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STAFF PAPER

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Project	Rate-regulated Activities	
Paper topic	Scope—Definition of regulator	
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Objective

1. The Exposure Draft *Regulatory Assets and Regulatory Liabilities* (Exposure Draft) does not specify whether a particular type of body, such as a regulator, is required for a regulatory asset or regulatory liability to exist. Many respondents to the Exposure Draft commented that the scope of the proposals would be clearer if a regulator was required. This paper analyses those comments and makes recommendations to amend the proposals.

Summary of staff recommendations

2. The staff recommend the final Standard:

   (a) includes the existence of a regulator in the conditions that are necessary for a regulatory asset or regulatory liability to exist;

   (b) defines a regulator as 'a body that is empowered by law or regulation to determine the regulated rate or a range of regulated rates'; and

   (c) includes guidance to clarify that self-regulation (ie situations when the price is not determined by a regulator) is outside the scope. However, the final Standard would apply to cases when an entity determines its own rates (for example, some co-operatives) or related parties (for example, an entity's own

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governing board) determine the rate but in both cases they do so in accordance with a framework that is overseen by a body empowered by law or regulation.

Structure of the paper

3. This paper is structured as follows:

   (a) proposals in the Exposure Draft (paragraphs 6–11);

   (b) summary of comments received (paragraphs 12–17); and

   (c) staff analysis (paragraphs 18–41).

4. Appendix A includes paragraphs of relevant documents published as part of the Rate-regulated Activities project (the project) that deal with the existence of a 'regulator' and illustrate how this term has been used.

5. Appendix B includes a summary of comments received from members of the Consultative Group for Rate Regulation when developing a definition of regulator.

Proposals in the Exposure Draft

6. Paragraphs 3–6 of the Exposure Draft describe the scope of the proposed requirements. The Exposure Draft proposed that an entity applies the requirements to all its regulatory assets and regulatory liabilities. A regulatory asset is defined as:

> an enforceable present right, created by a regulatory agreement, to add an amount in determining a regulated rate to be charged to customers in future periods because part of the total allowed compensation for goods or services already supplied will be included in revenue in the future.[1]

7. A regulatory agreement is defined as a set of enforceable rights and obligations that determine the regulatory rate to be applied in contracts with customers.

8. However, the Exposure Draft does not specify whether a particular type of body, such as a regulator, must exist to enforce compliance with the regulatory agreement, and

[1] A regulatory liability is similarly defined.

what the characteristics of that body should be (paragraph BC85(b) of the Basis for Conclusions on the Exposure Draft).

9. The IASB did not specify whether a particular type of body, such as a regulator, must exist to enforce compliance with the regulatory agreement because:

   (a) the characteristics of regulators across the world vary and it would have been difficult to decide which characteristics to specify;

   (b) it was unnecessary to specify characteristics of a regulator since the Exposure Draft proposes that the rights and obligations created by the regulatory agreement need to be enforceable; and

   (c) the IASB found no reason why setting the scope narrowly to include only regulatory agreements subject to a regulator with particular characteristics would lead to more useful information about the effects of regulatory assets and regulatory liabilities.

10. Consequently, the term 'regulator' does not appear:

   (a) in the conditions that are necessary for a regulatory asset or regulatory liability to exist (paragraph 6 of the Exposure Draft); nor

   (b) in the definition of 'regulatory agreement' included in paragraph 7 and Appendix A of the Exposure Draft.

11. The term 'regulator' appears, however, in paragraphs 8 and 27 of the Exposure Draft (**emphasis added**):

> 8 The practices for establishing regulatory agreements vary between jurisdictions and between industries. For example, a regulatory agreement may take the form of:
>
> (a) a contractual licensing agreement between an entity and **a regulator**;
>
> (b) a service concession arrangement; or
>
> (c) a set of rights and obligations specified by statute, legislation or regulations.

27 An entity determines whether a regulatory assets or regulatory liability exists using judgement considering all relevant facts and circumstances, including any:

(a) confirmation from **the regulator** of amounts to be added or deducted in determining future regulated rates;

(b) explicit requirements or guidelines in the regulatory agreement;

…

Summary of comments received

12. Many respondents said not specifying whether a particular body, such as a regulator, is required for a regulatory asset or regulatory liability to exist, and what the characteristics of that body should be:

(a) creates uncertainty as to the application of the proposals;

(b) may capture a wide range of activities and arrangements that should not be included in the scope; and

(c) may challenge the consistent application of the final requirements.

