

**RESPONSE TO DG ENER PUBLIC CONSULTATION  
ON  
GOVERNANCE OF DAY-AHEAD MARKET COUPLING**

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## 5. QUESTIONS FOR PUBLIC CONSULTATION

### *(1) Is the problem definition correct?*

Yes, it adequately reflects the different possibilities existing to organize the single price formation process for the day-ahead markets in Europe.

### *(2) Do you agree that governance of market coupling shall be addressed in a legally binding guideline?*

Yes, without a legally binding framework the process to establish the single electricity European market will be considerably more protracted and difficult. Depending on the Regulatory status of the Power Exchanges, governance (in the broadest sense) can be a critical issue to resolve in market coupling initiatives. To date this has been successfully addressed in local regional projects, but the challenges in the future will be substantially greater given the number and diversity of parties and national jurisdictions involved in Europe-wide solutions. A legally binding framework will provide clarity and reduce the dependence on voluntary agreements or changes by the involved parties and national regulators/legislators.

As far as the alternative to use the Network Codes to create a legally binding framework, instead of a Governance Guideline, please see our answer to question 7.

### *(3) Which is your preferred option? Why?*

Europex does not necessarily see a big difference between options 2 and 3.3 in practice.

- Both options 2 and 3 should cover only the necessary requirements that need to be harmonized/determined at a European level to ensure the successful implementation and management of the market coupling. If we try to set rules for other issues that are not essential, this will unnecessarily complicate and delay the process. Such an approach does not prevent harmonization of other aspects, but the development of the European Price Coupling (EPC) is not dependent on them.
- Option 3.3 implies that either the contract route or direct regulation/licensing are to be selected by Member States, while option 2 leaves greater flexibility for Member States. However, the situation today in Europe is that all the market coupling initiatives that are

either in operation or under discussion are implemented using either contracts or direct regulation/licensing or a combination of both.

It will be important during the development of the Guideline to make sure that all existing coupling initiatives are covered in order not to force unnecessary changes that interfere with existing well working coupling mechanisms.

*(4) What are in your view the main impacts of different options? Can you provide elements for assessment of impacts of the different options?*

**Option 1:** This option does not set a mandatory Governance Guideline establishing the roles and responsibilities of the different parties acting in the market coupling mechanisms. It therefore bears the risk of leading to a very long process to achieve the EPC. The alternative of relying on a voluntary framework emerging will only imply a delay in the process, since the process of achieving consensus has shown its limitations in the past (as an example in the CEE Region, reaching a consensus on the market coupling implementation process is taking very long, with interference with the explicit flow based auctions option). In addition, a Governance Guideline is the suitable framework to set-up the governance of the market coupling, which should be established in a separate framework from the Network Codes since these are properly related to the operational and functional aspects of the network.

**Option 2:** This option restricts the Governance Guideline to only the critical requirements needed to ensure the development and operability of the market coupling, while not being prescriptive how these requirements will be established in each country. The key issue is ensuring that all the necessary requirements for market coupling are indeed identified and adequately addressed.

**Options 3.1 and 3.2:** Setting in the Governance Guideline a single governance arrangement solution to be implemented in all the European Member States conflicts with the principle of subsidiarity if it is not needed, therefore it may make the Guideline harder to pass the comitology step since this represents an unnecessary “invasion” of the Member States powers. It will be counterproductive to affect existing arrangements that are currently delivering good results in a daily basis, and this will lead to significant implementation challenges. Should existing projects be stopped pending resolution of this standard model?

The two main directions of the market coupling governance regulation in this area are:

- Regulate the cross-border capacity allocation function as a function of the TSO, or TSOs, who will contract commercially its execution in the framework of the market coupling function with an exchange;
- Regulate or license the cross-border capacity allocation, as part of the market coupling function, and assign it directly via the energy regulation in each Member State to an exchange.

Each solution has advantages and disadvantages and what is suitable for each Member State can be decided nationally, since both solutions are perfectly compatible with the implementation of markets coupling and the EPC (and this is what option 3.3 proposes).

**Option 3.3:** Providing for both contractual and regulated solutions better reflects the reality today, and would avoid unnecessary change. The key issue is ensuring that just the necessary requirements for market coupling are identified and addressed; if we adopt a pragmatic approach, option 3.3 looks very similar to 2.

**Option 4:** This represents a radical departure from the approach that has worked to date, which has depended on the motivated contribution from the power exchanges and/or on the individual Member State regulations. It would be very difficult to develop this solution in practice and it is highly questionable that this model would actually lead to an efficient and appropriate framework. The suggestion that a “Central Coupling Office” could be jointly owned by TSOs and power exchanges does not help the very difficult governance of this entity.

The main hurdles related to the establishment of such an entity can be listed as follow:

- Drastic change to the existing market design of spot power markets;
- Complex and uncertain legal process to get a central entity established and enforced in each Member State;
- Deep modification of current roles and responsibilities of TSOs and PXs, depriving power exchanges of their core function of order matching, thus putting at risk the reliability of the whole process of market price formation;
- Material impact on the legitimate business interests or regulatory status of power exchanges;

- Uncertain legal and operational implications for market participants, since this option will deeply modify the current contractual and technical arrangements;
- Cost and delays of this option are quite significant, including the transition costs and the comitology process (that could be difficult since there is no clear imperative for the extent of change);
- Current voluntary initiatives would be put in question.

Option 4 will therefore most probably induce serious delay in all market coupling implementation projects, if not block them for a significant period of time, without insurance that the new arrangements will preserve an equivalent quality of execution of the current mechanisms of market price formation and cross-border capacity allocation.

