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SINGLE-LEVEL COOPERATION OF THE NATIONAL AUTHORITIES IN OVERSIGHT OF THE WHOLESALE ENERGY MARKETS

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Zahnitko O. Single-Level Cooperation of the EU Member State's national authorities in oversight of the wholesale energy markets.

The article approaches regulation of the wholesale energy market as a part of coordinated effort to establish single EU-27 energy market. We analyze the forms of the cooperation among the national regulators responsible for competition in the wholesale energy markets; such responsibility is split - between two, three or more regulators. The principle of cooperation dominates in the oversight of the wholesale energy market [over concurrency] and has been institutionalized in the form the memo, statute or code; it had also evolved in the EU *acquis*.

Domestic legal system of a state remains a fundamental framework in the traditional nation-state world order as the domestic regulators (NCA, NRA or SMA), along with domestic authority, get also to vote in the EU authorities. Previous research concentrated on delegation of the sovereign powers to the EU level and, to a lesser extent, on coordination between national and state level in the federal EU Member States. This article, instead, looks at horizontal cooperation on the national level only using the comparative legal method. The national level appears to generate the ideas for the EU level and not *vice versa*, at least, in the analyzed settings of Belgium, France, Germany, the Netherlands, Spain and the United Kingdom. The working arrangements on the information exchange, pooling of resources in the form of task force, investigation crew, joint unit as well as consultations and mutual comments on the policy proposals are common cooperation formats in each of the countries analyzed, often as a formal legislative rule. At the same time, the EU level inter-agency cooperation for the wholesale energy market can boast only memoranda of understanding, quite short. The research also lay prospectives of how Ukrainian government could fit in with its oversight mandate split among the competition authority, financial market authority and energy regulating authority given decision by the European Council on 14-15 December 2023 to open accession negotiations with Ukraine. This publication is third in the planned series of four comparative legal research papers on the inter-action between the regulatory agencies, the first two papers deal with the characterization of the wholesale energy product and wholesale energy market, undertake a content-analysis of the EU-level agencies interactions; the closing fourth part will systematize regulatory policy proposals for the domestic inter-agency cooperation in Ukraine.

Key words: wholesale energy markets, regulatory policy, prevention of manipulation, inter-agency cooperation, national regulatory authority, national competent authorities, financial instruments.

Загнітко О.П. Співпраця національних органів одного рівня з нагляду за оптовими енергетичними ринками в межах країни – члена ЄС.

У статті розглянуто регулювання оптового енергетичного ринку в національній державі як частину скоординованих зусиль щодо створення єдиного енергетичного ринку ЄС-27. Ми ана-

лізуємо форми співпраці між національними органами, відповідальними за захист економічної конкуренції на оптових енергетичних ринках, адже цю компетенцію поділено – між двома, трьома чи більшою кількістю регуляторів. Принцип співпраці в нагляді за оптовим енергетичним ринком домінує (над принципом незалежності регулятора) і його інституційовано у формі меморандуму, закону чи навіть кодифіковано, цей принцип також закладено в міжнародне право на рівні законодавства ЄС.

Національна правова система країни залишається засадничою основою традиційного світового ладу, який побудовано з національних держав, оскільки національні регулятори (енергетичних ринків, фінансових ринків, економічної конкуренції в цілому), окрім компетенції всередині держави, також мають право голосу в органах влади ЄС. Попередні дослідження зосереджувалися на делегуванні суверенітету органам ЄС і, меншою мірою, на координації між федеральним рівнем та рівнем суб'єкта федерації у відповідних державах-членах ЄС. Натомість ця стаття розглядає горизонтальну співпрацю й лише на національному рівні за допомогою порівняльно-правового методу. Вбачаємо вплив співпраці між національними органами однієї держави на генерацію ідей для рівня ЄС, а не навпаки, принаймні стосовно проаналізованих нами Бельгії, Франції, Німеччини, Нідерландів, Іспанії та Сполученого Королівства. Робочі домовленості щодо обміну інформацією, об'єднання ресурсів у формі цільової групи, слідчої групи, спільного підрозділу, а також консультації та взаємні коментарі щодо проєктів політико-правового характеру є універсальними форматами співпраці для кожної з аналізованих країн, часто у формі законодавчої норми. Водночас, міжвідомча співпраця на рівні ЄС для ринків оптових енергетичних продуктів може похвалитися хіба меморандумом про порозуміння, доволі коротким. Наукова розвідка також надає перспективу того, як український уряд міг би виглядати поруч з іншими Державами-членами ЄС, адже в Україні компетенцію нагляду за ринком оптових енергетичних продуктів розподілено між органом з питань загальної економічної конкуренції, органом нагляду за ринками капіталу та органом, що здійснює державний вплив на енергетику – у світлі рішення Європейської Ради від 14-15 грудня 2023 року про початок переговорів з Україною про вступ до ЄС. Ця публікація є третьою в запланованій серії з чотирьох порівняльно-правових розвідок про взаємодію одного рівня між регуляторами ринку оптових енергетичних продуктів. Перша стаття стосувалася юридичної кваліфікації поняття оптового енергетичного продукту та оптового енергетичного ринку, друга є контент-аналізу взаємодії наднаціональних органів ЄС у нагляді за ринками оптових енергетичних продуктів; четверта заключна частина упорядкує пропозиції щодо регуляторної політики з міжвідомчого співробітництва в Україні на національному рівні.

