

Energy Regulation: A Bridge to 2025

Conclusions Paper¹

19 September 2014

Recommendation of the Agency on the regulatory response to the future challenges emerging from developments in the internal energy market

¹ This conclusions paper is attached to the Recommendation of the Agency for the Cooperation of Energy Regulators No 05/2014 of 19 September 2014 on the regulatory response to the future challenges emerging from developments in the internal energy market

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Introduction

- 1 This document contains European energy regulators' considered conclusions on the regulatory challenges we expect will emerge over the coming decade from the development of the Internal Energy Market (IEM). It is based on a pre-consultation document, issued on 6 November 2013², and the full consultation document, issued on 29 April 2014³, to which 141 responses from stakeholders were received. In addition, workshops were held on 6 November 2013, 29 April 2014, and 5 June 2014, and a consumer conference was held on 18 June 2014. Throughout this process, the Council of European Energy Regulators (CEER) has collaborated closely with the Agency for the Cooperation of Energy Regulators (the Agency). The conclusions presented in the present document take full account of the responses received (a full evaluation of those comments can be found in a related document⁴).
- 2 The IEM will increasingly deliver tangible benefits to European energy consumers and so its completion remains a top priority for the Agency and for National Regulatory Authorities (NRAs). The Commission's President designate has announced the objective of a European Energy Union and has proposed the appointment of a Vice President for Energy Union and Commissioner for Climate Action and Energy. This clearly indicates that European energy market integration is likely to receive a renewed impulse and IEM competition remains a top priority. Therefore, in the immediate future, the regulatory focus will continue to be on the development and implementation of the Network Codes, Guidelines and other measures which are fundamental to the achievement of full energy market integration. Nevertheless, we consider that it is essential that we also look further ahead from the perspective of energy regulators to examine the challenges that we expect the energy sector will face after the full implementation of the existing rules, including the development of retail market competition, so that the benefits of the IEM feed through to energy consumers. In this way, all those involved in the development of the IEM can be informed, and the Agency and NRAs, including through CEER, can develop a regulatory response which will remain fit for the purpose.
- 3 In order to stimulate a discussion on the complete framework for the IEM, we have also made suggestions in areas which go beyond the present responsibilities of the Agency and NRAs, resting principally with the European Parliament, Council and Commission. Also, NRAs may be constrained by the domestic legal and regulatory structures they operate under; so if some of these changes were to be taken forward they may require Member States to alter domestic regulatory structures to give any powers needed to fulfil those new roles.

² "Energy Regulation: A Bridge to 2025" Pre-consultation Set of Papers, 6 November 2013, http://acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2013_E_05.aspx

³ "European Energy Regulation: A Bridge to 2025" Public Consultation Paper, 29 April 2014, http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2014_O_01.aspx

⁴ "Energy Regulation: A Bridge to 2025" Evaluation of responses to consultation, 19 September 2014

The Single European Gas and Electricity Markets in 2025

- 4 The focus of the Agency and all NRAs will firmly remain on the full implementation of the Network Codes developed over the last three years, both in gas and electricity, and on the support for the adoption and implementation of those Codes and Guidelines still under development. These Codes and Guidelines contain the core provisions which give effect to what is generally referred to as the Electricity and Gas Target Models. It is an approach that reflects many stakeholders' comments that the development of a strategy to accommodate future changes should not detract from that immediate priority.
- 5 Significant progress has already been made towards establishing the IEM (for example, through day-ahead market coupling in electricity and entry-exit systems in gas which cover most of the European Union (EU)), but much still remains to be done in terms of the adoption of the Codes and the Comitology Guidelines along with their implementation. Where adoption has been delayed for technical reasons, the Agency and NRAs remain committed to promote their early, voluntary implementation so that European energy consumers can benefit from the IEM as soon as possible.
- 6 Our earlier consultation paper detailed the changes which we consider could be anticipated to impact on the IEM's development. We recognised that it is not possible to predict with certainty all the events which could affect the development of the IEM in the coming decade. Thus, we sought to identify the main trends which could reasonably be foreseen and so give a good indication of likely developments. Most respondents to our consultation agreed that the specific changes identified in our consultation paper were the right ones. They also agreed with the likely impacts that these changes will have. It is therefore on this generally agreed basis of the market we hope to have in place by 2025 that we can outline the preparations we as regulators must make.

Outline of Document

- 7 The document is structured principally along sectoral lines. Within each chapter, we briefly set out our sectoral vision of the market for 2025, based on the analyses presented in the consultation paper and stakeholders' responses. We then explain the objectives we seek to achieve and, in respect of each of them, the specific deliverables we intend to implement, extending from 2015 onwards. The document also includes a chapter on the governance of the process for the development of the internal European electricity and gas markets.

- 8 With respect to short-term deliverables, the Agency's 2015 Work Programme, when adopted, will anticipate that the Agency may be called upon to perform some of the activities presented in this document⁵. On its own initiative, the Agency may issue recommendations to the EU institutions following the completion of its work on the review of the Electricity and Gas Target Models⁶. The CEER Work Programme for 2015 (which will be issued later this year) will also reflect appropriately the specific short-term deliverables proposed in this document which fall within its remit.
- 9 We also summarise how each proposal will be pursued. Where a proposal can be assigned entirely to one organisation or to NRAs, we have also identified that organisation in the text. Where the responsibility for different aspects of the proposal is shared between the Agency, CEER and NRAs, we have not provided a breakdown of these tasks. That will be defined in detail in the respective Work Programmes, identifying the organisation which will undertake each aspect.
- 10 We have focused on the future challenges which we believe will face the electricity and gas sectors. However, the challenges posed to the Agency and NRAs by the new wholesale energy market monitoring framework introduced by REMIT⁷ have not been included in the scope of the present document, even though integrity and transparency are essential for a well-functioning IEM. The reason for this exclusion is that the implementation of this monitoring framework is already underway, although it must be emphasised that the Agency and many NRAs have not so far been able to secure the resources required to operate it effectively.

⁵ Cf. Section II, Chapter 2, paragraphs 2.6.2 and 2.6.4, and Section III, Chapter 1, in the Agency's 2015 Work Programme

⁶ Cf. Section III, Chapter 3, paragraph 3.7, in the Agency's 2015 Work Programme. The Electricity and Gas Target Models define a vision for the organisation of the electricity and gas sectors and for the design of their respective European wholesale and retail markets. This vision has been developed by European regulators with the active involvement of stakeholders.

⁷ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 08.12.2011, p. 1–16)

1 Electricity

In this chapter we outline how we expect the electricity market in Europe to operate in 2025, including the development of the market to involve an active participation from the demand side. We identify a series of objectives we need to pursue, and make proposals for the actions we must take in respect of each objective to deliver an integrated internal European electricity market.

