The experience with regulatory cooperation in the energy sector in Europe

Alberto Pototschnig

3rd Asia-Pacific Regulatory Forum on Power System Connectivity

Bangkok, 26 February 2024
Outline

• Regulatory cooperation in Europe
• European experience with Regulatory Fora
• Voluntary regulatory cooperation delivering benefits to consumers
• Institutionalising regulatory cooperation: ACER
Outline

• Regulatory cooperation in Europe
• European experience with Regulatory Fora
• Voluntary regulatory cooperation delivering benefits to consumers
• Institutionalising regulatory cooperation: ACER
A long tradition of cooperation among Energy Regulators in Europe

Where it all started …

Pippo Ranci Ortigosa
AEEG (now ARERA), Italy

Jorge Vasconcelos
ERSE, Portugal

Miguel Ángel Fernández Ordóñez
CNSE (now CNMC), Spain

Seville, Spain, 1997
Regulatory cooperation to support energy market integration in Europe

1st Package
"First common rules for the internal market and liberalisation"

Partial liberalisation

1996 1998

2nd Package
"Speeding up liberalisation and market integration"

Full market opening; obligation for MSs to establish NRAs independent from industry; legal & functional unbundling

2003 2005

3rd Package
"EU-wide Institutional & Regulatory Framework"

Reinforcing unbundling; harmonised cross-border rules; strengthened NRAs independence and powers; establishment of ACER & ENTSOs

2009

Clean Energy for All Europeans Package (CEP)
"More robust EU Framework"

Enhanced energy market design; reinforcing ACER & ENTSOs’ roles; strengthening regulatory oversight; creation of RCCs and of EU DSO Entity; emphasis on consumers

2019

CEER
ERGEG
ACER

2000

2003

2010

2011
The Council of European Energy Regulators (CEER)

• Established in March 2000 by 10 National Regulatory Authorities (NRAs)
• Voluntary organisation of European (EU and EEA) electricity and gas regulatory entities
• Brussels-based Secretariat
• Not-for-profit association status under Belgian law adopted in 2003
• Currently comprising:
  • 30 members: 27 EU Member States, Iceland, Norway and the UK
  • 9 observers: Albania, Bosnia and Herzegovina, Georgia, Kosovo, Moldova, Montenegro, North Macedonia, Serbia and Switzerland
CEER Mission

CEER is the **voice of Europe's national energy regulators** at EU and international level. Through CEER, the national regulators **cooperate and exchange best practice.**

- Encourage best regulatory practices
- Champion sound and independent regulation in the public interest
- Share experience and support NRAs in their daily work, e.g. through training and workshops
- Put customers and their protection at the heart of energy policy
- Promote a competitive, secure and environmentally sustainable internal market
- Engage with a variety of stakeholders

*With the establishment of ACER, focus mainly on consumers, distribution, retail, sustainability and international outreach*
European Regulators’ Group for Electricity and Gas (ERGEG)

- Established by the European Commission in November 2003 (EC Decision 2003/796/EC)
- Independent advisory group on electricity and gas, composed of EU NRAs
- Advised and assisted the European Commission in the consolidation of the Internal Energy Market
- Dissolved as of 1 July 2011 following the establishment of ACER (EC Decision 2011/280/EU)
The European Regional Initiatives

The Electricity and Gas Regional Initiatives (ERI and GRI)

• were launched by ERGEG in 2006

• aimed at bringing together NRAs, transmission system operators (TSOs) and other stakeholders in a voluntary process to advance market integration at the regional level as a step towards the creation of a well-functioning Internal Energy Market (IEM)

• supported a bottom up approach to the completion of the IEM, bringing all market participants together to test solutions for cross-border issues, carry out early implementation of the EU acquis and come up with pilot-projects which can be exported from one region to the others.
The European Electricity Regional Initiative