13. Some respondents were concerned the proposals may:

(a) require significant judgement for entities outside traditional regulated industries to determine whether their pricing agreements are within the scope of the proposed requirements which may lead to inconsistency in practice. For example, a few respondents said it is not clear whether the proposed requirements would apply to the following situations:

(i) self-regulation—for example, a co-operative agreement which prevents a co-operative entity from increasing the price of goods or services it supplies to the co-operative members in some periods, but allows the co-operative entity to recoup those amounts by increasing the prices charged to the members in the future.

(ii) commercial contracts between entities for the supply of goods or services that contain 'catch-up' clauses for costs incurred in the past that would only be included in the pricing charged when supplying goods or services in the future.

(b) create structuring opportunities within groups or between related entities to create artificial regulatory assets or regulatory liabilities as a basis for managing reported performance. For example, a transfer pricing agreement between a parent and one of its subsidiaries, with the parent assuming the role of the regulator by establishing the prices the subsidiary must charge customers, with the goal of guaranteeing a profit level for the subsidiary.

14. To avoid these consequences, some of these respondents said the final Standard should clarify that a regulator is necessary for a regulatory asset or regulatory liability to exist and recommended the final Standard define 'regulator'.

15. In defining a regulator, some of these respondents recommended that the IASB considers developing a definition of a regulator similar to that in IFRS 14 *Regulatory Deferral Accounts*:

> An authorised body that is empowered by statute or regulation to establish the rate or a range of rates that bind an entity. The rate regulator may be a third-party body or a related party of the entity, including the entity's own governing board, if that body is required by statute or regulation to set rates both in the interest of the customers and to ensure the overall financial viability of the entity.

16. Some respondents highlighted a few features that the definition of a regulator would need to include:

(a) independent—the regulator should be a third party that is independent from the entity applying the proposals. Requiring a regulator to be independent would:

(i) ensure that self-regulated entities, such as the case of some co-operative entities, are not included in the scope of the proposals; and

(ii) reduce structuring opportunities, for example, it would be clearer that intercompany transfer pricing agreements are outside the scope.

(b) governmental body or an entity with delegated authority. This feature would ensure rights and obligations from agreements between private entities are scoped out.

(c) objective—an accounting firm said in some jurisdictions there may be government-owned entities, where a regulator may be a related party of the entity, but to be within the scope of the proposals there should be sufficient rules and regulations in place to ensure that the regulator is acting objectively.

17. An accounting firm said the definition could focus on the role entrusted to the regulatory body (ie key functions) instead of focusing on the type of regulatory body or persons.

Staff analysis

18. The staff analysis is structured as follows:

(a) assessing whether to require the existence of a regulator (paragraphs 19–27); and

(b) defining regulator (paragraphs 28–41).

Assessing whether to require the existence of a regulator

19. This section assesses whether the existence of a regulator should be included in the conditions that are necessary for a regulatory asset or a regulatory liability to exist (paragraph 6 of the Exposure Draft).

20. In paragraphs BC85–BC86 of the Basis for Conclusions on the Exposure Draft the IASB argued that, when determining whether a regulatory asset or a regulatory liability exists, what matters is that the rights and obligations created by a regulatory agreement are enforceable. Whether or not a regulator exists and what the characteristics of that regulator should be is secondary.

21. However, as discussed in paragraphs 12–13, many respondents were concerned that the Exposure Draft does not specify whether a particular type of body, such as a

regulator, is required for a regulatory asset or a regulatory liability to exist. For these respondents this creates:

(a) uncertainty as to the application of the final Standard (ie whether a regulator is required to exist);

(b) the possibility that the final Standard will include self-regulation within its scope—ie, the ability of an entity to artificially create regulatory assets or regulatory liabilities by virtue of its articles or statute of incorporation (for example, the case of the co-operative in paragraph 13(a)(i)); and

(c) structuring opportunities. For example through a transfer pricing agreement between a parent and one of its subsidiaries (paragraph 13(b)) or by setting up commercial contracts between private companies (paragraph 13(a)(ii)).

22. We agree with these respondents. If the final Standard requires the existence of a regulator—an external party to the entity—within the conditions that are necessary for a regulatory asset or a regulatory liability to exist, then:

(a) much of the uncertainty about the application of the final Standard would be removed—agreements that do not feature a regulator would be clearly outside the scope.

(b) self-regulation would be excluded from the scope—we do not think it was the IASB's intention when developing the Exposure Draft to capture self-regulation. Appendix A provides an overview of the documents published throughout the life of the project. None of those documents aimed to capture self-regulation.