Ключові слова: ринок оптових енергетичних продуктів, регуляторна політика, міжвідомча співпраця, національні органи Держав-членів, фінансові інструменти, попередження маніпулювання.

Introduction to the issue. The EU energy markets are undergoing significant transformation since the Treaty on the Functioning of the European Union (TFEU) was signed in 2007 and its Article 4 offered energy as the area for shared competence of the EU and the Member States [1]. From paternalist sectors of a single country, often vertically integrated, they have been deregulated and unbundled to create competition and offer better service to consumers with less support from the government. Along the way, the externalities of climate change [2], regional and global competition [3, 4, 5] security concerns [6, 7] affected acceleration or deviation from the overall goal of the "energy efficiency first" principle, however, they did not fail to target the same goal of creating the single market for the wholesale energy products in the EU-27 as well as in the closely-knit EEA and the wider neighborhood of the Energy Community Member-States. Large part of the market design enabled, post-TFEU, by the Market Abuse Regulation (MAR) [8] that disallows market abuses through transparency and exchange of information among the competition authorities and supported by the criminal penalties in each Member-State under Market Abuse Directive (MAD) [9]. MAR is supplemented, on the financial side of the trades by Regulation and Directive on markets in the financial instruments - MiFIR [10] and MiFID II [11], respectively, which implement transparency in the pre-trade and after-trade environment through reporting mechanisms, requirement to publish quotes and trades, restrictions on the derivative build-up, operation of the trading venues. Finally, on the physical side of the wholesale energy trades, Regulation on energy market integrity and transparency (REMIT) [12] deal with the spot contracts and those forwards / futures that REMIT carved out from MiFID II: professional arrangers of the trades

are defined, trade reporting obligations and platforms are defined. Traditionally, however, the energy, financial markets and the competition are overseen by three different authorities at the national level and, consequently, in the collective bodies of the EU. Thus, the information, albeit similar or identical under the EU acquis, flow through different channels created by each authority, creating a risk of overlapping, oversight gaps and regulatory arbitrage due to different experience, hardware and software that each national competent authority possess. The problem is exacerbated by the two-level of the EU market oversight under mentioned above Article 4 of TFEU [1].

Research objectives. This article uses the content analysis to summarize domestic cooperation of the national competent authorities in the several EU Member-States and whose mandate involves ensuring transparency and integrity of the competitive wholesale energy market. Complex nature of the wholesale energy market and its structure, in particular, parallel legal infrastructure for the financial and physical side of the wholesale energy products, leads to overlapping obligations of the market participants and concurrent mandates of the regulatory agencies. Therefore, inter-agency cooperation became an important factor in the legal culture of the wholesale energy sector, and we analyzed the exact types and forms of such cooperation as well as synergies achieved. This research paper is one in the series of comparative legal research on the inter-action between the regulatory agencies, other pieces review the legal nature of the wholesale energy market, a content-analysis of the EU-level agencies interactions and policy paper for the potential of the domestic inter-agency cooperation in Ukraine in view of Ukraine's effort to accede TFEU as a Member State of the EU following decision by the European Council on 14-15 December 2023 to open accession negotiations with Ukraine, and the approval by the Council of the Negotiating Framework for the negotiations with Ukraine on 21 June 2024 [13].

Based on the EU market design "packages" for the European energy sector mentioned above that have direct application in the national law Member States have been allocating powers between:

- financial or securities market authorities ("SMAs")
- energy regulators that are referred to in the EU acquis as "NRAs"); and
- national competition authorities ("NCAs").

The findings are structured along the countries analyzed in the alphabetic order and comprise sections on Belgium, France, Germany, the Netherlands, Spain. Aside EU-27, we have also included in the research a section on the United Kingdom of Great Britain and Northern Ireland for its similarity to the Ukraine's situation (a) it has free trade area with the EU and the UK laws have to be harmonized with the EU acquis as a part of the free trade arrangement; (b) the agencies of the UK have similar degree of peculiarity and harmonization than those of Ukraine, and (c) the UK sets leading example in the legal deregulation of the wholesale energy market in the European sub-continent.

