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Ensuring the market design initiative delivers

The need for a strong regulatory oversight role for ACER

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Introduction

Part of the ‘Winter’ legislative package aims to enhance the institutional framework that governs how Europe’s energy market functions. This includes further regionalisation of energy markets and improved coordination between different players such as distribution system operators (DSOs), transmission system operators (TSOs), and national regulatory authorities (NRAs).

The Commission’s upcoming legislative proposals foresee the development of additional rules far beyond the end of the official legislative process. These rules will impact - either negatively or positively - the ability of new technologies and players to compete in the market to drive the energy transition. Furthermore, they will set a decision making framework that either contributes towards long-term decarbonisation objectives or locks in dirty fossil fuels for at least the next decade at extra cost to consumers and the environment.

To be effective, the new market design needs rules to guarantee independent regulatory oversight, transparency and accountability. At the same time, regulatory oversight must ensure that market rules do not prevent increased competition from new market actors (including active customers/prosumers).

The Agency for Cooperation of Energy Regulators (ACER) will play a crucial role in providing this oversight at regional and EU-levels, but in order to do so it needs to be further empowered (and better resourced). In particular:

1. ACER’s oversight of ENTSO-E needs to be strengthened;
2. ACER should have strong powers to oversee any potential new EU-DSO body;
3. ACER should have a strong role in overseeing European-wide adequacy assessments and interventions by Member States to ensure security of supply; &
4. ACER needs to be empowered to exercise stronger oversight of cross-border market activity by TSOs, including through Regional Operational Centres (ROCs).

1 Strengthening oversight of ENTSO-E

While ENTSO-E is a member-based industry organisation, it has a large degree of influence in drafting and implementing EU Network Codes, and network planning. However, ACER has few tools to oversee ENTSO-E or to hold it accountable.

The relationship between ACER and ENTSO-E needs to be rebalanced, Specifically:

1. ENTSO-E's tasks of developing and monitoring EU Network Codes should be transferred to ACER;
2. ENTSO-E should be required to respond to and follow ACER opinions/recommendations;
3. ACER should be required to monitor enhanced 'independence' standards for ENTSO-E;
4. ACER should have authority to obtain information upon request from ENTSO-E, and correspondingly from TSOs, in order to provide effective oversight.



2 Strong powers to oversee any new EU-DSO body

The Commission will propose a new EU-level body to enhance cooperation between TSOs and DSOs, and develop further guidance/codes on DSO issues.

However, DSOs often have close relationships with the supply and generation sides of their integrated undertakings. There is a risk, therefore, that DSOs will use their prominent position as 'quasi-rule makers' to discriminate against technologies or market actors (e.g. prosumers) that hurt their bottom line. Therefore:

1. ACER should be mandated to develop and monitor any codes or guidance on DSO issues as a result of MDI legislation - this task should not be left to the DSOs themselves.
2. ACER should monitor criteria around independence, unbundling rules, and appropriate geographic and size representation for participation in the body, including in any executive or board-like bodies, or working groups created to carry out specific tasks.
3. ACER should be able to require the provision of information from the body upon request.



3 A strong role in overseeing the development of adequacy assessments and resulting interventions by Member States to ensure security of supply

To ensure capacity mechanisms do not result in subsidies or lock-in for fossil fuels.

Specifically:

1. ACER should be empowered to make binding decisions regarding the European adequacy assessment and the development of common conditions to participate in any resulting capacity mechanisms, to ensure they do not discriminate against technologies or actors such as intermittent generation, demand side flexibility and interconnection, and that they are consistent with long-term renewables, efficiency and climate objectives.
2. ACER should be empowered to help the Commission assess whether capacity mechanisms are needed, and whether they are compatible with market and other climate and energy objectives. ACER should also be able to provide recommendations or opinions to the Commission, which the latter would then have discretion to adopt.



4 Oversight of cross-border activity by TSOs including through ROCs

Creation of ROCs, enhanced coupling of balancing markets and regional-level TSO cooperation require ACER to exercise stronger oversight of cross-border market activity, including the implementation of EU Network Codes by ROCs and their participating TSOs.

Specifically:

1. ACER should be empowered to cooperate with NRAs to monitor implementation of rules on coordinated system operation and planning, balancing and forward capacity allocation, and to approve relevant terms and conditions or methodologies.
2. ACER's mandate under REMIT should be expanded so it can monitor regional markets in real time. ACER could provide this function itself or it could procure such services from a private 'independent' provider together with regional TSOs or NRAs. ACER should also be allowed to provide operational support to NRAs in enforcing REMIT.
3. Beyond the current package, the EU will need to revisit independent market regulation and governance, and more effective real-time cross border monitoring of market competition. Otherwise, the gains achieved from the market design will be minimal.



Ensuring that the market design initiative delivers:
The need for a strong regulatory oversight role for ACER

Josh Roberts

Lawyer, EU Climate and Energy

Email jroberts@clientearth.org

Tel +32(0)2 808 4324

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw.

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Brussels

60 Rue du Trône (5th floor)
Box 11
1050 – Ixelles
Brussels
Belgium
t +32 (0)2 808 34 65

London

Fieldworks
274 Richmond Road
London E8 3QW
United Kingdom
t +44 (0)20 7749 5970

Warsaw

Żurawia 45
(staircase B, 2nd floor)
00-680 Warsaw
Poland
t +48 22 3070190

www.clientearth.org

ClientEarth is a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 2-6 Cannon Street, London EC4M 6YH, with a registered branch in Belgium, N° d'entreprise 0894.251.512, and with a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208

