



POSITION PAPER N° 1 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

How the ACER operates

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

The European Commission's proposals in the various revised legislations provide for a substantial number of new responsibilities, for the national regulatory authorities as well as for the Agency for the Cooperation of Energy Regulators (hereinafter referred to as the Agency). These proposals refer, in particular, to :

- A broadening of the Agency's jurisdiction: the scope of the network codes is broadened and the tasks of the Agency are extended, for example to include the monitoring of public intervention on the market as well as the assessment of the adequacy of resources and the preparation for the risks of electricity supply disruption ;
- A certain number of new missions for the Agency: its missions are particularly extended to the supervision of the electricity market operators (NEMO) and the regional operational centers (ROC) and the coordination of the regional missions of regulators as specified in the network codes and the guidelines governing the functioning of the internal market for electricity ;
- A strengthening of its powers: the European Commission's proposals, for example, grant the Agency the power to amend proposals for network codes which are currently submitted to it for review and entrust it with significant approval authority concerning their implementation methods, which are currently under the responsibility of national regulators and/or operators.

These proposals are accompanied by a certain number of modifications to the rules governing the internal functioning of this Agency. The CRE notes in particular that :

- The Director of the Agency is entrusted with important new prerogatives. It has notably been proposed to entrust the director with the drafting of the reviews, recommendations and decisions which are subject to a favorable opinion by the Board of Regulators. In the context of the coordination of the regional missions by the national regulators, the director will also be responsible for deciding on the extent of the proposals submitted to the national regulators and on their potential impact on the internal market.
- The Board of Regulators will be largely involved in carrying out the new tasks proposed to be entrusted to the Agency. The European Commission also proposes to amend the voting rules of this Board : its opinions would no longer be adopted by a two-thirds majority of its members who are present but by a simple majority, the rule of one vote per national regulatory authority remaining unchanged.
- The Agency's working groups, who assist the Director and the Board of Regulators in carrying out their tasks and through which national regulators contribute to the elaboration of the Agency's opinions, decisions and recommendations, are institutionalized. It is proposed to entrust the Agency's Board of Directors with the establishment and the adoption of their operating rules.

2. IMPLICATIONS

By maintaining the Board of Regulators at the center of the Agency's decision-making process and thereby derogating from the principles set out in the common approach to the EU decentralized agencies, the European Commission confirms the crucial role of the national regulators in the implementation of the internal energy market rules and the monitoring of their compliance by the operators. The formalization of the working groups, in the regulations, also recognizes their key role within the Agency.

In recognizing the possibility for the Agency to directly modify the proposals made by the operators, and through the extension of its missions to include the regional grid, this will lead to empowering it with an extremely

important decision-making authority. In this context, the transparency, clarity and collegiality of its functioning are essential guarantees of quality and applicability, which must be preserved if not also further reinforced. The proposals to extend the Agency's obligations in terms of stakeholder consultation are, moreover, in line with this imperative.

The European Commission also considers that the modification of the internal operating rules of the Agency would allow it to gain in speed. The cooperation requirement of the European energy regulators, which accompanies the European Commission's proposals, should be placed at the center of this goal for efficiency and reflected in the way the Agency operates : the co-construction of the opinions, decisions and recommendations adopted by the Agency, since its inception, have facilitated the early implementation of numerous network codes. However, according to the European Commission's proposals, the director of the Agency would have exclusive competence for the preparation of the Agency's opinions, decisions and recommendations and could adopt them even if a group of regulators representing more than 80% of the European market would object to their content. The concentration of powers within the Agency, resulting from these proposals, would not only go against the spirit of cooperation that nevertheless is the foundation of the Agency but could also undermine the legitimacy of its actions and further impede market integration. A mode of operation similar to that of the European Securities and Markets Authority (ESMA) seems to correspond more closely to the co-construction logic on which the internal energy market was built on the adoption of Agency acts relating to market regulation could thereby be entrusted to the Board of Regulators according to majority rules appropriate to their reach.

The further development of the work done jointly by the agents of the national regulators and the Agency, within the working groups is an additional response to this challenge. The proposals of the European Commission, however, must be clarified so that the national regulators may continue to participate independently. Particularly, the Board of Regulators should be able to specify the conditions under which working groups can assist it, in the performance of its tasks, as is the case, for example, with the Board of Supervisors of the European Securities and Markets Authority.

3. THE POSITION OF THE CRE

In general, the CRE shares in the objective of strengthening the coordination of the actions by the energy regulators within the Agency. In proposing to empower it to adopt decisions that currently require 28 different national decision-making processes, the European Commission responds to certain recommendations made by the regulators.

However, the CRE considers that an evolution of the Agency's powers of authority cannot be considered, if the following conditions are not met:

- the current voting rules that apply to the Board of regulators should be maintained (no transition to a simple majority rule) ;
- the adoption of acts by the Agency relating to the regulation of the market should be entrusted to the Board of Regulators and the possibility for the Board of Regulators, to amend the proposals submitted to it by the director should be explicitly provided for.

Furthermore, the CRE considers that certain adjustments to the proposals by the European Commission would encourage the participation of national regulators in the tasks accomplished by the Agency. In particular, the Board of regulators should be able to decide on the establishment of the working groups as well as their operating rules.

The construction of the Energy Union must be based on collective decisions and the bills proposed by the Commission, in relation to how the ACER operates, must therefore be amended to this effect.



POSITION PAPER N° 2 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

The regional operational centres (ROC)

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

The draft regulation on the internal market for electricity creates new entities, the Regional Operational Centres (ROCs), which are responsible for coordinating the transmission system operators (TSOs) at the regional level. Their missions complement those of the TSOs on subjects with a regional dimension (development of network models, operational safety analysis, interconnection capacity calculations, supply-demand adequacy studies, etc.). These operational centres would make recommendations to TSOs on matters within their purview, but would also have the competence to issue binding decisions (e.g. : to impose corrective actions – i.e. any measures applied by one or more TSOs, manually or automatically, in order to safeguard the operational security - while optimizing the interconnection capacities that could be attributed to the market.

