

Clean Energy Package: An efficient and balanced institutional setting needed

The Clean Energy Package introduces several significant changes in the institutional landscape by shifting roles and responsibilities across various actors and across different levels, shaking up the carefully crafted framework that the Third Package had established between the EC, ACER and the ENTSOs. While ENTSO-E welcomes its new mandates and the strengthened role of ACER in a number of areas, we believe that some provisions should be further improved. These improvements should centre on principles of better regulation (avoid introducing additional procedural complexities which increase burden), principles of subsidiarity and proportionality (especially, but not limited regional cooperation aspects), but also ensure consistency with the network codes process.

Proposals go in the right direction, but better balance is needed among institutions, better regulation, respect of subsidiarity and consideration of the existing network codes.

Keep momentum on the network codes implementation

- The Clean Energy Package contains a number of provisions, which supersede the ones already existing in the network codes. Network codes enter the implementation phase only now, and their real potential is yet to be unleashed. They prepare the energy system for the next decade and will be the basis for next generation legislation. It is inappropriate to disregard a carefully crafted compromise between governments, regulators, TSOs and stakeholders, and to propose new legislation that does not take account of network codes implementation. Such an approach neglects the considerable efforts undertaken by many parties, with the adoption of the Third Package. It creates uncertainty and undermines the EC's own legislative credibility. Mentions of the codes, and of the links between them and the package, are largely missing.
- Moreover, such an approach endangers the technical coherency of the codes and the overall functioning of the market, because it creates uncertainties for all parties, and thus may lead to increased cost for consumers. For example, the Clean Energy Package risks interfering with the effective implementation of the System Operation Guideline, according to which all Regional Security Coordinators will be up and running by the end of 2017, but also goes against some provisions in the Capacity Allocation and Congestion Management Regulation, and in the Balancing Guideline.

Do not contradict the network code provisions, but keep momentum on the implementation and added value of the codes.

Avoid splitting wholesale and retail markets, but integrate them

- The Clean Energy Package proposes that the drafting of codes directly related to the operation of the distribution system is led by the EU DSO entity. This setup lacks the design of adequate structures to ensure TSO-DSO coordination. The institutional design has to ensure a neutral approach of all industry players. There is a risk of creating local markets, and losing sight of the system and its needs. ENTSO-E recommends a co-creation process, which would be especially crucial to allow customers to participate in all markets, and to unleash welfare gains for EU citizens.

A co-creation process is needed between the new EU-DSO entity and ENTSO-E, involving other stakeholders, to achieve the active customer paradigm

TSO concept diverging from the Third Package

- The complexity of the institutional framework is further increased by a new clause, Art.40.2 of the Electricity Directive, allowing Member States to assign one or several TSO functions to a TSO "other than the one which owns the transmission system to which the concerned responsibilities would otherwise be applicable". This approach is likely to lead to an asymmetrical landscape with different entities carrying out different TSO tasks across Europe. This will make the interaction between them more intricate and, consequently, the coordination of system operation will become more challenging, less efficient and ultimately more risky. Moreover, questions about governance, such as the participation in regional or pan-European structures would also arise.

Unnecessary complexity due to confusing allocation of TSO functions

Ensure efficient regional cooperation and oversight: not ROC(K)ET science yet

- ROCs are new entities created under the Regulation, with specific mandatory tasks. The Clean Energy Package gives the national regulatory authorities (NRAs) oversight and binding power over the ROCs and a role for ACER in monitoring and analysing ROCs' performance. Overall, there is a lack of corresponding measures to ensure strong NRA and Member States' cooperation similar to that of TSOs, to solve the governance and liability issues. Without a ROC-type integration of NRAs and Member States, TSO ROCs cannot exist.
- ENTSO-E sees the enhanced role of ACER vis-à-vis NRAs, through a mechanism for regional recommendations in case of regional issues, as a step in the right direction. However, in addition to the ROC liability and governance issues, the provisions allowing regulators to sit on the Board of the ROCs, even as observers, will lead to conflicts of interest and contradicts corporate governance rules.
- Regarding the legal nature of these entities and their ability to perform the assigned 17 functions, the proposals do not clarify upon which legislation the mandatory instructions of a ROC will be issued (i.e., if the national laws of the place where the ROC is established applies or if other rules apply). This has to be clarified further in the legislation revision process.
- The proposed framework and legal tools are not robust enough to guarantee that an entity such as the ROC, with a mandate to perform EU functions and give binding/non-binding decisions for a whole region, will work seamlessly and swiftly enough. Quite the opposite, splitting of decision-making in power system operation in different timeframes between TSOs and ROCs would lead to conflicting responsibilities and therefore create risky political and legal gaps. In addition, NRAs in the region have to agree and coordinate on how to perform oversight of ROCs to avoid imposing inconsistent or overlapping requests for information, fines or conflicting instructions to the ROCs. If a decision-making system different from unanimity is chosen, it means that some Member States would in some way be waiving their competences. In addition, the package does not provide mechanisms for imposing sanctions on the ROCs in case of failure to execute properly their tasks.

Several aspects of the ROC concept violate liability and subsidiarity principles. The governance model is creating conflicts of interest, and corresponding regional NRA and Member states 'ROCs' are missing. They are indispensable to make ROCs work.