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COLLABORATION IN OVERSIGHT OF THE EU MARKET FOR THE WHOLESALE ENERGY PRODUCTS: SUPRANATIONAL PERSPECTIVE

Description of the problem. Long trend for liberalization of the energy markets was invoked by the efficiency of the price equilibrium found by a string of economic studies in the second half of XX century, which advocated decentralized price discovery with neutral rule-setting authority. The design of market for each energy product established, prior to XXI century, relatively rigid borders of such market that incentivized trading arbitrage and promoted hedging through various products without falling under the oversight of the market position on the cumulative basis. With more recent increase in the flexibility of technology for storage of the natural gas, LNG and electricity, interchangeability of some products invoked the legal and economic notion of the comprehensive oversight of the competition on the wholesale energy markets to prevent monopolization of the key infrastructure capacities or product hoarding to manipulate the price.

Interplay and overlap of the competence between the general competition watchdog, energy regulator and the financial market authority want optimization of the oversight to streamline compliance by the market participants and exclude regulatory arbitrage.

Literature review. The term “wholesale energy product” was introduced in 2010s [1] to guarantee holistic competition oversight and fair resolution of the trade on the markets. The wholesale energy product plays on physical and financial side. This division of the energy market into physical and financial sectors has resulted in overlapping and concurrent responsibilities among various national regulatory authorities.

On the physical deliveries side, a competition issue is caused by the limited capacity of the infrastructure, which also gave rise to earlier concept of ‘natural monopoly’ that is, the concentration of the market power that is difficult to avoid and, therefore, the functions and activities must be subject to heavier regulations and culminated in the ‘unbundling’ of the vertically integrated companies, often owned or directly authorized by the state to run one or more energy markets. For example, Naftogaz of Ukraine, established in 1999 [2],

substituted whole sector, currently represented by several industries due to market de-regulation and the unbundling of links in the supply chain of the value added. On the other extreme, in 2022, on the wave of market disruptions on the natural gas market caused by Russia, the EU established a solidarity mechanism to include more rigid administrative thresholds that ensure the security of supply rather than rely on earlier margins established as a result of statistical models by the private sector market operators [3].

On the financial side, wholesale energy product or WEP ensures swift settlements, resolving an issue encountered in 2008 credit default swaps and mortgage-backed securities, where price volatility short circuited the liquidity and spurred a number of insolvencies in domino effect. Financial side, therefore, uses its own institutions to keep the settlement risks away from the physicality of infrastructure and concentration of the non-payment risks on the fraudulent or ‘too big to fail’ company that must be rescued by the public money. In Naftogaz example, the government of Ukraine injected equity a number of times and even passed several statutes to unravel the non-payment knots [4]. As of 2024, WEP extends to physical contracts on delivery, transmission and distribution of natural gas, LNG and electricity [5; 6] while the consultations are ongoing with respect to extending it to hydrogen and emission allowances. Some of the wholesale energy markets are planned for marginalization (coal, diesel, fuel oil) or restriction (petroleum, kerosene), while others tend to become more important factor in the energy balance, prompting, thus, stricter oversight – for example, biomass, biomethane, ethanol. Ukraine and most of the EU27 member states have had sector-specific energy regulation and oversight, while WEP concept has been demonstrating that competition laws are interlinked for energy markets and financial markets. Energy market authorities, on one hand, and financial market authorities, on the other hand, play a significant role in market oversight: (a) over WEP (physically delivered) and their settlements and (b) on the financial instruments [7], which often are “look alike” of physically delivered WEP.

The EU has established a sectoral cooperation in order to achieve market transparency, and their internal organization had become not only functional, but also sectoral, horizontal and transverse. The EU level co-operation on EU wholesale energy market and financial derivatives trading starts with the EU institutions, namely, European Competition Network (ECN) [8], Agency for Cooperation of Energy Regulators (ACER) [9] and European Securities Markets Authority (ESMA) [10] that regulate the EU wholesale energy market and financial derivatives trading by enforcing the rules established in the European Union's Regulation on wholesale energy market integrity and transparency (REMIT) [1], [5] and the European Market Infrastructure Regulation (EMIR) [11].

We do not look in this article, at other, non-EU cooperation matters between the EU27, which has been developing. For example, only in the energy oversight cooperation, the Council of European Energy Regulators (CEER) [12] or the Energy Regulators Regional Association (ERRA) [13] as well as the Energy Community Regulatory Board (ECRB) [14] and cooperation with the EFTA Surveillance Authority [15]; neither we look at memorandum of understanding with the Federal Energy Regulatory Commission of the United States of America [16].

In the competition area, ECN consists only of 27 competition authorities within the European Union and the Directorate General Competition of the European Commission, providing a platform for discussion and cooperation as well as a tool to ensure an effective and consistent application of EU competition rules. However, it does not include platforms for cooperation with EEA and EFTA; nor this article focuses on the foregoing nor on dialogue outside the EU promoted by the International Competition Network (ICN), which amplifies an effort to approximate the competition policy principles across the participating jurisdictions, countries, regions and continents (currently, the membership consists of 141 competition authorities from 129 jurisdictions) [17].