2. IMPLICATIONS

Historically, TSOs have spontaneously organized voluntary cooperation arrangements on a regional level, particularly following the incident of November 4 2006 (separation of the large continental European network into three areas and diversion of part of the consumption of Southern European countries, including France).

Thereby, RTE belongs to one of the existing regional coordination centres, Coreso, which regroups the German (50hertz), Belgian (Elia), British (National grid), Spanish (REE), Portuguese (REN) and Italian (Terna) TSOs.

At this stage, these centers (*called Regional Security Coordinators - RSCs*) have as a main task to coordinate the actions of TSOs, by providing close to real-time recommendations, due to a broader vision of the state of the European electricity system .

The regulation on the operating of the electricity system (*System Operation Guideline*), adopted in comitology by the Member States in 2016 and which should enter into effect before the summer of 2017, already foresees a strengthening of the RSC's missions, particularly in terms of defining network models for coordinated capacity calculation and short and medium-term adequacy studies.

The Commission's proposal in the context of the « Clean Energy For All Europeans » package, which intervenes even though the system will evolve in 2017, goes further by assigning new missions to ROCs and by transferring certain responsibilities to the regional level. ROCs would thus participate in the development of crisis scenarios and in the calculation of cross-border capacities relative to capacity mechanisms ; they may also issue binding instructions to TSOs (e.g. : regional dimensioning of reserves).

3. THE POSITION OF CRE

CRE considers that the European Commission's proposal is both premature and contrary to the principle of subsidiarity, insofar as:

- the System operation guideline, which is expected to come into effect in the summer of 2017, already includes strengthened missions for the RSCs ;
- these missions have not yet been implemented and have not been the object of feedback allowing to assess the effectiveness and the potential benefits of these new provisions ;
- a detailed analysis of the expected costs and benefits associated to the new missions that could be entrusted to ROCs should be conducted ;
- finally, the transfer of operational responsibilities to ROCs, with the ability to issue binding instructions to TSOs, could contradict the fact that security of supply is a national prerogative.

CRE therefore emits very strong reservations concerning this proposal, as it has been drafted to this day.



POSITION PAPER N° 3 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

The use of congestion income relative to the use of interconnections

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

In accordance with the regulation (EC) N° 714/2009 of 13 July 2009 in application, congestion income, meaning the revenues from the use of interconnection capacities, may be used to:

- **guaranteeing the actual availability of allocated capacities** (costs associated with physical or financial firmness) ;
- **maintain or increase interconnection capacities** through network investments ;
- **reduce network tariffs**, subject to the approval of regulators.

Article 17 of the draft regulation for the electricity market proposes to amend these provisions. It proposes to cancel the possibility of using these revenues to reduce tariffs, and to place on a separate internal account line of the transmission system operators (TSOs), the share of income which would not be used guarantee capacity availability or create new ones. It leaves it up to ACER to propose the conditions and deadlines for the use of this income, which are then to be approved by the European Commission.

2. IMPLICATIONS

The European Commission considers that the reduction of network tariffs could encourage national regulators to restrict investments in order to maintain congestion income and to limit tariff increases. It points out that in 2014 and 2015, only half of the European congestion income has been used to guarantee the availability of existing capacities or to create new ones. As a reminder, in France, the total amount of congestion income in 2014, 2015 and 2016 was respectively 415, 475 and 393*M €, i.e. approximately 10% of RTE's tariff revenues. In 2014, almost two-thirds of this amount (257 M€) was invested for interconnections.

*provisional value

3. THE POSITION OF CRE

CRE considers that the proposed changes in the provisions of Article 17 of the draft regulation are contrary to the principle of economic efficiency.

In fact, the European Commission's proposal would encourage the construction of interconnections as long as the congestion income is not nil, that is to say, until the interconnections are never again congested. The European network would then be a copper plate with a single market price for all of Europe. However, from an economic efficiency point of view, this objective is irrelevant. In fact, new interconnection projects must be developed as long as their costs (which are borne by users via tariffs) are lower than the benefits stemming from these interconnections (i.e. the gains on production costs that they allow).

Furthermore, CRE recalls that it does not, as a principle, seek to minimize the tariff, but to carry out cost-effective and beneficial interconnection projects for Europe. CRE has put into place incentives to develop interconnections based on a criterion that takes into account the benefit for the whole of Europe, and not only for France. These incentives have delivered the desired effect, accelerating projects that are useful to the integration of the European market (2015: Savoie-Piémont project with Italy; 2016: IFA 2 project with England).

The provisions proposed by the European Commission could also lead to the opposite effect of what is expected. Indeed, in countries where interconnection capacities are low and where the need for investments is most obvious, the congestion income is limited (this income is dependent on the price differential at the borders but

also on the capacities that are allocated to the market). These are therefore insufficient for financing new investments.

Building an interconnection while preventing network users from benefiting from a legitimate return on their investment would increase the tariff on the investment amount without any return or compensation. It is further unlikely that the proposed provisions will accelerate investments in those countries where they are particularly needed.

CRE is therefore opposed to this proposal made by the European Commission.



POSITION PAPER N° 4 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Harmonization of network tariffs

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

Article 16 of the draft regulation, proposed by the European Commission in the context of the « Clean Energy for All Europeans » package aims to harmonize the tariffs for network usage. It proposes that these tariffs :

- reflect the costs actually incurred by TSOs and DSOs, insofar as they correspond to those of an efficient network operator ;
- are transparent and non-discriminatory between the power generation that is connected at the distribution level and at the transmission level, and neither against storage installations; they shall further not create disincentive for participation in demand response ;
- incentivize TSOs and DSOs to promote energy efficiency, market integration and security of supply, to develop innovative solutions, and introduce performance targets to increase the efficiency of the network.