Literature review. The oversight mandate and administrative process are subject to the close attention for their daily use in the operation of the market and a plenty of articles are based on the sectoral analysis for the domestic (national), EU or multi-level interplay in the particular Member State, that is, they focus on domestic or international interplay of the competition authorities [14], financial authorities [15] or energy authorities [16], [17].

L. Hancher & F.M. Salerno [14] find that use of the competition law playbook (verbatim '*competition law-ization'*), in retrospect, was increasingly popular in the efficacy measurement for the EU policies, extending to the energy sector in 2006-2016 (the paper is written in 2017), featuring, in particular, direct access to the regulated entities – the case exercised in MiFID and REMIT, network enforcement and NCA enforcement as both the primary and the last resort. The paper dates to the period when independent energy authorities were in the formative stage if established at all and, hence, early days of specialization, emergence of the governance and policies rather than collaboration with competition agency that has general mandate.

N. Moloney [15] in her detailed treatise concentrates on the financial regulations and institutions without focus on the link and causality with underlying commodities and competition in the real sector of economy that seek capital on the financial markets. S. Obrenović [18] limited its research to chronology of the parallel rising of regulatory mandates for the financial and the energy regulators at the EU level. Complexity of the wholesale energy legal environment and rising concerns of overlapping legal regimes and competence between financial and energy regulatory authorities both at the EU and Member States levels or at domestic level were not actually addressed. Despite intrinsically complex law, 2022-2023 winter season volatility placed a pressure on the trust in the sustainability of the institutions. Thus, closer cooperation and information exchange between different regulators can reduce some uncertainties

[16], although details of that premise and analysis do not go beyond overview of the memorandum of understanding between ACER and ESMA [18].

E. Mathieu et al. look at the 'longitudinal' inter-agency cooperation in Belgium, which involves regional, federal and the EU energy authorities [16] and find that coordination and cooperation between different regulatory authorities and agencies are crucial for the effective implementation of the existing energy and financial provisions. Importantly, for our study, Mathieu et al. establish that trend for coordination is caused by the interdependencies between regulators across levels and the choice of cooperation strategy over earlier contentious behavior is a result of learning experience. They also find that bilateral coordination arrangements may become a barrier to multilateral arrangements. OECD also provides a longitudinal study for the energy regulations and draws comparisons between US-Canada cooperation in managing joint energy systems and the EU-NRAs cooperation in their synchronized electricity grids and interconnected gas networks [17].

The research of the institutions and their cooperation published to date is based on the historical data of the wholesale energy sector in the EU and national authorities that pre-date latest amendments of the acquis based on the challenges posed to the security of the wholesale energy supply by the Russian aggression in Europe, in particular, against Ukraine since 2022 and subsequent Fit for 55 update of the Energy Union and Climate Action package of regulations and directives [19].

Findings. An important differentiating factor between the mode of operation for NRA, SMA and NCA. NRAs and SMAs deal with *ex ante* regulation, creating market policies, such as access obligations, tariff schemes, technical standards that enable trades, financial settlements and physical deliveries. NCAs operate primarily *ex post* investigating anti-competitive behavior during the trades, withholding of supply or collusion for the insider trading or price manipulation. The exception, and an important one, is the market concentration, where NCA is the first watchdog to review the consequences of acquisitions, mergers and controls; NCA, thus, acts as a first filter before it gets to SMA or NRA. Ex ante merger permissions or approval of the horizontal arrangements are not focus of this article, however.

Even though the market structure targets fair competition and free market access, especially after market liberalization in the EU, the *ex-post* actions are dominated by NCAs, as they are responsible for the imposition of sanctions for abuse of a dominant position in the market. NRAs and SMAs also receiving, under REMIT and MiFID II, investigation and enforcement authority, much like NCAs. On the other hand, there are some EU Member States that have adopted a merging-approach between sector-specific regulation and competition, either completely (i.e., by establishing one regulatory authority for both sectors) or in a hybrid manner (i.e. by having more authorities with overlapping competences) that are mandatorily pool and/or exchange resources.

1. Belgium. The Kingdom of Belgium provides an example not only about co-operation among national authorities, but also among the regional authorities of this federation. On the regional level, FORBEG (Forum of Belgian Regulators for Electricity and Gas) is a forum that brings together the various energy regulators in the country, including the federal regulator, the Commission for Electricity and Gas Regulation (CREG), and the regional regulators, the Flemish Regulator for Electricity and Gas (VREG), the Walloon Regulator for Energy (CWaPE), and the Brussels Energy Regulator (BRUGEL). They cooperate under different working groups and facilitate exchange of information between these regional regulators. At the national level, the NRA co-operates with the CREG, the Financial Services and Markets Authority (FSMA, Belgian SMA) and the Belgian Competition Authority (BMA, Belgian NCA).

