Conference
“New Governance and Regulation in the Energy Sector”

Brussels, 24th March 2017
Introduction

ARNAUD VAN WAEYENBERGE
HEC, ULB
LIANA COZIGOU
CREG
Session 1
Multi-level governance

MODERATOR:
HELENE GASSIN, CRE
Session 1
Multi-level governance

GUEST KEY-NOTE SPEAKER
JORGE VASCONCELOS, CO-FOUNDER OF CEER
NEW GOVERNANCE AND REGULATION IN THE ENERGY SECTOR

Jorge Vasconcelos
NEWES, New Energy Solutions

CREG / ULB Conference Brussels, March 24, 2017
GOVERNANCE:

thoughts without content, intuitions without concepts?

“thoughts without content are empty, intuitions without concepts are blind”
CORRIGENDUM
Concerns all language versions.
The text shall read as follows:

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Governance of the Energy Union,

repealing Regulation (EU) No 525/2013
1. CONTEXT OF THE PROPOSAL

- Reasons for and objectives of the proposal

A resilient Energy Union with an ambitious climate policy and a fundamental transformation of our energy system can only be achieved through a combination of coordinated action – legislative and non-legislative – at EU and national level. To achieve this, the Energy Union needs strong Governance ensuring that policies and measures at various levels are coherent, complementary and sufficiently ambitious. The main objective of this initiative is to set out the necessary legislative foundation for this process in view of delivering the Energy Union, which will have to be complemented by non-legislative measures and action for the Governance to succeed.
GOVERNANCE = POLICY(IES) COORDINATION?

Diagram showing the relationship between EU, MS1, MSi, POLICY1, POLICY2, POLICYn, POLICY1, POLICY2, POLICym.
WHAT’S THE PROBLEM?

LOOKING BACK – LEARNING FROM HISTORY?

LOOKING AHEAD – WILLING TO FACE THE NEW CHALLENGES?
VERTICALLY INTEGRATED MONOPOLIES

EU INTEGRATION

UNFINISHED EU INTEGRATION

VERTICALLY INTEGRATED MONOPOLIES

20X0

GOVERNANCE COMPLEXITY

INTEGRATION

CARBON

DATA

LOW

HIGH

LOW

MEDIUM

MEDIUM

LOW

HIGH

NEWES, New Energy Solutions

March 24, 2017
Developing a new governance for the European energy market

Jorge VASCONCELOS
NEWES, New Energy Solutions - Alternate Member of the Administrative Board of ACER

In a footnote, the White Paper provided then the following definition: “Governance’ means rules, processes and cross-border transactions, determined equitably, and pointing out that:
1) The rulers

Individually, Member States are free “to determine their energy mix”. Collectively, Member States have agreed on several goals and targets, also approved by the European Parliament, that explicitly or implicitly limit their individual freedom. Therefore, as recognized by the Council in October 2014, it is necessary to improve “coordination of national energy policies”. This requires substantial political will and innovative institutional arrangements.
The “idée fix” that all forms of diversity are inherently negative and anti-European (not cost-effective, distortive, etc.) is a dangerous illness – let’s call it the “infantile disorder” of eurocratic federalism.

We can perfectly leave with different energy mix options - if the appropriate coordination mechanisms are put in place.

But although the potential coordination tools are already here (in existing legislation), they have been ignored, not applied, their importance for a well-functioning IEM systematically minimized.
2) The rules

Over the last 20 years, EU energy policy has been translated into an extensive set of rules concerning, i.a., energy markets, environmental restrictions, consumer rights, trans-european infrastructures, international cooperation, research and development, etc. Because almost all EU rules are the outcome of complex political negotiations, the potential for overlapping and conflicting interpretations cannot be neglected and increases with time. Therefore, it would be useful to simplify and to enhance coherence of the EU energy legal framework. This requires a few smart EU law experts. Moreover, the “regulatory gap” should be overcome - this requires audacious legislators.
3) The roles

Besides Member States and European Parliament (“the rulers”) there are many other actors actively involved in the development and implementation of EU energy policy: first of all the European Commission, followed by an increasing number of institutions (namely regulatory agencies and competition authorities), as well as formal (e.g. networks of transmission system operators) and informal organizations. Their increasing responsibilities include monitoring, reporting, tariff setting, proposal and approval of technical and market rules, etc. The different roles and responsibilities are not always clearly defined and although jurisdictional conflicts are seldom in Europe, several gaps and grey areas persist. For the benefit of transparency and efficiency some roles could be revised and new role assignments could be established, namely as regards planning, reporting and monitoring, as indicated in the conclusions of the October 2014 European Council. Therefore, more coherent rules should also define more coherent roles. This requires extensive knowledge about how laws and market rules are designed, as well as about how they work in practice – typically, a task for a wise men committee.
GOVERNANCE = RULES & ROLES COORDINATION?
NEW MODES OF GOVERNANCE