Moreover, distribution tariffs may be differentiated with regards to the type of consumers and their use of the network (possibility of temporal differentiation in particular).

This article also provides that ACER shall provide a recommendation on the gradual convergence of transmission and distribution pricing methods, which national regulators shall "take duly into consideration when approving or fixing transmission tariffs or their methodologies". It is also foreseen that ACER is responsible for monitoring the implementation of this recommendation, for updating it at least every two years, and for reporting back to the European Commission.

Finally, Article 55 of the draft regulation on the electricity market plans to extend to distribution tariffs the possibility of a network code already existing for transmission tariffs.

2. IMPLICATIONS

In proposing to harmonize the determination of network tariffs at the European level, the European Commission seeks to remove cross-border distortions which could, in its view, have an impact on the development of production and storage.

The challenge for France is that the structure of the usage tariff for the public electricity networks continues to be elaborated so as to send the correct economic signals to network users and thus to optimize investment needs in these networks. To achieve this, it is necessary to take into account national specificities. For example, electric heating in France reinforces the differentiation of network costs between the different times of the year and hence the relevance of introducing time differentiation of tariffs. This may not be the case in other countries (in the Netherlands, for example, since electric heating is virtually non-existent, the network tariff can easily be directly capacity-only or energy-only related and without a temporal differentiation).

3. THE POSITION OF CRE

CRE considers therefore that the harmonization of withdrawal tariffs is unnecessary and inappropriate, particularly for distribution level. Furthermore, no competence whatsoever should be attributed to ACER in that field.

Tariff harmonization is unnecessary because cross-border competition is not carried out between consumers but rather between producers, and inopportune because withdrawal tariffs must promote efficient energy consumption management.

However, electricity consumption curves differ from one Member State to another, which is an argument against the uniformity of tariff treatment in Europe. Only the differences between injection tariffs on transmission systems could have an impact on competition within the European market. However, Regulation (EC) N° 838/2010 of 23 September 2010 already addresses this issue by setting a cap at 0.5 €/MWh (excluding losses and system servicing). Recommendation No. 09/2014 of ACER also prohibits injection rates indexed to the production.

Moreover, the benefits of harmonization of injection tariffs on distribution networks remain uncertain. If cross-border competition between producers connected at distribution level is theoretically possible, in practice, most of these production capacities are subject to support mechanisms that take into account network access charges.

The impact assessment accompanying the draft amendment to this regulation does not demonstrate that the harmonization of tariffs would deliver tangible benefits exceeding the implementation costs.



POSITION PAPER N° 5 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Use of storage by electricity network operators

1. THE PROPOSAL FROM THE EUROPEAN COMMISSION

The « Clean Energy for All Europeans » package proposal largely encourages the use of different forms of flexibility by network operators, but sets the principle that they can not possess nor operate storage facilities. Exceptions would nevertheless be possible, particularly in the event of market failure: if a network operator can not contract with a third party to carry out a project that would be useful for the community, this network operator could invest in a storage asset, and use it to absorb congestion or to avoid reinforcement on the network. In this case, the market failure criterion should be reassessed every five years.

2. IMPLICATIONS

The storage industry, which is still under development, could be called upon to provide multiple services to the electricity network: participation in the supply-demand balance, absorption of congestions, provision of voltage systems services, etc.

CRE must therefore, as part of its mission to contribute to the proper functioning of markets, participate in the establishment of a favorable framework for the development of the storage industry.

A first aspect of this favorable framework is the coverage, by the French network tariff (TURPE), of the costs that could be incurred by network operators for having some storage capacity in order to absorb a congestion or to limit investments on the network. These costs are in fact included in the missions of network operators and thus should ordinarily be covered by TURPE. The coverage of these costs, which provides a guaranteed income for the storage operators, could be an investment-triggering factor towards a means of storage.

Secondly, a favorable framework for storage must ensure that the storage asset operator can, in addition to the services eventually provided to the network, also offer its services to all relevant markets, in order to make the best use of the possibilities of the storage. The market value of these services is the primary value of storage, which allows to store energy when it is inexpensive on the markets, so as to resell it when it is the most expensive. Storage installations that are used solely for the service of the networks would be constrained to be under-employed in relation to their technical capabilities. Optimization of the use of storage facilities will, on the contrary, increase their profitability, thus facilitating their development.

Network operators are, by nature, not legitimate to decide on the use of a storage installation, relatively to market prices offered in the various mechanisms that are open to competition. Such choices are indeed incompatible with their role as a neutral player within the electricity system. In particular, network operators may not participate in supply nor production activities, and therefore nor physical trade-offs within the markets. Network operators therefore can not directly tap into the value of the storage resulting from the electricity markets.

Therefore, the network operator does not appear to be the best-placed player to fully exploit the possibilities offered by a storage asset. It can only use storage to reabsorb congestion, and possibly to provide peak voltage system services. To develop storage on the markets, it will need to implement a complex governance, so that third parties can further value the flexibility provided by storage on the energy markets.

It therefore seems appropriate to set up a framework in which third parties who own storage assets can sell services to the network operators, thanks to these assets, to meet their congestion management needs.

To meet the needs of network operators, the location of the means of storage generally constitutes a key element which, on the other hand, has a much less obvious importance for the services that can be valued in the markets. Network operators could steer third parties to develop storage installations where it would be useful for the network, by launching tenders that would impose the desired location. Successful applicants would then invest in

storage facilities, which they could also use in the energy markets, as long as it does not compromise the guaranteed availability to the network operator and its needs.

Such a framework would allow a simple form of governance and greater agility within the storage market. In order to ensure that owners of storage assets are aware of the revenues associated with the provision of these services, network operators could reserve the availabilities of supplies corresponding to their needs, particularly via long-term contracts whose costs could be covered by TURPE.

