

**- Position Paper -**

**Electricity market design – Europex positions on the Electricity Regulation, Electricity Directive and the ACER Regulation**

Brussels, 11 October 2018 | The trilogue negotiations for the electricity market design files (the draft recasts of the Electricity Regulation, Electricity Directive and ACER Regulation) are well under way. At this stage it is crucial that all parties can agree on workable solutions grounded in market realities. Overall, this is an opportunity to ensure that wholesale markets are efficient, accessible and are ready to meet the challenges of the energy transition. This paper raises five aspects emerging from the negotiations so far which we believe are necessary to address or maintain. A comparison of the positions of the Commission, Parliament and Council, as well as our amendment proposals can be found in annex.

**Electricity Regulation**

**1. Regulatory changes must also consider the impact on long-term markets: Article 3(1); Article 8**

Long-term derivatives markets are vital to allow electricity market participants to effectively manage their risk. While short-term markets allow for physical optimisation, long-term futures markets provide important opportunities to secure prices and hedge positions. There is close interplay between these physical and financial markets. Europex therefore welcomes the recognition in the compromise proposal that any regulatory changes must take into account effects on both short-term and long-term derivatives markets and products.

**2. Definition of imbalance price areas: Article 5(6)a**

We support the compromise text which modifies the European Commission's definition of bidding zone and highlights that imbalance price areas shall be equal to bidding zones, and not the other way round. This wording should be preserved.

**3. No need to set minimum bid-sizes on day-ahead and intraday markets: Art. 7(3)**

There is no reason to stipulate the minimum or, for that matter, maximum size of bids in day-ahead or intraday markets. Currently at least ranges between 0.1 and 1.0 MWh/h are used.

The minimum limits should be freely adaptable based on the evolution of the markets, while respecting any technical limits that may apply to handle the price formation.

## Electricity Directive

### 4. Definition of ‘interconnector’: Art. 2(33)

The Presidency’s compromise proposal on the definition of an ‘interconnector’ excludes equipment within a Member State. It also defines an interconnector as equipment that only links transmission systems. This definition raises concerns as to how existing interconnectors *within* Member States will be impacted (for example multiple zones in Sweden and Italy or the interconnector between Great Britain and Northern Ireland). This definition also introduces uncertainty around any changes to bidding zones borders which differ from Member State borders. Configurations which cover more than one Member State, for example the Germany-Luxembourg bidding zone, must also be considered in any definition. For these reasons, we support the definition identified in the Council’s general approach.

## ACER Regulation

### 5. Network codes and guidelines - adopting terms and conditions or methodologies: Art. 5(2)

Any revision by ACER of terms and conditions or methodologies developed according to the Network Codes and Guidelines should be conditional on a consultation of all affected stakeholders having been carried out. It is also vital to avoid the creation of parallel processes when adopting terms and conditions or methodologies. This Article should therefore ensure consistency with the processes currently in place for the network codes and guidelines, and in particular the Electricity Balancing and the CACM Guidelines.

### About

Europex is a not-for-profit association of European energy exchanges with 26 members. It represents the interests of exchange-based wholesale electricity, gas and environmental markets, focuses on developments of the European regulatory framework for wholesale energy trading and provides a discussion platform at European level.

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## Annex: detailed positions table

### Electricity Regulation

#### 1. The role of long-term markets: Art. 3(1); Art. 8

| Commission proposal<br>COM(2016) 861 final/2<br>published 23 Feb 2017   | European Parliament (ITRE<br>report as voted 21 Feb<br>2018)  | Council (General Approach<br>published 20 Dec 2017)<br>Document: 15879/17  | Presidency<br>compromise proposals<br>(5834/3/18 REV 3, 10<br>September 2018) +<br>Europex amendments   | Europex position   |
|---|---|--|---|--|
| <p><b>Principles regarding the operation of electricity markets - Art. 3(1)</b><br/>(n) long-term hedging opportunities, which allow market participants to hedge against price volatility risks on a market basis, and eliminate uncertainty on future returns on investment shall be tradable on exchanges in a transparent manner subject to compliance with EU treaty rules on competition.</p> | <p><b>AM 29</b><br/>(n) long-term hedging opportunities, which allow market participants to hedge against price volatility risks on a market basis, and <b>mitigate</b> uncertainty on future returns on investment shall be tradable on exchanges in a transparent manner subject to compliance with EU treaty rules on competition <b>while current products offered on exchanges should be further expanded and promoted at Union level; Regulatory changes shall take into account effects on both short-term and long-term</b></p> | <p>(n) <b>in order to</b> [ ] allow market participants <b>to be protected</b> [ ] against price volatility risks on a market basis, and [ ] <b>mitigate</b> uncertainty on future returns on investment, <b>long-term hedging opportunities</b> shall be tradable on exchanges in a transparent manner <b>and long-term supply contracts shall be negotiable over the counter</b>, subject to compliance with EU treaty rules on competition.</p> | <p><i>Accept in part and modified</i><br/>(n) [ ] <b>in order to</b> allow market participants [ ] <b>to be protected</b> against price volatility risks on a market basis, and [ ] <b>mitigate</b> uncertainty on future returns on investment, <b>long-term hedging opportunities</b> shall be tradeable on exchanges in a transparent manner, <b>and long-term supply contracts shall be negotiable over the counter</b>, subject to EU treaty rules on competition.<br/><br/><b>Market rules shall facilitate trade of products <del>on</del></b></p> | <p>While much of the recent focus has been on developing short-term markets, long-term derivatives markets are vital to allow market participants to effectively manage their risk. Interplay between the physical and financial markets is increasingly important.<br/><br/>Europex therefore welcomes the recognition in the compromise proposal that any regulatory changes must take into account effects on both short-term and long-term forward and futures markets and products.<br/><br/>The choice of instruments for long-term hedging should be left</p> |