EXTERNAL FACTORS
- EU POLICY-MAKING
- EU POLITICAL AND INSTITUTIONAL ARCHITECTURE

INTERNAL FACTORS
- SELF-REGULATION
  - EU "REGULATION"
  - NATIONAL REGULATION

ENERGY SECTOR
- LEGACY GOVERNANCE
- TRANSITION
- NEW GOVERNANCE

NEWES, New Energy Solutions
March 24, 2017
I

(information)

COMMISSION

EUROPEAN GOVERNANCE — A WHITE PAPER

COM(2001) 428 final

(2001/C 287/01)
REGULATION OF ENERGY MARKETS AND EUROPEAN GOVERNANCE
DISCUSSION PAPER

JORGE VASCONCELLOS SUMMER 2001

1. INTRODUCTION

For some years\(^1\), energy regulators have co-operated informally among themselves and with the European Commission in order to facilitate the development of an efficient Internal Energy Market. This kind of co-operation raises several questions that may be considered at different levels, ranging from the “very technical” to the “very political”. In order to define the most appropriate and efficient co-operation framework it is necessary to address those questions without preconceived ideas. The purpose of the present paper is to provide a preliminary list of critical questions and to briefly discuss them from different viewpoints.
increasing connectedness of local energy related sectors
ENERGY SYSTEM ARCHITECTURE

SSML: Single Sector
Multiple Level

MSML: Multiple Sector
Multiple Level

SSSL: Single Sector
Single Level

MSSL: Multiple Sector
Single Level
The new electricity functional relational map
Control complexity, before and more than market complexity, is the problem.
Thanks to modern ICT full control at any level is possible
IC TECHNOLOGIES INTRODUCE THE CONTROL FLOW PROBLEM: WHO CONTROLS WHAT AND WHO COORDINATES?
“the control flow problem”

1) How to ensure control at each level?
Within each layer, different control policies can be implemented, from a highly centralized approach, more or less replicating at each level the current national master/slave hierarchical structure, down to a fully decentralized structure.

2) How to define functional interfaces between layers?
In order to ensure effective coordination of the whole system it is necessary to exchange information between layers and to establish clear communication and control procedures. Protocols must be implemented both for normal and for abnormal operational conditions.

3) Who is the “controller of the controllers” and “controller of last resort”? 
A checklist for improving Europe’s energy governance
The CREG conference “New governance structures in the EU energy sector”
Bruxelles, 24. 3. 2017

Energy and Climate
Diplomacy: Existing
Tools and Proposals

Matteo BARRA
Martin ŠVEC
Introduction

1) EU Energy and Climate Diplomacy
2) EU Competence
3) Existing tools
4) Proposals
Energy and Climate Diplomacy
Energy Security Perspective

The EU external energy policy has been traditionally driven by its dependency on supplies of energy.

The EU imports 53% of the energy it consumes.

❖ EU Strategy:

Council conclusions on strengthening the external dimension of the EU energy policy (2011)

COM European Energy Security Strategy (2014)


Council conclusions on EU Energy Diplomacy (2015)
Energy Security Perspective

- **Objectives:**
  - Diversification of suppliers
  - Diversification of routes
  - Stable environment (Energy Charter Treaty)
  - Extension of energy principles and legal framework (Energy Community)

- **Tools:**
  - Bilateral partnerships
  - Regional instruments (Energy Charter Treaty, Energy Community)
Climate change represents an urgent threat to human society and the planet. 2016 was the hottest year ever recorded (UN Weather Agency). The 2/3 of emissions causing climate change come from the energy sector. A long-term goal of keeping the increase in global temperature well below 2°C

**EU Strategy:**

- Council conclusions on climate diplomacy (2015)
- Council conclusions on European climate diplomacy after COP 21 (2016)
- COM “The Road from Paris (2016)
Objectives:
Transition to the low carbon economy
Promotion of renewable sources of energy
Mobilization of private investment
Climate change adaptation, mitigation

Tools:
Capacity building
Supporting implementation of the Paris Agreement
Regional and Multilateral Instruments
The UN High Commissioner for Refugees estimates that, on average, 22.5 million people have been displaced by climate or weather related events each year since 2008.