However, in the current context, the experimental nature of the topic of storage and the lack of development of the sector could nevertheless call for a framework where the network operator can carry out an experiment allowing it to directly invest in storage installations. However, this solution should only be implemented as a last resort, after having noted the lack of willingness from other parties/players to invest, in response to a call for expression of interest by the network operator.

3. THE POSITION OF CRE

CRE recalls that the equilibrium between the actors of the electricity system is based on the principle of neutrality of network operators, and that in principle, the latter should not be the operators of the storage facilities.

However, a total ban for network operators to operate storage facilities would not be comprehensible today in a sector whose economic model has not yet been stabilized. In the same spirit, the special case of non-interconnected areas can call for specific solutions.

CRE will therefore be particularly attentive to the proposals by the European Commission and vigilant to those arrangements for the implementation of the possible exceptions that do not result in a total and definitive ban on network operators owning storage facilities.



POSITION PAPER N° 6 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Calculation of cross-border capacities

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

Capacity calculation is an exercise carried out by network operators before each term (annual, daily, as well as intraday) in order to determine the interconnection capacity allocated to the markets. This calculation is carried out according to methodologies approved by the regulators.

The draft regulation on the electricity market presented by the European Commission reproduces and supplements the principles of capacity calculations (as defined in the current Regulation (EC) N° 714/2009 of 13 July 2009 and in the Commission Regulation (EU) 2015/1222 of 24 July 2015 known as « CACM »).

Paragraph 3 of Article 14 of the draft regulation acknowledges that maximizing cross-border capacities must not be at the expense of the security of network operation or when the corrective actions it involves are not economically efficient.

But paragraph 7 poses a contradictory principle that the cross-border capacities available to the market should not be reduced to solve congestion inside control areas or as a means of managing physical flows in an area induced by the internal trading to another zone (loop flows). Thus, TSOs, while performing capacity calculations, would be under the obligation to maximize the capacity offered to the markets, without consideration of the associated costs and benefits.

Exceptions/special dispensations to this rule would still be possible, but under very restrictive conditions : the latter should be subject to a formal request from the TSO to its regulator and be approved with the agreement of the other regulators within the capacity calculation zone, with the ultimate decision coming from ACER in case an agreement can not be reached.

The provisions proposed by the European Commission are inspired by the Recommendation N° 02/2016 of 11 November 2016 by ACER on coordinated capacity calculation methodologies and on cost-sharing of *redispatching* and compensation exchanges.

2. IMPLICATIONS

With these provisions, the Commission intends to address situations where interconnection capacities available to the market are greatly reduced (relative to the physical capacities of the cables) because the inclusion in the calculation of physical flows or *loop flows* accordingly reduces the capacities available to the market.

This situation of capacity "shortage" allocated to the markets is particularly observed on the borders of Germany: with renewables energy production being located in the North of the country, whereas consumption is rather concentrated in the South, there are very significant North-South physical flows. Given the inadequacy of the German internal network to channel these flows, they partly transit through neighboring networks (for example by passing through the Netherlands, then Belgium and France), and saturate the exchange capacities at the German borders.

CRE shares the European Commission's objective for optimizing (but not maximizing as a matter of principle) the capacity allocated to the markets. In particular, during the winter of 2016-2017 which was marked by a drop in nuclear energy production in France, France's import capacities from Belgium and Germany were greatly reduced, in particular due to internal constraints on the German networks. CRE is working closely with all the regulators involved so that network operators propose changes in capacity calculations in the CWE region (including France, Germany, Belgium and the Netherlands) to be implemented before the next winter.

Nevertheless, the aim should not be to increase the capacity allocated to the market at all costs but to optimize these capacities by taking into account, on the one hand, the internal security of the systems, and on the other

hand, the costs associated with the corrective (*redispatching*) measures made necessary by these increases in the capacity allocated to the market. Indeed, the remedial measures that are available to TSOs must be effectively implemented only in those cases where their costs are lower than the profits that are allowed by the increases in capacity that these measures permit.

3. THE POSITION OF CRE

While CRE recognizes the need to improve capacity calculation methods, it is opposed to the European Commission's proposal. This proposal does not take into account the internal security of the systems nor the costs associated with the necessary corrective measures which could exceed the expected savings of such a measure.

Thus, CRE considers that the existing provisions of the Regulation (EC) N° 714/2009 of 13 July 2009 and the Commission Regulation (EU) 2015/1222 of 24 July 2015 (CACM) which have both not yet been implemented, provide a sufficient framework for optimizing capacities allocated to the markets.



POSITION PAPER N° 7 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Procurement of balancing reserves

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

Article 5 of the draft regulation on the electricity market proposes to define the principles relating to the balancing of the electrical system, and in particular the arrangements for procuring balancing reserves (whose regional sizing could be entrusted to the Regional Operational Centres (ROCs), otherwise provided for in the draft regulation).

This procurement would be:

- facilitated on a regional scale by the ROCs;
- carried out in a daily and/or intraday timeframe;
- realized in a dissociated manner, for the upward capacity and the downward capacity.

2. IMPLICATIONS

The European draft Electricity Balancing Guideline, adopted by the Member States in comitology in March 2017, already provides a framework for procuring balancing reserves at a supranational level, on a voluntary basis.

It further specifies that the procurement of the reserves is carried out "on a short-term basis to the extent possible and where economically efficient", and in a dissociated manner only for secondary and tertiary reserves, with the possibility of an exemption.

The European Commission's proposals in the framework of the Clean Energy for All Europeans Package, if accepted, would proceed to go further than the European draft Electricity Balancing Guideline, as recently adopted in comitology, in particular by requiring the procurement of all reserves in a dissymmetrical manner (for primary and secondary reserves) and **by making the procurement on a daily and/or intraday basis mandatory**.