The securities market authorities cooperate with each other via international public law organization with special status authorized by the statute of Quebec, International Organization of Securities Commissions (IOSCO) [18] that adopted formal instrument for consultations and exchanges of information [19] as well as objectives and principles for regulatory policy on the capital markets [20] followed by the methodology to assess the implementation of said principles and objectives [21]. To reiterate, cooperation beyond the EU is not in the focus of this study; we also do not look at the communication and collaboration between the EU agencies and the market participants – consumers,

traders and trade organizers / trade platform operators, which also take place in the EU [22].

Goal and objectives. The article focuses on the overview and analysis of the practices for cooperation between the EU agencies responsible for competition on the wholesale energy market and trends to optimize the administrative burden of compliance by the market participants in the Single market and European Economic Area (EEA). The objectives include overview of the bilateral and trilateral areas for cooperation; research of the limits for independent decision-making as well as of the tradeoffs for separation of the oversight over energy pricing, financial risks and general competition as a part of more general doctrine of separating rule-setting function from inquisitory and adjudicating functions in the governance.

Findings. To ensure the effective implementation of EU regulations on the wholesale energy market and financial derivatives trading, REMIT directly refers to cooperation between different authorities. Article 1(3) of REMIT states various regulatory and financial authorities, including the ACER and ESMA as well as national energy regulators, national securities regulators and national competition authorities, should work together to ensure a consistent approach to enforcing rules related to financial derivatives and wholesale energy products [1]. The different authorities must collaborate to enforce rules related to financial derivatives and energy products; moreover, REMIT2 added this year that exchange of relevant “information and data on a regular, if possible, quarterly, basis” [5] must take place with respect to the *potential* breaches of the Market Abuse Regulation [23] and Market Abuse Directive [24] as far as WEPs are concerned. REMIT2 and Clean Energy Package oblige recently established ACER's Administrative Board to allocate the resources necessary, in particular, to such collaboration (Article 1(4)) [5; 9].

Based on this principle in the Regulation, the EU second and third level *acquis* provide a legal foundation for these authorities to exchange information in order to monitor the market and collect data efficiently. However, even though the regulations emphasize the need for a process of consultation and cooperation between ACER and ESMA (or national regulatory and competition authorities for that matter), they do not establish boundary-spanning institutional interaction or protocols for consultations, cooperation and exchange of information mechanisms.

Therefore, Memorandum of Understanding (MoU) between ACER and ESMA had been entered into to give certainty and predictability, for the competent authorities as well as market participants, of enhanced inter-agency cooperation at EU level that was mandated by REMIT. The MoU

outlined the scope and operational practicalities of each agency in its communication forms, joint institutions and boundaries towards each other.

In this function ACER, as the EU umbrella organization over national regulatory authorities of the Member States (NRAs), takes the lead in fostering cooperation between NRAs and financial market authorities (FMAs) in the EU and other Member States. That is, ACER plays no role in interaction between NRA and FMA in the same country, for example, Germany or Belgium, but it is a key channel for German NRA to contact Belgian FMA, or address enquiry by Belgian NRA to German FMA.

Article 10 of REMIT foresees that ACER must establish a mechanism to share information it receives with NRAs and FMAs as well as national competition authorities (NCAs), ESMA and other relevant authorities.

To fulfill this purpose, ARIS (ACER REMIT Information System) is designed as an IT system to collect and share data with NRAs and other authorities like ESMA and to monitor trading activities in wholesale energy products to detect and prevent market abuse in the forms of market manipulation and insider trading. Under Article 10(2) of REMIT, ACER is obliged to give access to this mechanism to the authorities that have established systems enabling ACER to meet operational reliability requirements under Article 12 of REMIT. These requirements are for ensuring confidentiality, integrity and protection of the information received and prevent any misuse of, and unauthorized access to the information maintained in the IT system. As a result of this mechanism, inter-agency cooperation in the exchange of information for monitoring the wholesale energy market and financial derivatives trading has become possible at EU level.

ESMA and ACER entered into the Memorandum of Understanding (MoU) facilitating inter-agency cooperation at the EU level; the first draft was signed between the agencies in July 2013, two years after REMIT, then it was updated on 6 March 2023 [25]. Between the two versions, ACER and ESMA launched the idea of a joint task force and highlighted possible areas of cooperation - in October 2022, in the context of the energy crisis following Russia's offensive in Ukraine and the countries supporting it. Not only ESMA and ACER offered to enhance an effort to strengthen oversight of energy and energy derivative markets, but their initiative was reinforced by the Market Correction Mechanism (MCM) Regulation [26]. The MoU concerns the consultation and cooperation regarding their statutory responsibilities in relation to EU wholesale energy markets and financial derivative trading. The purpose of the MoU is to strengthen the collaboration between both agencies in the con-

text of energy crisis; it covers coordinated and consistent approach to market abuse framework under MAR and REMIT, which, as mentioned above, obliges cooperation between ACER and ESMA. Moreover, both MAR and REMIT mandate ACER's cooperation with the competition authority, however, the MoU is bilateral, and not trilateral. This format speaks of ACER preference in implementation of REMIT and MAR: the agency chose flexibility of *dialogue* over the consensus in *polylogue*, ACER gave priority to speed and efficacy of direct channels with ESMA over comprehensiveness and efficiency of trilateral or multilateral web of connections and reconciliations.

