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Energy Regulators**



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NRAs' Cooperation in Practice

Status Review

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Abstract

This CEER Status Review on National Regulatory Authorities' (NRAs') Cooperation in Practice (C16-LTF-48-03) sets out the key legal framework governing cooperation among NRAs in the relevant EU legislation. It also provides examples of how NRA cooperation has worked in practice, on the basis of both the formal, legally foreseen, forms of cooperation (for example within the framework of the Agency for the Cooperation of Energy Regulators (ACER)), and also informal means of cooperation.

Long before the establishment of ACER (or its predecessor, ERGEG) 10 NRAs, on their own initiative, signed a Memorandum of Understanding creating the Council of European Energy Regulators (CEER) with the objective of facilitating cooperation and information exchange among NRAs to further the goals of realising a competitive, integrated European market in electricity and gas. This paper does not focus on the successes of the CEER model of NRA cooperation (which has inspired the model of voluntary NRA cooperation in other regions). Neither does it address the regional elements of the European Commission's new "Clean Energy for All Europeans" legislative proposals, published 30 November 2016.

Rather, the aim of this paper is to provide an overview of technical or market-related cooperation among NRAs to date to improve market efficiency on a bilateral, regional and pan-EU level. Useful lessons are provided based on examples of good practice (both formally and informally) observed to date, which demonstrate the benefits that such cooperation has brought to the development of the Internal Energy Market and regional market integration (e.g. MIBEL in the Iberian peninsula and the Single Electricity Market on the island of Ireland).

Target Audience

European Commission, energy suppliers, traders, gas/electricity customers, gas/electricity industry, consumer representative groups, network operators, national regulatory authorities (NRAs), Member States, academics and other interested parties.

Keywords

Regional Cooperation; Cross-Sectoral; Networks; 3rd Package; National Regulatory Authorities (NRAs); Transmission System Operators (TSOs); Distribution System Operators (DSOs); Network Codes (NCs); Commission Guidelines; early implementation of network codes.

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Executive Summary

Background



Regional cooperation between National Regulatory Authorities (NRAs) has become increasingly important, including in the context of the “Energy Union”. This paper sets out the key legal framework governing cooperation among NRAs that is contained in the relevant EU legislation. It also presents examples of how NRA cooperation has worked in practice, on the basis of both the formal, legally foreseen, forms of cooperation and voluntary cooperation. The aim is to provide an overview of how cooperation among NRAs has worked to date on a bilateral, regional and pan-EU level. Several examples of good practice observed to date demonstrate the benefits that such cooperation has brought to the development of the internal energy market.

Since the creation of the Council of European Energy Regulators (CEER) in the year 2000, NRAs voluntarily cooperate at EU level. Through CEER, Europe’s NRAs forge strong relationships with each other and speaking with one voice globally. Based on the success of the voluntary cooperation of NRAs within CEER, the European Commission formally established its advisory group of energy NRAs, called the European Regulators Group for Electricity and Gas (EREG) in 2003. The EREG Regional Initiatives, an own-initiative of regulators with the support of the European Commission, were a major step towards regional market integration and illustrate the benefits of NRA cooperation. This paper does not seek to address the new regional dimensions of the European Commission’s “Clean Energy for All Europeans” legislative proposals, published 30 November 2016.¹

Main Findings

Since the voluntary EREG Regional Initiatives were established in 2006, regional cooperation of NRAs has developed further, both on a voluntary and legal basis. The obligation for NRAs to cooperate is enshrined in several provisions of the legal acts of the 3rd Package. NRAs are obliged to closely consult and cooperate with each other, and to provide each other and the Agency for the Cooperation of Energy Regulators (ACER) with any necessary information needed for the fulfilment of their tasks under the Directives. Although there are no precise rules laid down about how NRAs should achieve that obligation in practice, the legal framework sets out, *inter alia*, the following objectives for NRAs’ cooperation:

- Enable an optimal management of the network;
- Promote joint electricity/gas exchanges and the allocation of cross-border capacity;
- Enable an adequate level of interconnection capacity within the region and between regions;
- Coordinate the development of all network codes for the relevant TSOs and other market actors; and
- Coordinate the development of the rules governing the management of congestion.

Other areas of cooperation have been set out in the 3rd Package’s Network Codes, Guidelines as well as in other pieces of EU legislation such as the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) or Trans-European Energy Networks (TEN-E) Regulation. The purpose and the scope of cooperation depends on the objectives and area of activity. In the following areas NRAs have already successfully cooperated:

- Coordinated NRA decision-making on cross-border matters;
- NRAs’ joint decisions on cross-border cost allocation (CBCA);
- NRAs’ cooperation for the support and review of the PCI process;

¹ <https://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition>



- NRAs' certification decisions on cross-border TSOs;
- Granting of exemptions for new cross-border infrastructures; and
- NRAs' cooperation in exchanging information according to REMIT.

In addition, in various areas, where no cooperation is legally foreseen, NRAs are cooperating on a voluntary basis. This is the case for different regional geographical cooperation instances, for example:

- The Nordic NRA cooperation within NordREG;
- The Iberian NRAs' Cooperation, creating the Iberian Electricity Market (MIBEL);
- German-Austrian NRA Cooperation regarding competing capacity;
- Austrian-Italian NRA cooperation on bundling pilot project at the Arnoldstein/Tarvisio; and
- Irish cooperation through the Single Electricity Market (SEM) Committee.

Voluntary NRA cooperation has also taken place within the framework of early implementation of Network Codes or Guidelines.

For the organisation of cooperation, NRAs usually agree on terms of references which include actions such as: nomination of the lead NRA; regular meetings between NRAs (at least twice a year); exchange of relevant information; joint meetings with the concerned Transmission System Operators (TSOs) and stakeholders; and consultation of position papers.