In France, RTE contractualises a significant portion of its reserves on an annual basis (rapid and complementary reserves in particular). Discussions are under way to procure the reserves on a short-term basis, which could effectively encourage the development of the participation of certain industries, in particular, the renewables sector. However, a thorough examination of the definition of that timeframe (weekly, D-2, D-1 ...) should be conducted, in order to take into account the technical and operational constraints and the associated costs. On the other hand, the ability to retain part of the procurement in the longer term (for example annually), provided that it shows its economic efficiency, could facilitate the participation of other sectors in this contractualization (e.g. extraction sites) by providing them with greater visibility on the revenues, in order to cover the associated investments.

3. THE POSITION OF CRE

CRE considers that before any implementation of the provisions proposed by the European Commission, an in-depth analysis of the operational and practical consequences of the latter as well as of the costs and benefits associated with them is absolutely necessary.

Thus, the procurement of balancing reserves at a regional level would require ensuring that the necessary interconnection capacities will be readily available, and that these capacities should therefore be reserved and no longer allocated to the daily and intraday markets.

It would thus be necessary to carry out an in-depth economic analysis to determine whether there could be more value in "locking in" an interconnection capacity to pursue capacity balancing exchanges, rather than allocating it to the daily and intraday market-couplings.

CRE does not oppose the European Commission's proposal concerning the procurement of balancing reserves at a regional level, so long as the latter limits itself to providing a favourable framework that is not prescriptive.

On the other hand, it is unfavourable to the European Commission's proposals for the new prescriptive provisions:

- The procurement of reserves on a daily and/or intraday basis;
- The procurement of the totality of the reserves in a dissymmetrical manner (for the primary and secondary reserves).

The draft regulation establishing a guideline on electricity balancing has recently been adopted in comitology. At first, it would be suitable to enable its correct implementation in order to obtain the expected benefits.



POSITION PAPER N° 8 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Local energy communities

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

The draft directive on the electricity market presented by the European Commission in the context of the “Clean Energy for All Europeans” package, introduces the notion of “local energy community” (LEC) defined as a “legal entity which is effectively controlled by local shareholders or members, generally value rather than profit-driven, involved in distributed generation and in performing activities of a distribution system operator, supplier or aggregator at local level, including across borders”.

Article 16 of this draft directive defines the regulatory framework applicable to these LECs, and in particular, the relations between the latter and their users and with the distribution system operator (DSO) to which they are, if the need arises, connected to:

- the latter should:
 - either be able to possess or lease and manage local energy networks, and then assume the role of the DSO;
 - or be able to conclude contracts with the distribution system operator for the operation of the network. In this case, they would not assume the full role of the DSOs.
- the LECs should have access to all organized markets;
- each member of these communities would voluntarily participate and retain their consumer rights (free choice of the supplier and the possibility to leave the LEC at any time), even if the LEC would fulfill the role of the DSO. It would not be necessary to be a member of the LEC to be connected;
- the users of an LEC that are not members would be subject to fair and cost-reflective network charges that could be set by the national regulatory authority in the event of a disagreement between those users and the LEC;
- the LECs may not be interconnected. If an LEC was to be interconnected, it would be subject to "appropriate" charges by the distribution system operator to which it is connected, with injections and extractions being accounted for separately.

2. IMPLICATIONS

These provisions are the result of the European Commission's willingness to promote the development of self-consumption, because the local energy communities can “be an efficient way of managing energy”.

In some cases, such communities could represent a factor for the mobilization and the involvement of the players, in order to carry out projects for the flexibility or the control of the demand, both beneficial for the electricity system.

In the event that the LEC delegates all activities relating to the network, including the planning, to the DSO, the situation resembles the framework of the collective self-consumption operations provided for in France, by the Act N° 2017-227 of 24 February 2017, in which the legal entity representing the community signs a contract with the network operator, specifying which users would be assigned the different flows.

On the other hand, the effects on the organization of the system of a generalization of the development of LEC exercising all or part of the network operator activities, should be carefully evaluated:

- the de-optimization of the territorial planning and operation of the networks by the DSOs; an LEC would constitute a pocket network upon which the DSO would have no control and could not proceed with extensions.
- the questioning of the tariff equalization and the increase of the tariffs of the public networks for their users if the LECs were to be developed in zones where network installation costs are lower than average costs (dense zones). In this respect, the directive cannot call into question the tariff equalization which falls within the competence of the Member States.

3. THE POSITION OF CRE

As a preliminary point, CRE considers that the definition of local energy communities should be clarified.

CRE believes that the creation of such communities could have positive effects on the mobilization of citizens and more extensively on the flexibility of the electricity system.

However, if these communities were to fulfill the role of the local DSOs, including network planning, the conditions for their creation should be strictly defined.

In practice, the associated constraints (free choice of the supplier, tariffs that could be contested to the regulator, etc.) would in fact limit their development, and their management through small entities can prove to be very costly.

On the other hand, if such schemes were to become widespread nevertheless, this situation would present risks, particularly in terms of optimization of network planning and of tariff equalization.

Consequently, CRE considers that the conditions for eligibility (size, geographic zone, network topology) for the role of distributor or for the exercise of some of the corresponding competencies should be strictly regulated. The principle of subsidiarity should prevail to enable Member States to define these conditions.



POSITION PAPER N° 9 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

15% target for electricity interconnections in Europe

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

A target for interconnection capacities representing 10% of the installed capacities per country had been proposed by the European Commission (Communication COM (2001)775). This objective was subsequently endorsed by the conclusions of the European Council of 16 March 2002.