MoU signed in 2023 encompasses the three main forms of collaboration: consultation, cooperation and exchange of information between ACER and ESMA. The document defined the scope and terms for the implementation in the context of increasing internationalization, harmonization and interdependence of the EU wholesale energy market, so that ACER and ESMA needed an ability to fulfill their tasks in a consistent and coherent manner as prescribed originally by REMIT back in 2011, but expanded over the time and amended post-MoU, in 2024 REMIT2. Moreover, as commodity derivative trading, which may be either physically or financially settled, and commodity trading are used together on wholesale energy markets, the MoU is also important for the uniform application of rules regarding insider dealing, unlawful disclosure of inside information, market manipulation and attempted market manipulation at EU level. At the same time, the MoU leaves a place for possibilities to enhance cooperation between ACER and ESMA in case of need and future changes in the evolving regulatory environment and consult with each other in the preparation of guidelines and recommendations relevant to their respective mandates, in order to ensure that the specificities of the financial and energy sectors are fully taken into account.

The MoU between ACER and ESMA is publicly available and consists of four chapters, which is a refreshing practice and transparency and depth in comparison to publicly available MoUs entered by Ukrainian authorities [26], the memoranda involving them have not been made public, as at this date [27], [28], [29]. The document sets a framework for cooperation in the following areas:

(a) information sharing: ACER and ESMA will exchange information on regulatory developments, changes on the market, and data relevant to their respective areas of responsibility;

(b) joint activities: The agencies will collaborate on joint projects, studies, and initiatives related to wholesale energy and financial markets by establishing a joint task force;

(c) technical assistance: if an agency requests an assistance, the requested party will provide technical assistance and support within the framework specified under the MoU.

Chapter 1 of the MoU sets out the general principles and scope. The purpose of the MoU is to establish a general framework for consultation and cooperation between the two agencies to facilitate the fulfillment of their legal responsibilities. In the section on the scope of cooperation, it is stated that cooperation is aimed to be achieved through (a) on-going consultation, (b) mutual exchange of information, (c) participation in working groups and/or task forces meetings and (d) written exchange of non-public (confidential) information. Article 2 of the MoU reiterates the aim with the focus on the wholesale energy markets including both spot and derivative energy market. It, therefore, emphasizes its subordinated nature relative to other legislation in effect and restates that no prejudice to the existing powers, functions or duties neither of ACER nor of ESMA will be affected.

MoU's Chapter 2 determines the practicalities of the cooperation and coordination between the agencies: firstly, the importance of close communication and consultation regarding the wholesale energy market between agencies at staff level are recognized. The circumstances, where common regulatory issues may arise are listed without limitation of the MoU scope, in Article 3. This non-exhaustive nature of the common interest provides an argument of the forward-looking nature of the memo rather than pure codification or rationalization of the minimum mandate under the REMIT and MAR, a practice to be learnt from by the aspiring candidate to the EU membership, such as Ukraine and its authorities. The circumstances that give rise to the common action under the agencies' regulatory tasks include control of market abuse, product intervention measures, position management powers [25]. Other substantive areas of cooperation pursuant to MoU, Article 3, include the areas of cooperation agencies' operation of Market Correction Mechanism, indices and LNG price assessment and benchmark as well as other general regulatory oversight tasks on the EU wholesale market. On the technical execution level, Article 3 mentions data collection, technical advice and recommendation to European Commission as well as the *efficiency and effectiveness* of the market monitoring [25]. Article 4 restates the agencies' mandates under Article 16(3)(b) of REMIT and Article 25(3) of MAR and proceeds to specify, in detail, communication of information to facilitate a coordinated and consistent approach to market abuse, including the use of templates under implementing regulation on the MAR-related data

and personnel exchanges [30], which established technical standards not only for templates, but also forms and a joint electronic system. In case of a problem with the electronic system for communication, agencies' functional email addresses of agencies are identified as back-up communication channels. According to Article 7 of the MoU, on top of the Implementing Regulation, both agencies will establish efficient and effective communication channels for the proper compliance with the objectives. To implement this yet another communications channel, ACER and ESMA must set email addresses and lists of liaison officers for the purpose of cooperation and exchange of information.

Yet closer collaboration, provided in the MoU when restated in 2023, is a joint Task Force of the ACER and ESMA with a view of facilitating technical cooperation between ACER and ESMA on data and knowledge, promoting and developing cooperation on market monitoring and investigation, contributing to recommendation to EU Commission, contributing to the consistent application of the prohibition of market abuse, of the obligation of transaction reporting and of related requirements for market participants. Governance of the joint Task Force is set out in Article 6 of the MoU and includes undertaking to meet at least twice a year and share the leadership through co-chairing. Both ACER and ESMA agreed to make all practicable efforts to provide with "any information likely to be of assistance" [25] to the envisaged joint Task Force (*ESMA ACER Task Force* or 'EATF') that will carry out their relevant statutory responsibilities.