As there are no predefined rules on how to best set up cooperation between NRAs, evidence of how it has worked in practice shows that irrespective of whether there is a legal obligation or not, the following instruments have broadly been found to facilitate successful NRA cooperation: Agreements between NRAs; Memorandums of Understanding (MoUs); Letters of Intent; ACER recommendations; CEER Guidelines of Good Practice; and voluntary NRA platforms. It was observed that MoUs have proven to be an excellent instrument in which parties can agree on common processes and preliminary rules.

When it comes to the role of ACER, even if not explicitly foreseen by the ACER Regulation, it can be useful for NRAs to use ACER as a cooperation platform. Such a platform will enable ACER to properly fulfil its market monitoring tasks according to the 3rd Package and can be used for keeping an overview of each established cooperation case in EU among other things for the purpose of exchange of good practices.

A major, voluntary, successful cooperation platform is CEER itself. Through CEER, NRAs cooperate on a wide range of issues, 2 of which (TSO efficiency benchmarking and data collection for monitoring purposes) are briefly described below.

Conclusions

CEER sees major benefits from the many voluntary NRA cooperation experiences to date. NRA cooperation has played a key (and often leading) role in enhancing market integration at regional level, which in turn is an important step towards a single, integrated EU energy market. NRA cooperation should be supported going forward.

CEER could help in providing regular overviews on NRAs' cooperation in order to provide information and transparency, and to serve as example to be followed when these are successful.





1 Introduction

This CEER Status Review sets out the key legal framework governing cooperation amongst NRAs that is contained in the relevant EU legislation. It also provides examples of how that cooperation has worked in practice, on the basis of both the formal, legally foreseen, forms of cooperation (for example within ACER's umbrella) and informal means of cooperation.. The aim is to provide an overview of how cooperation has worked to date – both formally and informally – among NRAs, on a bilateral, regional and pan-EU level, and also as part of ACER. Useful lessons are provided based on examples of good practice observed to date, which demonstrate the benefits that such cooperation has brought to the development of the internal energy market.

Regional cooperation with neighbouring countries within a European Union framework is a key building block for the “Energy Union”². This is why regional cooperation, between National Regulatory Authorities (NRAs) has become increasingly important.

Indeed in the 3rd Package³ of legislation developed in 2009, market integration was primarily foreseen through regional cooperation. According to the 3rd Package's Electricity Directive, “Member States should foster the integration of their national markets and the cooperation of system operators at Community and regional level”.⁴ As set out in the 3rd Package Directives this is one of the main tasks of NRAs: “The development of a true internal market in electricity, through a network connected across the Community, should be one of the main goals of this Directive and regulatory issues on cross-border interconnections and regional markets should, therefore, be one of the main tasks of the regulatory authorities, in close cooperation with the Agency where relevant.”⁵

Articles 6 and 7 of the 3rd Package's Electricity and Gas Directives foresee the “Promotion of Regional Cooperation”. NRAs shall cooperate with each other for the purpose of integrating their national markets at one or more regional levels, as a first step towards the creation of a fully liberalised internal market. Regional specificities have been taken into account within the regional initiatives set-up by ERGEG that are now managed by ACER.

Furthermore, beside the general obligation of NRAs (“shall”), according to Articles 38 and 42 of the Electricity and Gas Directives respectively to consult and cooperate with each other to fulfil their tasks on cross-border issues, cooperation is foreseen at least on a regional level in order to: (a) foster the creation of operational arrangements which leads to an optimal management of the network; and (b) coordinate the development of all network codes and (c) coordinate the development of rules governing the management of congestion.

² European Commission - Press release of 08.06.2015: http://europa.eu/rapid/press-release_IP-15-5142_en.htm

³ Directive 2009/72/EC (Electricity Directive); Directive 2009/73/EC (Gas Directive); Regulation (EC) 713/2009 (ACER Regulation); Regulation (EC) 714/2009 (Electricity Regulation); Regulation (EC) 715/2009 (Gas Regulation).

⁴ Recital 58 Electricity Directive. Note that there are equivalent provisions in the Gas Directive and Gas Regulation but for the sake of brevity in this report we refer only to those legislative references in the Electricity Directive and Electricity Regulation.

⁵ Recital 59 Electricity Directive 2009/72/EC.



The regional cooperation between NRAs is foreseen both in the Directives of the 3rd Package but also in the Electricity⁶ and Gas Regulations⁷ through the possibility for Network Codes to take regional specificities into account.⁸ These regional specificities are to be developed through the cooperation of the concerned regional NRAs.

2 Background

A major step towards regional energy markets was the set up (in Spring 2006) of the “Regional Initiatives” of the European Regulators Group for Electricity and Gas (EREG). The Regional Initiatives were a flagship own-initiative project of the energy regulators to speed up the integration of Europe's national energy markets.

The aim of the regional initiatives was to create regional markets in Europe as an interim step to creating single-EU electricity and gas markets. Launched with the support of the European Commission, the Regional Initiatives created seven electricity and three gas regional markets as a staging-post towards a single-EU energy market.

The seven regional electricity markets of EREG's Electricity Regional Initiatives (ERI):

- 1) The Baltic;
- 2) Central-East;
- 3) Central-South;
- 4) Central-West;
- 5) North, South-West; and
- 6) The France-UK-Ireland.

The three regional gas markets of the EREG Gas Regional Initiative (GRI):

- 1) The North-West region;
- 2) The South region; and
- 3) The South-South East region.

A critical factor to the success of the Regional Initiatives, due to their voluntary nature, was the involvement and commitment of all relevant stakeholders. Hence, the Regional Initiatives were set up in a way to ensure stakeholders were effectively engaged. The Regional Initiatives brought together regulators, the European Commission, Member State governments, companies and other relevant parties to focus on developing and implementing solutions to improve the way in which regional energy markets develop.

Ever since then, regional cooperation in the energy sector has become increasingly important and turned out to be an integral part of the NRAs' cross-border activities. Whilst the majority of the cooperation practices were established on a voluntary basis, EU legislation now contains cooperation obligations for NRAs.

