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Document title: ACER Reinforcing regulatory cooperation Executive Summary

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Taking action and reinforcing regulatory cooperation to deliver the IEM

Key outcomes and deliverables emerging from the Summit

Executive Summary

- ❖ The Agency and National Regulatory Authorities (NRAs) have complementary duties and powers, but a shared responsibility to ensure a competitive, secure and environmentally sustainable internal energy market (IEM) at EU level. The complementary nature of regulatory oversight at national and European level requires close cooperation among NRAs and with the Agency.
- ❖ Within this framework, the Agency's effectiveness in bringing together NRAs' resources to help deliver the IEM is fully evident. The Agency and NRAs have worked together over the past five years to deliver the IEM and its benefits to consumers. They are committed to enhance further this cooperation within ACER. A Summit of the Agency's Board of Regulators and the Director in September 2015 provided the opportunity to take stock of this experience and to identify and develop initiatives to enhance such cooperation which are described below. They aim at responding to the gathering pace of stronger market integration and the other challenges facing energy sector regulation in the years to come.
- ❖ Effective regulatory oversight of the IEM requires independence and adequate resources for the Agency and NRAs, to make sure that they are able to meet their growing tasks, as well as to cooperate at European level in the public interest. The Agency and NRAs should also be subject to an appropriate system of checks and balances, as set up in the Third Energy Package, as well as to judicial and democratic scrutiny. Independence, transparency and accountability promotes the trust of customers and other stakeholders in the effectiveness of regulatory oversight of the EU energy sector.

❖ Background

The European Commission has stated that full implementation and enforcement of existing energy legislation (including the independence of NRAs), is the first priority to establish the Energy Union, as is the need to reinforce the powers and independence of the Agency¹.

It is understood, therefore, that the future role and powers of the Agency will be addressed, *inter alia*, in the European Commission's legislative proposals on the new energy market design. The Agency has already

provided its views when responding to the European Commission's consultation paper².

In that response, we supported a more robust regulatory framework for the IEM with a reinforced role for the Agency and an even stronger cooperation among NRAs through the Agency. Moreover, in the 'Bridge to 2025' Conclusions Paper³, the Agency committed to develop specific mechanisms further to enhance cooperation with and among NRAs. Such cooperation should be based on the adequate resourcing and independence of

¹ 25.2.2015 COM (2015) 80 final Energy union package Communication from the Commission to the European Parliament, the Council, the European Economic and social committee, the Committee of the regions and the European Investment Bank on "A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy".

² Brussels, 15.7.2015 COM (2015) 340 final Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. Joint ACER-CEER response to the European Commission's Consultation on a new Energy Market Design of 07 October 2015.

³ Conclusion Paper of 'Energy Regulation: the Bridge to 2025' Recommendation ACER Recommendation No 05/2014 of 19 September 2014 on the regulatory response to the future challenges emerging from developments in the internal energy market.

NRAs. In fact, the European Court of Auditors⁴ placed particular emphasis on the need for NRAs to be independent, have appropriate resources to fulfil their duties and to participate and cooperate fully at EU level.

The need for independence and sufficient resources of both the Agency and NRAs is even more important for the future regulatory arrangements.

❖ Introduction

In this context, at the Summit in September 2015, we sought to identify ways to ensure that the cooperative arrangements within the Agency are suitable to meet future challenges and can adapt to the evolving role of the Agency. Not least, to make sure that we are making effective use of our resources.

In fact, the Agency's very title and first years of operation underline its fundamental purpose: to provide a Community structure to facilitate NRAs' cooperation and to improve coordination of their actions. But over time and most likely even more in the years to come, the Agency has been and will be assigned stronger powers, which require an enhanced model of cooperation within the Agency.

Following this Summit, a number of initiatives have been developed which are summarised below: A Recommendation to the EU Institutions (ACER Recommendation 01/2016 of 30 May 2016) has been adopted, proposing measures to ensure the independence of the Agency and NRAs, including through sufficient resourcing. This Recommendation benefits from an internal stock-taking exercise on NRAs' resources (see further below). We also developed enhanced cooperative arrangements between the Agency's bodies to meet the future regulatory challenges and to promote the involvement of all NRAs in the work of the Agency. All this work builds on the existing checks and balances of accountability, transparency and independence, which lie at the heart of the EU regulatory model.

⁴ Special report (No 16/2015) of Court of Auditors: "Improving the security of energy supply by developing the internal energy market: more efforts needed" which recommends that, "The Member States should make sure that NRAs are independent and do not face restrictions to the scope of their role. The NRAs should have sufficient resources available for their activities, including allowing them to participate fully in EU-level cooperation activities".

