

Vienna, 05.05.2017

# 5<sup>th</sup> Vienna Forum on European Energy Law

## Does ACER need a refit? - a critical view

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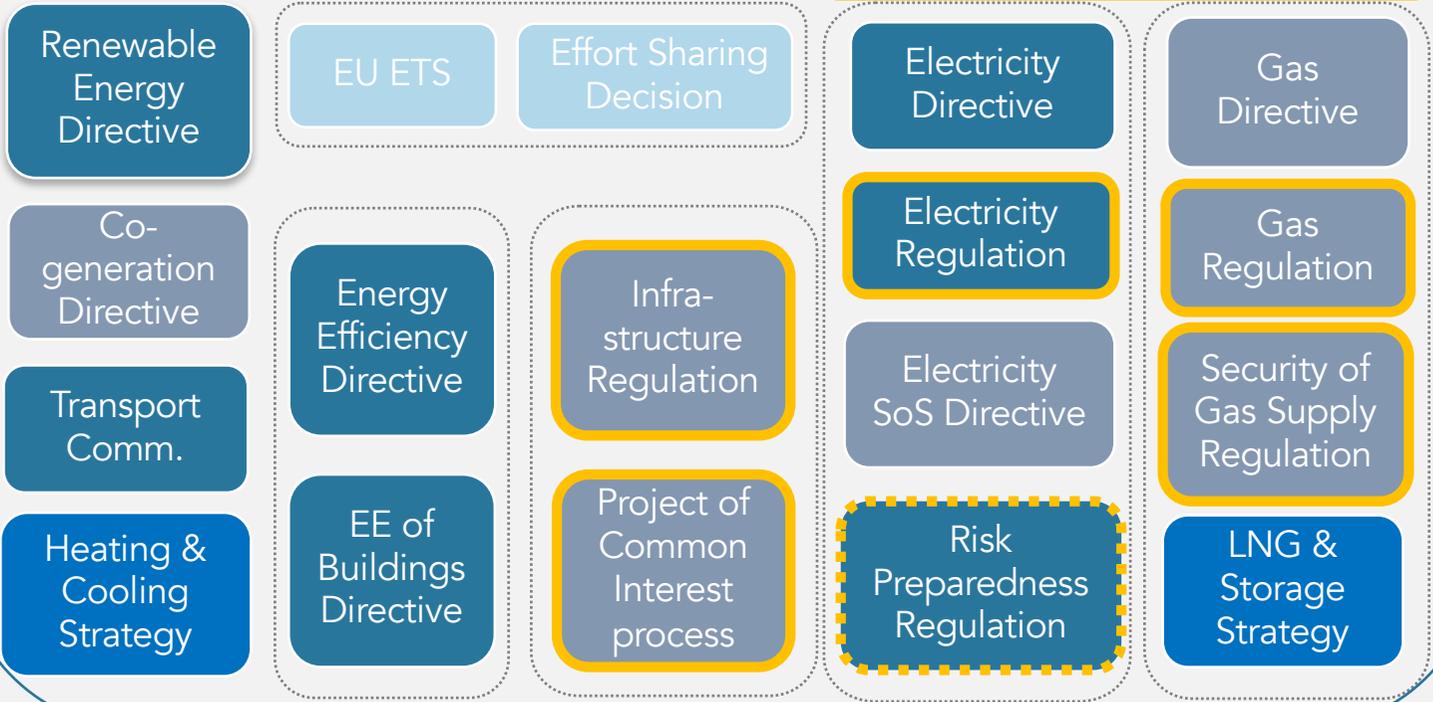
# Energy Union

COP 21 – Paris agreement

28 National Energy policies

ACER Regulation

REMIT Regulation



# So far ACER's purpose is limited\*

Assist NRAs in order to fulfil their tasks at EU level.

Co-ordination of NRA action if necessary.

Only a few selected direct decisions.

\* According to Third Energy Package

# “Within” ACER four bodies prepare & decide

## Director

Heads ACER.

Appointed by AB after favourable BoR opinion.

## Board of Regulators

1 member (+1 alternate) per NRA.

1 COM (non-voting) member.

1 vote per MS.

## Administrative Board

9 members—  
5 Council,  
2 COM & EP.

Administrative tasks.