Chapter 3 of the MoU is dedicated to the requests for assistance, which is a specific and an important way of cooperation between the energy and the securities market authorities. Article 8 sets out minimum requirements as to the form (in writing) and the substance of the request for information: it must contain description of the requested assistance, general description of the subject matter, the time period for the requested assistance. Article 9 continues the topic with the sets of principles for execution of requests for assistance: reasonable effort standard, purpose-oriented choice of means by the requested party, mutual consultation on the typology, assistance by the requesting party. Recognizing sensitivity of the data shared, the MoU dedicates Articles 10-12 to restrictions on the use of information received by ESMA from ACER and *vice versa*. While the information obtained under the MoU cannot be used for enforcement without prior consent of the other party, any and all data can be freely used for the purposes of other statutory responsibilities. All information obtained by agencies remain, however, subject to the EU data protection and professional secrecy rules.

Final Chapter 4 of the MoU contains closing provisions, which not only play technical role but also contain important substantive rules – they require publication of the MoU as well as mandatory review of the MoU's provisions at the regular intervals to be agreed from time to time. Such reviews may, obviously, result in amendments or alterations consented by both parties. MoU, according to Article 15, is concluded for an indefinite time and, therefore, can be terminated by any party with or without cause subject only to the 30 days' prior written notice.

The cooperation between ACER and national authorities (ACER members) and other competent authorities in the member states is subordinated to the ACER's task of ensuring proper functioning of the integrated European market in gas and electricity as well as the links of the EU market with third countries. ACER role in monitoring wholesale energy markets to detect and deter market abuse requires close cooperation with national regulatory authorities, since NRAs ensure compliance and enforcement of the reporting obligation by the national market participants, while ACER collects and processes the information filed through reporting infrastructure. Besides, the cooperation between NRAs and ACER is critical in achieving energy market objectives for each Member-State. Besides, NRAs play a key role in implements relevant EU regulatory policy both as a part of ACER management bodies as well as for relevant European country outside of small policy areas where ACER has direct competence throughout the Single Market. In the latter context, ACER supports national NRAs in the exercise of their regulatory functions at European level and coordinates their contributions.

In this framework, ACER and national competition authorities work together to ensure the effective implementation and enforcement of EU energy market regulations. They cooperate in monitoring and assessing the functioning of European wholesale energy markets and market behavior by sharing information and data to analyze market developments and identify potential issues or barriers to competition, market integrity and transparency. Breaches of REMIT may constitute or lead to violation of the competition rules and be subject to the oversight from MAR perspective. ACER plays an important coordinating role in assisting competition agencies in performing their regulatory function at European Energy Market. This collaboration helps to ensure that the energy markets operate in a fair, transparent and competitive manner, which benefits consumers. At the same time, cooperation between ACER and the competition authorities helps avoiding duplication of their activities.

The cooperation mechanisms between ACER and NRAs are structured by a **multilateral Memorandum of Understanding** (MMoU), which serves to

establish a shared views of the nature and conditions of oversight of the wholesale energy markets under Articles 7 and 16 of REMIT and harmonization of that parallel effort by multiple actors. Specifically, the MMoU outlines the scope and terms of cooperation and between ACER and NRAs, aimed at ensuring effective monitoring and regulation of the whole sale energy market. Along with the general objectives listed above, the MMoU lays out specific procedures for handling suspected breaches of REMIT: (a) notification of suspected breaches, (b) provision of information to the ACER, (c) initiation of investigations into possible breaches, and (d) the coordination of investigatory groups in cases where the ACER determines that a possible breach has had or is having cross-border impact [31]. The MMoU was drawn up in 2020 to address the needs that accumulated over almost a decade of REMIT application.

The MMoU sets a shape for the cooperation mechanisms between ACER and NRAs in their shared mission of upholding EU *acquis* in the wholesale energy markets, including key piece - REMIT and implementing regulations. Similar to the MoU between ACER and ESMA, the MMoU of ACER and NRAs is not designed to replace any current legislation, nor limit, broaden, or modify the powers, functions, or responsibilities of the parties involved. The MMoU uses status quo in established distribution of powers and responsibilities but, at the same time, (a) facilitate efficient communication between the parties in carrying out their respective duties, through periodic meetings between market monitoring experts of ACER and NRAs as well as other channels; (b) promote information exchange between them on general principles, best practices, and new developments of mutual interest in this field, including the latest trends in trading conduct, experiences from disciplinary actions as well as developments in the market rules (MMoU, Article 2).

Under the Article 3, ACER may request information and clarification from the NRAs regarding market data. Similarly, market monitoring experts from NRAs may request information and clarification from the ACER about its understanding of the application of REMIT. The scope on information to be provided is limited only by the mandatory restrictions under applicable Union and national law. That is, any information can be provided, unless the law established explicit prohibition to do so.