The Electricity Market in 2025

A large share of electricity production will come from diverse sources which are substantially low or zero-carbon. We expect there to be a liquid and competitive wholesale market, including arrangements which value flexible response from all sources, to help ensure continued high levels of system security. Transmission networks will have increased interconnection and cross-border capacity will be calculated dynamically to maximise its efficient use. All forms of generation, storage and demand response will compete on a level-playing field across all timeframes, from investment-time horizons to real-time delivery, in a European-wide market without hindrance across borders. Policy interventions will be designed to address identified market failures and minimise distortions to the market. The regulatory framework will support economic investment in networks, without discriminating between national and cross-border projects, to the benefit of consumers.

All consumers, from large industrial users to retail customers, will be able to participate actively (either directly, or through service providers) in the market in different, and some new, ways. Consumers may own and operate generation capacity connected to their commercial or domestic premises. Smart technologies and new services will be available to manage the consumption of smaller customers (including domestic customers) in ways which may assist in, and reduce the cost of, network operation whilst also helping to reduce their own electricity bills. Newer technologies, such as electricity storage (including the storage capacity inherent in electric vehicles), may well play an increasingly important role in the market.

Regulatory components

1.1 The delivery of the Electricity Target Model will remain an immediate priority

Objective

11 The application of the Electricity Target Model - in many cases ahead of its relevant provisions becoming binding - has facilitated the initial stages of the development of Europe's internal electricity market. The rapid implementation of that Target Model will remain a top priority as an essential reference for the future coherent development of the IEM. However, we need to ensure that the Target Model will continue to evolve so that it remains fit for purpose as new challenges emerge, and thereby provide a sound basis to ensure that the IEM is robust to future change.

Proposals

12 In the near term, the Agency and NRAs will continue to support the adoption of the Network Codes and Comitology Guidelines in the areas of grid connections, capacity allocation and congestion management, system operation and balancing. We shall also actively promote the rapid implementation of the provisions contained in these Network Codes, where possible, in practice even before their becoming legally binding.

13 The Agency, in close cooperation with stakeholders, will continue to assess whether the Electricity Target Model – and the market design which it defines - remains coherent and robust to future change. In particular the Agency will:

- work with stakeholders to improve the communication of the benefits which customers can expect from the application of the Target Model, and monitor market developments to check that the benefits effectively materialise;
- promote the liquidity and integration of intraday markets, in particular in respect of managing a much greater penetration of non-programmable renewable-based generation;
- monitor the current pilot projects and our implementation work, including with regard to balancing, and where necessary seek to embed the emerging best-practice requirements in the relevant Network Code or Guidelines; and,
- monitor the efficiency of transmission system operator (TSO) coordination foreseen in the system operation-related Network Codes and the annual European Network of Transmission System Operators for Electricity (ENTSO-E) reports to assess whether the role of Regional Security Coordination Initiatives (RSCIs) needs either to be strengthened or replaced with a single European system security coordinator.

14 While the aim is for the Electricity Target Model to be robust to future challenges and changes in the electricity sector, the Agency will review and update the Target Model as necessary.

1.2 The growing integration of national electricity markets and the interconnection of infrastructure will facilitate the interdependence between Member States required to achieve enhanced security of supply

Objectives

- 15 European regulators believe that the EU needs a still more coordinated and more efficient approach to address its security of supply concerns. This will involve broadening the analysis from the present national focus and moving away from a mindset of “generation adequacy” to an approach of an integrated “system adequacy” that encompasses generation, demand, interconnection and storage. In parallel, regulators will facilitate investment in infrastructure where this is necessary, economic and efficient.

Proposals

System adequacy

- 16 The Agency, CEER and NRAs will continue to promote more coordinated and consistent approaches to the assessment of system adequacy including, but not limited to, generation, through the development of EU-wide adequacy methodologies.
- 17 The Agency, with the support of NRAs, where appropriate in CEER, will monitor the impact of Capacity Remuneration Mechanisms (CRMs) in addressing the system adequacy issue and their effect on the integration and functioning of the IEM⁸.
- 18 European energy regulators will develop recommendations for the development of CRMs that take full account of cross-border interactions and their other impacts.

Network infrastructure development

- 19 The Agency will work to ensure that network infrastructure, including projects of common interest (PCIs), are appropriately developed and that any differences of regulatory practices across Europe do not hamper the development of key infrastructures. These monitoring activities will encompass infrastructure planning and the related cost-benefit analyses, including the allocation of costs across borders in cases where NRAs do not reach a common cross-border cost allocation decision. The Agency will compare developments in national regulatory practices in infrastructure regulation and identify good practices and lessons to be shared among NRAs.

⁸ The potential impacts of CRMs on the integration of the IEM were already explored by the Agency in its Opinion 05/2013 15 February 2013.

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- 20 Regulators will consider whether new approaches are needed to meet emerging challenges, including investments that serve multiple purposes or sit between several borders (such as in the North Seas).

1.3 Renewable-based generation and energy efficiency as mainstream components of Europe's energy mix

Objectives

- 21 The continued growth of renewable-based generation will result in it taking a larger share of the wholesale market, making it ever more important that renewables feature increasingly in the mainstream. Where support schemes are still needed, they must be designed so that distortions in the market are minimised and so that renewable energy sources are, as far as possible, put on a level-playing field with conventional producers (e.g. by ensuring they have balancing responsibilities which provide appropriate incentives to balance consumption with supply). Efforts will be needed to secure further improvements in energy efficiency as a key aspect of the transition to a low-carbon energy sector.

Proposals

- 22 CEER will continue to monitor developments in support schemes across the EU, building on the Commission's State Aid Guidelines and its Public Interventions Package, and will help to facilitate renewable trading, including through identifying and exchanging good regulatory practices.
- 23 The Agency and NRAs will seek to bring renewable generation more into the market through the Electricity Target Model, which will treat all forms of generation (and demand/storage) on a non-discriminatory basis. Markets will continue to be monitored to ensure that market rules do not favour some forms of generation over others and to assess how best to manage the growth of non-programmable generation.
- 24 CEER will promote energy efficiency in as much as it falls within the scope of the regulatory responsibilities of individual NRAs (for example, in relation to network losses and tariffs).

1.4 Greater penetration of renewable-based generation is significantly increasing the requirement for market-based flexible response which will include the demand side and the supply side

Objectives

- 25 The continued penetration of non-programmable, renewable-based generation increases the requirement for flexible response. We will aim to ensure that barriers to the development of flexible response are removed and that it can be provided by both the supply and the demand sides on a non-discriminatory basis. In particular, an appropriate framework for the evolution of Demand Side Response (DSR) on a non-discriminatory basis will need to be developed so that DSR can be established as a viable product.