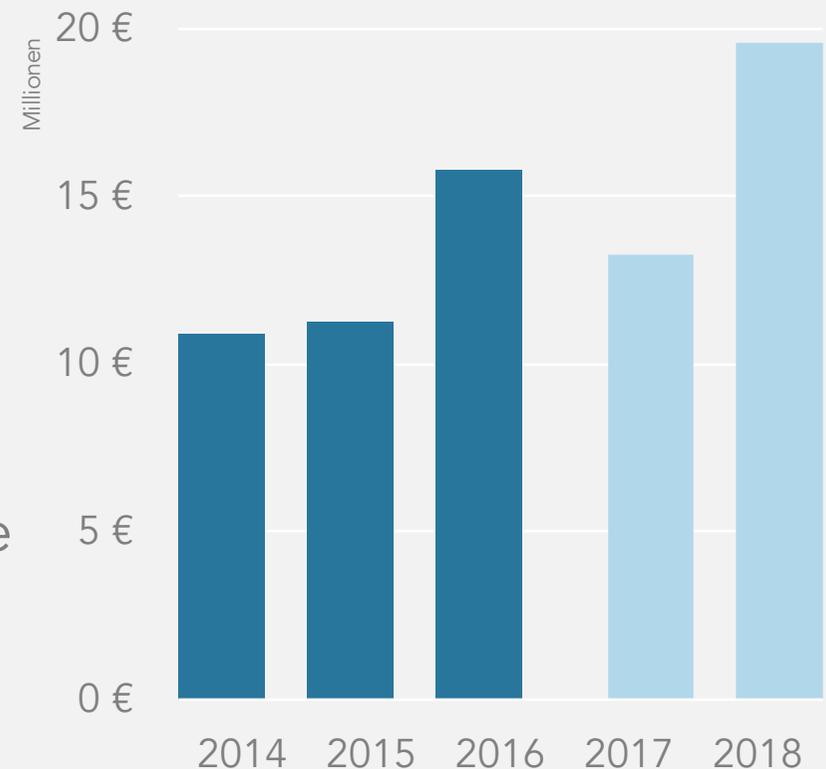
## Board of Appeal

6 members,  
6 alternates,  
1 registrar.

Independent from ACER.

# ACER 'suffers' from a limited budget & growing operational responsibility

- 100 % EU funded.
  - 2017: 13,3 Mio. EUR.
- Leaked Winter Package version included financial contribution by TSOs/ENTSOs.
- ACER would like to raise money from regulated entities.
- Support from NRAs (via seconded national experts) is diminishing (2016: 6.5 FTEs).
- In general the support of NRAs is on average 8.81% of the overall NRAs resources.
- Frequent imbalance between additional tasks & constant budget (e.g. REMIT, EIP)
- Prioritization needed → requires flexibility!



# Differentiated assessment of ACER's performance so far

- Gas sector is more successful regarding network code processes & therefore implementation of the Third Energy Package.
  - NCs typically provide a practical solution to an issue.
  - Whether „more“ is needed, will be answered with the EC 'Quo Vadis' study.
- Issues concerning electricity are often seen as ENTSO-E & not ACER issues.
  - NCs are rather process oriented & will require significant EU/regional co-ordination (by ENTSO-E & ACER).
- Co-ordination of NRAs so far not seen as satisfactory. → Why?
- Sometimes difficulties to agree within BoR.
- ACER has views but is not seen as “mediator” b/w NRAs with strong technical expertise & arguments on options. ACER rather develops its own views.
- Without NRA resources ACER could currently not fully deliver it's tasks.
- In general ACER is perceived positive by COM & a majority of NRAs.

# Current energy topics cover a wide(r) spectrum

- Climate & energy policy goals.
- Renewable (intermittent) energy sources.
- Energy Efficiency.
- Market integration.
- Integration of energy (sub-) sectors (heating/cooling, transport, electricity, gas).
- Security of Supply.
- New technologies (e.g. Power-X).
- End-consumer empowerment.
- Governance (ACER as well as integrated energy plans).
- Network development.

# But who is the competent authority?

Topic	Member State	NRA	ACER	COM
Climate & energy policy goals.	x			x
Renewable (intermitted) energy sources.	x	(x)		
Energy Efficiency.	x			
Market integration.	(x)	x	x	
Integration of energy (sub-) sectors.	x			x
Security of Supply.	x	(x)	(x)	(x)
New technologies (e.g. Power-X).	x	(x)		
End-consumer empowerment.	x	(x)		
Governance.	x		(x)	x
Network development.		x		

# A successful Energy Union requires an integrated decision making process

The current, rather arbitrary split of decision making between EU entities complicates achieving energy policy goals.

- Integrated market vs. national CRMs.
- National RES support vs. coordinated network expansion needs.
- What role will EU wide electricity trading play if price signals cannot reach RES generators & if there are (almost) no fossil generators left “in the market”?
- Nationally decided energy mix vs. integrated market.
- National efficiency measures with little coordination with RES, ETH, etc.
- Etc. etc.

ACER could be given the tools to support this integrated decision making.

# As we are moving towards an internal market decision making will need to follow

However, several conditions need to be met in order to allow ACER to make those decisions (itself)

- Sufficiently broad competencies to deal with topics.
- Sufficient financial & human resources (e.g. at least 3 technical experts on any relevant topic to enable high quality decision preparations).
- Technical, economical as well as legal expertise to deal with the relevant issues.
- Balanced and legally sound rules of procedure in place.
- Checks & balances in order to avoid 'arbitrary decisions'.
- Confidence on ACERs processes & impartiality by vast majority of effected parties.

**ACER still has some work to do before it can fill this role successfully.**

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