Articles 4 and 5 of MMoU establish the procedures for cooperation and the rules governing the confidentiality of exchanged information, respectively. Specifically, Article 4 requires appointment of liaison officers and outlines the process for their nomination as well as establishing communication channels between the parties involved. Article 5, in its turn, laid down the professional secrecy rules

that mandate the use of non-public information shared between the parties strictly within respective powers under the REMIT framework and always subject to confidentiality regime.

MMoU primarily deals, in accordance with the REMIT mandate, with the mechanisms related to detection and prevention of the market manipulation and trading based on inside information, although further amendments can be made by the parties to the MMoU as may be necessary. Interestingly, the parties did not limit themselves to ACER Regulation [9] and REMIT [1], [5] but proceeded with creation and institutionalization of the practices on the informal basis rather than sticking to the black letter of law.

ACER Guidance. Article 16(1) of REMIT requires the Agency to provide non-binding guidance on the application of REMIT's definitions and ensure that NRAs carry out their tasks in a coordinated and consistent way. The purpose of this guidance is to assist NRAs in achieving the necessary coordination and consistency in their activities under REMIT. The guidance is not legally binding, is published for transparency purposes only, and is updated periodically to reflect changing market conditions and the experience gained by the ACER and NRAs in the implementation and application of REMIT.

As part of the foreseen guidance task of ACER, **the Market Monitoring Handbook (MMH)** is a practical tool developed by ACER and NRAs for internal purposes to further elaborate on the general principles set out in the MoU, and to improve the coordination and consistency of monitoring and case handling under REMIT. The Handbook outlines the market monitoring processes and structures within the ACER's Market Monitoring Department, and clarifies the roles of entities with monitoring powers, including ACER and NRAs. The Market Monitoring Handbook is intended for internal use among concerned parties only and complements the MoUs signed between the ACER and different supervisory entities, particularly NRAs. The MMH guides the case handling, particularly those enquiries into the trades that involve interactions between ACER and NRAs, such as the allocation of cases with the cross-border elements. It also defines principles and channels for efficient cooperation between ACER and NRAs and can be revised to better serve its purpose of providing a practical framework for cooperation and consultation between the Agency and NRAs, without prejudice, at the same time, to the provisions set out by EU and national legislation.

Two important IT tools for the cooperation of ACER and NRAs in monitoring European energy market and combating its abuse are the **Notification Platform** and the **Case Management Tool** developed to enhance cooperation between ACER

and NRAs by providing them with the necessary means to share information, allocate cases, and work together more effectively towards their common goal of ensuring a transparent and fair energy market in Europe. The Notification Platform and Case Management Tool can be described as `translated` IT-code versions of the MMoU and the MMH (Market Monitoring Handbook).

The Notification Platform is a designated single-entry point for suspicious transaction reports, making it easier for NRAs to share information and coordinate their efforts. The NP has technical capacity to ensure that all relevant information is received and processed by the appropriate authorities, improving the efficiency and effectiveness of market monitoring.

The Case Management Tool serves as a centralized communication and workflow management tool for REMIT breach cases. It enables efficient case allocation and tracking, as well as secure storage of all related documents and communication. This facilitates better coordination between ACER and NRAs, effectively splitting and streamlining their administrative process and overall efforts in investigating and resolving market abuse cases.

Policy harmonization groups and committees. Part of the cooperation mechanisms between ACER and NRAs are reflected in the organization of the ACER, which acts in many ways as an association of national regulators based on the ACER directive and the structure of ACER reflective of the mandate. Foremost, its supreme body is a Board of Regulators, comprising each NRA and the executive Director of ACER. Besides the mandate, ACER structure has been agile along the development of the information technologies, involvement of the NRAs and the market, including macroeconomic situation based on the global geopolitical events, such as russian invasion in Ukraine, depletion of the North Sea gas fields, Brexit, commercialization of energy storage and generation from the renewable power sources etc. ACER has therefore established working groups, committees and task forces to facilitate this cooperation [32], including, without limitation the MMoU foundation. The ACER REMIT Committee (ARC) is one example of how cooperation works in practice – it is established under an ACER Director's Decision and composed of representatives of ACER, national regulatory authorities and the European Commission [33]. ARC Chairs and Vice-Chairs are appointed from among senior representatives of the NRAs to prepare and hold the ARC's quarterly meetings. There are three REMIT task forces reporting to the ARC. The structure of these task forces is informal and comprises ad hoc groups, who provide expert support on specific issues; the task forces are initiated by the chairs of the Working Groups in the ARC.

The Working Groups in ARC can be split into classes: those specializing on the market segments and others, dealing with the specific technical function. The market-segment groups are (a) ACER Electricity Working Group or (AEWG), (b) ACER Gas Working Group or (AGWG), and (c) ACER Retail Market Working Group (ARWG). The functional groups are REMIT Information Security Implementation Group (RISIG) and ACER's REMIT Information System NRA User Group (ANUG).

One of the three ARC Task Forces is REMIT Policy Task Force (RP TF) which meets approximately five times a year to summarize its monitoring of the progress by NRAs and assist to NRAs on the implementation of REMIT policies [33]. The other two ARC Task Force are (a) the Market Data Standing Committee and (b) the Market Monitoring Standing Committee. These committees directly reporting to ARC based on their technical expertise.