(c) structuring opportunities would be reduced.

23. One disadvantage of requiring the existence of a regulator is the risk of unintentionally excluding agreements that give rise to rights and obligations that are economically similar to those arising in agreements that are overseen by a regulator. This could potentially result in the loss of useful information.

24. However, evidence gathered throughout the project would suggest that this risk is low. Stakeholders have never suggested that requiring the existence of a regulator would prevent the appropriate recognition of rights and obligations that are

economically similar to those arising in agreements that are overseen by a regulator. In other words, we do not have evidence that suggests such agreements exist or that they are widespread.

25. We agree with the comments in paragraph BC86 of the Basis for Conclusions on the Exposure Draft that:

    (a) the development of a definition of regulator can be challenging because their characteristics can vary greatly: they can take diverse legal forms, can be designed with various features, can have various objectives and mandates, and can be required to meet various functions; and

    (b) selecting specific features of regulators for their inclusion in the definition may result in certain agreements falling outside the scope of the final Standard.

26. However, to minimise the risks in paragraph 25, when developing the definition, we think we should:

    (a) focus on regulators' key features—so that self-regulation is discarded—and on the regulators' functions that are relevant to the final Standard—ie those relating to the determination of the regulated rate; and

    (b) consider the definition of 'rate regulator' in IFRS 14. Entities in some jurisdictions already use this definition. Even though this population of entities is relatively small, the staff is not aware that the IFRS 14 definition inappropriately excluded agreements from its scope. In addition, some respondents recommended the IASB use the definition of 'rate regulator' in IFRS 14 (paragraph 15), which provides evidence that definition has worked well.

27. Considering the analysis in paragraphs 19–26, we recommend the IASB include the existence of a regulator within the conditions that are necessary for a regulatory asset or a regulatory liability to exist. We think the advantages of addressing the concerns described in paragraphs 12–13 outweigh the risks of unintentionally excluding some agreements from the scope. In addition, the staff think the difficulties, described in paragraph 25 of developing a definition can be overcome (paragraphs 28—41 discuss a possible definition).

Defining regulator

28. This section sets out the staff's proposed definition of regulator.

29. We considered the definition of 'rate regulator' in IFRS 14 as a starting point. When making changes to that definition we considered:

    (a) suggestions from respondents summarised in paragraph 16; and

    (b) comments from members of the Consultative Group for Rate Regulation (Consultative Group)—Appendix B.

30. IFRS 14 defines 'rate regulator' as:

> An authorised body that is empowered by statute or regulation to establish the rate or a range of rates that bind an entity. The rate regulator may be a third-party body or a related party of the entity, including the entity's own governing board, if that body is required by statute or regulation to set rates both in the interest of the customers and to ensure the overall financial viability of the entity.

31. We have developed the following definition of regulator:

> A body that is empowered by law or regulation to determine the regulated rate or a range of regulated rates.

32. We developed this definition considering:

    (a) the main feature of a regulator—ie 'a body empowered by law or regulation' (paragraphs 33–38);

    (b) the main function of a regulator—ie the determination of the regulated rate (paragraphs 39–40); and

    (c) items that needed to be modified from the definition in IFRS 14 (paragraph 41).

Body empowered by law or regulation

33. As discussed in paragraph 16 some respondents suggested that a regulator should:

    (a) be an independent third-party;

    (b) act objectively in accordance with rules or regulation; and

(c) have some attributes of a governmental body or an entity with delegated authority.

34. Respondents suggested these features to:

(a) ensure that self-regulated entities are not included in the scope of the final Standard; and

(b) reduce structuring opportunities.

35. We do not think the definition should include that a regulator needs to be an independent third-party and/or act objectively. This is because without a detailed explanation of these terms, the definition of regulator could be interpreted and applied differently across different jurisdictions. However, defining independence and/or objectivity would be challenging.

36. In addition, in some jurisdictions, the regulator and the regulated entity are related parties as defined in IAS 24 *Related Party Disclosures* because they are controlled by the same government. If the term 'independent' was included in the definition, regulated entities in these jurisdictions:

(a) could interpret this as meaning they would be outside the scope of the final Standard; or

(b) may have difficulties in proving the regulator is independent.

37. However, we think that by describing a rate regulator as 'an authorised body that is empowered by statute or regulation', IFRS 14 helps address respondents' concerns about self-regulation and structuring opportunities in paragraph 34.