**Nordic Region**
DE DK FI NO PL SE

**FUI Region**
FR IE UK

**Central-West Region**
BE DE FR LU NL

**Baltic Region**
EE LV LT

**Central-East Region**
AT BG* CZ DE HU PL RO* SI SK

**Central-South Region**
AT DE IT FR GR SI

**South-West Region**
ES FR PT
Delivering the Internal Electricity Market

Shared Vision: Electricity Target Model

Common Rules (Framework Guidelines and Network Codes)

Implementation and monitoring

A Parallel Process to deliver tangible benefits to EU energy consumers as soon as possible

Formal Framework Guidelines / Network Codes Process

Voluntary Early Implementation of the Target Model
• Regulatory cooperation in Europe

• European experience with Regulatory Fora

• Voluntary regulatory cooperation delivering benefits to consumers

• Institutionalising regulatory cooperation: ACER
The European Energy Regulatory Fora

- European Electricity Regulatory (Florence*) Forum est. 1998
- European Gas Regulatory (Madrid) Forum est. 1999
- Citizens’ Energy (Dublin**) Forum est. 2010
- Energy Infrastructure (Copenhagen) Forum est. 2015

- Informal gathering convened by the European Commission, bringing together (over two days) representatives of the EU institutions, national regulators, TSOs, energy sector associations and other energy sector stakeholders
- To discuss relevant developments and issues facing the energy sector

* also met in Rome, Milan and Ljubljana
** initially met in London
The European Electricity Regulatory (Florence) Forum

1st European Electricity Regulatory Forum
European University Institute, Florence, April 1998

Villa Schifanoia

Sala Europa
### Main topics discussed at the European Electricity Regulatory Forum meetings

<table>
<thead>
<tr>
<th>Topics</th>
<th>1st Feb 98</th>
<th>2nd Oct 98</th>
<th>3rd May 99</th>
<th>4th Nov 99</th>
<th>5th Mar 00</th>
<th>6th Nov 00</th>
<th>7th May 01</th>
<th>8th Feb 02</th>
<th>9th Oct 02</th>
<th>10th Jul 03</th>
<th>11th Sep 04</th>
<th>12th Sep 05</th>
<th>13th Sep 06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transmission pricing methods and cost accounting</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ancillary services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unbundling</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public service obligations and environmental costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-border tarification and inter-TSO compensation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Tariff structure (G &amp; L) harmonisation and locational signals</td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Cross-border congestion management and regional initiatives</td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>Infrastructure development</td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security of supply</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security and relieability standards</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trade of electricity with third countries</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transparency and information disclosure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>
Conclusions of the 38th European Electricity Regulatory Forum
Rome, 8-9 June 2023

The European Electricity Regulatory Forum: Conclusions

Conclusions of the 38th European Electricity Regulatory Forum
Rome, 8-9 June 2023

XXVII European Electricity Regulatory Forum

CONCLUSIONS

The Forum did not draft conclusions on the reform of the electricity market design due to the ongoing legislative process.

Completing the Internal Electricity Market: Implementation & Reform

Implementation of the Electricity Regulation

The Forum emphasizes the importance of implementing existing legislation and urges all parties to ensure that the benefits of the internal market can be urgently brought to consumers through the maximization of capacities for cross-border trading by TSOs, which supported security of supply and reduced volatility during the energy crisis.

The Forum acknowledges that assessment of compliance with the cross-border trading rules is the competence of NRAs, but nevertheless considers the ACER monitoring report of the minimum 75% threshold (MA75) critically important, allowing comparability based on a harmonized approach. The Forum encourages NRAs, TSOs and ENTSO-E to clarify with ACER the reasons for any potential discrepancies which may arise between the national assessments and the ACER assessment and try to resolve them to the extent possible.

The Forum underlines the importance of the bidding zone review and asks all TSOs to address delays in the current bidding zone review and quickly prevent an outdated and capricious timeline for delivery.

The Forum highlights the importance of resource adequacy and welcomes the initiative to speed up the approval process for Capacity Mechanisms and simplify the EEXA methodology in a transparent way, while preserving the elements needed to reach robust decisions.

The Forum welcomes the good progress on the establishment of Regional Coordination Centres and encourages all TSOs to ensure the full implementation of all tools as soon as possible.

