

**Mr. Alberto Pototschnig**

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Dear Mr Pototschnig, dear Alberto

### **ENTSO-E Response to the Agency's Reasoned Opinion on the Capacity Allocation and Congestion Management Network Code**

We write in response to the Agency's Reasoned Opinion on the Capacity Allocation and Congestion Management (CACM) network code received on 19 December 2012. In that letter the Agency lists a series of issues in which it considers further work by ENTSO-E would be needed.

ENTSO-E acknowledges that partial adjustments of the text, in the direction indicated by ACER, can be beneficial to improve the clarity of the code. This is particularly the case for articles referring to regulatory approval procedures, bidding zones review, stakeholder consultation, objectives of the network code, common timetable and compensation in case of emergency situation. As such, ENTSO-E would support amendments in the direction of the Reasoned Opinion.

In other areas, namely entry into force and application, cost recovery, intraday auctions, and redispatching and countertrading arrangements ENTSO-E is of the opinion that some minor changes could be introduced, provided they are thoroughly considered and cautiously drafted. ENTSO-E considers that appropriate solutions can be found on the basis of the compromise emerging from our discussions with the Agency and the European Commission after the Reasoned Opinion was issued. Those include the consideration of realistic and coherent deadlines, the inclusion of an efficiency requirement for cost recovery, remaining faithful to the goal of one single intraday market and considering cross-border relevant redispatching actions into the code.

On the other hand, ENTSO-E is concerned about some Agency suggestions in the area of capacity calculation. While our members are open to find an alternative formulation to 'best endeavours' obligations with regard to the harmonisation of capacity calculation inputs and methodologies, they also have serious reservations on the Agency requests related to the description of capacity calculation process and methodology. Although we understand that this is an area where additional detail is required, our members emphasise that it will take a considerable effort and time to develop and agree on a balanced set of more detailed rules. Our members also are of the opinion that it is premature to do so at a stage where no country in Europe employs the flow based capacity calculation methodology. Therefore, we strongly believe that the risks of trying to embed a more detailed process description in the network code text at this stage are far greater than the potential added value for TSOs' customers. ENTSO-E firmly trusts that the early implementation of the existing code provisions on capacity calculation will provide the necessary basis to bring the ambitioned detail in a future update of the code via the network code amendment process.

It is a fact that the CACM network code represents a balance of views – from market actors, the Commission, the Regulators and TSOs, and we are very much concerned that reopening long discussed and agreed compromises at this stage could lead to unintended consequences, inaccurate or inconsistent provisions or changes which would not be in the interest of the market as a whole.

As a conclusion, while we agree that in a few specific areas the drafting of the network code may benefit from refinements, we are convinced that the points raised by the Agency do not relate to cases of the CACM network code not being in line with the framework guidelines. Accordingly, and in the interest of delivering the Internal Energy Market as quickly as possible, our members wish to notify the Agency that ENTSO-E will not be using its right to resubmit the network code.

Instead, our members believe that the on-going dialogue between ACER, EC and ENTSO-E is the most effective and secure way forward to refine some of the specific articles of the code, subject to the considerations outlined in this letter, and to avoid unnecessary delays in the process leading to the comitology adoption.

We are confident that this will allow the Agency to identify a balanced solution and to finalise its qualified recommendation by the end of February, in line with the recent commitment of the ACER Board of Regulators.

Yours Sincerely,

A handwritten signature in blue ink that reads "Dobbene". The signature is written in a cursive style with a horizontal line above the name.

Daniel Dobbene  
President