38. We do, however, recommend replacing the term 'statute' with 'law'. This is because during the comment period, we learned that a few stakeholders in Europe thought 'statute' referred to the articles or statute of incorporation of a company. Interpreting 'statute' to mean the articles or statute of incorporation of a company led these stakeholders to think that some agreements would be in the scope of the proposed Standard (for example, intercompany agreements).

Determination of the regulated rate

39. Regulators may be required to fulfil a variety of functions, for example provide rate stability for customers or maintain the availability and quality of the supply of goods or services. However, we think that the determination of the regulated rate is the function that is most relevant to the final Standard. The determination of the rate refers to the process in which the regulator designs or establishes the basis for the calculation of the rate, evaluates an entity's rate application and subsequently approves the final rate. This may include consulting the public and other relevant stakeholders.

40. We kept the expression 'rate or range of rates' from IFRS 14 in the definition. The intention of the phrase 'range of rates' in the definition of 'rate regulator' in IFRS 14 is to capture in the scope of that Standard, situations in which the regulator provides the regulated entity some discretion or flexibility in determining the rate.[2] However, this discretion is restricted by boundaries set by the regulator. In some cases, the regulator may also establish different rates for different types of customers. Keeping 'range of rates' helps capture these cases.

Items that needed to be modified from the definition in IFRS 14

41. The following are a few differences between the definition in IFRS 14 and the one developed by the staff:

    (a) deleted 'authorised'. This is because being empowered by law or regulation should already provide the body with the appropriate authority or power to determine the regulated rate.

    (b) deleted the second sentence of the definition. That sentence refers to the possibility for the 'rate regulator' being a related party of the entity if that body determines rates both in the interest of the customers and to ensure the overall financial viability of the entity. We deleted this sentence because:

        (i) we think a short, simple definition is preferable. We think the final Standard should include guidance to clarify that self-regulation is

[2] This was discussed by the IASB at its October 2013 meeting. See Agenda Paper 22A.

outside the scope. We also think the final Standard should include guidance to clarify that the Standard applies to cases when an entity determines its own rates (for example, some co-operatives—see Appendix B) or related parties (for example, an entity's own governing board) determine the rate but in both cases they do so in accordance with a framework that is overseen by a body empowered by law or regulation.

(ii) we think the requirement the regulator determines 'rates […] both in the interest of the customers and to ensure the overall financial viability of the entity' should not be included in the definition of a regulator. This is because regulators may consider a combination of different objectives when determining the regulated rates. In addition, including a set of regulatory objectives in the definition may unintentionally narrow the scope of the final Standard. It may also be difficult for entities to demonstrate both the objectives of the regulator and that the rates set fulfil these objectives.

Question for the IASB
Does the IASB agree that the final Standard: a. includes the existence of a regulator in the conditions that are necessary for a regulatory asset or regulatory liability to exist; b. defines a regulator as 'a body that is empowered by law or regulation to determine the regulated rate or a range of regulated rates'; and

c. includes guidance to clarify that self-regulation (ie situations when the price is not determined by a regulator) is outside the scope. However, the final Standard would apply to cases when an entity determines its own rates (for example, some co-operatives) or related parties (for example, an entity's own governing board) determine the rate but in both cases they do so in accordance with a framework that is overseen by a body empowered by law or regulation?

Appendix A—Consideration of a regulator in the Rate-regulated Activities project and IFRS 14 *Regulatory Deferral Accounts*

Rate-regulated Activities Project

Exposure Draft Rate-regulated Activities *published in 2009 (2009 Exposure Draft)*

A1. The 2009 Exposure Draft proposed that entities should recognise regulatory balances arising from one type of rate regulation (commonly called cost-of-service regulation or return-on-rate-base regulation). The existence of a regulator formed part of the proposed scope criteria and 'regulator' was a defined term:

> 3 An entity shall apply this (draft) IFRS to its operating activities that meet the following criteria:
>
> (a) an authorised body (the regulator) establishes the price the entity must charge its customers for the goods or services the entity provides, and that price binds the customers; and
>
> (b) the price established by regulation (the rate) is designed to recover the specific costs the entity incurs in providing the regulated goods or services and to earn a specified return (cost-of-service regulation). The specified return could be a minimum or range and need not be a fixed or guaranteed return.

A2. The 2009 Exposure Draft defined a regulator as:

> An authorised body empowered by statute or contract to set rates that bind an entity's customers. The regulator may be a third-party body or may be the entity's own governing board if the board is required by statute or contract to set rates both in the interest of the customers and to ensure the overall financial viability of the entity.