Assessment of the Emergency Intervention

The Forum takes note of the findings of the Commission in the report on emergency measures to address high energy prices. The Forum signals, in particular, that the heterogeneous application of the cap on market revenue has led to regulatory uncertainty offering incentives of market participants to enter into power purchase agreements and forward contracts and negatively impacting new investments. The Forum cautions the Commission and co-legislators about the risks and long-term impact of prolonging or introducing such a measure structurally in the electricity market design, even as a crisis measure, and noted concerns on the potential continued application of existing caps.

Flexibility and Demand Side Response

Regarding the development of flexibility in the electricity system and markets, the forum recalls the importance and urgency of implementing the existing provision from the Clean Energy package, and sharing best practices in that respect. The Forum encourages the ongoing development of the new network code on demand response, and stresses the role of the Trading Committee and the required involvement of stakeholders in developing the network code. Finally, short and long-term system flexibility needs should be fully part of grid planning and system optimization.

Looking ahead: system readiness for net-zero

The Forum recognizes the significant preparatory work by all parties to prepare the amendments to the Grid Connection Codes and calls on ACER and the Commission to take this work forward without delay. The Forum acknowledges the changing technical needs of the electricity grid, increasing system integration and the need for further work on this.

Energy Community

The Forum acknowledges the great strides taken by the Energy Community countries and TSOs to further integrate with the European electricity market and encourages them to continue with the necessary market reforms. In particular, the Forum commends the impressive work to keep the Cisinski and Moldovan electricity systems functioning at all times following last year’s emergency synchronization. The Forum encourages all parties to continue their work on agreeing transparent, non-discriminatory and harmonised rules for trade.
Outline

• Regulatory cooperation in Europe
• European experience with Regulatory Fora
  • Voluntary regulatory cooperation delivering benefits to consumers
  • Institutionalising regulatory cooperation: ACER
Benefits from electricity market integration in the EU

Estimated gross social welfare benefits from various actions intended to increase EU market integration (€bn/year)

Source: ACER
Delivering benefits to European consumers

Improving the efficiency in the use of the interconnection capacity in the day-ahead timeframe through market coupling

2013

2022

Efficiency in the use of cross-zonal capacity in the day-ahead market

Estimated Annual Benefits

€ 1 billion

Source: ACER/CEER MMR 2020

EU Regulation on Capacity Allocation and Congestion Management
Without market coupling, electricity might move in the “wrong” direction …

Percentage of hours with net day-ahead nominations against price differentials per border 2012-2013 (%)
Welfare losses from the inefficient use of cross-border capacity

Estimated social welfare gains still to be obtained from further extending day-ahead market coupling per border (€m)

- 2012-2013 ≈ € 300-350 million
- 2018-2019 ≈ € 150-180 million
Benefits from cross-border trading at times of high and volatile prices

Estimated monthly welfare benefits from cross-border electricity trade in 2021 (€bn)

Source: ACER’s Final Assessment of the EU Wholesale Electricity Market design, April 2022, Figure 11
Outline

• Regulatory cooperation in Europe
• European experience with Regulatory Fora
• Voluntary regulatory cooperation delivering benefits to consumers
• Institutionalising regulatory cooperation: ACER
The 2005-2006 EC Sector Inquiry
Main findings

- Structural conflicts of interest: a systemic conflict of interest caused by insufficient unbundling
- Persistent gaps in the regulatory environment, particularly for cross border issues
- A chronic lack of liquidity, both in electricity and gas wholesale markets
- A general lack of transparency in market operations

Enhanced powers for independent national energy regulators
Reinforced coordination between national energy regulators
Substantially enhanced consistency of regulation in cross-border issues
Reinforced cooperation between Transmission System Operators
The establishment of ACER

• The identified shortcomings in regulatory consistency and cooperation across the EU led to the establishment of the (European Union) Agency for the Cooperation of Energy Regulators (ACER)

• ACER initial mission was “to assist” the National Regulatory Authorities (NRAs) in exercising, at Union level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action”

• ACER was established not as a EU Regulator (for wholesale markets and “horizontal” networks), but as a body promoting the cooperation of national regulators
## ACER Mission over time