Proposals

- 26 In order to facilitate the development of DSR, and as a complement to the work of the European Commission (EC) in this area, European energy regulators will:
- define an action plan to identify and remove (regulatory, technical, legal or market-related) obstacles to the development of DSR and to facilitate DSR deployment;
 - develop the concept of “flexible response” to be traded in the electricity market by defining the appropriate regulatory arrangements to facilitate the development of markets to enable competition between different DSR-options to be developed by market players;
 - explore how trading in flexible response may operate in, or interact with, other markets and other mechanisms (e.g. day-ahead, intraday and balancing markets and CRMs);
 - assess the potential benefits of DSR as a key contributor to flexible response; and,
 - develop an approach for the management (including the collection, dissemination and protection) of consumer data, which is essential for the development and operation of a market in DSR. We address the data protection aspects of this issue in Chapter 4.
- 27 CEER will explore ways of ensuring that small consumers are properly protected and empowered, and that incumbent players (notably Distribution System Operators (DSOs)) do not operate in ways which foreclose or distort the potentially competitive market in flexibility services, including from the demand side (these aspects are also further considered in Chapters 3 and 4).

2 Gas

In this chapter we set out our vision of how we expect the gas market in Europe to operate in 2025, whilst acknowledging the significant uncertainty that surrounds current projections of gas demand over the next decade. We identify a series of objectives that we need to pursue if the vision is to be achieved and which are robust to different outcomes of gas demand. We make proposals for the actions we will take in respect of each of these objectives.

The Gas Market in 2025

The balance of probabilities - although far from certain - is that gas demand in the EU will significantly decrease in the period to 2025. However, gas will, along with other energy sources, be used to provide flexible electricity generation to manage the fluctuating output of renewable-based generation. We also consider that new environmentally beneficial uses for gas are likely to increase, such as the use of gas in the transportation sector. Consequently, an adaptable and flexible approach will be needed in regulating gas networks and markets. Wholesale gas markets should be competitive and liquid and thus we expect a consolidation in the number of gas hubs, and possibly an increase in the size of balancing zones, to occur. Economically exploitable alternative sources of gas, including from unconventional sources, are likely to increase, thereby enhancing security of supply, although geopolitical changes, at least in the short term, could well have significant impacts. Cooperation and further integration with gas markets in Energy Community Contracting Parties are expected to increase.

Regulatory components

2.1 Delivery of the Gas Target Model will remain an immediate priority

Objective

- 28 The realisation of the Gas Target Model⁹ is a major step towards the achievement of the IEM and it will remain a top priority for the Agency in the short term. The Gas Target Model will continue to be implemented through the adoption and implementation of Network Codes and Commission Guidelines.

⁹ A revised version of the Gas Target Model will be released in late October

Proposals

- 29 The Agency will continue to support the full and rapid implementation of the congestion management procedures Guideline, the capacity allocation and the balancing Network Codes, and the adoption of Codes in the areas of tariffs, interoperability and data exchange.

2.2 Security of Europe's gas supplies needs to be robust to wider world events

Objective

- 30 Geopolitical events continue to threaten the security of Europe's gas supplies. We will take all reasonable steps within our competences to safeguard the security of Europe's gas supplies. A competitive, liquid, flexible, diversified and single European natural gas wholesale market, well connected to various upstream sources, will provide the most efficient delivery of security of supply in Europe.

Proposals

- 31 The Agency has already proposed that the EC invite Member States to analyse any potential security of supply vulnerability (at national or regional level as appropriate) using scenarios and indicators (such as those identified in the stress tests conducted by the EC in summer 2014, as well as relevant indicators of security of supply we defined in the Gas Target Model in 2011¹⁰). As set out in the new 'European Energy Security Strategy', based on the outcome of this assessment, we recommend that where necessary national, regional and EU-level measures are developed to prevent and mitigate emergency situations. Such measures could include increased availability of reverse-flow capacities where appropriate, obligations on Member States to honour any contractual obligations towards suppliers in other countries in emergency situations, infrastructure projects aimed at supply diversification, the diversification of supply routes, the usage of storage and liquefied natural gas (LNG) and, possibly, the temporary use of virtual pipes (for example, the supply of LNG by road transport).
- 32 CEER will propose measures to be put in place to encourage the full and efficient use of gas storage being made available to shippers so that they are able to meet balancing requirements at an efficient cost. Such measures could include the development of storage products which facilitate emerging new patterns of gas.
- 33 The Agency will examine whether there are regulatory obstacles to the integration of gas from unconventional sources into the gas market, and make proposals to remove those we identify.

¹⁰ Gas being available from at least 3 sources and a Residual Supply Index of more than 110% for more than 95% of days per year; see CEER vision for a European gas target model. Conclusions paper, Ref: C11-GWG-82-03, 1 December 2011.

2.3 Europe's gas market needs to be efficient and responsive to future changes

Objective

- 34 European consumers should enjoy the benefits of well-integrated, competitive and liquid wholesale gas markets through improved retail competition. In the context of shrinking gas demand, the gas sector must be responsive to the evolving needs of its customer base and notably in respect of changes arising out of environmental initiatives. More specifically:
- the increasing need for flexible response, including from gas-fired power stations, to complement the growing volume of intermittent renewable-based electricity generation; and,
 - the potential growth of the use of LNG and compressed natural gas (CNG) in the transportation sector.

Proposals

Wholesale markets

- 35 The Agency proposes that each NRA reviews the progress made towards the development of fully functioning wholesale markets based on entry-exit systems to facilitate the development of competition and conducts a periodic analysis (once every 3 years, unless more frequent review is warranted by significant market developments) to establish whether or not customers in their respective Member States' are in markets which meet these criteria.
- 36 For this purpose, the Agency will refine the Gas Target Model criteria to capture, as succinctly as possible, the essence of a fully functioning market. These criteria will seek to demonstrate whether "market participant needs" are met and whether there is broader "market health" (for example, market participants need forward curve liquidity, low bid offer spreads, a healthy, resilient gas market that has high levels of supplier competition, and multiple sources of gas supply). These criteria should be used on an indicative basis to assess the functioning of a wholesale market.
- 37 Where the criteria for well-functioning wholesale markets are not met, the NRA should assess whether the evolution of the market(s) can reasonably be expected to ensure that these criteria are met within a defined period (3 years is proposed) or whether more active intervention is required to meet the fundamental goal of delivering the benefits of competition to consumers. In this latter case, the NRA(s) should propose a plan by which the target criteria can be achieved (including the possibility of regional market integration, along with a comprehensive cost benefit analysis). The Agency also proposes that NRAs report periodically on the implementation of such plans.
- 38 It is crucial to ensure that the whole process is transparent, objective and inclusive.

