



May 2017
AK Position Paper

EU-Energy Package „Clean Energy for All Europeans“: Regulation establishing a European Union Agency for the Cooperation of Energy Regulators (ACER)

About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Rudi Kaske
President

Christoph Klein
Director

Executive Summary

The main responsibilities of ACER are primarily to oversee energy markets (electricity and gas), participate in the development of network codes and coordinate the decisions of national regulators. With this draft regulation, the EU Commission wishes to expand the responsibilities and authority of ACER and hence further strengthen the position of ACER.

Democratic considerations prompt BAK to view outsourcing sovereign responsibilities to decentralised EU agencies very critically. The scope of responsibility for ACER stretches – beyond the principles of separation of powers – from legislation to administration to jurisdiction. Important decisions by ACER are not transparent and are taken away from public view. However, these decisions can have drastic effects on a Member State, as the recent decision by ACER to divide the common German-Austrian bidding zone shows. Therefore BAK advocates not to expand the responsibilities and authority of the agency, but rather to make its organisational structure, responsibilities and procedures more transparent and more democratic. There is no doubt that close cooperation between European electricity network operators is essential due to the interconnectivity of electricity networks. However, from a democratic point of view, legally binding decisions should not be taken by decentralised agencies, but by administrative authorities.

The AK's position in detail

Article 2: Type of acts of the Agency

ACER will be able to give opinions and recommendations not only to the transmission system operators (TSO), but also in the future to new organisations – such as the regional operational centres (ROC) and the nominated electricity market operators (NEMOs). In this context, BAK refers to its statements in BAK's position paper on the planned EU Regulation on risk-preparedness in the electricity sector of May 2017, which highlights the issues of non-transparent decision-making powers in connection with the creation of new decision-making levels (such as ROCs). It remains unclear whether ACER could ultimately become responsible for decisions such as load shedding in the case of supply congestion – e.g. because of extreme weather conditions. In BAK's opinion, such far-reaching decisions should be taken by an administrative authority and not by decentralised EU agencies.

Article 5, paragraph 2: Development and implementation of network codes and guidelines

Network codes regulate issues related to the market and technology (including connection to the grid, generating capacity, congestion management) with the aim of promoting cross-border networks and market integration in electricity and gas through harmonised rules. These network codes have a direct and immediate impact in Member States and at times have a significant impact on Member States and on individual market participants (electricity genera-

tors, network operators or consumers). For example, the current decision of ACER to divide the common German-Austrian bidding zone is based on the "Network Code for Capacity Allocation and Congestion Management" (CACM). ACER is already playing a major role – in cooperation with the European Network of Transmission System Operators for Electricity (ENTSO-E) and the European Network of Transmission System Operators for Gas (ENTSO-G) – in developing these network codes. However, the process itself lacks transparency because of the highly complex technical issues. In the future, ACER will be granted more authority for the preparation and final presentation of network codes (including the power to decide over the algorithms and methodology for implementation of the network codes). BAK is against this expansion of authority, since this would further strengthen the questionable (from a democratic point of view) role of ACER. This would mean it would scarcely be possible to monitor the process flows and decision-making processes from outside. Instead, it should be ensured that the competent administrative authorities have sufficient expertise to issue network codes so that ultimately they can also exercise control over those parties subject to such standards.

Article 5, paragraph 3: Bidding zones

In the context of the definition of bidding zones, in the future ACER will be given the opportunity to require modification of methods and assumptions used by transmission system operators

in the bidding zone review. BAK rejects the expansion of the scope of responsibility of ACER. Specifically, the assumptions with which ACER justified the division of the common German-Austrian bidding zone were criticised by experts as being outdated and not objective.

Article 6: Tasks of the Agency as regards the national regulatory authorities

If national regulatory authorities cannot agree on regulatory questions which fall within their scope of responsibility, but which have a cross-border impact, ACER is to be given the authority to decide on this regulatory question in the future. Since national regulatory questions affect almost all aspects of the energy supply and therefore changes can have an appreciable impact on market participants as well as on the security of supply, BAK rejects this proposed transfer of authority to ACER. In any event, a careful investigation of the possible consequences of transferring this authority should be undertaken beforehand.

Should you have any further questions
please do not hesitate to contact

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