<table>
<thead>
<tr>
<th>Under the THIRD PACKAGE</th>
<th>Under the CLEAN ENERGY PACKAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>To assist the National Regulatory Authorities (NRAs) in exercising, at Union level, the regulatory tasks performed in the Member States and, where necessary, to <strong>coordinate</strong> their action</td>
<td>To assist the National Regulatory Authorities (NRAs) in exercising, at Union level, the regulatory tasks performed in the Member States and, where necessary, to <strong>coordinate</strong> their action</td>
</tr>
<tr>
<td></td>
<td>To <strong>mediate and settle disagreements</strong> between NRAs</td>
</tr>
<tr>
<td></td>
<td>To <strong>contribute</strong> to the establishment of <strong>high-quality common regulatory and supervisory practices</strong>, thus contributing to the consistent, efficient and effective application of Union legal acts in order to achieve the Union’s climate and energy goals</td>
</tr>
</tbody>
</table>
ACER Governance

Administrative Board (AB)

Board of Regulators (BoR) (all national regulators)

Director

Board of Appeal (BoA)

Regulatory decision making bodies
Questions for discussion
Questions for discussion

• What model of power system connectivity (e.g. exchange of best practices, bilateral trading, market integration) are you aiming for in your region?

• What are the main benefits you are expecting from regional power system connectivity?

• What are the main barriers in developing power system connectivity in your region?

• What role regulatory cooperation at regional level might play in promoting regional power system connectivity?

• What is the current state of regulatory cooperation in your region and which results has it achieved?
Thank you for your attention!
### The Internal Electricity Market in Europe

The governance of the Internal electricity Market: the hierarchy of norms

<table>
<thead>
<tr>
<th>Type of Act</th>
<th>Adoption Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directives (requiring national transposition) and Regulations (directly applicable in all Member States) (of the European Parliament and the Council)</td>
<td>Normal legislative process: proposal by the European Commission, adoption by the co-legislators (the European Parliament &amp; the Council)</td>
</tr>
<tr>
<td>Network Codes and Commission Guidelines</td>
<td>“Comitology” process involving Member States</td>
</tr>
<tr>
<td>EU-wide Terms and Conditions or Methodologies (for the implementation of Guidelines)</td>
<td>By ACER</td>
</tr>
<tr>
<td>Regional Terms and Conditions or Methodologies (for the implementation of Guidelines)</td>
<td>By all relevant National Regulatory Authorities (NRAs) or by ACER if NRAs fail to agree of upon their joint proposal</td>
</tr>
</tbody>
</table>
ACER Individual Decisions under the Third Package

ACER’s Individual Decisions

If:
- The concerned NRAs fail to agree
- Upon request of the concerned NRAs

Decisions on Terms and Conditions for Access to and Operational Security of Cross-border Infrastructure

Decisions on TPA/Unbundling Exemptions

Decision on “Terms and Conditions or Methodologies” for the implementation of the electricity (CACM, FCA, EB, SO) Guidelines

Decision on Cross-border Cost Allocation for Projects of Common Interest (TEN-E Regulation)

Decision on Cross-border Cost Allocation (Gas SoS Regulation)
Adoption of EU-wide Terms and Conditions or Methodologies for the implementation of existing electricity Guidelines

Network Codes under the Third Energy Package
- ACER decides only if NRA fail to agree or upon their joint proposal

Clean Energy Package
- ACER directly decides
### NRAs’ and ACER’s decisions in the Clean Energy Package