In its communication of 28 May 2014 concerning energy security, the European Commission had suggested raising this target to 15% by 2030 (taking into account the project costs and the potential for trade development accordingly, by region), in order to enhance security of supply and facilitate cross-border exchanges and trade. In its conclusions of 24 October 2014, the European Council endorsed the EU's 2030 action framework for Climate and Energy, which proposes *"the objective of arriving at a 15% [electric interconnections] target by 2030, as proposed by the Commission"*.

Today, the European Commission is pursuing its efforts to develop European interconnection capacities by requesting, in the new draft regulation on the governance of the Energy Union, that each Member State inscribes, in its energy-climate plan, the *"the level of electricity interconnectivity that the Member State aims for in 2030 in consideration of the electricity interconnection target for 2030 of at least 15 %"*. However, this level would not be binding and would result in regular communications from the Member States to the European Commission, concerning their progress, on which the European Commission could then make recommendations.

2. IMPLICATIONS

The new interconnections are costly and complex projects. The investment decisions on these projects must be made on the basis of sound cost-benefit analyses, in order to avoid creating a situation of overinvestment in the networks, the cost of which would be borne by European consumers.

However, an interconnection objective defined *a priori*, and *a fortiori* if it is uniformly applied at the European level, does not permit taking into account the specificities of the different borders (in particular the geographical situation and hence the costs of the projects as well as the complementarity of the power stations installed in the countries concerned).

In addition, the 10% target initially set by the conclusions of the European Council of 16 March 2002 is based on the installed capacity for each of the Member States of the European Union. The reaffirmation of an interconnection objective based on the same basis does not take into account the profound changes that the electricity system has undergone since then, notably due to the increased development of renewable energies¹.

3. THE POSITION OF CRE

Interconnections are essential to the development of the European energy market. Hence, CRE has recently supported the development of several projects. The Baixas Santa-Llogaia line between France and Spain (a direct current line of 2,000 MW) was installed in October 2015. CRE also granted an exemption decision to the ElecLink project, and approved the financial incentive request for the IFA 2 project. These two lines will increase interconnection capacities with Great Britain by 1000 MW each.

The general mission of CRE is to contribute to the proper functioning of the electricity and gas markets for the benefit of its end-users. It will ensure that the consumers of gas and electricity are not exposed to considerable

¹ The renewable energy generation facilities, especially in the wind and solar sectors, have load factors that are very different from the conventional thermal and nuclear plants. For an equivalent energy production, one can thus have much more installed capacity.

costs by building infrastructures whose utility for contributing to the European market and to the security of supply have not been demonstrated.

It therefore considers that any decision to invest in new interconnection projects must be based on sound cost-benefit analyses and not solely to attain an arbitrarily defined interconnection target, only taking into account the installed production capacity.

In view of the difficulties associated with defining such a target, the European Commission set up a group of experts, in October 2016, to contribute to the definition of a methodology for setting the interconnection target.

However, if indicators were to continue to be defined, the latter should have no binding value. The construction of such indicators should also take into account the market evolutions, the geographic situation of the countries, the characteristics of their energy production fleets, the consumption patterns as well as the convergence rates of prices.

Thus, the installed production capacity should be modulated according to the actual production peak, in order to avoid overestimating the actual mobilization of production capacities, particularly for photovoltaics and wind power. In addition, taking into account a single indicator does not adequately reflect the actual state of the electricity system. The peak of consumption in each country should equally be taken into account.

Thus, in France at the end of 2016, with power plant installations of 131 GW and interconnection capacities for exports of 13.8 GW in average over the year, the interconnection rate is 10.5%. Referring to the actual peak production (which rose to 88 GW in 2016), this rate would be 15.6%. Alternatively, in order to take into account the contribution of interconnections for the security of supply of the territory, referring the peak import (11.3 GW in 2016) to the historical peak of consumption (102 GW in 2012) results in a rate of 11.1%.

Consequently, CRE, that is fully committed to reinforcing interconnections, is unfavourable to the European Commission's proposal as it is drafted, because it could lead to a very costly overestimation of needs.



POSITION PAPER N° 10 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Review process of the bidding zones

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

Article 13 of the draft regulation on the electricity market by the European Commission introduces a procedure for reviewing bidding zones, inspired by the provisions of the Commission Regulation (EU) 2015/1222 of 24 July 2015 "*Capacity Allocation & Congestion Management*" (CACM) in the course of implementation.

This procedure proposes to rely on a technical and economic study (review of the zones) carried out by the concerned transmission system operators (TSOs), on the basis of which a recommendation would be made to maintain or review the perimeter of the bidding zones, between countries or within a country.

The proposed regulation would introduce two substantial changes as compared to the CACM regulation:

- the authority to approve and to amend the methodology used by the TSOs to carry out the review of the zones would be transferred from the national regulators to ACER ;
- the justified decision for maintaining or changing the existing bidding zones would be in the hands of the European Commission and no longer in those of the Member States.

2. IMPLICATIONS

A bidding zone is a geographic perimeter within which exchanges are not limited and where consequently, there exists a single price on the wholesale markets. Conversely, between two bidding zones, the exchange capacities may be limited. They are then to be determined by the network operators according to rules that are approved by the regulators.

From a theoretical point of view, these bidding zones must therefore represent geographic perimeters within which the networks do not exhibit structural congestions (congestions may appear occasionally, requiring so-called "*redispatching*" measures to guarantee the flows). Conversely, the boundaries between two bidding zones correspond to the structural congestions of the networks.

In fact, the bidding zones today are essentially aligned with the borders of the countries, although some countries have already established several bidding zones within their borders (Italy and Sweden).

It should be emphasized that this factual situation is not necessarily removed from the theory insofar that the networks are generally less congested within countries rather than in cross-border zones.

In France particularly, network reinforcements were conducted in the areas that were historically more strained (PACA and Brittany) and the network today is little congested. France could therefore appear as not very concerned by the topic.