According to the Commission, regional cooperation between NRAs should not be limited to EU Member States or stop at EU borders. The flexible framework appears to be an excellent tool to smoothly integrate and harmonise EU-markets. The positive experience with Regional Initiatives lead to foresee provisions in the 3rd Package supporting NRAs regional cooperation.

⁶ Regulation (EC) 714/2009

⁷ Regulation (EC) 715/2009

⁸ Articles 8(6) Electricity and Gas Regulation



In its communication regarding the public consultation process on a new energy market design⁹, the Commission explicitly placed the issue of promotion of regional cooperation and coordination on energy policies on the preferences list. This relates to:

- Regional coordination of national policymaking
- Coordinated regional approach to renewable energy, including support schemes
- Regional cooperation to enhance interconnectivity¹⁰
- The establishment of regional operational centres to help effectively plan and manage cross-border electricity flows
- The need for secure and cost-efficient development and management of the electricity system.

3 EU legal framework for NRA cooperation

The EU-legislator recognised the need to establish a European legal framework for regional cooperation. Thus, the 3rd Package and consequently the Network Codes and Guidelines include provisions for NRAs to cooperate and take, where necessary, joint decisions on various issues. According to the 3rd Package's Electricity and Gas Directives¹¹, Member States and NRAs shall cooperate with each other for the purpose of integrating their national markets at one or more regional levels, as a first step towards the creation of a fully liberalised internal market. Where Member States have provided so, NRAs shall promote and facilitate the cooperation of Transmission System Operators (TSOs) at a regional level, including on cross-border issues, with the aim of creating a competitive internal market in electricity and gas, fostering the consistency of their legal, regulatory and technical framework and facilitating integration of the isolated systems in the Community.

The geographical areas covered by such regional cooperation shall include cooperation in geographical areas which may be defined by the Commission, taking into account existing regional cooperation structures. Regional cooperation may also cover other geographical areas. Each Member State shall be allowed to promote cooperation in more than one geographical area¹².

In addition, for the gas sector, Member States shall cooperate in order to promote regional and bilateral solidarity in order to safeguard a secure supply on the internal market in natural gas. Such cooperation shall cover situations resulting or likely to result in the short term in a severe disruption of supply affecting a Member State. The Commission and the other Member States shall be kept informed of such cooperation, and the Commission may adopt Guidelines for regional cooperation in a spirit of solidarity¹³.

⁹ SWD(2015) 142 final.

¹⁰ For example, in the Baltic region, the Iberian Peninsula, the Northern Seas Countries, Central and South Eastern Europe, etc.

¹¹ Article 6 Electricity Directive; Article 7 Gas Directive.

¹² Articles 12(3) Electricity Regulation and Gas Regulation.

¹³ Article 6 Gas Directive.



When it comes to the framework for cooperation between NRAs, some rules are set out in the Electricity and Gas Directives and Regulations¹⁴. NRAs are obliged to closely consult and cooperate with each other, and to provide each other and ACER with any necessary information for the fulfilment of their tasks under the Directives. However, there are no precise rules laid down about how NRAs achieve that obligation in practice. The legal framework defines the duties to be tackled through Regional cooperation; NRAs' cooperation at least at regional level shall create arrangements that:

- Enable an optimal management of the network;
- Promote joint electricity/gas exchanges and the allocation of cross-border capacity;
- Enable an adequate level of interconnection capacity within the region and between regions;
- Coordinate the development of all network codes for the relevant TSOs and other market actors; and
- Coordinate the development of the rules governing the management of congestion.

The list and the scope of these duties can be extended by Commission's Guidelines¹⁵.

The tools for setting up the mentioned cooperation issues are not prescribed so it is up to NRAs to decide on the form of the cooperation and level of involvement of the parties.

The definition of the regions depends on the regulated objective. As stated above the Commission is empowered to define the geographical areas for regional cooperation. For some predefined issues the regions can already be set out in the Regulations, like in the case of capacity allocation where regions are listed¹⁶.

These regions are subsequently referred to in the 3rd Package's Network Codes and Guidelines, e.g. for determination of capacity calculation regions (CCR) according to Article 15 of the Capacity Allocation and Congestion Management Guideline (CACM GL)¹⁷.

There are also other regions which are being defined and created on technical specificities (e.g. Coordinated Balancing Areas according to Article 12 of the draft Electricity Balancing Network Code¹⁸). Furthermore, there are legal provisions which require all NRAs in a specific region to cooperate, for example in Article 9(8) CACM GL.

¹⁴ E.g. Article 38 Electricity Directive; Article 42 Gas Directive; Article 6(2) Electricity Directive; Article 7.2 Gas Directive.

¹⁵ Article 38(5) Electricity Directive.

¹⁶ Point 3(2) of Annex I Regulation (EC) No 714/2009. Northern Europe (i.e. Denmark, Sweden, Finland, Germany and Poland); North-West Europe (i.e. Benelux, Germany and France); Italy (i.e. Italy, France, Germany, Austria, Slovenia and Greece); Central Eastern Europe (i.e. Germany, Poland, Czech Republic, Slovakia, Hungary, Austria and Slovenia); South-West Europe (i.e. Spain, Portugal and France); UK, Ireland and France; Baltic States (i.e. Estonia, Latvia and Lithuania).

¹⁷ Commission Regulation (EU) 2015/1222

¹⁸ Draft Electricity Balancing Network Code recommended by ACER in its Qualified Recommendation published in July 2015:

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXES_TO_RECOMMENDATION_032_015/Annex%20I%20-%20Proposed%20amendments%20to%20the%20Network%20Code.pdf



4 Legally foreseen instances of NRA cooperation

In addition to the above mentioned general framework, specific cooperation obligations are set out in Network Codes, Guidelines as well as in other pieces of EU legislation such as the REMIT¹⁹. The purpose and the scope of such cooperation depends on the objectives and area of activity. To increase efficiency, NRAs have been prepared to better work together and possibly set up new tools to better coordinate their decision-making process through Guidelines, Memorandums of Understanding (MoU), Letters of Intent, Agreements, Declarations, etc. Hereafter is a list of examples of where NRAs have cooperated in accordance with these legal rules.