- 39 The measures that individual countries will need to consider to tackle such issues are likely to vary on a case-by-case basis, but may include:
- market merger: full merger with one or more neighbouring markets, i.e. balancing zones;
 - trading region: partial merger with one or more neighbouring markets (i.e. balancing zones); and/or,
 - satellite market: accessing the benefits of a neighbouring spot and forwards market by substantially “attaching” (assuming sufficient pipeline capacity) their own gas market to a neighbouring gas market.

Gas/electricity interactions

- 40 The Agency and NRAs will review national gas tariff structures within the framework of the Network Code on rules regarding harmonised transmission tariff structures (now under development). Where relevant, the review will examine whether national gas network tariff structures potentially distort market signals that indicate when it is efficient for individual gas power plants to run. If appropriate, the Agency will make proposals to rectify any deficiency.
- 41 The Agency will make proposals, where necessary, to improve collaboration between the gas and electricity sectors including arrangements for gas and electricity TSOs to cooperate more closely with one another. More specifically, the Agency will:
- undertake a review of the industry timelines applied in the organisation of the gas and electricity markets before and after gate closure to explore whether any alteration of the arrangements could improve the coordination between the two sectors;
 - examine how information flows might be improved, so that system operators and market participants benefit from more timely information, thereby ensuring that all parties improve the optimisation of their operational decisions; and,
 - examine the potential for improved coordination in other areas, such as ten-year network development plan (TYNDP) development.

New gas uses

- 42 Moves to improve air and water quality, including through EU legislation, are expected to lead to new uses of gas in both land-based and marine transportation. Regulators will, within their remit, work to ensure that regulatory arrangements facilitate such new uses.
- 43 Regulators will monitor developments in power-to-gas and other technologies and will remove any unnecessary regulatory barriers that have been identified which undermine the commercial viability of those technologies.

- 44 NRAs, at national level and through CEER, will (within their remit) encourage competition among energy sources by removing barriers to the extension of the gas distribution grid to new areas and customers, as long as it is economically efficient to do so.

3 Consumers and Retail Markets

In this chapter we set out how we expect the retail markets in Europe to operate in 2025. We have identified a series of objectives to be pursued and make proposals for the actions we must take in respect of each objective.

European retail markets in 2025

Retail markets for gas and electricity should be competitive to ensure that consumers receive the full benefits of the IEM. Consumers should have a real choice of a wide range of service offers. Consumers are likely, in many markets, to be charged on the basis of dynamic pricing for their consumption which will enable them to manage that consumption in ways which reduce their overall bill so that consumers can continue to receive reliable and affordable energy supplies when they require them. Consumers will increasingly also be electricity producers. Consumers will be able to use new smart technologies to manage their energy consumption and production, or may choose to engage service providers to manage their interface with the energy market which will simplify the process of consumer engagement and choice. These service providers may offer a range of energy services, but could also offer non-energy services (such as buildings security, internet and telecoms) to consumers, some of which may rely on energy-based infrastructure for their provision. Consumers will need to be properly informed, as well as protected and empowered, if they are to make informed choices. Retail markets should be fully open to new market entrants from other Member States and, as far as possible, integrated across national borders.

Regulatory components

3.1 The benefits of the IEM will be delivered to consumers through the establishment of competitive national retail markets

Background

45 The Third Package¹¹ gives NRAs the responsibility for monitoring: the level and effectiveness of market opening and competition at wholesale (including on electricity exchanges) and retail levels; prices for household customers, including prepayment systems; switching rates; disconnection practices; charges for, and the execution of, maintenance services; complaints by household customers; and, any distortion or restriction of competition. NRAs are required to provide any relevant information, and bring any cases identified to the competent competition authorities, thus helping to ensure, together with other relevant authorities, that consumer protection measures, including those set out in the Third Package, are effective and are enforced.

Objective

46 Our broader, more ambitious, objective remains the achievement of a fully functioning single market. Important elements of this goal are already in place through the Third Package and earlier legislation which needs to be fully transposed. In the absence of a fully integrated market framework, our objective is well-functioning retail energy markets at least at national level which should deliver reliable, affordable and simple-to-use services to protect and empower customers (the RASP principles enunciated in the CEER-BEUC 2020 Vision¹² – namely Reliability, Affordability, Simplicity, and Protection & Empowerment). Energy retail markets in each Member State should be open to new entrants in supply in order to encourage competition.

¹¹ The term “Third Package” refers collectively to: Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 (Gas Directive); Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 (Electricity Directive), concerning common rules for the internal market in natural gas and electricity respectively; Regulation (EC) No 714/2009 of the European Parliament and the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003; Regulation (EC) No 715/2009 of 13 July 2009 of the European Parliament and the Council on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005; and, Regulation (Ec) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

¹² CEER-BEUC (2012), A 2020 Vision for Europe’s Energy Customers A Joint Statement - 12 November 2012

Proposals

Establishing competitive retail markets

- 47 CEER will establish common criteria for a well-functioning retail market and develop a Roadmap aimed at securing competitive, reliable and innovative retail markets to the benefit of consumers by 2025. The Roadmap will take into account the different stages of Member States' present levels of retail market development.
- 48 CEER will establish a set of key features of retail market design, taking into account national structural differences, in order to provide a level-playing field for suppliers, energy aggregators and other competitive service providers. The design will:
- establish a clear line between competitive and regulated services in order to clarify the roles of stakeholders such as DSOs, other regulated entities (such as TSOs), data hub operators, and retailers. This will complement our work on DSOs (outlined in Chapter 4);
 - clarify the interface between service providers and customers for key processes such as supplier switching, billing, connection, disconnection and maintenance. We will apply the customer-centric approach in undertaking this work; and,
 - ensure that vulnerable customers are not disadvantaged or overlooked.
- 49 CEER proposes to examine the scope of the potential for retail market integration at both regional and European levels.

Encouraging new entry by energy suppliers, including from other Member States

- 50 CEER will identify a set of minimum standards (e.g. for supply licences, for DSO/supplier contracts and for the exchange of customer data) in order to remove market barriers and facilitate the entry of new suppliers, including those from other Member States, into national retail markets.
- 51 Regulated end-user prices are not compatible with the objective of establishing liberal competitive retail markets. Therefore, CEER will develop guidance, based on experiences at national level, on the approaches to be used to facilitate the phasing out of regulated end-user prices, as soon as practicable, whilst ensuring that customers are properly protected where competition is not yet effective.
- 52 European energy regulators will continue to undertake effective market monitoring (including in respect of the relationship between wholesale and retail prices) to identify market distortions which are inhibiting the development of competition. The results will be presented in the Agency's annual Market Monitoring Report (to which CEER contributes). Where we identify particular problems, we will develop solutions, using regulatory tools, to open retail markets in cooperation with national competition authorities.