A3. Respondents to the 2009 Exposure Draft said the scope of the Standard should be narrower (so it aligned more closely with US GAAP requirements) or broader (to

include entities subject to regulatory schemes beyond 'cost-of-service'). However, there were no comments on the existence of a regulator.[3]

Discussion Paper Reporting the Financial Effects of Rate Regulation *published in September 2014 (Discussion Paper)*

A4. The Discussion Paper described the common features of various types of rate regulation. It grouped features that seemed most likely to give rise to rights and obligations that meet the definitions of an asset and a liability in the *Conceptual Framework for Financial Reporting,* and that are incremental to the assets and liabilities accounted for by applying IFRS standards in effect at that time. The IASB termed the type of rate regulation containing all those common features 'defined rate regulation'.

A5. One of the features of 'defined rate regulation' described in the Discussion paper is that its rate-setting framework creates rights and obligations that are enforceable on the regulated entity and on the regulator. Many respondents agreed that the Discussion Paper captured adequately the rights and obligations created by a wide variety of regulatory schemes. No comments received showed concerns about the presence of the regulator in the feature of 'defined rate regulation'.

A6. In addition, paragraph 4.73 of the Discussion Paper says:

> **Enforcement of rights and obligations**
>
> 4.73 Some suggest that the existence of a rate regulator whose role and authority is established in legislation or other formal regulations is an important feature to consider when analysing what rights and obligations established by the rate regulation are enforceable. This is because, in order for there to be a substantive right or obligation, there has to be an enforcement mechanism outside the entity. […]

[3] See Agenda Paper 7 discussed at the February 2010 IASB meeting.

IFRS 14

Exposure Draft Regulatory Deferral Accounts *published in September 2013 (2013 Exposure Draft)*

A7. In the 2013 Exposure Draft the existence of a regulator formed part of the scope criteria and 'rate regulator' was a defined term.

A8. The proposed scope of the 2013 Exposure Draft was:

> 7 An entity that is eligible to and elects to apply this (draft) interim Standard shall apply all of its requirements to the regulatory deferral accounts arising from all of the entity's rate-regulated activities that meet the following criteria:
>
> (a) an authorised body (the rate regulator) restricts the price that the entity can charge its customers for the goods or services that the entity provides, and that price binds the customers
>
> (b) the price established by regulation (the rate) is designed to recover the entity's allowable costs of providing the regulated goods or services.

A9. The 2013 Exposure Draft defined a rate regulator as:

> An authorised body that is empowered by statute or contract to set rates that bind an entity's customers. The rate regulator may be a third-party body or may be the entity's own governing board, if that board is required by statute or contract to set rates both in the interest of the customers and to ensure the overall financial viability of the entity.

A10. The majority of respondents agreed with the existence of a rate regulator forming part of the scope criteria.[4]

[4] See Agenda Paper 22A discussed at the October 2013 IASB meeting.

IFRS 14 published in January 2014

A11. The IASB amended the scope criterion and issued IFRS 14 in January 2014 as an interim Standard that would apply until the completion of the comprehensive project.

A12. In IFRS 14, the existence of a regulator forms part of the scope criteria through the requirement that an entity conducts 'rate-regulated activities'. 'Rate regulator' is also a defined term in IFRS 14.[5]

A13. The scope requirements of IFRS 14 are:

> 5 An entity is permitted to apply the requirements of this Standard in its *first IFRS financial statements* if and only if it:
>
> (a) conducts *rate-regulated activities*; and
>
> (b) recognised amounts that qualify as regulatory deferral account balances in its financial statements in accordance with its previous GAAP.'

A14. IFRS 14 defines rate-regulated activities, rate regulation and rate regulator, respectively, as:

> Rate-regulated activities—An entity's activities that are subject to rate regulation.
>
> Rate regulation—A framework for establishing the prices that can be charged to customers for goods or services and that framework is subject to oversight and/or approval by a rate regulator.
>
> Rate regulator—An authorised body that is empowered by statute or regulation to establish the rate or a range of rates that bind an entity. The rate regulator may be a third-party body or a related party of the entity, including the entity's own governing board, if that body is required by statute or regulation to set rates both in the interest of the customers and to ensure the overall financial viability of the entity.

[5] The defined term 'rate regulation' in IFRS 14 links the defined term 'rate regulator' to the defined term 'rate-regulated activities', which forms part of the scope criteria.