### **Additional options:**

Regarding the additional options Europex opinion is the following:

1. ***Allowing or excluding local competition in market coupling:*** Allowing competition in local markets should be an option of the Member States in the designation process – it is one aspect of the terms and conditions under which any power exchange is designated. The core requirement that is of general interest is that Member States (or the competent entity inside the Member State) have designated a power exchange who is then obliged to comply with the market coupling requirements. The actual terms of this designation have little consequence outside the particular member state. Any pooling of liquidity of PXs via a market coupling mechanism should be on a fair and non-discriminatory basis.
  
2. ***Mandatory or voluntary participation in market coupling:*** Europex understands that it is not the mandatory or voluntary participation of power exchanges, but of Member States, which is at stake for the achievement of the objectives. According to the text of the different options (2, 3 and 4) the participation of the Member States is not voluntary; therefore we do not see the voluntary nature option of the participation in market coupling of Member States. As far as the mode of participation of power exchanges, it will be a consequence of the decision of the Member State (or the competent entity inside the Member State), whether they decide the direct designation of an exchange to perform market coupling, or the direct mandate to the TSO to contract for it with a voluntary exchange. However, once designated a power exchange is obliged to comply with the market coupling rules and requirements.

Note that clarification will be required on the mode of designation of exchanges participating to market coupling by “Member States”: Europex understand that the designation should be formally made by the competent entity identified nationally (i.e. not necessarily national ministries, but also other independent administrations or mandated commissions).

*(5) Are the criteria for a good solution as presented in the list right? Do you have other criteria to add?*

No

*(6) Is the proposed timeline for the network codes and guidelines as presented in Annex 1 sufficient?*

Because several of the steps proposed in the Guideline need to be taken nationally, it could be advisable to establish some deadlines for the steps in the Governance Guideline itself, since some of them could require the previous modification of some national legislation.

The consistency between the Network Codes and the Governance Guidelines should be ensured, also with respect to the ACER Road-map presented at last the Florence Forum.

*(7) If you think that governance of market coupling shall be addressed in a legally binding guideline, is the relation between this guideline to the related network code as presented in this paper correct?*

The Governance of the market coupling and the roles of TSOs and power exchanges should not be left to the ENTSO-E drafted Network Codes. The concept of Network Codes is suited to deal with network operation and security of supply issues and not so much with market issues which require an adapted regulatory framework, distinct from the one applicable to power grids. We should note the Better Regulation principles, and avoid widening the scope of the Codes inappropriately.

Market coupling inherently involves a balance between network and market considerations. If everything is established in the same Code there is a risk that the network aspects of the Code override (and potentially conflicts with) market needs. The Governance Guideline offers the

opportunity to create a balanced governance framework, properly reflecting the interests of all stakeholders.

According to the document received, the list of issues mentioned to be covered by the Governance Guideline - and not by the Network Codes - are adequate.

*(8) What should be the cost sharing solutions of market coupling, between countries and between TSOs and power exchanges, both regarding the initial investment costs and the operation costs?*

First of all it is necessary to indicate that the costs involved in market coupling are moderate in comparison with the benefits of a proper functioning internal single electricity market.

Costs are either common costs (jointly incurred for common benefit) or local costs. Europex understands that the question applies to common costs only, since local costs will be arranged locally.

There are many types of common cost: some may be regional, some may be just between the PXs or TSOs. In all cases the important issue is the sharing key. While the involved parties may make proposals, the sharing keys should be approved by the NRAs and ACER.

The issue of cost recovery by TSOs and PXs should be addressed locally. This issue is closely linked to the terms of their regulation and/or designation.

Although the split of costs among TSOs and PXs in each Member State is an issue that should be addressed locally, this should be done in a way that is consistent with the independence of the parties, making sure that costs are adequately recuperated given that market coupling has some public interest characteristics.

*(9) Which aspects of market coupling do need specific regulatory oversight?*

Europex is in favour of a harmonised, principle-based European oversight framework for Exchanges whatever their respective national legal or regulatory situation is. The development of such a harmonised oversight framework should take into account already existing EU regulatory oversight frameworks. This regulatory oversight framework shall not be understood in the sense of an entire market design regulation.

NRAs or other competent authorities should supervise the compliance with the general requirements while ensuring the necessary flexibility for running the markets.

General minimum requirements for the organisation of Exchanges include:

- Management of systems ensuring orderly trading and efficient price formation;
- Transparency of information relevant to confidence of price formation;
- Non-discriminatory access requirements and provisions for the execution of trading;
- Market abuse monitoring and obligation to report findings of abusive actions to relevant authorities.

REMIT has already established some criteria for such a markets oversight framework, including electricity spot markets, covering most of the relevant aspects such as surveillance of market participants' behaviour in energy and capacity markets, and transparency (information publishing).

Other aspects that might require specific supervision for the market coupling function include:

- Available capacity calculations;
- Conditions (firmness) of capacity allocation;
- Compliance with capacity allocation requirements by the single matching algorithm for market coupling;
- Market coupling cost allocation;
- Dispute resolution;
- Operational performance of the market coupling.

It is true that market coupling/splitting mechanisms combine in the same act energy prices formation (the core activity of Exchanges) and capacity allocation. But in this case the aspects of market coupling related to implicit capacity allocation should be seen as a specific activity which could be regulated in itself, with no spill-over effect on the governance of the other Exchanges functions. These other Exchanges functions require rather an adapted regulatory oversight with the direct supervision of NRAs or other competent authorities as described in the first two paragraphs above.



*(10) What differences do you see between the need of governance arrangements for organising intra-day trade compared to the day-ahead market coupling? Should a legally binding guideline on governance also cover the intraday timeframe?*

While there are many apparent similarities between intraday and day ahead, there is less experience with multiparty intraday implicit solutions to draw upon. In general, Europex thinks that the intraday Governance arrangements are addressed in a Governance Guideline and not in the Network Codes.