The Market Data Standing Committee (MD SC) focuses on analyzing REMIT data collected through the data reporting process and improving data quality. As a reminder, that technically includes the infrastructure to report insider information prior to the trades and the post-trading infrastructure that collects information on the transactions concluded to be screened for potential market abuses; it comprehensively comprises three levels of hardware, software and skills: (i) market participants' capacity, (ii) authorized reporting mechanisms and platforms that provide service to the market participants and (iii) the trade repository operated by ACER on the centralized and, potentially, decentralized basis. MD SC meets every three months. By ensuring uniform rules and technical standards on the data, MD SC eliminates the need for a physical presence in the country of trade, saving the costs of the office premises and allowing synergies for operations that now can be run in all 27 Member States from one quarter. It meets on a quarterly basis.

Market Monitoring Standing Committee (MM SC) provides a forum to discuss the application of REMIT to specific cases of market abuse, oversight of wholesale energy markets and coordination of REMIT cases. MM SC, thus, deals with the substance trends demonstrated by the data collected by the ACER through market participant infrastructure. It meets approximately 5 times a year and ensures that no regulatory arbitrage is based on the objective factors.

Market Coupling Project Team (MC PT) is another special committee under ARC focusing on the effective integration of market aggregation data into the data reporting process. MC PT meets for a videoconference every two weeks.

Technical RISIG provides support, advice and coordination on the definition and implementation of ACER's REMIT information security policy.

It meets quarterly and, if requested, conducts ad hoc peer reviews of NRAs' compliance with the relevant policy. Another one, ANUG provides support to the end users of ACER's REMIT Information System (ARIS) and convenes virtual meetings every two months.

AEWG is a large unit, which established the following task forces: Adequacy & Capacity Remuneration Mechanisms TF, Balancing TF, Capacity Allocation and Congestion Management TF, Cybersecurity TF, Forward Capacity Allocation TF, Future Policy & Governance TF, Infrastructure TF and System Operation and Grid Connection TF.

AGWG similarly features a number of task forces: Balancing TF, Capacity Allocation Mechanism TF, Gas Target Model TF, Infrastructure TF, Interoperability TF and Tariffs TF.

Investigatory Groups are significant part of the activities related to coordination in REMIT implementation and enforcement. ACER supports national regulatory authorities (NRAs) to conduct their reviews and investigations of potential REMIT breach cases in a coordinated and consistent manner. ACER's involvement in cases of market abuse is becoming increasingly intensified and more frequent: in 2020-s, the agency interacts more than 500 times annually with REMIT cases, most often by going through documents and processing requests to ensure a coordinated and consistent approach by the NRAs. While the final decision on the enforcement of a REMIT breach rests with the relevant NRAs, ACER facilitates NRAs in the EU to make consistent decisions on those nationally adjudicated cases in a harmonized manner. However, it is worth reminding that since 2018 there of investigatory groups activities has been frequently suspended due to staff shortages.

Large-scale stakeholder meetings. ACER organizes large-scale events for participants from Member States, energy traders and consumers, transmission system organizations and NRAs to enhance interaction and facilitate information exchange. In this context, the Energy Market Integrity and Transparency (EMIT) Forum, held in Ljubljana in September/October every year since 2017, is a platform for promoting fair and competitive energy market; it was held in virtual reality during the pandemic (cf. [34]). During the EMIT Forum, stakeholders can exchange ideas on the implementation of REMIT by discussing recent REMIT cases. Representatives of NRAs present the challenges they face to get the views of other NRAs. The platform allows for the exchange of questions and discussions between NRAs and the Agency to ensure consistency in their understanding and interpretation of REMIT regulations. Ultimately, the goal of the EMIT Forum is to promote harmonization of views and practices related to REMIT among all involved parties.

Similarly to the EMIT Forum, there are two other platforms designed to facilitate the sharing of information among market participants, NRAs and the ACER with the aim of exchanging experiences and discussing topical issues and new developments of mutual interest in relation to wholesale energy market monitoring and enforcement. One is periodic meetings with energy exchange surveillance technical experts called the Market Surveillance Forum (MSF), which is not widely publicized. However, it has a separate stream of documentation to follow – Market Surveillance Programs adopted by NRAs and coordinated by ACER, discussion and communication platforms on the national level in each Member State and in the various cross-border formats of EFTA, Eastern Partnership, Energy Community etc. Another ACER stakeholder symposium is the Energy Trading Enforcement Forum (ETEF) that is used for exchange of views not only with the NRA's enforcers but also with the national financial authorities of the Member States.

Cooperation between Directorate General Energy (DG Energy) and Directorate General (DG Comp). To ensure that the EU's energy market functions properly and is fair and competitive, DG Energy and DG COMP work together in various ways, including a cooperation through information exchange. DG Energy and DG COMP regularly share information on energy market trends, competition concerns, and regulatory developments. By doing so, they can stay informed about developments in the energy sector and coordinate their actions more effectively. Besides mechanical exchange, DG Energy and DG COMP may consult with each other on matters related to the energy market, such as the development of new regulations or the interpretation of existing rules. This helps to ensure consistency and coherence in the EU's energy policy, leading to more predictable market outcomes and greater regulatory certainty.

