



Regional Regulatory Oversight
CEER White Paper series (paper IX) on the
European Commission's Clean Energy Proposals
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1. Introduction and Overview

The stepwise integration of wholesale electricity markets in Europe as part of the Internal Energy Market and as proposed under the “Clean Energy for All Europeans” legislative package¹ raises the issue of the governance and decision-making regime for markets at regional level. This includes regulatory decisions on proposals for joint regional terms and conditions or methodologies (TCMs) to be proposed by regional Transmission System Operators (TSOs) or Nominated Electricity Market Operators (NEMOs), as foreseen in the current EU Network Codes and Guidelines.

This high-level Regulatory White Paper provides the views of National Regulatory Authorities (NRAs) in the Council of European Energy Regulators (CEER) on regional decision-making, in response to the Clean Energy proposals. In particular CEER outlines **five high-level principles on regionalisation with a view to an effective and efficient regulatory oversight approach which benefits electricity consumers.**

According to the current EU Network Codes and Guidelines, regulatory decisions on proposals for joint regional TCMs to be proposed by regional TSOs/NEMOs fall primarily under the responsibility of the NRAs of the concerned region.

Following the proposals in the Clean Energy package (Article 5(2)) regarding regional implementation of network codes and guidelines, CEER believes that the **overarching principle for regional regulatory oversight should foresee a central role for regulatory authorities of the regions concerned in the development of decisions that pertain to their particular regions.** That is to say, that NRAs of the concerned regions should be the ones primarily responsible, for example, for the regional implementation of network codes and guidelines (TCMs).

We recall that the enforcement powers of these TCMs remain with the NRAs according to Article 59(1) of the Electricity Directive, which requires NRAs to ensure compliance by market participants with obligations under relevant EU legislation including network codes and guidelines.

For clarity, this paper focuses on regional decision-making rather than EU-wide “all NRA decisions”, where the Clean Energy package rightly foresees that ACER (the EU Agency for the Cooperation of Energy Regulators) manages fully such regulatory decisions.

¹ For ease of reading, reference to the Electricity Directive refers to the re-cast Electricity Directive COM/2016/0864 final/2 - 2016/0380 (COD), and reference to the ACER Regulation refers to the proposal for a revised regulation on establishing a European Union Agency for the Cooperation of Energy Regulators (recast) COM/2016/0863 final/2 - 2016/0378 (COD). References to specific Articles in the proposed recast legislation relate to the revised texts (corrigenda) published by the European Commission on 23.02.2017.

2. Important Principles for Regional Issues

CEER outlines below five important principles regarding the regional dimension of Europe's electricity sector in terms of its corresponding regulation and oversight, with a view to implementing a regime which benefits electricity customers.

1. **Regulators support an incremental approach to market integration** – It is vital that Europe's energy markets continue their progress towards achieving the Energy Union. NRAs in CEER will continue efforts to work towards a more efficient and integrated European energy market in order to unlock further benefits to consumers. As part of this evolution, CEER believes that we must continue to improve market structures, market rules and governance arrangements, as intended by the Clean Energy package.
 - An incremental approach, beginning with regional cooperation, has yielded benefits to date and regulators want to see that the approach continues. Learning by doing and a gradual increase in the roles of pan-European (and regional) bodies is the best way to achieve this.
2. **Appropriate regulatory oversight is key** – As more tasks are performed at regional or pan-European level, energy regulatory oversight also needs to adapt. Nevertheless, this needs, in all cases, to be proportionate. A regional dimension of activity needs fully to embed regionally coordinated oversight, to be undertaken by those regulatory authorities closest to the actions, whilst keeping ever-present the broader, European, context.
 - An overarching principle for regional regulatory oversight should foresee a central role for regulatory authorities of the regions concerned in the development of decisions that pertain to their regions. The final responsibility of the regulators within a region as regards the oversight and implementation of regional measures must be reflected in the Clean Energy package, whilst recognising the need for EU-wide issues to be referred to ACER where appropriate.
3. **Good governance means a proper articulation between national, regional and European levels** – Irrespective of the way regions are structured, clear and transparent governance arrangements for the regional structures will be vital. All relevant parties, in the ambit of their responsibilities, should be properly involved in decision-making and oversight. Where deadlocks result, there must be a clear process to resolve those issues, while there is also a need to avoid inconsistencies across regions.
 - In cases where an issue involving regulators within a region is elevated to ACER for consideration, the decision-making and governance arrangements established in the ACER Regulation for regulatory matters (i.e., requiring the review and favourable opinion of the Board of Regulators) must be applied. This ensures that the European perspective, and the regulators' collective technical expertise, is properly taken into account.
 - Furthermore, CEER notes that the Clean Energy package proposes a direct role for ACER in regional decision processes in all cases in which these have "a tangible impact on the IEM" (Internal Energy Market) and "significant relevance beyond the region". In CEER view, the threshold for such impact may prove difficult to measure. In this sense, it is important to recall that regions are the building blocks of the internal energy market; thus most regional decisions will, naturally, have broader impacts. In

order to avoid inconsistencies in trying to define ex-post the tangible impact of regional issues, NRAs of the concerned regions could request an ACER decision.

4. **Regions should be led by market integration** – Market integration has developed at different speeds across Europe to date and regions need to reflect this. Energy regulators would like to see regions selected based on market conditions rather than merely geography, for example.
 - Those regions, which should cover a broad range of countries, will also need to be capable of evolving over time as further competition and market integration develops (meaning that energy regulators continue to strive for the ultimate aim of a fully competitive Internal Energy Market).
5. **Complexity needs to be minimised** – Finally, energy regulators want to see as simple and transparent a set of arrangements as possible. This is going to require pragmatic trade-offs: a one-size-fits-all approach will not capture the specificities required, while different regions for every market timeframe, product or service would also be impractical. Similarly complex coordination structures and layers of governance are unlikely to act in customers' interests.

Annex 1: Relevant ACER/CEER Papers

This White Paper builds on the "[European Energy Regulators' Overview Paper - Initial Reactions to the European Commission's Proposals on Clean Energy](#)", published by the Agency for the Cooperation of Energy Regulation (ACER) and CEER on 23 January 2017. It is part of a series of Regulatory White Papers covering key topics related to the Clean Energy package.

European Energy Regulators' Overview Paper, "Initial Reactions to the European Commission's proposals on Clean Energy", 23 January 2017
European Energy Regulators (ACER-CEER) White Paper #1 Renewables in the Wholesale Market , May 2017
European Energy Regulators (ACER-CEER) White Paper #2 Role of the DSO , May 2017
European Energy Regulators (ACER-CEER) White Paper #3 Facilitating Flexibility , May 2017
European Energy Regulators (ACER-CEER) White Paper #4 Efficient Wholesale Price Formation , May 2017
CEER White Paper (no. I) on Distribution and Transmission Network Tariffs and Incentives , May 2017
CEER White Paper (no. II) on Technology that Benefits Consumers , May 2017
CEER White Paper (no. III) on Consumer Empowerment , May 2017
CEER White Paper (no. IV) on Efficient System Operation , June 2017
CEER White Paper (no. V) on The Independence of National Regulatory Authorities , June 2017
CEER White Paper (no. VI) on Infrastructure , July 2017
CEER White Paper (no. VII) on System Adequacy and Capacity Remuneration Mechanisms , July 2017
CEER White Paper (no. VII) on Renewable Self-consumers and Energy Communities , July 2017