Appendix B—Comments received from members of the Consultative Group

B1. When developing the definition of regulator, we shared an initial draft of that definition with the members of the Consultative Group for Rate Regulation (Consultative Group) for their feedback. The following table includes main comments received from the members of the Consultative Group and how we have considered them when developing the definition of regulator.

Item	Comment received	Staff view
Delete regulation	One member suggested that the reference to 'regulation' be deleted. This is because some may interpret the term 'regulation' to include regulation that a parent entity imposes on a subsidiary entity, or that an entity imposes on itself (ie 'internal regulation'). According to this member the definition should only consider regulation that derives its authority from law.	We think the final Standard can clarify that the term 'regulation' in the definition of regulator would exclude 'internal regulation'—ie that created by entities within the same Group.
Regulators determine 'allowed revenue' rather than a regulated rate	One member said that, in the regulatory schemes of entities in the power and gas industries in the United Kingdom,[6] the regulator does not determine the rate per unit but the total allowed revenue. Entities subject to those schemes would then determine the rate per unit to be charged to customers based on the total allowed revenue and their estimates of	Respondents to the Exposure Draft did not raise concerns that the definition of 'regulated rate' could cause entities subject to schemes where the regulator only determines the 'allowed revenue' to conclude that they would be outside the scope of the proposals. Because of this we recommend the definition of regulator focuses on the regulator determining the regulated rate. We think the specific fact pattern when the regulator

[6] During the comment period, we learned that this may not be specific of the United Kingdom. For example, in revenue cap schemes for entities in the electricity transmission and distribution sectors in Australia, regulators also set the revenue to which each entity is entitled for a regulatory period, with entities then using consumption forecasts to generate the rates to be charged to customers. See comment letter here.

Item	Comment received	Staff view
	consumption, with an entity being able to recover or return any under or over-recovery of allowed revenue in rates charged to customers in future periods. This member's concern is that the definition could make these entities conclude they are outside the scope of the final Standard.	only determines the 'allowed revenue' can be clarified in the application guidance of the final Standard.
Self-regulation	A few members suggested that the final Standard explicitly excludes self-regulation from its scope. Within the self-regulation topic, a few members raised the following fact patterns: (a) co-operatives—One member questioned how the definition of regulator addressed the co-operative fact pattern in paragraph 13(a)(i). Co-operatives are commonly self-regulated when it comes to setting prices for goods or services that they supply, which are usually supplied to the members of the co-operative.	Throughout the course of this project, the IASB learned that, when the goods or services being supplied are considered to be essential, co-operatives may be subject to some form of regulatory oversight. That regulatory oversight may be exercised by a government department or other authorised body. We think the final Standard should include guidance to clarify that self-regulation is outside the scope. We also think the final Standard should include guidance to clarify that the Standard applies to cases when an entity determines its own rates (for example, some co-operatives) or related parties (for example, an entity's own governing board) determine the rate but in both cases they do so in accordance with a framework that is overseen by a body empowered by law or regulation.

Item	Comment received	Staff view
	(b) an entity determines the rate it charges to customers but it does so according to a framework determined by law and subject to supervision of authorised bodies.	
Enforce	A few members suggested that the staff considered restricting the definition of regulator further by requiring that the body identified as regulator not only 'determined' the regulated rate but also 'enforced' it.	We note that in some cases the same body empowered by law or regulation may both determine and enforce the regulated rate. In some other cases, these functions (determination and enforcement) may be carried out by two distinct bodies empowered by law or regulation. We have not gathered evidence that would make us recommend that the definition of regulator should only capture bodies empowered by law or regulation to carry out both functions. We think that the design of the enforcement mechanisms (ie either through the same body determining the rate or through a distinct body) should not affect: (a) the definition of regulator if the body determining the rate is empowered by law or regulation to do so; and (b) the conclusion that rights and obligations arising from the regulatory agreement are enforceable.

Item	Comment received	Staff view
Government is the party regulating the rate	Another member said in his jurisdiction the electricity sector is regulated by a scheme of control regime, operated through agreements entered into by the government and power companies. The government regulates the electricity tariffs through these agreements. This member said that the government is not strictly empowered by law or regulation to regulate the companies' tariffs and therefore it may not meet the definition of regulator. This member suggested to extend the definition to cover regulation through contracts.	We think the description of regulator as a body 'empowered by law or regulation' caters for the case when governments are the bodies assuming the role of regulator. This is because governments or government bodies are often the parties regulating the price that can be charged for goods or services. In addition, including in the definition that a regulator could be empowered by contracts to determine the rate would not remove the concerns of those respondents that think the proposals could create structuring opportunities.