



GEODE Position Paper on the Commission's Proposal to establish an Agency for the Cooperation of Energy Regulators

Summary

GEODE welcomes the Commission's proposal for a regulation to establish an Agency for the Cooperation of Energy Regulators (ACER). GEODE recognises the need for increased co-operation between national regulators as well as between national transmission system operators (TSOs) in order to further develop the energy market within the EU.

Given the fact that the ACER's decision-making powers and tasks are specified and well-defined, it is absolutely necessary that it is provided with the necessary binding tools to achieve its aims, as laid out in the regulation. This is especially important in relation to the Agency's tasks with regard to cooperation of national TSO's.

Main tasks of the proposed ACER

The proposed ACER will complement at a European level the regulatory tasks performed by national regulators. More specifically, the Agency should provide a framework for cooperation between national regulators, a regulatory overview of cooperation between TSO's, have individual decision-making powers, and perform a general advisory role.

GEODE position

One fundamental criterion in order to justify legal measures on EU level is the cross border effect of the issue. This includes measures in only one Member State which could have supra-national implications.

Groupement Européen des entreprises et Organismes de Distribution d' Energie

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The Commission's proposal for the Agency presupposes Agency activity in individual decisions concerning infrastructure in the territory of more than one Member State. The aim is to improve the handling of cross-border situations and to establish procedures for cooperation between national regulators, especially concerning the exchange of information and the apportionment of competence where more than one Member State is involved.

Governance of the proposed ACER

Standard rules and practices for Community regulatory agencies will apply to the institutional setting and governance principles of the Agency. The necessary independence of regulatory functions needs to be taken into account.

The Commission foresees an Administrative Board responsible for all administrative and budgetary matters, a Board of Regulators responsible for all regulatory matters and decisions, and a Director, appointed by the Administrative Board after consultation with the Board of Regulators, to be chosen from a shortlist drawn up by the Commission. In addition, the structure of the Agency should incorporate in a Board of Appeal, which is competent to handle appeals against decisions adopted by the Agency.

GEODE position

National TSOs are subject to national law and national regulatory activity. The ENTSO cooperation (see "Efficient cooperation between transmission system operators" below) and Agency powers with regard to ENTSO have to be specified with appropriate regard to national interests and the independent role of the national regulator.

GEODE foresees a need to further develop and specify the decision-making powers of the Agency to enable the Agency to take those steps and decisions required to fulfil its purpose and tasks.

GEODE would like to highlight the importance of the Agency's independence, to this end, the rules of member nomination must ensure the balance between the Council and the Commission.

Efficient cooperation between Transmission System Operators

The Commission identifies a need for effective cooperation between TSOs and a clear and stable regulatory framework, including regulatory coordination in order for market integration to take place. Network access rules and operational rules need to be compatible, there has to be effective exchange of information between TSOs, and effective coordination of new investment to increase interconnection capacities.

Existing cooperation among TSOs, i.e. ETSO and GTE but also UCTE and EASEE-Gas, has made a significant contribution to the internal market but recent network incidents and black-outs indicate the shortcomings of this form of cooperation.

The Commission requests the TSOs to strengthen their cooperation in a number of key areas and main issues including development of market and technical codes, preserving the voluntary process of the TSOs, as well as research and innovation activities of common interest, coordination of grid operation and investment planning. The development of regional markets should complement development within the internal market.

The Commission will formally designate the ENTSO to oversee these tasks. Cooperation within ENTSO will be monitored by the ACER, including the involvement and consultation of stakeholders in the ENTSO work on specific subjects.

GEODE position

The powers provided to the Agency regarding the tasks as regards the cooperation of transmission system operators, must permit the Agency to take those necessary decisions and actions for the Agency to fulfil its tasks. The proposed regulation describing the Agency's tasks in article 6 has to be enforced in several aspects. The regulation is too broad in terms of TSO powers, too weak in terms of Agency powers, the technical and market rules are voluntary and thus unenforceable. The regulation relies too heavily on the TSOs in terms of drafting technical and market codes, thereby excluding customer and stakeholder involvement in the process. The regulation also lacks mechanisms by which the codes could be modified.

The regulation should grant the Agency the powers to issue binding guidelines on the ENTSOs cooperation making TSOs subject to enforceable rules. This will ensure that the ENTSO cooperation will be more successful in achieving the regulation's aims. This is all the more

crucial bearing in mind that national transmission system operators assume the dual role of both system operator and transmission owner.

The role of the regulator and the transmission system operator is more balanced at a national level than between the proposed ACER and the ENTSO cooperation.

The ENTSO's task to design codes should be limited to technical issues that should be subjected to proper consultation with stakeholders and supervision by ACER prior to adoption.

Market issues are not subjected to TSOs but the Agency. The Agency shall also approve the 10 year investment-plan and supervise its implementation.

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