<table>
<thead>
<tr>
<th>ACER decides on:</th>
<th>if provided in ordinary EU legislation; in existing NCs/GLs and their later revisions or in new NCs/GLs adopted as implementing acts</th>
<th>If provided in new NCs/GLs adopted as delegated acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU-wide Terms and Conditions or Methodologies</td>
<td>Always</td>
<td>- If NRAs fail to agree (see Art 6(4) Reg 2019/942)</td>
</tr>
</tbody>
</table>
| Regional Terms and Conditions or Methodologies                                  | - If NRAs fail to agree  
  - Upon NRAs’ request  
  - If Dir or BoR so require in case of wider impact | - If NRAs fail to agree (see Art 6(4) Reg 2019/942)  
  - If Dir or BoR so require in case of wider impact |
| Regulatory issues having effect on cross-border trade or cross-border system security | - If NRAs fail to agree  
  - Upon NRAs’ request | - Upon a request of 60% of the concerned NRAs (1 NRA if only 2 are concerned) |
| CBCA Decisions (PCI and Gas SoS);  
  BZ review methodology                                                             | - If NRAs fail to agree  
  - Upon NRAs’ request | - If NRAs fail to agree  
  - Upon NRAs’ request |
The role of the Board of Regulators in ACER decision-making under the Third Package

<table>
<thead>
<tr>
<th>Type of Act /Activity</th>
<th>Proposal</th>
<th>Involvement of the BoR</th>
<th>Adoption</th>
<th>Review by the BoA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opinions and Recommendations (ex art. 5 to 9 Reg. 713/2009)</td>
<td>Director</td>
<td>Formal Opinion</td>
<td>Director</td>
<td>No</td>
</tr>
<tr>
<td>Decisions (ex art. 8 and 9 Reg. 713/2009)</td>
<td>Director</td>
<td>Formal Opinion</td>
<td>Director</td>
<td>Yes</td>
</tr>
<tr>
<td>REMIT</td>
<td>Director</td>
<td>Consulted</td>
<td>Director</td>
<td>No</td>
</tr>
<tr>
<td>Opinions on Regional PCI Lists</td>
<td>Director</td>
<td>Formal Opinion</td>
<td>Director</td>
<td>No</td>
</tr>
<tr>
<td>CBCA Decisions</td>
<td>Director</td>
<td>*</td>
<td>Director</td>
<td>Yes</td>
</tr>
<tr>
<td>Other Activities</td>
<td>Director</td>
<td>*</td>
<td>Director</td>
<td>No</td>
</tr>
</tbody>
</table>

* No formal involvement envisaged in the Regulations. Practice established.
The role of the Board of Regulators in ACER decision-making under the Clean Energy Package

<table>
<thead>
<tr>
<th>Type of Act /Activity</th>
<th>Proposal</th>
<th>Involvement of the BoR</th>
<th>Adoption</th>
<th>Review by the BoA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decisions, opinions and Recommendations (ex art 3(1), 4 to 8, 9(1) and (3), 10, 11(c), 13, 15(4), 30 and 43 Reg 2019/942)</td>
<td>Director</td>
<td>Formal Opinion</td>
<td>Director</td>
<td>No</td>
</tr>
<tr>
<td>REMIT</td>
<td>Director</td>
<td>Consulted</td>
<td>Director</td>
<td>No</td>
</tr>
<tr>
<td>Opinions on Regional PCI Lists</td>
<td>Director</td>
<td>Formal Opinion</td>
<td>Director</td>
<td>No</td>
</tr>
<tr>
<td>CBCA Decisions</td>
<td>Director</td>
<td>*</td>
<td>Director</td>
<td>Yes</td>
</tr>
<tr>
<td>Other Activities</td>
<td>Director</td>
<td>*</td>
<td>Director</td>
<td>No</td>
</tr>
</tbody>
</table>

* No formal involvement envisaged in the Regulations. Practice established.
ACER decision making process for acts requiring the BoR’s favourable opinion

- The Director continues to “hold the pen”! …
- … BUT, a more convoluted procedure is now foreseen for the involvement of the BoR
  - The Director drafts the proposal
  - The Director consults the Working Group “sufficiently in advance”
  - The BoR may provide comments and amendments
  - The Director considers amendments, with written reasoning in case of deviation
  - Director may withdraw the proposal, with written reasoning
  - If the BoR does not give its favourable opinion, the Director may revise the text further without the need for justification
  - (Recital: seek the favourable opinion of the BoR on a new or revised draft text at any stage)
- BoR favourable opinion
- Director adopts and publishes the act