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|   | <i>forward and futures markets and products.</i>   |   | <i>exchanges at across the Union.</i><br><br><i>Regulatory changes shall take into account effects on both short-term and long-term forward and futures markets and products.</i>   | up to market participants, and there is no need to specify the mix of instruments in this Regulation.   |
| <b>Art. 8 Forward markets</b><br><br>3. Subject to compliance with treaty rules on competition, market operators shall be free to develop forward hedging products including for the long-term to provide market participants, in particular owners of generation facilities using renewable energy sources, with appropriate possibilities to hedge financial risks from price fluctuations. Member States shall not restrict such hedging activity to trades within a Member State or bidding zone. | <b>AM 47</b><br><br>3. Subject to compliance with treaty rules on competition, market operators shall be free to develop forward hedging products including for the long-term to provide market participants, in particular owners of generation facilities using renewable energy sources, with appropriate possibilities to hedge financial risks from price fluctuations. Member States shall <b>support the liquidity of such products, in particular of exchange-based products that have already been developed, and shall allow them to be traded across bidding zones.</b> | 3. Subject to compliance with treaty rules on competition, market operators shall be free to develop forward hedging products including for the long-term to provide market participants, [ ] <b>including</b> owners of generation facilities using renewable energy sources, with appropriate possibilities to hedge financial risks from price fluctuations. Member States shall not restrict such hedging activity to trades within a Member State or bidding zone. | <i>Maintain Council GA</i><br><br>3. Subject to compliance with treaty rules on competition, market operators shall be free to develop forward hedging products including for the long-term to provide market participants, [ ] <b>including</b> owners of generation facilities using renewable energy sources, with appropriate possibilities to hedge financial risks from price fluctuations. <b>Member States shall support the liquidity of such products, in particular of exchange-based products that have already been developed, and shall allow them to be traded across bidding zones.</b> Member States shall not restrict such hedging activity to trades within a | Exchange-based trading is critical to the success of the Energy Union and the decarbonisation of the EU energy sector. Exchanges help to pool liquidity, establish transparent benchmark prices and provide efficient trading platforms, clearing and settlement solutions.<br><br>A shift towards trading on exchanges, where contracts are cleared through central counterparties, was also backed by the G20 Pittsburgh agreement (2009) on financial services regulation.<br><br>We therefore encourage the Council to back the Parliament's amendment supporting the liquidity of exchange-based products already developed. |

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|  |  |  | Member State or bidding zone. |  |
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## 2. Definition of imbalance price areas: Article 5(6)a

| Commission proposal<br>COM(2016) 861 final/2<br>published 23 Feb 2017 | European Parliament (ITRE<br>report as voted 21 Feb<br>2018) | Council (General Approach<br>published 20 Dec 2017)<br>Document: 15879/17   | Presidency compromise<br>proposals (5834/3/18<br>REV 3, 10 September<br>2018)   | Europex position  |
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| -   | -  | <b>6a. The imbalance price area shall be equal to a bidding zone, except in case of a central dispatching model and in accordance with Balancing Guideline adopted on the basis of Article 18 of the Regulation 714/2009. The imbalance area shall be equal to the scheduling area, except in case of a central dispatching model where imbalance area may constitute a part of a scheduling area in accordance with the Balancing Guideline adopted on the basis of Article 18 of the Regulation 714/2009.</b> | <i>Accept to modify GA and merge with Am 64. For the part on imbalance and scheduling areas see Article 54(2) of Reg. 2017/2195 (Balancing Guideline).</i><br><b>6a. Each imbalance price area shall be equal to a bidding zone, except in case of a central dispatching model where an imbalance price area may constitute a part of a bidding zone. [ ]</b> | Europex supports the compromise proposal, which modifies the Commission's definition of bidding zone and rightfully highlights that imbalance price areas shall be equal to bidding zones, and not the other way round. |