4.1 Coordinated NRA decision-making on cross-border matters

According to the provisions of the CACM GL, NRAs have to jointly approve the submitted terms and conditions or methodologies (TCM) and issue their own decisions in a short timeframe of six months²⁰ (all-NRA-decision). Otherwise the case should be referred to ACER.

In order to achieve such a challenging target NRAs have created a new decision making forum – the Energy Regulators Forum (ERF) – which has its own rules of procedure. The ERF serves as a cooperation platform and can be used either by all NRAs in case of all-NRA-decision²¹ or only by the concerned NRAs of a specific region in case where TCM refer only to a specific region²². The ERF will serve the regulators also in other all- or regional-NRA joint decision-making processes laid down in other Network Codes and Guidelines.

4.2 NRAs' joint decisions on cross-border cost allocation (CBCA)

In cases of cross-border cost allocation, NRAs have to reach an agreement and take coordinated decisions on submitted investment requests within six months²³. This requires a coordinated process for concerned NRAs of the specific region. The experience of CBCA-decisions has shown so far that NRAs are able to take coordinated decisions. In 17 cases the concerned NRAs have taken CBCA decisions on projects of common interest (PCIs) and only in two cases an agreement could not be reached within the six-month timeframe, leading ACER to issue the final decision.

In order to facilitate CBCA processes, ACER has adopted a Recommendation²⁴ which lays down the main principles that NRAs should follow when assessing an investment request and deciding on the allocation of costs across Member States.

¹⁹ Regulation (EU) No 1227/2011 of The European Parliament and of The Council

²⁰ Article 9 CACM GL.

²¹ Article 9(6) CACM GL.

²² Article 9(7) CACM GL.

²³ Article 12 TEN-E Regulation

²⁴

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2005-2015.pdf



4.3 NRAs' cooperation for the support and review of the PCI process

Regional groups are established for the purpose of reviewing the PCIs, leading to the establishment of regional lists of projects of common interest. In order to ensure broad consensus, these regional groups should ensure close cooperation between Member States, NRAs, project promoters and relevant stakeholders. Each group shall organise its work in line with regional cooperation efforts pursuant to Article 6 of the Electricity Directive, Article 7 of the Gas Directive, Article 12 of Electricity Regulation, and Article 12 of Gas Regulation and other existing regional cooperation structures²⁵.

4.4 NRAs' certification decisions on cross-border TSOs

The construction and operation of cross-border infrastructures (notably interconnectors) require NRAs' cooperation. Such infrastructures can either:

- Be operated under a regulated regime; or
- Be granted with an exemption decision (Article 17 of Electricity Regulation; Article 36 of the Electricity Directive). Under such a scenario, NRAs have to make joint decisions when exempting the new interconnectors according to Article 17(4) Electricity Regulation.

Should such interconnectors be developed and run by entities which are not already certified TSOs, NRAs shall apply the certification process to the operator of the infrastructure.

For NRA cooperation in cross-border TSO certification cases, there are no specific rules, except for the general cooperation provisions of the Directives (Article 38 and 42 Electricity and Gas Directive).

That said, there are several examples of positive NRA cooperation on certification of interconnectors where certification decisions have to be issued by two NRAs. Due to possible differences in the transposition of the unbundling rules, such a decision requires an effective and coordinated cooperation between the concerned NRAs. For instance, Ofgem (the UK NRA) has been involved in cross-border certifications involving NRAs from the Netherlands, Ireland, Belgium and Northern Ireland. In order to have coordinated decisions there is a clear need for a common, well defined process. The following practical steps have been taken by the NRAs to implement the cooperation:

- Regular meetings between relevant NRAs;
- Joint NRA/TSO meetings;
- Cooperation on drafting and timing of information requests (as appropriate within the applicable legal framework);
- Sharing of information between NRAs; and
- Attempts (where appropriate) by relevant NRAs to notify preliminary certification decisions to the Commission within close timescales.

²⁵ Point 1(3) of Annex III of Regulation (EU) No 347/2013 of The European Parliament and of The Council



4.5 Granting of exemptions for new cross-border infrastructures

As referred to above, Article 36 of Gas Directive and Article 17 of Electricity Regulation allow for exemptions from key regulatory provisions on third party access to interconnectors, storage and LNG terminals, on tariff regulation and on unbundling.

The exemption procedure laid down in the aforementioned provisions requires concerned NRAs to find an agreement on the exemption request for infrastructures located in the territory of more than one Member State, and subsequently to issue coordinated decisions. In practice, the concerned NRAs in most cases adopt a joint opinion which is then annexed to the national exemption decisions. National decisions are contextually notified to the Commission or within close timescales. The described procedure was followed, among other cases, with respect to the Trans-Adriatic Pipeline (TAP) that was exempted from some regulatory provisions by means of a Joint Opinion drafted together by the Greek, Italian and Albanian NRAs which was the basis for the national decisions notified to the Commission. Another example is the ElecLink interconnector within the Channel tunnel: Ofgem and CRE (the French NRA) have conducted coordinated public consultations, coordinated exemption decisions on the basis of a joint opinion, and jointly approved access rules relative to the interconnector. They expect to work together to jointly examine ElecLink's application to be certified as an interconnector operator in due course.

4.6 NRAs' cooperation in exchanging information according to REMIT

In order to fulfil their duties under REMIT and to enable an effective market monitoring of wholesale energy markets NRAs have to cooperate at a regional level²⁶. For the implementation of the cooperation on wholesale energy markets monitoring at regional level, NRAs may work together and with ACER on specific conditions in order to reflect regional or national specificities. The modalities of cooperation are set out in MoU for administrative arrangements between ACER and NRAs. In some cases there are letters of intent signed by NRAs with regard to informal information exchange.²⁷

5 Voluntary Cooperation

There are various areas where regional cooperation of NRAs takes place, even if not foreseen or required by the European legislation. So far, this has mainly concerned issues related to the implementation of market coupling in different regions or issues related to security of supply.