3.2 Consumers should be empowered to engage effectively in energy markets and in the development of market rules

Objective

- 53 The introduction of smart technologies and the development of DSR will give consumers the opportunity to engage more directly and more easily in the operation of energy markets and in the electricity market in particular. It will be essential to establish an appropriate framework to encourage consumers, particularly small business and domestic customers, to engage fully in energy markets, including in respect of the development of market rules, and to be empowered so that their contributions have a significant impact. We will develop further the CEER-BEUC 2020 Vision and its application, and the RASP principles, which we expect to have most impact on smaller consumers.

Proposals

Empowering customers to engage actively in the energy market

- 54 CEER will establish a toolbox of good practices to encourage and empower EU customers to participate fully in the energy market. This will include:
- how consumers might be best informed on the use of new technologies to manage their energy consumption patterns, how best to access data, and on the new services offered by providers;
 - providing information on the new opportunities now emerging, such as micro-generation and demand-side participation;
 - providing information on the potential financial benefits of active participation in energy markets; and,
 - exploring the potential benefits of a more coordinated approach to smart technologies.
- 55 CEER will produce a roadmap to secure reliable supplier switching within 24 hours, no later than 2025, unless the cost-benefit analysis is negative. Delivery of the roadmap could require changes in EU legislation.
- 56 CEER will propose ways to allow energy consumers easily to compare the offers available in the market. We will make proposals for harmonised definitions of the cost components of bills to facilitate this. We will explore whether the presentation of pre-contractual offers could be standardised and whether a summary of the key contractual conditions could be provided to consumers in concise and simple language alongside the contract. We will seek to impose an obligation so that retail customers are entitled to choose to receive a single bill which is provided by one market player (customers' main point of contact) covering distribution and energy supply.

Empowering customers to engage in the development of energy market rules

57 CEER will propose measures to allow customers to participate effectively in the process for the development of market rules and, where appropriate, in the consultation processes that precede regulatory decisions. These measures, reflected in Chapter 5, are specifically:

- the Agency, CEER and, where appropriate, NRAs, will strengthen consumer involvement by establishing stakeholder panels, including representatives from consumer organisations, to provide views at a strategic level on future market developments. The purpose of these panels will be to provide platforms to engage stakeholders in a holistic way on future market developments across all segments and sectors of the market;
- we will also continue and enhance our current practice of involving stakeholders (including by establishing panels) on specific issues; and,
- we will explore the potential for establishing effective representation for smaller consumers' organisations by public body financial support for expert advisers. The EC should consider adopting a similar model.

3.3 Regulation to protect consumers should be applied appropriately and only when required

Objective

58 CEER will intensify its efforts to ensure that consumers are properly protected in the retail market throughout the decade to 2025.

Proposals

59 CEER will develop the principles of the CEER-BEUC 2020 Vision by:

- bringing forward proposals to enable vulnerable customers to secure the same benefits from the market as non-vulnerable customers;
- issuing common standards for the content, format, and exchange of customers' data between the data holder and commercial organisations, and ensuring that they are implemented. In this way retailers will be able to provide commercial offers to customers and customer data will be properly protected;
- further developing CEER's benchmarking work to identify best practices for minimum guaranteed service standards to be provided to customers by DSOs and suppliers; and,
- reviewing the potential impact on consumers of the development of new services (such as those relating to DSR) and, if necessary, making proposals to the EC for the introduction of appropriate consumer protection measures.

4 Distribution System Operators

In this chapter we set out the role we expect distribution system operators (DSOs) to play in the developed internal energy market of 2025. We expect that the most significant changes will affect electricity DSOs. We have identified a series of objectives to facilitate DSOs taking on the role we envisage they will need to fulfil and set our proposals for the actions we must take in respect of each objective.

The role of DSOs in 2025

DSOs must be neutral market facilitators in undertaking their core functions to enable the development of new market-based services to consumers by third parties. DSOs' role as market facilitators must be consistent with their responsibility to ensure secure system operation. DSOs may use smart grid solutions to manage efficiently the much greater penetrations of generation (particularly low-carbon technologies, including renewable-based generation) connected to distribution networks at least cost. DSOs will need to manage their networks actively. As a result there will also need to be greater coordination between DSOs and TSOs on network operational matters. DSOs should increase resilience to existing and new threats to security of supply, including cyber-security threats. In parallel with this, DSOs should ensure that consumer's data privacy is maintained. At the same time DSOs may also need to adapt their networks to meet new demands, such as the need for electric vehicle recharging stations and compressed natural gas filling stations.

Regulatory components

4.1 Existing regulatory requirements in the Third Package must be fully implemented and effectively monitored

Objective

- 60 Non-discriminatory access to the distribution network is essential for downstream access to customers at retail level. The scope for discrimination as regards third-party access and investment, however, is currently less significant at distribution level than at transmission level. Moreover, legal and functional unbundling of DSOs was required, in Directive 2003/54/EC, only from 1 July 2007 and its effects on the internal market in electricity are still to be fully evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they properly implemented and closely monitored.

Proposal

- 61 CEER will continue to monitor the activities of vertically-integrated DSOs, as regards their influence on the development of competition, in particular in relation to household and small commercial customers, in order to facilitate a level-playing field at retail level. The adequacy of the current rules on business separation will be assessed against the evolving role of DSOs.

4.2 New services to consumers will emerge in the space currently occupied by DSOs, particularly in relation to electricity. In order to facilitate the development of such new services to consumers, the core role of DSOs needs to be clarified.

Objective

- 62 New services will appear which will enable consumers to engage more fully and effectively in the energy market. These services may relate to demand-side energy management or to other energy services, and may be coupled with non-energy services. These new markets should not be foreclosed by existing energy players, and in particular by the activities undertaken by incumbent monopoly DSOs. In this regard, unbundling rules must be respected. DSOs may use smart grid solutions, including flexibility services, to optimise the efficient operation of the network ultimately to the benefit of consumers. The regulatory framework should enable the introduction of new services and efficient cooperation among market players including DSOs and should facilitate the development of efficient network solutions, including smart grids.

Proposals

- 63 Whilst the national situation of DSOs is very varied¹³, CEER will define a framework for the identification of core DSO functions which will facilitate the development of potentially competitive services in areas closely related to their core roles.
- 64 CEER will develop a “toolbox approach” for the regulation of DSOs, to be adopted flexibly according to nationally prevailing conditions, including a set of consistent options to ensure an adequate level of business separation of core DSO functions from potentially competitive activities.

¹³ These relate, for instance, to: size (number of customers); voltage levels (for electricity) and pressure levels (for gas) operated; direct or indirect connection to transmission grid; metering operations and data management allocated to DSO or to independent operators; network automation; and, level of RES and distributed generation penetration.