In December 2016, the Boards of Directors of CREG and FSMA approved a cooperation protocol that outlines how the two organizations will work together to share information and expertise. The goal of this cooperation is to ensure the integrity and transparency of the energy markets. This agreement is particularly significant because there is increasing overlap between the regulations governing energy markets (REMIT) and those governing financial markets.

(a) Basis of Interagency Co-operation in Belgium. The relationship between the Belgian NRA (CREG) and the Belgian NCA (BMA) is regulated by law (Arrêté Royal / Verslag Aan De Koning) C-2017014276, published in the Official Gazette on 15 December 2017 [20]. In addition, Belgian NRA (CREG) has signed a Protocol of cooperation with the NCA (FSMA), i.e. all three state agencies are interlinked as far as energy markets are concerned, but through bilateral rather than trilateral relations.

(b) Scope of Interagency co-operation in Belgium. C-2017014276, Article 3 provides for joint authorities' meeting at least once a year and must be confidential. Article 4 expedites exchange of

information without prejudice to ongoing investigations or other enforcement process. Article 5 allows sharing of confidential information and professional secrets between the authorities, unless the transferring authority manufactured non-confidential version of the data or report. Article 6, however, establishes barriers for certain type of information that cannot be transferred, e.g., data from other NCAs or from EU competition bodies – European Competition Network (ECN) or Directorate-General on Competition (DG-Comp); lenience and settlement procedures are also ring-fenced from transfer to CREG. Article 7 guarantees that CREG and BMA will be mutually informed about the other party's actions in a reasonable detail: about sessions, including the relevant dates, the topics discussed, the deadlines for intervention etc. BMA is able to provide CREG access to draft audit decisions or to procedural documents in case it is concerned, in order to provide opinions on the matter. CREG must also be informed about BMA's final decisions.

The Protocol of Cooperation between CREG and FSMA provides for following types of cooperation:

(i) Spontaneous information exchange (Article 3): Each of the authorities shall inform the other one about information obtained while exercising supervisory duties if deemed useful for the other authority. In market abuse detection cases, both authorities coordinate information exchange.

(ii) Information request (Article 4): each of the Authorities can request information from the other state agency on grounds of transparency and integration. If the responding Authority denies access to such information, it must indicate the relevant reasons for denial.

(iii) Consultation and Assistance (Article 5): each authority who seeks consultation or assistance, shall provide the other party with all the relevant information on grounds of transparency and integration. If the responding authority denies consultation/assistance, it shall indicate the relevant reasons for that.

Articles 6 and 7 deal with the ways of communication, mostly based on written requests and information exchange. and Article 8 guides the purposes for which information received can be used by the respective authority. Article 9 describes confidentiality regime whereas Article 10 provides for bilateral meetings, at least annually, between FSMA and CREG.

2. France. The relationship between the French NRA (*la Commission de régulation de l'énergie* or CRE), French NCA (*L'Autorité de la concurrence* or AC) and French SMA (*l'Autorité des marchés financiers* or AMF), is similar to the cooperation in Belgium described above. More specifically, French Energy Code incorporated several provisions on bilateral cooperation around the energy regulatory agency [21].

In accordance with Article L.134-16 (effective as of 11 November 2019), paragraph one, the President of CRE shall report to AC any "*abuse of dominant position and practices hindering the free exercise of competition in the sectors of electricity or natural gas*". The CRE President may request AC's opinion on the same or any other matter within CRE competence. Under paragraph two of the article, AC must communicate to CRE any incoming referral that falls within CRE's competence so that the latter can submit, within a period of two months, its observations. AC can also request an opinion from CRE on any issue in the wholesale or retail energy markets, in particular, natural gas and electricity. Both authorities have complementary missions. The preamble of the NOME (Nouvelle Organisation du Marché de l'Electricité) law refers to CRE's mission to monitor the consistency of the electricity market prices, while AC monitors anti-competitive practices under the terms of the Articles L. 420-1 and 420-2 of the Commercial Code [21].

Under Article L.134-17 of the French Energy Code, CRE and AFM cooperate with each other. They must exchange information useful for the accomplishment of their respective missions. CRE refers to AFM any possible breaches of obligations under the laws or professional rules relating to insider trading, price manipulation and dissemination of false information, "*or any other breach likely to undermine the proper functioning of the market*" in respect of the financial instruments, including greenhouse gas emission allowances. CRE, on its end, uses consultations of AFM, where they appear useful, for any opinions and conclusions falling within CRE jurisdiction.