### 3. No need to set minimum bid-sizes on day-ahead and intraday markets: Art. 7(3)

| Commission proposal<br>COM(2016) 861 final/2<br>published 23 Feb 2017   | European Parliament (ITRE<br>report as voted 21 Feb<br>2018)   | Council (General Approach<br>published 20 Dec 2017)<br>Document: 15879/17   | Presidency<br>compromise proposals<br>(5834/3/18 REV 3, 10<br>September 2018) +<br>Europex amendments  | Europex position   |
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| <p><b>Art. 7 Trade on day-ahead and intraday markets</b></p> <p>3. Market operators shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, with minimum bid sizes of 1 Megawatt or less, to allow for the effective participation of demand-side response, energy storage and small-scale renewables.</p> | <p>3. Market operators shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, with minimum bid sizes of <b>500 Kilowatt</b>, to allow for the effective participation of demand-side response, energy storage and small-scale renewables <b>including directly by customers.</b></p> | <p><b>3. Nominated electricity market</b> operators shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, with minimum bid sizes of 1 Megawatt [ ], to allow for the effective participation of demand-side response, energy storage and small-scale renewables <b>in accordance to the methodologies developed in the [ ] capacity allocation and congestion management guideline adopted on the basis of Article 18 of Regulation (EU) 714/2009.</b></p> <p><b>4. [ ]</b> By 1 January 2021, the imbalance settlement period shall be 15 minutes in all [ ] <b>scheduling areas unless [ ] regulatory authorities have granted a derogation or an exemption in accordance with [ ] the balancing guideline adopted on the basis of Article</b></p> | <p><i>Accept in part with modified GA</i></p> <p><b>Nominated electricity market</b> operators shall provide products for trading in day-ahead and intraday markets which are sufficiently small in size, <b>with minimum bid sizes of 1 Megawatt or less,</b> to allow for the effective participation of demand-side response, energy storage and small-scale renewables <b>including directly by customers [ ].</b></p> | <p>There is no reason to stipulate the minimum or, for that matter, maximum size of bids in day-ahead or intraday markets. Currently at least ranges between 0.1 and 1.0 MWh/h are used.</p> <p>The minimum limits should be freely adaptable based on the evolution of the markets, while respecting any technical limits that may apply to handle the price formation.</p> |

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|  |  | <b>18 of the Regulation 714/2009.</b><br>[] |  |  |
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## Electricity Directive

### 4. Definition of 'interconnector'

| Commission proposal<br>COM(2016) 864 final/2<br>published 23 Feb 2017  | European Parliament (ITRE<br>report as voted 21 Feb<br>2018) | Council (General Approach<br>published 20 Dec 2017)<br>15886/17  | Presidency compromise<br>proposals  | Europex position   |
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| 33. 'interconnector' means a transmission line which crosses or spans a border between bidding zones, or between Member States or, up to the border of EU jurisdiction, between Member States and third countries. | -  | 33. 'interconnector' means an <b>equipment used to link electricity systems</b> [] which crosses or spans a border between bidding zones, or between Member States or, up to the border of [] <b>Union territorial</b> jurisdiction, between Member States and third countries.<br><br><i>[This definition is not part of the general approach].</i> | <b>33. 'interconnector' means an equipment used to link electricity transmission systems, excluding equipment crossing a bidding zone border inside a Member State.</b> | The Presidency's exclusion of equipment within a Member State, and the change to require an interconnector to be equipment that links transmission systems (only) raises some important concerns, given that bidding zones are not always aligned with Member State borders. <ul style="list-style-type: none"> <li>• How will existing interconnectors <i>within</i> Member States be defined, for example in Member States which contain multiple bidding zones (e.g. Sweden or Italy)?</li> </ul> |

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|  |  |  |  | <ul style="list-style-type: none"> <li>How would this definition impact future processes to amend bidding zones borders which are different from Member State borders?</li> </ul> <p>The current definition in the compromise proposal introduces a large amount of uncertainty in these respects. We therefore support the definition identified in the Council general approach.</p> |
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## ACER Regulation

### 5. Network codes and guidelines: Art. 5(2)

| Commission proposal (COD 2016/0378 - doc. 15149/1/16 REV 1 +ADD1REV1)   | European Parliament (ITRE report)   | Council (General Approach published (doc.9478/18))   | Presidency compromise proposals  | Europex position  |
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| <b>Article 5</b><br>2. In cases where the network codes and guidelines developed pursuant to Chapter VII of [recast Electricity Regulation as | AM 36<br>2. In cases where the network codes and guidelines developed pursuant to Chapter VII of [recast Electricity Regulation as proposed by COM(2016) 861/2] | 2. In cases where <b>a legislative act of the Union adopted in an ordinary legislative procedure</b> or the network codes and guidelines adopted before the entry into force of this | Accept in part:<br>2. In cases where <b>a legislative act of the Union adopted in an ordinary legislative procedure or the</b> network codes and | The CACM Regulation already specifies the process of adoption of terms and conditions or methodologies (Art. 9 and 12). |