4.3 New challenges, including higher levels of distribution-connected generation and the deployment of smart technologies, will require DSOs to be responsive and innovative to ensure efficient network development and operation. DSOs might use smart grid technologies and new innovative techniques to adapt to the changing environment at least cost to the consumer.

Objective

- 65 Regulatory incentives and other regulatory mechanisms may be considered, as appropriate, to encourage DSOs to respond to new challenges and opportunities and to facilitate innovation and research and development. Distribution tariff structures will be reviewed to ensure the efficient use of distribution networks, including through an assessment of whether the costs imposed on networks by their usage at peak times should be reflected in tariffs.

Proposals

- 66 CEER will identify and share good practice examples of distribution network tariff structures in order to enhance the efficient development and operation of these networks to the benefit of consumers. Any network tariff structures and schemes (e.g. for self-consumption and large industrial consumers) should not impede efficient price signals at the wholesale and retail levels. At the point of service, simplicity needs to be assured for end-consumers together with adequate levels of protection.
- 67 CEER will develop guidelines for good practice for incentive schemes (including, but not limited to, output-based) to encourage efficient innovation by DSOs in such areas as smart grids and will continue to review regulatory approaches for piloting the application of new technologies and techniques, and for efficiently encouraging research and development, and will identify and share good practices.

4.4 More active control of distribution networks will result in a need for greater coordination between TSOs and DSOs

Objective

- 68 Cooperation between the DSOs and the TSO must be effective as the requirement for active network management by DSOs increases as a result of greater distributed generation and DSR.

Proposal

CEER will develop recommendations for clarifying the distinct roles and responsibilities of TSOs and DSOs in order to strengthen cooperation and technical data exchange between them, as well as among DSOs (both in the gas and electricity sectors). The management of data in relation to market players is addressed in Chapter 1, whilst the consumer protection aspects of this issue are addressed in Chapter 3.

5 Governance

In this chapter we address the decision-making processes, the overall regulatory framework and cooperation arrangements which are central to the development of the IEM. It is crucial that they remain fit for purpose during the period to 2025. We have therefore identified a series of objectives we need to achieve if the governance arrangements for the IEM are to operate efficiently. We make proposals for the actions to be taken in respect of each objective.

Developing the IEM in 2025

To be efficient, the IEM must be dynamic and must continue to evolve in response to new technical and political developments, as well as to consumer demands. All energy consumers, including domestic and small business consumers, should have an active role in decisions relating to the future development of the IEM on an equal basis with industry stakeholders.

The Agency will be called upon to play a greater role in a more Europeanised energy sector. Its governance already reflects various checks and balances established in the Third Package. These are designed to guarantee accountability and transparency, to protect the public interest, and to take account of national specificities when making decisions needed to achieve the IEM. These checks and balances are achieved in a number of ways: through the respective roles of the Agency's Director and its three boards; through the establishment of the Agency's rules and budget through the EU processes; through the rights of any party to appeal decisions; and, the broader requirements for transparency and accountability. As the regulatory framework of the IEM evolves, it is important that these checks and balances are maintained and the independence of the Agency is preserved.

The strengthening integration of Europe's energy markets will also place increased responsibilities on the ENTSOs. Consequently, enhancements to the governance arrangements for these bodies will be needed to ensure their transparency and accountability. As the framework established by the Third Package evolves, adjusting the present arrangements proportionately (where necessary through further legislation) will allow these organisations to continue to enjoy the trust of industry stakeholders and consumers.

Newly established bodies which are called to perform essential functions in the IEM should also be subject to appropriate regulatory oversight.

The EC should consider how best to apply checks and balances similar to those applying to the Agency to the ENTSOs, as they too are likely to have important and growing public interest roles at the European level.

We must also ensure that the IEM can effectively interact with Europe's energy trading partners, and that those countries committed to implement the EU energy *acquis* receive adequate support.

Regulatory Components

5.1 Energy consumers, including particularly smaller consumers, need to be empowered to participate as actively as possible in consultation processes on the future development of the IEM

Objective

- 69 We will identify (with the EC where appropriate) ways to meet the challenge for organisations representing smaller consumers to engage in and influence the processes for managing market developments.

Proposals

- 70 Whilst we will continue and enhance our current practice of involving stakeholders (including by developing existing and establishing new panels) on specific issues, the Agency, CEER and, where appropriate, NRAs will strengthen consumers' and other stakeholders' involvement by establishing stakeholder panels, including representatives from consumer organisations, to provide views at a strategic level on future market developments. The purpose of these panels will be to provide platforms to engage stakeholders in a holistic way on future market developments across all segments and sectors of the market.
- 71 We recommend that the EC itself also considers establishing effective representation for smaller consumers' organisations. One possibility worth investigating is the provision of limited funding to certain representative consumer bodies to enable them to procure expert advisers who could engage more effectively at a technical level in our stakeholder panels, public consultations and debates in order to promote consumer views (see also Chapter 3).

5.2 The Agency provides a key platform to enhance NRAs' cooperation and coordination, including through its Board of Regulators which brings together all EU (and, potentially, third countries') NRAs

Objective

- 72 The Agency's role in the future will evolve in response to further market integration and as a result of the further development of European energy policies. The Agency should continue to fulfil two key roles: first, to oversee effectively the European regulatory framework, and ensure that the activities of EU bodies (ENTSOs and other newly established bodies) comply with their legal obligations to avoid any "regulatory gap" (which is discussed below); and, secondly, to support the cooperation of NRAs and to facilitate the coordination of their actions at European level to enable them to respond to the pace of market integration to 2025.

Proposal

- 73 The Agency will develop specific mechanisms to further enhance cooperation between NRAs. This may also include proposals for legislative changes to give the Agency the powers to adopt directly decisions to approve legally binding instruments in case of EU-wide proposals.

5.3 The ENTSOs will have an increasingly important role in market rule development as markets integrate. Consequently the accountability and transparency of the ENTSOs may need to be enhanced in order to retain the trust of stakeholders.

Background

- 74 Both ENTSOs have achieved a good level of performance since their establishment by the Third Package. They are likely to play a greater role in the governance of the IEM in a number of respects. They will: formulate proposals for terms and conditions or methodologies, which are crucial for the implementation of Network Codes and Commission Guidelines; monitor the implementation of the Codes and Guidelines themselves, many of which will be soon adopted; undertake European network planning, including the development of the TYNDP, which is a key instrument in selecting projects of common interest; and, prepare summer and winter generation adequacy and supply outlook reports which are of growing importance. There is also the prospect of the ENTSOs having an important and potentially beneficial technical role in the development and assessment of modification proposals to Network Codes and to documents which are subsidiary to Commission Guidelines. We note that the growing role of the ENTSOs is accompanied by the increasing role of their member TSOs in the operation of the IEM, including through the establishment of voluntary cooperation bodies which may span several borders.