It should be mentioned that a large number of the current legally required cooperation issues already started several years ago as voluntary cooperation on NRAs' own initiatives. In addition, experiences in early implementation of legal provisions in Network Codes have been very fruitful to allow an efficient application of regional rules.

These cooperation cases set up before the entry into force of the 3rd Package now provide a solid basis for the required cooperation under the provisions of the relevant regulations. In order to better organise the cooperation, the parties usually agree on terms of references which include inter alia the following actions:

²⁶ Article 7(2) and Article 16(1) REMIT

²⁷ E.g. In case of information exchange between Swiss and Austrian NRAs. For EU NRAs, the drafting of such MOU is not required since cooperation can be directly established under the umbrella of Article 17 of REMIT and the Multilateral MoU between ACER, NRAs and market monitoring bodies. For non EU NRAs, such MOU can be a necessary step to enter into a fruitful cooperation



- Nomination of the Lead NRA;
- Regular meetings between NRAs (at least twice a year);
- Exchange of relevant information;
- Joint meetings with the concerned TSOs and stakeholders;
- Consultation of position papers.

The below listed cases of well-functioning NRAs' cooperation can serve as examples for potential lessons that can be learned from good practice shown by NRAs' cooperation.

5.1 Examples of NRAs' Cooperation in general and on Network Codes' or Guidelines' early implementation

Within the framework of early implementation of the CACM GL, CRE, CREG (the Belgian NRA), BNetzA (the German NRA), ILR (the Luxembourgish NRA) and ACM (the Dutch NRA) jointly approved the electricity flow-based methodology aiming at calculating capacity for day-ahead timeframe at the Central West (CWE) region borders. To that matter, a gentlemen's agreement was concluded between the concerned NRAs and ever since then approvals of new methodologies or rules in the CWE region entail the adoption of coordinated decisions even though NRAs are not legally bound to do so.

22 regulators also approved Harmonised Allocation Rules (HAR) as an early implementation of the Forward Capacity Allocation (FCA) network code. Furthermore, CRE and CREG are currently cooperating in order to implement the intraday "quick-win" (implicit capacity allocation).

At the balancing timeframe, NRAs also cooperate to assess TSOs' proposals which are developed in the context of the early implementation of the Guidelines on Electricity Balancing. For instance, Ofgem, CRE, ERSE (the Portuguese NRA), CNMC (the Spanish NRA), AEEGSI (the Italian NRA) and ELCOM (the Swiss NRA) are currently analysing their TSOs' proposal for the design of the Trans-European Replacement Reserve Exchange (TERRE) project, the pilot project to exchange balancing energy from replacement reserves according to the principles set in Article 15 of the draft Electricity Balancing Network Code²⁸.

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http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/ANNEXES_TO_RECOMMENDATION_032_015/Annex%20I%20-%20Proposed%20amendments%20to%20the%20Network%20Code.pdf



5.2 The Nordic NRA cooperation within NordREG

In 2002 the organisation for the Nordic energy regulators (NordREG) was formally established by Denmark, Sweden, Finland, Iceland and Norway. The members of NordREG have signed a MoU for the cooperation, and each member has a representative in the NordREG Board. With due regard to national differences in the legal framework and responsibilities, the mission of NordREG is to actively promote legal and institutional framework and conditions necessary for developing both the Nordic and the European electricity markets. Within NordREG there are appropriate mechanisms of cooperation, information exchange and assistance amongst the Nordic NRAs. NordREG also provides a framework for the discussion of regulatory issues in order to facilitate coordination of views and common positions when appropriate. In addition to the Nordic cooperation within NordREG, there is also cooperation outside of this framework where this is efficient; e.g. the Norwegian/Swedish support scheme (EI-certificates) to increase production of renewable energy. The cooperation between the Nordic NRAs within NordREG covers both voluntary cooperation and cooperation in order to fulfil the legal requirements foreseen in EU-legislation.

Recent examples of voluntary cooperation:

- Price comparison tools – Several of the Nordic NRAs have developed and launched national price comparison tools. In this work, the NRAs shared experience and assisted one another.
- Data hub – To address an increasing need for data management, identified by NordREG, the Nordic TSOs, under the NRAs' supervision, are developing national data hubs. The data hubs will increase the efficiency of AMS (smart metering) through more effective communication and data processing. The data hubs will further harmonise the Nordic retail market.
- NBS – Nordic Balance Settlement is the establishment of a common balance settlement mechanism for Finland, Norway and Sweden. The purpose of the mechanism is to reduce entry barriers for retailers that want to offer services in these countries and pave the way for a common Nordic retail market for electricity. NBS requires a harmonisation of national legislation.
- Assessment of flexibility barriers in the Nordic countries, with focus on how to address the identified barriers.

NordREG facilitates the legally foreseen regional cooperation in the European Network Codes/Guidelines or regulations, by setting up working group structures as framework for discussions and for coordinating the NRAs views and approval.

5.3 The Iberian NRAs' Cooperation

Portugal and Spain signed the International Agreement of Santiago de Compostela, creating MIBEL (Iberian Electricity Market), as a single integrated market for both countries. The Agreement also sets up a Regulators Board, integrating the energy regulators and financial authorities of both countries, which is entitled to exercise certain functions relating to MIBEL. This International Agreement was amended in order to constitute the single Iberian Market Operator, promote competition on MIBEL and harmonise regulation concerning tariffs, last resort retailers and dominant operators. Furthermore, energy regulators and financial authorities of Portugal and Spain signed a MoU for the cooperation and effective coordination of the supervision of MIBEL.



Joint auctions of interconnection capacity between Portugal and Spain started in March 2014 as a result of a coordinated work of both NRAs - CNMC²⁹ and ERSE³⁰.