Nevertheless, as part of the study on the review of the zones currently under way, as provided for in the CACM regulation, a scenario in which all the "big" countries (Germany, Poland, France) would be divided into several zones is under study.

The European Commission's hypothesis of a redistricting of the bidding zones at a subnational level would impose major issues to the functioning of the retail market which still needs to be clarified and that could be inclined as such to call into question the energy policy principles of the Member States.

3. THE POSITION OF CRE

CRE is **unfavorable** to the changes introduced by the European Commission, which translate into transfers of competencies to a European level, on a subject which should be a matter of subsidiarity and which carries strong political consequences.



POSITION PAPER N° 11 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Development of demand side management

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

Article 17 of the draft directive on the internal electricity market proposed by the European Commission provides for the possibility for independent flexibility providers (IFPs, also known as aggregators) to participate in the electricity markets, without the need for an agreement from other players, particularly including suppliers.

The principle of compensation payment from the flexibility provider to the supplier would be generally prohibited, a compensation covering imbalances between the aggregators and the balancing responsible parties (hereinafter « BRP ») could however be provided for, on an exceptional basis.

2. IMPLICATIONS

The European Commission's voluntarist proposals are aimed at developing the demand side management activity, at a time when the development of intermittent renewable energies increases the need for flexibility of the electricity system and where active participation of consumers is sought.

In France, an ambitious work program by the public authorities, the electricity transmission operator, the national regulator and all the players has been under way for several years in order to progressively open up the different market segments to demand side management.

Within Europe, France has an innovative framework regarding the subject, enabling all final consumers (from industrialists to residential consumers) to exploit their ability to manage their consumption during those periods when the electricity system requires it the most .

The provisions foreseen at this stage by the European Commission represent an important step forward by recognizing the activity of the flexibility providers, independent of the suppliers, but call into question the practical modalities of an efficient development model. Indeed, in compensation of the absence of an agreement with the supplier, French law has provided rules for the development of the demand side management, organizing **a financial flow from the IFP to the supplier of the consumer whose load is shed**. This flow, referred to as "versement", enables the materialization of the transfer of energy from the supplier to the IFP, so that the latter can further sell the energy corresponding to the load shedding realized by the consumer through RTE or directly through the market.

These principles have been validated on several occasions:

- The Constitutional Council validated this mechanism during the promulgation of the "Brottes" law in 2013 ;
- The Autorité de la concurrence (Competition Authority) also validated this mechanism when the decree implementing the law was published in July 2014 ;
- In its decision of 13 May 2016, the Conseil d'Etat (Council of State) rejected Voltalis' petition, recalling that the payment "*constitutes the remuneration for an asset whose ownership is transferred from the supplier to the flexibility provider*" and that it does not appear that « *the contested rules grant an advantage to the electricity suppliers* ».

3. THE POSITION OF CRE

CRE is therefore in favour of the European Commission's proposals regarding the possibility of carrying out demand side management activities without the supplier's agreement but is opposed to the general prohibition on compensation payment : when an IFP can sell energy on the markets, independently of the agreement of the

suppliers of the sites which it has serviced, an energy transfer must be arranged from the suppliers to the IFP. The compensation payment is simply the fair financial return for this vital energy transfer.

Furthermore, CRE wishes clarification regarding the fact that the payment must be directly related to the totality of the energy shed by the IFP and resold on the markets, and not to any imbalance within the perimeter of the BRP of the consumers whose load is shed. It is in fact the injection of the totality of the shed energy that the supplier must be responsible for, so that the IFP can resell it on the markets.

CRE's proposal will allow for the development of this new demand side management market, an effective medium for energy transition.

POSITION PAPER N° 12 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Technologically neutral invitations to tender

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

Directive 2009/72/EC of 13 July 2009 provides, in Article 8, that Member States guarantee the possibility, in the interest of the security of supply, to foresee new capacities or energy efficiency/demand side management measures, by the means of a tendering procedure or any equivalent procedure in terms of transparency and non-discrimination, on the basis of published criteria.

The Commission Regulation (EU) Regulation N° 651/2014 of 17 June 2014, declaring that certain categories of aids are compatible with the internal market in application of Articles 107 and 108 of the Treaty, allows, in Recital 60, that provisions should be made for a block exemption for the aids for investments in energy produced from renewable sources in order to achieve the Union objectives in this area.

Furthermore, the guidelines on State aids for environmental protection and energy for the 2014-2020 period, published by the European Commission on 28 June 2014, confirmed these elements by emphasizing that if the tendering procedures should in principle be open to all producers of electricity from renewable energy sources on a non-discriminatory basis, the competitive tendering may be restricted to certain technologies if a procedure open to all producers would yield insufficient results (Recital n° 126).

It appears from these provisions that the technologically specific tendering procedure is an exception to the general scheme of technological neutrality, which must therefore be justified by the Member State.

The drafting of the "Clean Energy for All Europeans" package could raise concerns about the banning of tenders differentiated per technology. Indeed, paragraph 2 of Article 4 of the draft directive on renewable energy sources provides that: « Member States shall ensure that support for renewable electricity is granted *in an open, transparent, competitive, non-discriminatory and cost-effective manner* ».

2. IMPLICATIONS

The use of technologically specific tenders remains necessary to ensure the effective and balanced development of renewable energies. Indeed, the systematic use of technologically neutral tenders does not guarantee the attainment of energy policy objectives and prohibits possible synergies with other public policies. Moreover, the industrial visibility for the players in the sector could find itself substantially altered.

Effects on energy policy objectives

Given that technologically neutral tendering favours the selection of the most competitive technologies in terms of production costs, henceforth they do not make it possible to achieve the differentiated objectives by technology which France has set for itself, in the framework of the multiannual energy program. They directly interfere with the definition of the energy mix that falls within the competence of the Member States.