To conduct the legislative mandate, CRE can also collect all necessary information from the French ministries responsible for the economy, the environment and the energy (French Energy Code, Article L.134-18 [21]).

CRE and AFM signed the Protocol of Understanding, with the outline of the cooperation between them. Protocol proves for the mutual assistance including methodology, expertise and information exchange. That is to say, in the event of an anomaly detected on the markets by one of the authorities, it is obliged to inform another as soon as possible. Or, if an authority has information deemed useful to

the other, it may communicate such information on its own initiative. If necessary, and if it proves to be useful for the exercise of their missions or the avoidance of similar requests from the two Authorities, they may set up an organization allowing them the systematic exchange of information collected (Article III of the Protocol). Article VI provides for the meetings between French NCA and SMA and allows practical arrangements for the exchange of information to be made within the framework of such meetings. Article V regulates the way of information exchange and the different formalities; however, each request is examined on an *ad hoc* basis. Article VI refers to bilateral meetings every three months, specifying indicatively some relevant issues to be discussed. Articles VII and VIII refer to information use and confidentiality regime.

3. Germany has created a multi-sector NRA (*Bundesnetzagentur* or BNetzA) responsible not only for the energy grid regulation but telecommunications, post and railway sectors, which is in the scope of business of the Federal Ministry of Economics and Energy. This sort of arrangement is not unique to Germany and may be further explored as a part of the quest towards optimization of the regulatory cost in Ukraine and other countries.

BNetzA has no concurrent powers with the German NCA (*Bundeskartelagentur* or BKartA). More specifically, BNetzA does not apply general competition rules but applies competition law elements and principles as far as directly incorporating them in the Energy Industry Act (EnWG) [22]. Pursuant to §17 para. 2 the Securities Trading Act (WpHG) [23], the German SMA (*Bundesanstalt für Finanzdienstleistungsaufsicht* or BaFiN) co-operates with BNetzA by exchanging information for the performance of their tasks. Paragraph 2 of §17 provides that BaFin, the Federal central bank (Deutsche Bundesbank), BKartA, BNetzA, the supervisory authorities for the stock exchanges and the stock trading, the competent authorities for common markets in agricultural products must communicate to each other observations and findings, including personal data, which are necessary for the performance of their tasks. Moreover, aside the exchange of information on the federal level, the law also obliges cooperation with the antitrust and insurance market supervising authorities at the state level.

Basis of Cooperation between authorities is as follows:

(a) Chapter 2 section 50f of the Act against Restraints of Competition (GWB) [23], focusing on information exchange to ensure legal certainty and to avoid duplication of the functions. Their cooperation expands to comments by BKartA prior to BNetzA's decisions, and agreement on the relevant market definition. Overall, BNetzA is regulating network access charges *ex ante*, setting up incentive regulation schemes, ensuring non-discriminatory network access and setting conditions, taking steps against abuse of market position by network operators, monitoring unbundling provisions and setting fines, where appropriate. BKartA is responsible for the application of competition law in generation/production and supply of the electricity and natural gas, the abuse of market power in the wholesale markets, the control of end-user prices and merger control.

(b) BKartA and BNetzA jointly supervise market transparency for the wholesale electricity and gas trading obligations, through a joint unit, the Market Transparency Unit (MTU Electricity and Gas), created by BNetzA. MTU duties are covered by the provisions laid out in the new Ninth Chapter of the GWB, Sections 47a – 47i, 47l and 81 [23].

(c) The MTU is designated in the law as the national market surveillance authority under REMIT pursuant to GWB, Section 47b para. 2 and EnWG, Section 56 [22].

(d) In addition to the statutory rules, BKartA and BNetzA have signed a "Kooperationsvereinbarung" (cooperation agreement) [25] regarding their engagement in MTU electricity and gas. The cooperation agreement exclusively concerns the performance of the tasks of the MTU_{eg} regulated in Part 1 Section 9(I) and (III) GWBG, which comprises the ongoing monitoring of the trade wholesale energy products through the collection of relevant data and information by means of requests for information and determinations or through the use of other existing reporting obligations, sources and reporting systems, the collection of these data and their continuous evaluation in order to detect anomalies in price formation which may be based on prohibited conduct. The tasks in the MTU_{eg} are performed by the employees of the BNetzA and the BKartA working in the MTU_{eg} in accordance with the plan that assigns the duties. This plan shall be jointly developed and issued by the BNetzA in agreement with the BKartA. Decisions of the MTU_{eg} are issued under the name of BNetzA (NRA, that is, rather than NCA) with the designation, however, "*Markttransparenzstelle für den Großhandel mit Strom und Gas*" (i.e., the $MTU_{eg)}$). The employees of the BNetzA and the BKartA work closely together in the performance of tasks in the MTU_{eg}. They collect and compile data jointly and in a coordinated manner with the aim of

