to be addressed through an adequate regulatory framework.

Regarding the option of merging RSCIs into one for each synchronous area or into a single European one, we would like to stress that such a merger would contradict the principle of subsidiarity, and that:

- a) For a number of processes, TSO coordination is already taking place at a synchronous area or pan-European level or it is planned to take place in the near future.
- b) ENTSO-E is preparing a framework based on the network codes that will facilitate the inter-RSCI coordination striking a balance between a centralised approach and the need for flexibility (considering the underlying different system conditions across Europe). This framework will be based on the responsibilities and the roles assigned in the Third Energy Package and it will address the different processes that need to be coordinated as well as the appropriate level of coordination (regional, synchronous area, pan-European).
- c) Any merging of RSCIs must not undermine the critical role of RSCIs as important building blocks of TSO coordination. ENTSO-E's evaluation is that *regional* coordination is the best way to manage the system complexity, ensure credible geographical coverage and minimise operational risks; enforcing mergers based on abstract reasons would be counter-productive.

Further relevant demonstration of close TSO co-operation is the Awareness System (EAS), which delivers a pan-European view of the network. Building on decades of TSO cooperation, it went live in April 2013. It covers Continental Europe, Scandinavia, the Baltic States, and the British Isles. It provides an essential collaborative tool for TSOs in 32 countries and increases European consumers' security of supply.

Providing electricity flexibility through gas

3.19. – ENTSO-E agrees on the perspective to look into how the electricity and gas markets can be coordinated and aligned – provided that the concrete proposals are targeted and efficient and represent a balanced approach between the two sectors. As aforementioned, ENTSO-E would like to emphasise that both flexibility measures on the generation side as well as on demand side need to be integrated into a competitive market framework that provide efficient price signals for investment in new flexible capacity as required.

Infrastructure development

3.21-3.24. – ENTSO-E strongly supports initiatives to enhance coordination between authorities, in particular across borders to facilitate cross-border investments. In particular, we consider the implementation of the EU-wide ten-year network development plans is a crucial priority to enable all European energy policy objectives.

ENTSO-E considers that the particular financial needs of TSOs need to be recognised by NRAs. Without the appropriate conditions, the execution of both the size and the pace of the necessary investments are highly endangered. The regulatory environment in which TSOs are operating must be stable and foster the financeability of the upcoming investment challenge. Regulatory regimes should enable TSOs to finance the steep rise in capital expenditures. The attractiveness of the electricity transmission sector must improve in order to be competitive in global capital markets where the risk-reward balance is key for attracting financial resources.

ENTSO-E welcomes ACER's note that cross-border investments involve new and different challenges. We would like to emphasise that these challenges translate systematically into higher risk as perceived by investors, which NRAs need to recognise and address through coordinated risk assessments and regulatory approaches.

The TEN-E Regulation (EU) 347/2013 stipulates that the EC may issue guidelines on investment incentives for projects of common interest (PCIs). For this purpose each NRA shall publish its methodology and the criteria used to evaluate investments in electricity (and gas) infrastructure projects and the risks incurred by them. ENTSO-E believes that ACER should take a leading role in promoting best practices in this field.

ENTSO-E would further welcome if ACER could investigate regulatory possibilities supporting TSOs in increasing public acceptance for transmission projects and in reducing the '*not-in-my-backyard*' effect.

Enabling the market in demand response & the role of DSOs

3.29. – 3.37. – To fully deploy and utilise the DSR potential, we acknowledge that there needs to be a significant roll out of key enabling technologies (especially time of use metering). ENTSO-E recommends ACER to address the following:

- The issue of ownership and contestability of these meters should be carefully considered by national regulatory authorities. Data ownership and access should have a clear regulatory framework, to enable opportunities for market parties while protecting the confidentiality of personal and commercial information. This has implications for the system build and IT architecture but will facilitate competition not only in energy but also ancillary service provision into the future.
- Data handling: develop a framework that optimises the use of DSR across multiple parties (e.g. DSR sharing) facilitated through the role of a future data handling body (or bodies). This will ensure TSOs and DSOs, suppliers etc. have the ability to gather the data required to fulfil licence, regulatory, commercial obligations.
- To set-up clear and consistent ground rules and roles for all relevant parties to deliver DSR. These rules shall be adopted at the EU level with some uniformity while leaving flexibility for pilot projects and adjustment at regional or national levels and shall be based on an evaluation of the existing obstacles for the development of DSR (regulatory, competition, economic, etc) in order to address them properly.

With respect to the integration of DSR into existing energy markets, demand response should be incorporated and treated fairly in every aspect of market design, be it energy markets, balancing markets, reserves, ancillary services, or capacity mechanisms. This should bear in mind that DSR is not one single product or function, but a large set of various measures that can be distinguished in terms of volume, duration, response time, frequency of activation etc. Future DSR market(s) will have to assign different values and prices to these different products, and would increase the complexity of these market(s) considerably.