- 75 Although NRAs exercise oversight of individual TSOs, the ENTSOs are not currently subject to similar oversight¹⁴. The current arrangements for regulatory oversight by the Agency are limited to monitoring and issuing opinions which are not binding in nature and so the ENTSOs are under no obligation to follow them. Against this background, we consider that, in the same way that national TSOs are regulated by NRAs, so should the Agency have effective oversight of the ENTSOs in respect of their EU-wide activities. These oversight arrangements should ensure that the European public interest is properly served and that the ENTSOs' operations are undertaken efficiently and transparently. This may be of some significance where some ENTSOs' members, although regulated nationally, are (inevitably) primarily driven by legitimate duties to their own shareholders. Further, since the ENTSOs, similar to national TSOs, do not face competitive pressures on their costs, we believe it is important that there is a degree of oversight at European level to encourage efficiency in the interests of Europe's energy consumers.

Objective

- 76 To enhance the level of regulatory oversight of the ENTSOs given the likely greater role they will play at European level.

Proposals

- 77 Given this increasingly central role of the ENTSOs in the European regulatory structure, the EC should consider whether new legislation is required to ensure that they are subject to appropriate checks and balances and that there is effective regulatory oversight in respect of the ENTSO's evolving role in order to ensure the fulfilment of their European role towards the IEM completion and operation. Some proposals are included below and the Agency will further develop detailed advice, by the end of 2015, to the EC. This will take into account the EC's forthcoming internal energy and retail markets Communications, as well as the EC's report on the planned assessment of the Agency.

¹⁴ NRAs have the duty of ensuring compliance of TSOs, and where relevant, system owners, as well as of any electricity and natural gas undertakings, with their obligations under the Third Package legislation. The Agency under the current framework monitors the execution of the tasks referred to in Article 8(1), (2) and (3) of the ENTSOs for Electricity and for Gas reports to the Commission. The Agency can only issue opinions and recommendations addressed to the ENTSOs but not binding decisions.

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- 78 The Agency, under the current framework, monitors the execution of the certain tasks of the ENTSOs and reports to the Commission. In this regard, the Agency can issue only non-binding opinions and recommendations addressed to the ENTSOs. Stronger oversight powers for the Agency (for example, the possibility to issue binding decisions, where appropriate and proportionate, with regard to the ENTSOs' core tasks) should ensure that the ENTSOs' responsibilities relating to the development and implementation of Guidelines, Network Codes and the TYNDP are subject to appropriate regulatory scrutiny at EU level along with adequate transparency requirements. In developing its detailed advice to the EC, the Agency will examine a number of aspects of the operation and tasks of the ENTSOs, including: statutes; rules of procedure; work programmes, and how these relate to their budget and expenditure; and, the process for the development of the TYNDP (not least given its importance in relation to the new TEN-E Regulation and in the PCI selection process) as well as with regard to the implementation of the Network Codes.
- 79 Strengthening the powers of the Agency in this way would require new legislation.

5.4 Greater interaction between gas and electricity networks suggests that greater collaboration between the ENTSOs is needed

Objective

- 80 The growing interaction between electricity and gas sectors should be reflected in institutionalised cooperation between the ENTSOs in undertaking their tasks. This could include, where appropriate, the development and implementation of Network Codes and of undertaking network planning across the European networks on the basis of sound forecasting and analyses.

Proposals

- 81 The EC should require the strengthening and, if necessary, make legislative provisions to reinforce, the cooperation between ENTSO-E and ENTSOG.

5.5 The governance of energy-related Guidelines should follow the approach already established by the Third Package

Objective

- 82 The Commission announced at the last Florence Forum that some existing and future Network Codes will be adopted as 'Guidelines'. The first Network Code to be affected in this way is the Capacity Allocation Congestion Management (CACM) one, which will now be proposed as a Guideline. These and other Guidelines require that important subsidiary instruments are developed at a later stage and that they should have binding effect. Our objective is that the role of independent regulation (and hence of the Agency) is maintained and that the process for the adoption of any subsidiary instrument is as effective as possible.

Proposals

- 83 In respect of the approval of binding subsidiary instruments in the case of EU-wide proposals prepared under future Guidelines, it is recommended that the EC considers proposing new legislation so that the Agency be empowered to take decisions directly rather than only in those cases where all NRAs fail to agree. This mechanism should be developed with clarity on the division of responsibilities between regulatory bodies (to avoid duplication and to ensure decisions are taken by the appropriate authority) and with due respect to the European legal framework and subsidiarity. As in other areas of NRA cooperation under the Third Package, decisions of the Agency on such subsidiary instruments should, in any case, be subject to the favourable opinion of its Board of Regulators, which is composed of representatives of EU NRAs. This procedure ensures that both the European interest and national specificities are appropriately taken into account.
- 84 The practice of incorporating governance aspects into individual Guidelines cannot address the process for the development and initial drafting of each Guideline, and exposes the risk that different arrangements will exist for different Guidelines. It is recommended that the Commission considers proposing a stand-alone Guideline on governance in order to establish clear common arrangements for all Guidelines related to energy regulation, including in respect of their development, initial drafting and modification. The process should follow that set out in the Third Package in respect of Network Codes.

5.6 A number of other bodies will have important responsibilities essential for the operation of the IEM and these essential functions should be subject to appropriate and effective levels of oversight

Objective

- 85 A number of new bodies have been created as part of the implementation of the Third Package (i.e. subsequent to the establishment of the Agency and its core responsibilities as set out in its founding Regulation¹⁵). These bodies are given critical or monopoly functions to perform in the single energy market. Whilst normal competition rules will apply to these bodies their appropriate regulatory oversight needs to be ensured. Currently this concerns nominated electricity market operators (NEMOs), regional TSO cooperation bodies, and potentially European electricity and gas capacity allocation bodies, such as the PRISMA European Capacity Platform.

¹⁵ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators

Proposals

Oversight of bodies with essential EU functions which are monopolies

- 86 NEMOs, which relate to the CACM Guidelines, are examples of bodies with essential monopoly functions. The draft Governance part of the CACM Guidelines provides an extensive framework for the regulatory oversight of the NEMOs. This is broadly in line with the public consultation organised by the EC on the governance of day-ahead market coupling¹⁶, and in particular of their monopolistic functions. It is recommended that this framework be finally adopted, implemented and tested as soon as possible. The Agency will undertake an in-depth evaluation of the effectiveness and efficiency of this framework, two years after the entry into force of the Guidelines, and make recommendations to the EC.
- 87 If it becomes clear that this model is not fit for purpose, different structural solutions would need to be investigated, probably with greater separation between the monopolistic and potentially competitive activities. In this case, the Agency will bring forward constructive proposals how best to achieve this.
- 88 Furthermore, there is currently no clear and explicit framework for the regulatory oversight of mandatory EU TSO bodies, such as the future EU Allocation Platform foreseen in the Forward Capacity Allocation Network Code. These bodies are an emanation of their participating TSOs, who remain ultimately responsible and liable for the actions and services performed by these entities. However, given their EU-wide role it is recommended that they be subject to the regulatory oversight of the Agency on the basis of a specific Governance Guideline from the EC defining a clear and explicit framework for their activities in the context of the IEM.
- 89 A similar approach could apply to regional voluntary TSO cooperation bodies such as Capacity Allocating Service Company (CASC), Central Allocation Office (CAO) or Coordination of Electricity System Operators (Coreso) to the extent that they perform functions that need to be regulated.