avoiding additional work for authorities and companies. They ensure a continuous and comprehensive exchange of information and access to all data available in the MTU_{eg} and support each other. The exchange of information between BKartA or BNetzA and the MTU_{eg} on the Unit's activities takes place via the coordination group, the head or employees of the MTU_{eg}. The coordination group facilitates an overarching mutual exchange between BNetzA and BKartA on the performance of their own tasks in the MTU_{eg}. The group deals in particular with overall planning, personnel issues, the application of this cooperation agreement and issues that cannot be conclusively clarified at the working level. The coordination group meets twice a year as scheduled, as well as on an unscheduled basis at the request of a member or the head of the MTU_{eg}.

(e) Similar to the above framework, BNetzA cooperates with BaFin and exchanges information on the basis of Section 17.2 of WpHG, which obliges BaFin, as a part of financial reporting monitoring, to exchange with BKartA and BNetzA all information that the relevant counterparty requires for the performance of its tasks. In the interest of effective public control of the financial markets, a comprehensive duty of cooperation and mutual support applies here.

4. In the Kingdom of Netherlands, the Authority for Consumers and Markets (ACM) serves both as NCA and NRA. Similarly to BNetzA in Germany, it is a multi-sector authority, which regulates, *inter alia,* the energy. In contrast to BNetzA, however, ACM is pursuing a full range of consumer protection functions covering the sector-specific regulator duties of the competition authority. According to the 2019 Procedure on the provision of information, the ACM must provide information and intelligence to several other administrative agencies and regulators to the extent it is necessary for the proper execution of their tasks. The working arrangements on the exchange of information were made as early as in 2015 by the Protocol between ACM and the Minister of Economic Affairs (now – Economic Affairs and Climate Policy), the Minister of Infrastructure and the Environment (the latter, as of 2017 – the Ministry of Infrastructure and Water Management). By now, ACM also works actively with the ministries of (a) health, welfare and sport; (b) education, culture and science; (c) finance; (d) agriculture, nature and food quality.

Cooperation among the ACM and relevant agencies outlines the following aspects:

(a) ACM and the ministries exchange information, including reporting on findings, as quickly as possible, when the information is necessary for the performance of their duties, or when the information is reasonably assumed to be necessary for the performance of their duties. The flow can be initiated by ACM on its own or upon request by the Minister, or *vice versa*. there are provisions on conducting and reporting competition feasibility tests, policy and tariff making as well as writing annual reports.

(b) ACM and the Dutch SMA (Authority for the Financial Markets or AFM) have signed a Protocol of Cooperation in 2014, which consists of 24 articles in 7 chapters, that provide for (i) information exchange, including data collected on the wholesale energy markets under the REMIT, (ii) joint activities and reporting (iii) cooperation in investigation of the infringements, (iv) referral of retail consumers, (v) self-evaluation of the cooperation and (vi) communication channels [26].

Chapter 3 contains general provisions on information exchange, while Chapter 4 refers to information exchange on grounds of REMIT. If ACM or AFM finds that both authorities can take enforcement action against a certain conduct and/or joint action is desirable, ACM or AFM, respectively, must contact the other authority for further working arrangements on the relevant issue.

Information exchange and co-operation in respect of REMIT and MIFiD II is triggered by ACM's reasonable suspicion that acts have been or are being committed in the wholesale energy markets which constitute market abuse within the meaning of Market Abuse Directive 2003/6/EC [27], replaced, as of 2016, by MAR [8] and which affect financial instruments admitted to the regulated market and their derivatives (covered, previously, by Article 9 of that Directive). AFM, in its turn, must inform ACM without delay of its reasonable suspicion that acts contrary to Articles 3, 4 and 5 REMIT are being or have been conducted in the wholesale energy markets. ACM and AFM must proceed to consultations as soon as possible after becoming aware of the alleged breach. ACM and its predecessors have signed and continue to enforce 23 protocols in total on exchange of information and cooperation with 23 agencies that are not ministries.

Protocol aside, Dutch regulatory authorities collaborate through the Consultative Forum of Regulatory Bodies (MTB) to exchange information and work together in fulfilling their respective tasks. The MTB focuses on market functioning and the behavior of market participants. It comprises as many as **seven** regulatory bodies: ACM, AFM as well as the Dutch Data Protection Authority (AP), the Netherlands

Gaming Authority (KS), the Dutch central bank (DNB), the Dutch Healthcare Authority (NZa) and the Dutch Media Authority (CvdM) [28]. Each among seven regulators has specific responsibilities, but they regularly interact in their day-to-day regulatory activities. Given the similarities in questions and developments related to oversight and regulation, the MTB encourages regulators to collaborate and address common issues jointly. This approach enhances the effectiveness and efficiency of regulatory oversight and seeks to reduce the regulatory burden whenever possible. The primary aim of the MTB is to foster a structural basis for knowledge-sharing and experience exchange concerning shared concerns. The forum operates in an atmosphere of openness and mutual trust, enabling regulators to engage with one another effectively. For specific cases requiring bilateral cooperation, individual regulators follow cooperation protocols to ensure smooth coordination and efficient resolution. Through these cooperative efforts, the Dutch regulatory authorities aim to create a cohesive regulatory landscape that benefits both market participants and consumers alike.