ENTSO-E is very supportive of greater coordination between TSOs and between TSOs and DSOs. TSOs are already working to increase system awareness and system operability (with the EAS as just one example). Because of the importance of embedded generation and demand-side response on operational stability of the transmission system, TSOs must have an adequate and clear role in communication and interaction with DSOs and DSO connected users.

Incentive mechanisms for grid operation

In the near future, the regulatory framework, including its incentives, should be fit for purpose: a sole focus on cost efficiency improvements is likely to fail with the investment challenges ahead. Therefore, a forward-looking framework and incentives tailored to this changed context is required to meet the goals put forward by policy makers. While specific measures for improving national regulatory frameworks reflecting output based regulation of the TSOs' tasks might differ from country to country, national regulatory frameworks should reflect the ability to provide adequate remuneration, stable and foreseeable efficiency incentives and address specific forward-looking financeability needs to complete the necessary infrastructure. The investment challenge and the continued financeability of the transmission sector is clearly one of the top challenges for the next decade(s) and the regulatory toolkit should accommodate this scenario.

Implications for governance & implementation and enforcement of market rules

4.1.-4.4. – With regards to the governance of network code implementation and amendments ENTSO-E needs to emphasise the following:

- ENTSO-E and TSOs are already working on early implementation measures for the network codes. Compliance (i.e. controlling the enforcement of NC provisions) however, should not be a task for ENTSO-E
- ENTSO-E welcomes ACER's proposal to review the process for modification and enforcement of network codes. ENTSO-E believes that the revised process should make the best use of TSOs' expertise, resources and special role in the electrical system. ENTSO-E and its member TSOs, as the authors of the network codes, can play a significant role in maintaining efficiency of the future necessary pace of change.
- The governance framework for both implementation and amendment process needs to be developed closely with the ENTOSOs

4.5. – ENTSO-E is of the opinion that the fundamental roles of the entities active in the market (EC, ACER, ENTOSOs, NRAs, TSOs, consumers and stakeholders) are already well defined in the Third Energy Package and that the clarifications of the scope of responsibilities which can be delegated to EU Agencies does not necessarily call for an enhancement of ACER's role.

It is our understanding that ACER already plays an important role in co-ordinating NRAs on aspects related to the development, monitoring and implementation of network codes and that this role will keep growing in importance as the network codes are adopted in Comitology.

If, after a thorough assessment, the Agency nevertheless identifies a need for change in the distribution of roles, further clarity would be required on the exact envisaged scope of responsibilities so that a common understanding of the new roles can be shared by all entities active in the market. The description of the exact means for the redefinition of ACER's role would also need to be discussed.

4.6. – There will be a need to develop ways to amend and modify network codes taking into account that such amendments and modifications can be done in an efficient and timely manner and with a strong stakeholder involvement. We believe that it is necessary to finalise the implementation of the network codes and evaluate the functioning before initiating changes. ENTSO-E wants to stress that the EU legislation – mainly the Third Energy Package – is the baseline and ENTSO-E does not support the inclusion of a new layer of legislation or binding rules as proposed by ACER.

4.7. – In ENTSO-E's view the enforcement of the network codes is already well defined in the Third Energy Package. The governance process, including the involvement of stakeholders is a vital part of a successful enforcement process. ENTSO-E does not agree with ACER that there is a need for further legislation regarding the enforcement of the network codes. Past experience has shown that the current framework for the drafting of network codes is effective, although the adoption process through Comitology is proving challenging. While network codes are being drafted and adopted, implementation projects (for instance regional market coupling projects) are delivering concrete results. An additional legislative layer for the governance therefore does not seem justified.

4.8. – In our view the Third Energy Package provides the legislative framework which is now being implemented. The implementation of the network codes will further increase the cooperation between all involved parties, EC, ACER, the ENTOSOs, NRAs TSOs etc. ENTSO-E supports an approach on the implementation accepting that a 'one size fits all' approach might not fit all market areas. A flexible approach addressing national/regional specificities should be considered.

The role of the ENTOSOs

4.9. – Sharing a common understanding of the role and the form of the ENTOSOs, in line with the existing legislation, are natural steps now that the first network codes are being adopted and their implementation has started. ENTSO-E finds that the allocation of national/regional vs. centralised/coordinated tasks should be carefully evaluated taking into account that harmonisation across borders does not mean centralisation. ENTSO-E believes that the existing list of tasks and mandates for ENTSO-E is rather clear and well defined and the understanding of the tasks and roles of the entities will evolve through the cooperation and dialogue with the relevant stakeholders.