Oversight of bodies with essential EU functions which are not natural monopolies

- 90 Bodies with essential EU functions, which are not natural monopolies, are subject to the normal competition rules, even in cases where they hold a dominant position. However, competition law may be less effective where there is only one player in the relevant market. Consequently, it is recommended that a framework of rules regarding their activities and behaviour is put in place and that there is ex-ante regulatory oversight by the Agency in cases where competition law is not effective and where there is no foreseeable prospect of competition developing.

¹⁶ Public consultation on the governance framework for the European day-ahead market coupling, European Commission, 28 November 2011: http://ec.europa.eu/energy/gas_electricity/consultations/20120229_market_coupling_en.htm

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- 91 This concerns, for example, European gas capacity platforms which are a major step towards the implementation of the gas Capacity Allocation Mechanism (CAM) Network Code. Whilst none holds a legal monopoly, currently PRISMA is the major gateway for shippers to obtain access to the gas transmission grid and to purchase capacity, although there could be others developed. PRISMA thus has the potential to become, *de facto*, a monopolistic platform. A similar situation might exist in respect of other entities to whom TSO activities can be transferred, such as those foreseen in the gas Balancing Network Code.

5.7 The EU's approach to the energy market reaches beyond the borders of Member States because of the globalisation of wholesale energy markets and as a result of interactions with our near neighbours. Formal collaborative arrangements between European bodies and third countries need to reflect this development.

- 92 As the European energy market expands beyond the borders of the EU it is important to ensure that our markets interact efficiently with those of our neighbours and other energy trading partners. Particular attention must be paid to those countries that are committed to adopting the Community *acquis*.

Proposals

Third country NRAs and the Agency

- 93 NRAs from third countries which have concluded agreements with the EU committing them to adopt and implement the EU energy *acquis* should be allowed to participate in the Agency and its activities pursuant to Article 31 of its founding Regulation¹⁷. As a minimum, this would mean being allowed to join the Agency's Working Groups, as well as being involved in the Regional Initiatives activities. If the EC agrees the NRAs from these countries could participate, as observers, in the meetings of the Board of Regulators.
- 94 In this respect, NRAs from European Economic Area (EEA) countries, and in particular Norway, should be able to participate in certain aspects of the Agency's activities with immediate effect. Certain Energy Community Contracting Parties may also fulfil the conditions for their NRAs' participation in the near future.
- 95 The Agency should have a role in monitoring developments internationally which may impact on the operation of the IEM (for example, international gas developments could have a direct impact on Europe's supply security and energy prices). This could be included in the Agency's annual Market Monitoring Report.

¹⁷ According to Article 31 of Regulation (EC) No 713/2009, this participation is subject to the conclusion of an agreement between the Commission of the third country, whereby the latter has adopted and is applying EU law in the field of energy and, if relevant, in the fields of environment and competition.

Third countries and CEER

- 96 CEER will offer parallel treatment to NRAs of third countries. For example, where third country NRAs are allowed to participate as observers in the Working Groups of the Agency, they will be invited to participate as observers in CEER Working Groups on the same basis as other observers. Many EEA NRAs are already members of CEER.
- 97 Where appropriate, CEER will extend its training programme to include NRAs of Energy Community countries, and will develop specific courses for non-EU NRAs. CEER will also examine ways for its members to develop capacity building arrangements, including twinning programmes with NRAs of Energy Community countries and of other third countries (assuming appropriate EC funding is available).

5.8 The internal governance of the Agency should continue to reflect the checks and balances established in the Third Package

Objectives

- 98 The current governance structure of the Agency and the respective role of its internal bodies, including the Board of Regulators, has demonstrated its effectiveness over the first three years of operation and should be maintained, as it achieves an equilibrium between the pursuit of European objectives and fully respecting national positions, and preserves the essential independence of the Agency. This will ensure the independence of regulatory functions at national and EU level whilst ensuring full accountability.
- 99 The Agency should be adequately resourced in order to properly undertake the tasks assigned to it by the EU Institutions.

Proposals

- 100 The present checks and balances on the Agency's decisions including the possibility of recourse to the Board of Appeal against its decisions and the requirements for consultation and transparency should continue to apply in respect of any new powers it might receive. In the Third Package areas, the Agency's powers and decisions should reflect complementarity of regulatory action at national and European level which is vital in a more integrated market, including the need for the regulatory decisions to be subject to a favourable opinion of the Board of Regulators (by the present majority voting).
- 101 The proposal made above would require legislative change. It is recommended that if, in these circumstances, the inter-institutional non-legally-binding "Common Approach" relating to EU agencies is to be applied to the Agency, it should be done in a way which preserves its current internal governance structure and allocation of responsibilities among the Agency's bodies, including with respect to decision making and the appointment of staff, and its regulatory independence, as defined in its founding Regulation.

- 102 Moreover, to alleviate the Agency's reliance on a tightening EU budget and to ensure that its financial resources reflect the increasing added value that it delivers, it is recommended that, the Agency costs (which should remain under the scrutiny of the EU institutions) should be partially funded through fees.

5.9 The Agency should have adequate powers and resources to undertake its monitoring functions effectively

Objective

- 103 The Agency has been given monitoring functions. It should be given adequate powers to fulfil effectively these monitoring functions.

Proposals

- 104 It is recommended that the EC considers proposing new legislation such that the Agency be given adequate powers to fulfil effectively the important monitoring responsibilities assigned to it, including, in particular, in respect of information gathering. In this respect it would also be essential to involve and coordinate these functions with those of the concerned NRAs in a way that safeguards complementarity of action at national and EU levels, and ensures full and effective enforcement.

5.10 There should be effective arrangements to ensure compliance with the Agency's binding decisions

Objective

- 105 We have proposed that the Agency should have binding decision making powers in a number of areas described above which would require new legislation. Compliance is a necessary complement to any binding decision making powers.

Proposal

- 106 Should the Agency be granted decision making powers through new legislation, as we recommended, then appropriate measures should be put in place to ensure compliance with those decisions as far as it is legally possible to do so.