5. Spain. In 2013, the Spanish Parliament adopted Act 3/2013, creating a new authority in charge of both competition and regulatory matters, including energy: the National Markets and Competition Commission (*Comisión Nacional de los Mercados y la Competencia* and CNMC) as a result of merger between the competition authority (CNC) and several sectoral regulators, including NRA. The amalgamation of the regulatory and anti-trust authorities was approved in an effort to enhance their independence, provide legal certainty and institutional trust by adopting an all-encompassing view from both static (anti-cartel) and dynamic (regulatory) standpoint. The objective was also twofold: promote the modernization of the economy and benefit consumers. As a result, six supervisory entities in existence at the time - National Competition Commission, National Energy Commission, Telecommunications Market Commission, National Postal Sector Commission, State Council for Audio-Visual Media, and Committee of Railway and Airport Regulation - were packaged into a single government agency. CNMC, thus, has hybrid functions: enforcing competition rules and regulating economic sectors through two governing bodies: the Council and the President, who also chairs the Council. The CNMC Council consists of ten members operating as a collective decision-making body through two chambers: the Competition Chamber devoted solely to competition enforcement, and the Regulatory Chamber, devoted to regulatory files (each Chamber may issue an opinion on the files decided on by the other).

As a single body comprising different divisions, CNMC does not summon external inter-agency co-operation, but instead CNMC focuses on internal institutions and inter-institutional coordination. Sectoral regulators, competition advocacy and enforcement divisions, which have independent modes of operation, use, nevertheless mechanisms for exchange of information and mutual learning. This coordinated approach enhances the coherence of policy decisions of different divisions within the CNMC that work together to align their actions. By promoting collaboration and knowledge sharing, the CNMC ensures that all aspects of their regulatory responsibilities complement each other effectively, that is, coordination leads to operational savings caused by optimized use of resources and control of the redundancies. The streamlining of the policies and operational policies allows the CNMC to operate more efficiently and effectively, resulting in better outcomes for market regulation and consumer protection. As a result of CNMC's focus on internal coordination, regulatory decision-making is harmonized, mutual learning is enabled, operational efficiencies are achieved and the benefits delivered to both the stakeholders of CNMC and the regulatory body itself.

CNMC's cooperation with the National Securities Market Commission (Comisión Nacional del Mercado de Valores or CNMV) is based on Directive 2009/72/EC [29] (now replaced by Directive (EU) 2019/944 [30]) for the supervision of the wholesale energy market. Both Directives emphasize significance of a joint effort between NRA and SMA, as it enables them to obtain a comprehensive overview of the markets they oversee. By sharing knowledge and insights, market regulators can better understand the implications of financial market trends upon the energy sector, and *vice versa*. This collaborative approach also fosters improved risk assessment and early detection of potential issues that may arise at the intersection of energy and financial markets. Consequently, both regulators are better equipped to respond promptly and effectively to challenges, ensuring market stability and investor confidence.

6. United Kingdom. Ofgem is Great Britain's independent energy regulator, which has the Gas and Electricity Markets Authority (GEMA) as its governing body responsible for determining strategy, policy priorities as well as decision-making on regulatory matters, including price controls and enforcement.

GEMA's powers are provided for under 1986 Gas Act [31], 1989 Electricity Act [32], 1998 Competition Act [33], 2000 Utilities Act [34], and 2023 Energy Act [35].

NCA, the Competition and Markets Authority (CMA) has competition law powers which apply across the whole economy, which assigns it a leading role in oversight of the competition and directs to enter into institutionalized cooperation with the agencies that oversee competition in specific sectors. Pursuant to the statutory law and in pursuit of the harmonized approach as well as optimized economics of the competition policy setting and enforcing, Ofgem and CMA have signed in 2016 a detailed memorandum of understanding (MoU) that outlines areas and modes of their respective cooperation [36]. The MoU lists general cooperation principles and then more specific collaboration chapters:

(a) Cooperation in relation to the competition prohibitions, establishing the case allocation procedure, the information sharing mechanism (case handling and know-how), pooling resources and secondments of staff. Other types of mutual support, such as answering queries, providing opinions, are described as well, together with an obligation of publishing an annual concurrency report.