On the gas side, the Spanish (CNMC, formerly called CNE) and the Portuguese (ERSE) NRAs presented a proposal to the respective governments of Portugal and Spain to harmonise the conditions for obtaining the trading licences in the Iberian Peninsula, including the mutual recognition of marketing licences for each country³¹. A proposal for harmonisation and mutual recognition of marketing licences was previously submitted to public consultation and was favourably received by all stakeholders in MIBGAS. The proposed conditions are set out in the current legislation³².

ERSE and CNE/CNMC also approved a joint document on the major issues to be addressed for the development of MIBGAS. It was agreed that both entities should work in coordination on capacity allocation mechanisms between the Portugal and Spain interconnection point, on the proposal for harmonisation of the applicable tariffs in the Portugal-Spain interconnection with a view to eliminating pancaking, the harmonisation the balance mechanisms and the creation of an Iberian hub.

ERSE and CNE held a joint public consultation on the harmonisation of tariffs for access to the natural gas interconnections between Portugal and Spain³³. It was carried out by ERSE and CNE, in the South Regional Initiative and the respective countries for approval of capacity allocation rules interconnections in a harmonised way. The capacity allocation process began in Portugal and Spain for physical delivery of firm capacity. The detailed rules of the auction were set forth in the document "Information Memorandum" approved by the two regulators (ERSE and CNE) and published on the website of the two operators of the transport networks (REN and Enagas), CNE, ERSE and ACER.

²⁹ Circular 2/2104, of 12th March.

³⁰ Regulamento de Acesso às Redes e às Interligações (Regulamento n.º 496/2011, 19th August, amended by Regulamento n.º 474/2013, de 20th December), currently repealed by Regulamento n.º 560/2014, 10th December.

³¹ The documents of the public consultation are available at:
[http://www.erse.pt/pt/mibgas/licencasdecomercializacao/Documents/MIBGAS-Consulta_publica_licenca_comercializacao%20\(3Mar09-Final\).pdf](http://www.erse.pt/pt/mibgas/licencasdecomercializacao/Documents/MIBGAS-Consulta_publica_licenca_comercializacao%20(3Mar09-Final).pdf)

³² In Portugal: Decree-Law 230/2012, of 26/10. In Spain, since Royal Decree 197/2010, 26th February, licences are not required for natural gas retailers and traders (only communication to the competent authority). MIBGAS, Law 8/2015, 21st May, formalises the constitution of a single Iberian Market Operator for natural gas sector.

³³ The documents of the public consultation are available at:
<http://www.erse.pt/pt/consultaspublicas/historico/Paginas/39.aspx>



5.4 German-Austrian NRA Cooperation regarding competing capacity

Article 8 (1) of Commission Regulation (EU) No 984/2013 (Network Code on Capacity Allocation Mechanisms - CAM NC) allows for the allocation of competing gas capacity subject to the agreement of the directly involved TSOs and the approval of relevant NRAs. The (entry as well as exit) capacities at the interconnection points Oberkappel and Überackern at the border between Austria and Germany are in competition with each other, due to two competition constraints in the transmission system of the Austrian TSO, Gas Connect Austria (GCA). According to the CAM NC, GCA approached the adjacent TSOs on German side, i.e. Open Grid Europe, GRTgaz Deutschland and bayernets to reach an agreement regarding the allocation of competing capacity. A workshop between the TSOs was held to clarify the issue. As no solution could be reached between the TSOs, E-Control initiated a further meeting between the TSOs and with BNetzA. This resulted in a common understanding and revealed that the capacity booking platform (PRISMA) needed to be slightly improved in order to run the auctions of competing capacity correctly. The cooperation resulted in an agreed solution for the allocation of competing capacity at the IPs between Austria and Germany.

5.5 Austrian-Italian NRA cooperation on bundling pilot project at Arnoldstein/Tarvisio

This cooperation was the result of early implementation of the obligation to offer bundled gas capacity according to Article 19 of CAM NC³⁴. E-Control and AEEGSI cooperated to align the respective national regulations in order to enable and oblige the TSOs (TAG and SNAM) to offer bundled capacity on a day-ahead basis at the interconnection point Arnoldstein/Tarvisio. The outcome of the cooperation was that bundled capacity could be offered prior the entry into force the CAM NC.

5.6 Island of Ireland Cooperation through SEM Committee Joint Decision Making on Wholesale Electricity Market

On the island of Ireland there has been a cross-jurisdictional regulatory cooperation arrangement in place since November 2007 which provides for joint decision making between the Commission for Energy Regulation in Ireland and the Utility Regulator in Northern Ireland. The Single Electricity Market Committee (SEMC) is the decision making authority for all wholesale electricity matters on the island of Ireland and is underpinned by legislation in both jurisdictions that established the Single Electricity Market (SEM).

The principal objective of the SEMC is to protect the interests of consumers of electricity, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the SEM.

Key areas of cooperation and SEM Committee responsibility include:

- Oversight and regulation of the SEM since November 2007 which is based on a gross mandatory pool. The SEM has helped deliver cost-reflective prices and ensured security of supply on the island of Ireland.
- Work on Implementation of the EU Target Model and development of the design of revised energy and capacity markets under the aegis of the new Integrated Single Electricity Market (I-SEM).

³⁴ Commission Regulation (EU) No 984/2013



- Oversight of the DS3 (Delivering a Secure, Sustainable Electricity System) Programme to ensure a secure and reliable operation of the system as levels of non-synchronous wind penetration increase and to facilitate Ireland and Northern Ireland achieving targets of 40% of electricity consumed from renewable penetration by 2020.
- Cooperation with Ofgem and regional partners on implementation of the 3rd Package requirements through the France-UK-Ireland region, and cross border congestion management arrangements.

6 Tools for implementation of cooperation

With regards to cooperation among NRAs in Europe, the 3rd Package and national legislation provide for the NRAs to cooperate and exchange information with other EU NRAs as far as they respect equivalent confidentiality rules.