Joint investigation is another method for DG Energy and DG COMP of working together. Such joint investigations are conducted on the energy market issues, including anti-competitive practices or impermissible state aid. By pooling their resources and expertise, they can carry out more comprehensive and effective investigations, leading to better enforcement of competition law and fairer market outcomes.

Finally, DG Energy and DG COMP coordinate their actions to address issues related to the energy market, such as the enforcement of competition rules or the implementation of state aid measures. By working together, they can ensure that the EU's energy policy is effective and consistent, and that the interests of consumers are protected.

Conclusions. The EU case demonstrates wide variety of the interaction between the regulatory

agencies even on the limited legislative mandate. Of many levels and formats in the international cooperation concerning wholesale energy products, the EU appears to be the most developed. It is far from comprehensive as the national states maintain sovereign autonomy over the energy supplies and infrastructure as a matter of national security. However, the synergies of the common energy policy provide sufficient perks to encourage resources on the harmonization of the regulatory policies.

In the multilateral environment of 27 Member States, all processes in the regulatory mechanisms are subject to coordination and reconciliation, namely, development of the rules, interpretation and application, part of the legal consciousness that deals with the foregoing elements as well as self-evaluation of the past application practices and reassessment of the rules in view of the new circumstances and experiences. First, the authorized bodies do not stop at the letter of law prescription but go further with various normative forms of bilateral and multilateral memoranda of understanding at several levels – between the peers ACER and ESMA, between NRAs and ACER; post-signing interactions provide for liaison officers that handle strategic level enquiries and review of the normative directions. The agencies, however, do not stop at the short MoU blackletter but translate them into a handbook, guidance and the IT tools. These documents require regular consultations, harmonized decision-making (on approval, for example) and administrative processes (e.g., to avoid bottlenecks in the enquiry / case with the cross-border elements).

The institutionalization of communication and inter-institutional communication appears to be the most time-intensive part of the interaction among the authorities involved in oversight of the wholesale energy products and takes permanent form of committees, boards and working groups as well as ad hoc expert missions called task forces or project teams. All the foregoing collaboration platforms convene virtually or in person on a regular and irregular basis with the common agenda. Engagement of the wider circle of stakeholders takes a form of forum (conferences, symposia) that is held annually.

Closer cooperation provides a pooling of resources on the joint task forces (ACER and ESMA, as of 2023) and joint investigations (ACER and NRA) that ensure that, on one hand, neither overlap nor double penalty is imposed for the same violation and, on the other hand, that no unlawful or suspicious market behavior is overlooked.

The cooperation between ACER, ESMA and ECN, DG Energy and DG COMP is critical to ensuring a fair and competitive energy market in the European Union. Through information exchange, joint investigations, consultations, and coordinated actions, they work together to promote energy

security, protect the interests of consumers, and ensure that the EU's energy policy is effective and consistent.

Ramifications for further studies. This article looks into a harmonization of the two-level legal regulatory mechanisms at the wholesale energy market and is one in the series of comparative legal research on the inter-action between the regulatory agencies that also includes a case study of the EU NRAs' interaction with each other on the peer level, as well as research of the lessons and forecast of the inter-agency cooperation in Ukraine for the purposes of the accession to the EU and, until then, coupling of the markets for the wholesale energy products with the Energy Community members, including, first of all, Moldova and the EU Member-State that have border with Ukraine – Romania, Slovakia, Poland as well as countries with direct sea connection – Bulgaria, Turkey, Georgia.

Besides the series, further research may be looking at harmonizing wholesale energy market oversight at the inter-regional level, as outlined in the literature review above. The research could look into the possibility of publishing the insider information, processing the transaction data as well as cooperation in the admission to the market and pooling of resources for the investigations. Cooperation of the financial markets authorities among themselves is another area and their potential merger with the NRAs in energy markets as well as with competent authorities in other industries that use financial instruments to hedge their credit and operational risks.

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Summary

Zahnitko O. P. Collaboration in oversight of the EU market for the wholesale energy products: supranational perspective. – Article.