(b) cooperation in relation to the market provisions: market studies and market investigations. Taking into account that there is a significant overlap of competences between the aforementioned authorities, i.e., the competence allocation takes place *ad hoc*.

(c) specifics of the voluntary redress schemes that must be handled independently for sharing of information in these cases may implicate the market participants, which would be detrimental to the purpose of the procedure. The super-complaints – analogs of the *class actions* in the USA, but for the administrative rather than judicial process, - are allocated to CMA and Ofgem only responds to it within the limits of the gas and electricity markets.

CMA has signed two MoUs with the Financial Conduct Authority (FCA) [37, 38] – on the competition and the consumer protection powers, respectively. The MoUs were first signed in 2014, then amended in 2018 and 2019 pursuant to the changes in the statutory law; the memo for the competition consists of three parts:

(a) Cooperation in relation to the competition prohibitions: This part follows the structure and provisions with the MoU between Ofgem and CMA.

(b) Cooperation in relation to the market provisions: market studies and market investigations. This part also mirrors the structure of the respective part in the MoU between Ofgem and CMA.

(c) Cooperation in relation to competition scrutiny. This part regulates the interaction of the parties under the provisions of 2000 Financial Services and Markets Act [39].

MoU on the consumer rights protection sets arrangements on cooperation in the areas of concurrent competence under 1999 Unfair Terms in Consumer Contracts Regulations, 2002 Enterprise Act, including the 2008 Consumer Protection from Unfair Trading Regulations and 2015 Consumer Rights Act [38]. It works in parallel with the oversight of the wholesale markets' competition. This MoU's direct scope includes mortgages, consumer credit and claims management, accounts, insurance etc. However, it creates an informal reserve communications channel for the financial instrument considerations as long as credit, commercial practices, investments and contract terms are concerned: through exchange of industry monitoring information (sections 28–44), meeting and communicating frequently, at appropriate levels of seniority, to discuss matters of mutual interest (sub-section 12.1), consulting one another at an early stage on any issues that might have significant implications for the other authority (12.2), and sharing (for comment) at an early stage draft documents (such as consultation papers and briefings) that affect the functions of the other authority (12.3).

Conclusions. The Member States in the EU have established sectoral cooperation frameworks to achieve wholesale energy market transparency, with several authorities moving towards enhanced collaboration to streamline regulatory efforts and improve market oversight via agreements, memoranda, task force and other institutionalized forms. The same can be established with respect to the UK, which is the only ex-Member State in history. While pooling of resources, including the joint teams (investigating crew, task force, market transparency units etc.) is, *prima facia*, an attractive option to increase efficacy of the competition law enforcement, only some states decided to legislate on it formally. At the same time, data exchange, personal data protection, mixing teams and distinguishing leniency procedures – all appears within the universal scope of collaboration.

The cooperation as a contrast to concurrent exercise of power became a golden standard and was institutionalized in the EU acquis in the 2000-s and had further attention of the legislative bodies in the 2020-s. Independence of the NRA and professional secrecy rules, in most cases, is not a barrier to

comprehensive enforcement of the competition rules across the sector; to the contrary, the governments avoid preconditions to the regulatory arbitrage – incoherent approaches to the interpretation, gaps in the secondary legislation, uneven processing of information during the market monitoring, market studies or investigations.

The cooperation took off slowly from informal communications channels and then grew into the form of memoranda (following REMIT 2011), some not publishable at first, which eventually developed to the laws and codifications (around 2017-2020), which seem to have prompted reorganizations. The coherent approach to the competition and the consumer choice led, in Germany, to merger of sectoral competition agencies into BNetzA, whereas the Netherlands and Spain went further and put most competition authorities under 'a single roof'. It is worth reminding, that acquis, driven, probably, by the UK and German leadership, has been requiring independent regulator with specific expertise in the wholesale energy markets to be set in each Member State. The concept of the independent energy regulator evolved and incorporated an idea of comprehensive approach to the competition, interconnection of the physical and financial side of the trades, prevention of the regulatory arbitrage. Besides, all of the bodies involved are collegiate. Cooperation among the collegiate bodies is most likely to bust the efficiency of the policy outcomes, therefore, limits of the deliberations must have been put in the interest of the resource use optimization.

The financial market authorities (SMAs) notably, remained distinct from the other regulators, their journey in 2000-s was towards universal separation from the central bank functions and consolidation of powers at the EU level. We can speculate which trends at the EU level will settle following the changes at the domestic level of the Member States – whether the EU-27 decide to merge competition regulators, in particular, in the wholesale energy market and in the financial area, or their number will be increasing, in which case the collaboration and communication issues will persist.

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