Conversely, the development of complementary technologies, through specific invitations to tenders, makes it possible to take benefit from the totality of renewable energy sources. In terms of their integration within the electrical system, it also allows:

- to manage the variabilities in order to reduce the costs of the means used to offset the intermittence (e.g., the peaks in wind production are not correlated with the peaks in photovoltaic production) ;
- to develop controllable means - biomass, hydro - whose production costs are higher, but contribute to the system's overall security.

Synergies with other public policies

The development of certain specific technologies makes it possible to meet other objectives, particularly in terms of sustainable development. This is the case for example, with support for the methanization/biogas sector, which could represent a solution to the problems of waste treatment as well as those raised by the spreading of slurry.

Territorial planning issues can also be taken into account: for the biomass sector, it would seem appropriate to organize the deployment of facilities whose sizes are in line with the energy sources in the vicinity. The acceptability of onshore wind energy could also be improved by encouraging the development of larger installations rather than the dispersal of smaller installations throughout the territory.

Industrial visibility for the sector

CRE has recommended setting up multiannual invitations to tenders in order to provide visibility for the renewables sectors. This visibility particularly allows better industrial planning in the medium term, promoting the structuring and optimization of the industrial facilities and, in the long term, contributes to the scale economies and cost reductions.

However, technologically neutral tenders increase the uncertainty for a candidate about its ability to be selected, given the differentiated evolutions in costs that can affect each of the technologies, and are therefore likely to affect the industrial development of the sectors.

3. THE POSITION OF CRE

CRE considers that the use of technologically specific invitations to tender remains necessary to ensure the effective and balanced development of renewable energies. It therefore asks that the draft directive on renewable energy sources be amended to clarify that the concepts of openness and non-discrimination do not in any way restrict the possibility of organizing invitations to tenders differentiated per technology.



POSITION PAPER N° 13 – THE CLEAN ENERGY FOR ALL EUROPEANS PACKAGE / OBSERVATIONS BY THE FRENCH REGULATOR

Price caps on wholesale markets

1. THE PROPOSAL BY THE EUROPEAN COMMISSION

Article 9 of the draft regulation on the electricity market introduces new rules that prohibit the application of a price cap on wholesale markets - on futures, daily, intraday and balancing markets - unless this cap is fixed at the level of the cost of unserved energy (*Value of lost load - VoLL*). Under Article 10 of that regulation, the VoLL shall be determined by the Member States, differentiated where appropriate by bidding zone, on the basis of a methodology developed by ENTSO-E and approved by ACER.

2. IMPLICATIONS

This proposal is in line with the model of an “energy-only market”, wherein the remuneration of the peaking power plants required to ensure the security of the power supply, and in particular the coverage of their fixed costs, will be ensured in times of system strain by the scarcity rent resulting from the setting of the market price at a level superior to the marginal operating costs. In a market with a global overcapacity of generation, marked by the development of subsidized renewable energies, the doubts concerning the ability of the market to single-handedly ensure the security of supply as well as its ability to induce long-term investments have led to widespread reflection on the capacity mechanisms in Europe to provide another source of revenue for the generation facilities.

In practice, many Member States have decided to implement such capacity mechanisms. The European Commission, in its proposal on the “Clean Energy for All Europeans” package, does not call into question the existence of such mechanisms but defines rules regarding them in the regulation.

Finally, by providing a cap per bidding zone, the European Commission's proposal is in contradiction with the CACM regulation which makes provisions for a harmonized cap for all markets in Europe and would harm the development of a level playing field for stakeholders.

3. THE POSITION OF CRE

CRE believes that the risks associated with the European Commission's proposal outweigh the expected benefits, and is therefore unfavourable to it.

In the short-term, CRE has expressed reservations concerning the fact that an increase in price caps, during the periods of strain between the supply and the demand can, in practice, effectively allow access to additional generation capacities. It remains unproven that it is necessary to attain the price caps so that all the means of generation and demand side management are mobilized.

In the medium/long-term, the economic reasoning of investors does not seem to be compatible with the principle of covering the fixed costs during events characterized by a low probability of occurrence, and whether the price caps are fixed at 3000€/MWh as it is currently the case, or raised to a level equal to the VoLL. CRE considers that it remains unproven that an increase in price caps alone can be conducive to the investments necessary for the security of supply (particularly for the means required for extreme peak demand times) and prevent capacity shutdowns. The creation of the means of production is often the result of a political will within the framework of a territorial energy policy.

While this proposal relates to uniquely theoretical benefits, as previously stated, it nevertheless raises a number of practical problems such as:

- the difficulty of correctly estimating the VoLL : a unique value for representing a significant number of diverse willingnesses to pay among different categories of consumers;

- the exposure of market players to unnecessarily high financial guarantees. Since the cost of risk coverage is higher for a small producer or supplier, any increase in price caps, in particular for the day-ahead market, will expose these players to greater financial risks, making their entry or maintenance in the market more difficult. In addition, the current price caps are likely to limit the impacts of operational risks that may arise in the context of a fixing auction, as used for the day-ahead market¹.

Consequently, CRE is requesting the modification of Article 9 of the draft regulation.

¹ The functioning of the so-called "fixing" auctions in the day-ahead market makes it essential to maintain the price caps in ranges that are financially acceptable to all market participants. Since these auctions are at a uniform price, the equilibrium price is determined by the price of the last bid retained. As a result of this auction, prices may change very sharply and may be volatile (incorrectly anticipated cold temperatures, absence of wind and fall in wind production, power stations failure, unplanned curtailment in interconnection capacities, etc.). In addition, this bidding mechanism particularly exposes participants to human error, which may lead to the price of the last bid retained being very high, possibly attaining price caps, even though the supply-demand balance is not under any particularly strain. In times of strain, the effects of human errors on prices would also be increased tenfold. In the intraday market, where the allocation is carried out continuously, this risk of price "slippage" due to human error and hence the financial impact, is lower.