In addition to this general legal framework, good practices may of course be followed. As there are no predefined rules on how to best set up cooperation between NRAs, evidence of how it has worked in practice shows that irrespective of whether there is a legal obligation or not, the legal instruments listed below have broadly been found to facilitate successful cooperation:

- Agreements between NRAs (e.g. on REMIT cooperation at regional level);
- MoUs;
- Letters of Intent;
- ACER recommendations;
- CEER guidelines of good practice; and
- Voluntary NRAs platforms (e.g. ERF).

MoUs have proven to be an excellent instrument in which parties can agree on common processes and preliminary rules. MoUs are generally bilateral or multilateral agreements between two or more parties which express a convergence of will between the parties, indicating an intended common line of action. An MoU has been found to be a very suitable instrument for parties who are not permitted to create a legally enforceable agreement. We see that there are several examples of MoUs on cooperation which are different in nature and scope:

- MoU on the reinforced Baltic Energy Market Interconnection Plan (BEMIP)³⁵;
- MoU on the Establishment of a High Level Group on Interconnections for South-West Europe³⁶;
- MoU on a Joint approach to address the natural gas diversification and security of supply challenges as part of the Central and South-Eastern European Gas Connectivity (CESEC) initiative³⁷; and
- Terms of Reference of the CESEC³⁸.

Considering that MoUs represent one of the most used cooperation tools for NRAs it is possible to discern within some of them a common set of provisions (specifically relating to their governance) that have proven to be helpful in practice:

³⁵ https://ec.europa.eu/energy/sites/ener/files/documents/ROMANAD_2016.02.08_11.32.52_5C4N2560_1.pdf

³⁶ <https://ec.europa.eu/energy/sites/ener/files/documents/FINAL%20MoU%20after%20interservice.pdf>

³⁷ https://ec.europa.eu/energy/sites/ener/files/documents/CESEC%20MoU_signed.pdf

³⁸ https://ec.europa.eu/energy/sites/ener/files/documents/20150402TermsOfReferenceHLGCESEC-FINAL_0.pdf



- Establishment of a three-tier structure: political, operational and working level;
- Meetings, working methods, voting rules are clearly defined and published; and
- Participation of stakeholders is crucial to increase transparency and acceptance, unless certain aspects of cooperation are confidential.

Nevertheless, it should be noted that MoUs are non-binding instruments undertaken on a voluntary basis, not covered by a legal framework and thus cannot be enforced in the same way as a legally binding agreement. Therefore the elements contained in a MoU have to reflect the concrete cooperation and should be customised according to the needs and requirements of the parties.

7 Role of ACER in NRAs' cooperation

According to the ACER Regulation, previously established voluntary cooperation between NRAs can now also take place within a Community structure (i.e. the Agency) with clear competences. Thus ACER provides a framework within which NRAs can cooperate. Furthermore, it has to promote cooperation between the NRAs not only at a community level, but also at regional level³⁹. Even if not explicitly foreseen by the ACER Regulation, it can still be useful for NRAs to use ACER as a cooperation platform (e.g. ACER's CBCA Recommendation⁴⁰). Of course, there are also cases where NRAs are obliged to inform ACER about the results of their cooperation. This is, for example, the case for the certification of new interconnectors. When all NRAs concerned have reached an agreement on the exemption decision within six months, they shall inform ACER of that decision⁴¹.

Even in cases where ACER is not involved in NRAs' cooperation it would be best practice for NRAs to inform ACER on the cooperation. This will enable ACER to properly fulfil its market monitoring tasks according to the 3rd Package regulations.

In this way ACER provides an NRA cooperation platform to be used for keeping an overview of each established cooperation case in EU, among other things for the purpose of exchange of good practices. ACER should therefore be informed about relevant cooperation initiatives, so it can enable NRAs to use its facilities for the establishment and promotion of the cooperation.

8 Role of CEER in NRAs' cooperation

In March 2000, ten energy NRAs voluntarily signed a Memorandum of Understanding which created the Council of European Energy Regulators (CEER). In 2003, CEER was formally established as a not-for-profit association under Belgium law. One of CEER's key objectives, then and now, is to facilitate NRA cooperation, information exchange and assist NRAs in order to achieve competitive internal markets for electricity and gas in Europe.

³⁹ Article 7(3) ACER Regulation

⁴⁰

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2005-2015.pdf

⁴¹ Article 17(4) Electricity Regulation



16 years on and representing 35 NRAs from across Europe, CEER itself is testimony to the success of voluntary cooperation of energy NRAs. As the European association of energy regulators, CEER serves as an efficient platform for NRA cooperation where best practice regulation is developed, experiences shared and where NRAs are supported (included through training) in their daily work. CEER has been at the forefront of efforts to protect and empower energy consumers. The following 2 examples illustrate the good functioning of CEER NRAs' cooperation:

8.1 International Efficiency Benchmarking

CEER carried out its first efficiency benchmark for gas TSOs in 2016 based on experiences of the "e3grid 2012" project for the electricity market. There was no similar European gas TSO benchmark study available to regulators before this. The efficiency benchmark of European gas TSOs is therefore highly relevant for regulators in Member States with only one gas TSO or a small number of TSOs – insufficient for a proper national benchmark.

The European benchmark study provides an input for the regulators in deciding on the tariffs for gas TSOs. CEER was the optimal platform to execute the study. Overall, 13 NRAs were involved in this project (Austria, Belgium, Czech Republic, Croatia, Denmark, Finland, Germany, Great Britain, Greece, Portugal, Spain, Sweden and The Netherlands). Within CEER, the NRAs coordinated all relevant tasks. This included the preparation of contracts with the TSOs, NRAs and the consultant, set up a steering group, organising several workshops with all relevant stakeholders and other activities. CEER has set up reliable and transparent processes for all NRAs, helping overcome unnecessary administrative burdens, ensuring that the views of all NRAs will be discussed and considered.