❖ Architecture to realise the benefits of the IEM

The effectiveness of regulatory oversight depends on concerted action (by the Agency and NRAs) to implement the Third Energy Package and the Network Codes, to ensure the integrity and transparency of wholesale energy markets, and efficient infrastructure development.

The current model for regulatory oversight for the energy sector in the European Union is, therefore, based on close complementarity of action at national and European level. To date, this model has served us well.

As EU energy markets become more integrated, the future model will likely see a strengthening of the role of the Agency. This requires an even closer collaboration between NRAs and the Agency to ensure consistent regulatory action at EU and national level, as well as full and effective enforcement. Thus, NRAs having the independence and resources to engage and closely cooperate at European level among themselves and with the Agency, as well as the Agency being adequately resourced to perform its duties in an independent way, is key to ensure consistent and credible regulatory action in the IEM.

Such effective cooperation at European level is thus central in delivering the Energy Union strategy with the IEM at its heart and an enhanced governance of the EU energy sector so that the full benefits of the market integration flow to consumers.

❖ Supporting the delivery of the IEM: Inventory - taking stock of Regulators' Human Resources

The Agency gathered comparable data from NRAs on how many staff members they have overall and how many of these they commit to work within ACER. This stock-taking exercise found that, in spite of the severe resource constraints faced by NRAs, they commit significant resources to their cooperation within the Agency, collectively allocating the equivalent of over 200 full-time staff to work in the Agency's Working Groups and to the Board of Regulators. For the smallest NRAs the commitment of a significant larger proportion of their resources to cooperation within ACER, places a disproportionate strain on them.

Indeed many NRAs would like to be more actively involved in the Agency's work, but

simply lack sufficient overall resources to take on a more active role. Such severe resource constraints not only limit NRAs' capacity to cooperate at European level, but also put at risk their ability to carry out their duties – national and European – effectively and independently.

❖ **Independence of the Agency and NRAs lies at the heart of effective regulatory oversight to deliver benefits to consumers**

Full transposition and implementation of the existing energy legislation is fundamental to deliver the full benefits of the IEM to EU energy consumers and this should not be overlooked or delayed by the current debate on the new energy market design and on the evolution of governance arrangements.

We considered the effectiveness of the NRAs' independence requirements, in the light of the past experience, against the future needs. We identified certain areas where legislation could be improved. Although the independence requirements in the Third Package are robust, insufficient resources (see above results of the human resources' inventory), put that regulatory independence at serious risk. Such is the importance of these conclusions that a formal Agency Recommendation to the European Institutions has been adopted (ACER Recommendation 01/2016 of 30 May 2016).

This Recommendation addresses the role, powers and independence of NRAs in the light of: their important objectives to oversee their national markets; their European mandate to promote a competitive, secure and environmentally sustainable internal market for electricity and gas; and the need to play a full role in the Agency's structures and work. The Recommendation also aims to safeguard the Agency's capacity effectively to perform its functions.

The Recommendation takes fully into account the aspirations of the Energy Union strategy and of the Commission's current thinking on a new energy market design, as well as the findings of the special Report of the European Court of Auditors.

It proposes specific measures to strengthen the legal, financial, institutional and operational independence of NRAs (under the Third package), also recognising the need for stronger cooperation between NRAs through the Agency. It also highlights the need for

adequate resources for both NRAs and Agency in order effectively to perform their functions.

❖ **Enhancing our working practices on the solid foundation of an Agency's structure that embeds NRAs' expertise within its framework**

The Agency's structures draw extensively on NRAs' expertise to support the Agency's work. All NRAs – including the smallest – already commit considerable resources to cooperation within ACER. However, the strain this puts on the small and medium-sized NRAs is disproportionately high. We recognise how important it is that all NRAs, irrespective of size, participate and provide input. Indeed, the involvement of all NRAs brings the plurality of national experience and expertise in the work of the Agency. The input of all NRAs and their opportunity to participate in the work of the Board of Regulators and the Agency's Working Groups is, therefore, a fundamental objective.

We have also identified organisational and administrative improvements to facilitate such participation, to better accommodate the contribution of smaller NRAs. In the same vein, we have made enhancements to the mechanisms for NRA cooperation, in particular with respect to the future challenges facing energy sector regulation including the effective monitoring of the implementation of the Network Codes and ensuring market integrity and transparency.



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