4.10. – ENTSO-E notes ACER's intention to reassess the current regulatory and governance arrangements of the ENTSOs as it questions whether the regulatory oversight of the ENTSOs is adequate. ENTSO-E does not agree on the need for further ACER oversight and control as ENTSO-E is not a natural monopoly whose profits need to be regulated. Its members are already regulated by NRAs. We would welcome if ACER could specify any concerns with regards to the governance arrangements of ENTSO-E and address those directly with ENTSO-E at an early stage. ENTSO-E is available and willing to discuss any such concerns and help resolve them together with ACER. It shall however be noted that:

1. If – because of the natural monopoly status of TSOs – there is a justification for having their activities regulated at domestic levels by NRAs, this justification is lacking at pan-EU level, especially when bearing in mind that ACER already has the possibility of oversight of ENTSO-E's activities through the role it has in reviewing ENTSO-E's annual work programme and through the opinions and recommendations it provides on many ENTSO-E work products.
2. Hence any reinforcement of a pan-EU agency should not mean more regulatory power over ENTSO-E. The reinforcement should build on the current primary role of ACER, which is the coordination of NRAs.
3. The institutional balance the Third IEM Package prescribes has worked well and should be allowed to see through the positive outcomes of the numerous important work products EC, ACER and ENTSO-E have produced, working as a triangle team towards the realisation of the IEM. Any change in this balance should be established by European law, not by the sole will of one party.
4. ENTSO-E as a private law association of TSOs is the best place to enhance cooperation between its members but is not suited to have enforcement roles.

Further, it should be noted here that ENTSO-E has been delivering the expected results – content-wise as well as timing-wise – and is performing comprehensive and continuously improving consultation processes with a deep and engaged involvement of all stakeholders.

Appropriate regulatory oversight of new entities

4.11.-4.12. – ENTSO-E does not believe that direct Agency oversight on TSO joint ventures (such as capacity allocation platforms) is purposeful. Indeed those joint ventures aim at teaming-up in order to efficiently implement existing EU legislation and network codes as a service provided to those participating TSOs. In that respect each participating TSO is subject to the oversight of its own NRA, regarding services and associated costs, which should provide for sufficient control by regulators.

4.12. – As already stated earlier (cf. point 3.10.), ENTSO-E welcomes the emphasis ACER gives to the role of RSCIs, but any initiative to add or review a regulatory framework for these initiatives needs to take full account of the provisions already provided through the system operations network codes.

ACER's role in an expanding market

4.14. – 4.15. – ENTSO-E is very supportive of deepening the relations and cooperation with all European countries beyond the EU borders that are committed to participate in the IEM, including developing ways of building competences and ways of cooperating. As a matter of fact, ENTSO-E's membership goes beyond the EU and our member TSOs and ENTSO-E are engaged in close cooperation with non-EU countries through forums such as the Energy Community or Med-TSO. In this perspective ENTSO-E encourages ACER to closely cooperate with EFTA's Surveillance Authority and with the Energy Community so as to ensure coordinated implementation of the IEM rules and further expansion of the IEM.

Review of Question 3: Which regulatory actions are most important and should be prioritised?

ENTSO-E would encourage ACER to work on the following areas:

-
- the rapid implementation of the present electricity Target Model across all geographies and market timeframes and review the need for any changes; the ACER coordination role is key for NRAs to provide consistent decisions on the implementation of network codes;
 - map out a framework covering the required commercial, regulatory and standardisation aspects necessary to facilitate the market in demand response;
 - NRAs and ACER should work with DSOs and TSOs to allow them to more clearly define the respective roles and responsibilities that enable DSOs to manage their networks in a transparent and reliable way whilst also supplying system services to TSOs;
 - assess whether additional incentives are needed to promote necessary (but higher risk) investments with significant social benefits and, if so, how such incentives should be funded;
 - undertake further analysis to develop and improve the common European balancing target model defined in the network code;
 - ACER should encourage NRAs to allow for coordination for the European assessment of generation adequacy and to make sure that national measures and assessments take the pan-European dimension into account.

Review of Question 4: Are there other areas where we should focus?

Especially with regards to the aspect of flexibility, the ACER vision does not recognise, nor could it recognise without appropriate expert input all the material technical aspects underlying the necessary power system resilience that goes to the heart of the consumers' expectations and needs. It is only by recognising all the elements in power system resilience that market solutions truly deliver for the consumer and satisfactorily and efficiently meet policy objectives. Nowadays, energy markets do not fully reflect the value of system scarcities or missing system services that provide resilience and security to power systems. ENTSO-E would suggest that the ACER regulation bridge paper indicates a way forward on how to ensure that the necessary regulatory environments and that focus is committed to these areas. It is important that TSOs must be involved whenever system security and resilience is concerned.

Lastly, we wish to emphasise one important organisational element that can assist with enhancing power system flexibility, performance and resilience in this new operating paradigm is TSO-DSO interaction. ENTSO-E, TSOs and, we believe also DSOs, are committed to rapidly expand their cooperation to meet the smart grid challenges and opportunities, and NRAs and ACER should encourage and support these needed developments.