8.2 Collection of NRAs' data for monitoring purposes

CEER's database collects and stores data from NRAs on an extensive range of indicators (e.g. retail markets, consumer protection, wholesale markets, unbundling, technical issues). CEER grants ACER and the European Commission access to the CEER database for monitoring and benchmarking purposes. For example the annual ACER-CEER Market Monitoring Report (MMR) draws heavily on the indicators collected via the CEER database. Indicators are updated annually and are based on current monitoring requirements of the 3rd Package and the priorities of CEER, ACER and the European Commission. Even though the provision of data is on a voluntary basis, all CEER members consistently provide the annual data. Consequently, the CEER database is a reliable source of robust data for various reports of CEER, ACER, the Commission and national regulators.

9 Conclusions

CEER fully supports the approach of strengthening NRAs' cooperation in the ongoing process of market integration. In our view, cooperation (whether it is bilateral, regional or pan-European) should be applied both in the implementation of existing regulations as well as for the development of Network Codes and Guidelines supplementing the 3rd Package.

Given the differences in national systems and markets, regional integration is an important step to allow for a smooth transition towards an internal European market. CEER has long been an advocate of regional market integration on an effort to speed up the integration of Europe's national energy markets. CEER contributed significantly to setting up the (voluntary) Regional Initiatives in 2006 and their subsequent transition to ACER.



Based on the experience of the existing cooperation settings, we see that NRAs' voluntary cooperation has been extremely valuable. A main benefit is its pragmatic approach within the framework of existing legal and regulatory arrangements. ENTSO-E also concludes in its policy paper on regional cooperation and governance that successful cooperation is often based on voluntary coalitions between Member States and that the earlier mentioned examples were very successful⁴².

All the different instruments used (agreements, MoU, contracts etc.) so far by NRAs to "formalise" their cooperation have proven to be efficient and increase the flexibility in regulating markets. Most of the instruments mentioned in this paper seem fit for purpose as they respect differences of the regulatory framework and involve stakeholders properly, which is necessary for building confidence and understanding. Furthermore, they allow for more flexibility and adaptability to a continuous evolving energy market. In some instances, NRAs' cooperation tools have been later reflected in the legal framework, however many of them still remain at NRAs' disposal.

CEER could help in providing regular overviews on NRAs' cooperation in order to provide information and transparency, and to serve as example to be followed when these are successful.

The lessons that can be learned from successful NRAs' cooperation are that the following factors are important:

- A strong regulatory commitment within the pre-defined or agreed legal framework, and NRAs should be in the lead in the cooperation process;
- A streamlined, predefined, agreed and transparent working structure - define Terms of Reference (ToR), Rules of Procedure (RoP), proper voting system, etc.;
- An involvement of experts and stakeholders such as TSOs, DSOs and other relevant market participants;
- A continuous and transparent information exchange and involvement of ACER;
- A shared European vision coupled with a pragmatic approach.

CEER sees major benefits from the many voluntary NRA cooperation experiences to date. NRA cooperation has played a key (and often leading) role in enhancing market integration at regional level, which in turn is an important step towards a single, integrated EU energy market. NRA cooperation should be supported going forward.

⁴² "Examples can be found in cases such as the Nordics, the PLEF, the North Seas Countries' Offshore Grid Initiative (NSCOGI), MIBEL (Iberian Electricity Market) and other successful regional cooperation [...]." ENTSO-E policy Paper, April 2016.
https://www.entsoe.eu/Documents/Publications/Position%20papers%20and%20reports/entsoe_pp_regions_1604_web.pdf



Annex 1 – List of Abbreviations

Term	Definition
ACER	Agency for the Cooperation of Energy Regulators
ACER Regulation	Regulation (EC) 713/2009
BEMIP	Baltic Energy Market Interconnection Plan
CACM GL	Capacity Allocation and Congestion Management Guideline
CAM NC	Network Code on Capacity Allocation Mechanisms
CCR	capacity calculation regions
CBCA	cross-border cost allocation
CEER	Council of European Energy Regulators
CESEC	Central and South-Eastern European Gas Connectivity
Electricity Directive	Directive 2009/72/EC
Electricity Regulation	Regulation (EC) 714/2009
ERF	Energy Regulators Forum
ERGEG	European Regulators Group for Electricity and Gas
ERI	Electricity Regional Initiatives
FCA	Forward Capacity Allocation
Gas Directive	Directive 2009/73/EC
Gas Regulation	Regulation (EC) 715/2009
HAR	Harmonised Allocation Rules
MoU	Memorandum of Understanding
NRA	National Regulatory Authority
NBS	Nordic Balance Settlement
NordREG	Nordic energy regulators
PCIs	Projects of common interest
REMIT	Regulation on Wholesale Energy Market Integrity and Transparency
RoP	Rules of procedure
TAP	Trans-Adriatic Pipeline
TEN-E Regulation	Trans-European Energy Networks Regulation
TERRE Project	Trans-European Replacement Reserve Exchange Project
TCM	Terms and conditions or methodologies
ToR	Terms of reference
TSO	Transmission System Operator



About CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. CEER's members and observers (from 33 European countries) are the statutory bodies responsible for energy regulation at national level.

One of CEER's key objectives is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest. CEER actively promotes an investment-friendly and harmonised regulatory environment, and consistent application of existing EU legislation. Moreover, CEER champions consumer issues in our belief that a competitive and secure EU single energy market is not a goal in itself, but should deliver benefits for energy consumers.

CEER, based in Brussels, deals with a broad range of energy issues including retail markets and consumers; distribution networks; smart grids; flexibility; sustainability; and international cooperation. European energy regulators are committed to a holistic approach to energy regulation in Europe. Through CEER, NRAs cooperate and develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat. This report was prepared by the Legal Task Force of CEER's Implementation, Benchmarking and Monitoring Working Group.

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More information at www.ceer.eu.