

BULLETIN

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Towards Common Energy Market Regulation in the EU

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The creation of a competitive and single energy market has always been a priority of the European Union's energy policy. In 2009, a compromise was reached to establish an institution responsible for this task—a pan-European energy regulator. However, the Agency for the Cooperation of Energy Regulators was not equipped with supranational competences. Nevertheless its role in the process of building the internal energy market is essential and creates new conditions for the Polish market.

The liberalisation of energy markets was undertaken more than 20 years ago, but there still is no internal market in the EU, i.e., an area without internal frontiers where energy products can circulate freely. The gradual launch of integration in this field is not easy since it requires fundamental changes to rules governing the energy sector. The creation of energy markets encompasses the application of treaty law, the development of specific secondary laws (so called energy packages) and practical bottom-up measures. In 2011, the EU decided to speed this process in order to create, by 2014, a fully integrated internal energy market. One of the important elements of this is the harmonisation of regulation, and this task was allocated to a newly established body—the Agency for the Cooperation of Energy Regulators (ACER).

Actions Towards Common Energy Market Regulation in the EU. The liberalisation of network sectors (such as transportation, telecommunications, energy industry), initiated at the end of the 1980s and beginning of the 1990s, made it necessary to set up a regulatory framework and establish supervisory bodies over the activities of monopolies. The First Energy Package (1996 and 1998) contained very general guidelines concerning national regulatory bodies and only indicated the need for their creation. As a consequence, such a body was not created in Germany, where regulatory issues were allocated to the anti-monopoly office. What is interesting is the fact that the Polish Energy Act (1997) established the Energy Regulatory Office, hence it was seen as a modern law and one that adjusted Polish legislation to its future membership in the EU. The Second Energy Package (2003) set requirements to establish in all Member States regulators dedicated to the energy sector. The Third Energy Package (2009) harmonises the competences of national regulatory bodies, requires their independence from energy companies, consumers and governments, and at the same time obliges them to pursue the aims of EU energy policy. In order to ensure more effective and formal cooperation, ACER was established, which formally inaugurated its activities on 3 March 2011 in Ljubljana, in which it is seated.

Opportunities and Limitations. Despite more than a year and a half of activity, ACER is not publicly known. This is because of the specific nature of its tasks, which are mainly of a technical nature. Its main mission is to assist the regulatory authorities and the Commission in exercising their regulatory tasks at the EU level by coordinating their activities and working to harmonise their technical and market rules. For this purpose, ACER was granted certain powers, such as taking—in exceptional cases—individual decisions regarding grid access or the security of cross-border infrastructure, issuing non-binding opinions and recommendations addressed to regulatory authorities and EU institutions, monitoring energy markets, and issuing opinions on nonbinding 10-year network development plans of a European scope. The most important factor to accelerate the integration of markets, though, are so called network codes. Those codes constitute a new and valid instrument for harmonising technical and market rules. Although ACER does not create the

codes—that is the role of transmission system operators—they are formed on the basis of ACER's framework guidelines. Before network codes are submitted to the Commission, ACER will assess their compliance with its framework guidelines. It should be noted that network codes will become a part of the Community *acquis*, meaning the regulations will be directly applicable to all Member States. Moreover, after its establishment, ACER was granted new powers. Under wholesale energy market integrity and transparency regulation (REMIT), ACER is responsible for market screening in order to uncover and prevent market abuses. An analysis of these powers indicates they are quite limited and the main role of ACER is an advisory one. During the negotiations of the Third Energy Package, however, attempts to extend these powers were made so that ACER would be a decisive body on international issues, for example, on matters involving tariffs, investment plans, access to interconnectors or approval, rather than just a body that gives an opinion on network codes. But consensus was not reached on that point.

So far, actions taken by ACER have been dedicated to issuing its first nonbinding guidelines on cross-border capacity allocations for gas and electricity, as well as on conditions for connecting to electricity grids. Network codes adopted on the basis of these guidelines (work is well advanced here) will be of key importance to energy market participants, including in Poland, as it must decide on gas and electricity trade rules, conditions to connect to the grid and future cooperation with the EU in many other areas. Also, ACER has already issued an opinion on 10-year network development plans, which are new instruments promoting infrastructure development. Thus, though the agency is unable to directly influence national investment decisions, it can, however, recommend which projects are important from an EU perspective. And this, in turn, is a prerequisite for obtaining financial support from the EU. With newly built interconnectors, ACER may decide about access to their capacity but only on condition that national regulators either request ACER to do so or are unable to reach agreement. So far, ACER has not taken any decision in such a case.

Conclusions and Recommendations. Although the scope of competences delegated to ACER is relatively narrow and specific, since it is limited to technical and infrastructural tasks, it is a very important element of completing the pan-European energy market. This market will finally be created by 2014. In this context, the supranational and expert character of ACER, its formal independence, but mostly its position between the Commission, national regulators and energy companies, suggests that, in practice, its importance will grow. One can expect that ACER's recommendations may in fact translate into concrete decisions by the Commission. However, a lot depends on what practical standards of operation and collaboration with other bodies and energy market participants this new institution will develop. One can also anticipate that the powers of the agency will rise gradually, as a consequence of growing energy markets' interdependence and the necessity to regulate complicated and transnational matters. This already has been demonstrated by the assignment of new tasks (in REMIT) to provide it with the ability to monitor trade in energy products in the EU.

The establishment of ACER also means that the process of determining basic technical and market issues, relevant to all energy actors, has now been formalised, and the agency is the one that provides the framework for this cooperation. As a result, transmission system operators (in Poland, PSE Operator SA and Gaz-System SA) are expected to be strongly engaged in the process of creating network codes, because this is the only way of influencing the shape of any adopted solution and the inclusion of national specificities. Polish energy companies should be continually monitoring the activity of ACER and system operators and participate in the public consultations of documents issued by them. In this context, it is worth mentioning that national regulators, including the Polish Energy Regulatory Office, are now required to actively cooperate in international relations, especially in matters concerning whether common energy investments meet the objectives of EU energy policy (such as the proposed Polish–Lithuanian interconnector). Hence, this is a new condition on regulatory actions, to which the organisation and measures taken by the Polish regulator should be adjusted. It is of great importance that the national regulator be active in ACER's structure, either directly or indirectly through working groups that include regulatory authorities.