The article examines the cooperation among regulatory entities in the wholesale energy products' market at the supranational level within the European Union. The authorities involved comprise the Agency for the Cooperation of Energy Regulators (ACER), the European Securities Markets Authority (ESMA), the European Competition Network (ECN), the DG Energy and DG Competition of the European Commission. The study focuses on interactions among themselves and with each other as well as interaction of ACER with national regulatory authorities (NRAs). Cooperation among competent authorities is a key part of a resilience for the regulatory environment, which takes place in various forms. Within the EU legal system, the cooperation is allocated within those elements of the legal regulation mechanism, where the EU executive bodies are engaged: (a) the formulation of normative rules through secondary and tertiary legislation, (b) official and professional interpretation of these norms and (c) official application (implementation), (d) investigation and enforcement, (e) regulatory impact analysis, and, closing the loop, (f) the proposals to the European Commission (through EU agencies) and the European Council (through NRAs) about enactment or amendment primary EU *acquis*. Collaboration among the supranational agencies play critical role of crystallization point for the relevant elements in the mechanism of legal regulation for the relationships on the market for the wholesale energy products. A notable characteristic of the EU level collaboration is the formal institutionalization of most communication channels, which are, however, quite agile and start evolving immediately – in many cases, towards inter-institutional cooperation; the latter, in its turn, also strives to be formalized. The article also examines key acts on inter-institutional cooperation, detailing the forms, goals, subjects, and governance principles involved. The research highlights that significant resources are dedicated to various forms of communication among bodies and their units, particularly in regulatory policy planning and law enforcement assessment, which occur at multiple organizational levels (3-5 levels). A notable form of cooperation that looks promising for application in Ukraine is the pooling of resources from two or more independent regulatory bodies. This involves creating non-linear forms of cooperation, such as 'task force' (*Groupe d'Action*), comprising officers from each of the authorities involved; the task force operates, however, on the fixed assets of one leading entity. These joint task forces are used for pooling resources of ACER and national regulators in investigations and enforcements for REMIT breaches, as well as for information exchange – both between ACER and ESMA and, using other channels of communications – among ACER and NRAs. The scope of application for task forces as well as scope of other forms of resource pooling can be expanded at the EU level; resource pooling and task forces can also be applied to other levels of inter-agency cooperation. This article is part of a series analyzing cooperation among regulators in the wholesale energy products market, along with research papers on cooperation between national regulatory authorities of the EU Member States and on the lessons learnt for cooperation among the wholesale energy regulatory authorities in Ukraine.

Key words: regulatory activities, EU inter-agency cooperation, ACER, ESMA, NRA, task force, wholesale energy markets, wholesale energy products.

Анотація

Загнітко О. П. Співпраця в нагляді за ринком оптових енергетичних продуктів ЄС: наднаціональний аспект. – Стаття.

Стаття розглядає співпрацю суб'єктів регуляторної діяльності на ринку оптових енергетичних продуктів на рівні наднаціональних органів Європейського Союзу – Органу зі співробітництва регуляторів енергії (ACER), Європейського органу з ринків цінних паперів (ESMA), Європейської мережі з конкуренції (ECN), Генеральних директоратів Єврокомісії з енергетики та конкуренції, відповідно, між собою та із національними регуляторами. Співробітництво є частиною стійкого регуляторного клімату й уключає широку низку форм. Як частина правової системи ЄС, вона обіймає місце серед елементів механізму правового регулювання, в яких задіяно орган виконавчої гілки влади ЄС: (а) формування нормативних правил на рівні підзаконних актів, (б) офіційне та професійне тлумачення цих норм й (в) їхнє офіційне правозастосування, (г) притягнення до відповідальності за порушення, (д) аналіз регуляторного впливу та (е) формулювання пропозицій щодо ухвалення правових норм вищого рівня до Єврокомісії та Європейської Ради через, відповідно, агенції ЄС та національні компетентні органи. Співпраця між регуляторними органами відіграє засадничо важливу роль для цих елементів механізму правового регулювання відносин на ринку оптових енергетичних продуктів. Характерною ознакою для співпраці на рівні ЄС є формальна інституціоналізація більшості способів комунікації. Така інституціоналізація, однак, не є сталою, оскільки тут-таки починає адаптуватися до практик і часто демонструє рух до між-інституційної комунікації; остання, своєю чергою, також прагне формального закріплення. Досліджено основні акти про міжінституційну співпрацю, наведено форми співпраці, їхні цілі, предмет та принципи урядування. Наголошено, що найбільше ресурсів приділено різним формам комунікації між органами та їхніми підрозділами в процесі планування регуляторної політики та оцінки правозастосування, які відбуваються на 3–5 організаційних рівнях. Окремою формою, перспективною і для застосування в Україні, є співпраця на засадах об'єднання ресурсів двох чи більше незалежних органів, зокрема, створення «тематичних підрозділів» чи «груп спеціального призначення» (*Task Force, Groupe d'Action*), які мають в своєму складі службових осіб усіх залучених органів, діючи на матеріальній базі одного з них. Такі спільні групи використовують для об'єднання ресурсів ACER та національних регуляторів в дослідженнях та притягнення до відповідальності за порушення REMIT, а також для обміну інформації між ACER та ESMA, та між ACER та національними регуляторами (в цьому випадку, через інші канали комунікації). Сферу застосування тематичних підрозділів та форми об'єднання ресурсів може бути розширено на рівні ЄС, а також перенесено на інші рівні співпраці суб'єктів регуляторної діяльності. Стаття є частиною серії контент-аналізу співпраці між регуляторами ринку оптових енергетичних продуктів, поруч зі статтями, які присвячено співпраці між національними регуляторними органами Держав-членів ЄС, та уроків щодо співпраці для регуляторних органів ринку оптових енергетичних продуктів в Україні.

Ключові слова: регуляторна діяльність, гармонізація, міжвідомча співпраця, ACER, ESMA, національні регуляторні органи, оптові енергетичні продукти, оптові енергетичні ринки.