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| <p>proposed by COM(2016) 861/2] provide for the development of proposals for terms and conditions or methodologies for the implementation of those network codes and guidelines which require regulatory approval by all regulatory authorities or by all regulators of the concerned region, the terms and conditions or methodologies shall be submitted for revision and approval to the Agency. Before approving the terms and conditions or methodologies, the Agency shall revise and change them where necessary in order to ensure that they are in line with the purpose of the network code or guidelines and contribute to market integration, non-discrimination and the efficient functioning of the market. The procedure for the coordination of regional tasks in accordance with Article 7 shall apply.</p> | <p>provide for the development of proposals for terms and conditions or methodologies for the implementation of those network codes and guidelines which require approval by <b>the regulatory authorities of all Member States, the proposed terms and conditions or methodologies shall be submitted for revision and approval to the Agency.</b></p> | <p>Regulation or <b>adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011 of the European Parliament and the Council, []</b> provide for the development of proposals for common terms and conditions or methodologies for the implementation of those network codes and guidelines which require regulatory approval by all regulatory authorities <b>[],the terms and conditions or methodologies shall be submitted for revision to the Agency and shall be approved by the Board of Regulators.[]</b></p> | <p>guidelines <b>adopted before the entry into force of this Regulation or adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011 of the European Parliament and the Council, []</b> provide for the development of proposals for common terms and conditions or methodologies for the implementation of those network codes and guidelines which require regulatory approval by all regulatory authorities <b>[],the terms and conditions or methodologies shall be submitted for revision to the Agency.</b></p> | <p>Art.9(9) of Regulation 1222/2015 (CACM Regulation) provides that "<i>Proposals on terms and conditions or methodologies subject to the approval by several or all regulatory authorities shall be submitted to the Agency at the same time that they are submitted to regulatory authorities. Upon request by the competent regulatory authorities, the Agency shall issue an opinion within three months on the proposals for terms and conditions or methodologies.</i>"</p> <p>The Electricity Balancing Guideline provides for the adoption, approval and amendment of terms and conditions and methodologies in Articles 4,5 and 6.</p> |
|  | <p><b>2 a. (new) In cases where the network codes and guidelines developed pursuant to Chapter VII of Regulation (EU) .../... [proposed recast Electricity Regulation, COD (2016)0379] provide for the development of proposals for joint regional</b></p>  | <p><b>2(a) In cases where a legislative act of the Union adopted in an ordinary legislative procedure or the network codes and guidelines adopted before the entry into force of this Regulation or adopted as implementing acts pursuant to</b></p>  | <p>Maintain Council GA</p>  | <p>Europex reminds that the CACM Regulation already specifies the process of adoption of terms and conditions or methodologies (Art. 9 and 12).</p>   |

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|  | <p>terms and conditions or methodologies for the implementation of network codes and guidelines which require approval by all regulatory authorities of the region concerned, the proposed terms and conditions or methodologies shall be notified to the Agency.</p> | <p>Article 5 of Regulation (EU) No182/2011 of the European Parliament and the Council, provide for the development of proposals for terms and conditions or methodologies for the implementation of those network codes and guidelines which require regulatory approval by all competent regulatory authorities of the concerned region, the competent regulatory authorities of the concerned region shall reach an agreement by unanimity. The proposed terms and conditions or methodologies shall be notified to the Agency within one week of the submission of the proposal to the competent regulators. Regulators may refer the proposal to the Agency for approval pursuant to Article 6(8)(b) and shall do so pursuant to Article 6(8)(a) in case a unanimous decision cannot be reached.</p> |  | <p>Art.9(10) indicates that "Where the approval of the terms and conditions or methodologies requires a decision by more than one regulatory authority, the competent regulatory authorities shall consult and closely cooperate and coordinate with each other in order reach an agreement. Where applicable, the competent regulatory authorities shall take into account the opinion of the Agency."</p> <p>Moreover, Art.9(11) states that "Where the regulatory authorities have not been able to reach agreement within the period referred to in paragraph 10, or upon their joint request, the Agency shall adopt a decision concerning the submitted proposals for terms and conditions or methodologies within six months".</p> <p>The Electricity Balancing Guideline provides for the adoption, approval and amendment of terms and conditions and methodologies in Articles 4,5 and 6.</p> |
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