Four out of five top risks in terms of impact are associated with climate change (extreme weather events, water crisis, major natural disasters, failure of climate change mitigation and adaptation).

EU Strategy:

Council conclusions on Energy and Development (2016)

Implementing the EU Global Strategy - strengthening synergies between EU climate and energy diplomacies and elements for priorities for 2017 (2017)
Objectives:
To deliver universal access to carbon neutral energy
To address lack of energy access
To increase energy efficiency and renewable energy generation

Tools:
Capacity building
Implementation of the Paris Agreement
Regional and Multilateral Instruments
European Union
Principle of conferred powers: the EU has to find an appropriate legal basis for any of its external action.

The EU may invoke:

A. Competence on **Energy**
B. Competence on **Environment**
C. Competence on **Common Commercial Policy**
Existing tools
Bilateral/Regional Partnerships

Energy Diplomacy:

Bilateral instruments between the EU and key supplier or transit countries

Key energy producers: Algeria, Brazil, Gulf Cooperation Council, Norway, OPEC, South Africa and with countries of Central Asia

Key transit countries: Ukraine, Turkey, South East Europe

Memoranda of Understanding on energy security have been signed with Ukraine, Azerbaijan, Kazakhstan, Turkmenistan, Egypt

Regional partnerships: EU-Africa partnership (2020 targets of the Africa-EU Energy Partnership on energy access, energy security, renewable energy, and energy efficiency)
Environmental and energy provisions in international trade agreements have a strong potential to advance objectives of the energy and climate diplomacy.

**The Comprehensive Economic Trade Agreement ("CETA"):**

Article 29.4, the parties undertake to facilitate and remove obstacles to trade or investment in environmental goods and services of a particular relevance for climate change mitigation.

**The Transatlantic Trade and Investment Partnership ("TTIP"):**

The chapter on Energy and Raw Materials aims at liberalizing bilateral trade in goods, services and investment, and improving environmental sustainability and international governance.

FTAs concluded by the EU respectively with Singapore in 2015 and with Vietnam in 2016 both include a chapter on ‘non-tariff barriers to trade and investment in renewable energy generation’.
Multilateral/Regional Instruments

A. UNFCCC
B. The Energy Charter Treaty
C. The Energy Community
D. The Union for Mediterranean
Proposals
Proposals

A. **Capacity Building:**

Implementation of mitigation and adaptation policies.

B. **Efficient international energy governance by governments and international agencies:**

Coordinated action of international organizations in order to provide necessary capacity building through *inter alia*:

1) implementation of energy investment strategy for sustainable and inclusive development;

2) building market confidence in energy regulation;

3) creation of favourable conditions for energy investments;

4) integration of regional energy markets.
Thank you for your attention.

Martin Švec
Masaryk University
email: svec.martin@yahoo.com
A Regional Approach as a Driving Force to Reaching the Goals of the Energy Union:
The Case of Latvia

Dr. oec. Rota SNUKA
Dr. oec. Olga BOGDANOVA
Dr. oec. Jurijs SPIRIDONOVVS

Conference: New Governance and Regulation in the Energy Sector
Brussels, 24.03.2017
Regional Cooperation: Lessons Learnt

Tailoring the reinforced BEMIP

Joining NordPool

Regional LNG terminal challenge
Latvia in the European Union

Share in EU28

Population
0.4% (1.97 million)

Territory
1.5% (64.6 thou. km²)

Gross inland consumption of energy
0.3% (4.5 mtoe)
Common Problems in the Baltic Sea Region

- Pollution of the marine environment in the Baltic Sea area
- Limited access to electricity generation possibilities
- Lack of market liquidity
- Lack of incentives for infrastructure investment
- Security of Supply
Reaching Common Solutions

From BEMIP (2009) to BEMIP (2016)

• Well-developed and integrated electricity market
• Security of supply, gas market
  • geopolitical risks
  • the explicit dominance of a single energy supplier.
• Infrastructure development - based on the CEF instrument framework.
• Renewable energy & energy efficiency – soft measures
Development in the Electricity Sector

Isolated market

Improving inter-connectivity

Joining Nord Pool (2013)

Integration in the European grid (2025?)
From Energy «Island» to Regional Corridor

- joining a highly experienced partner with a well-functioning system;
- strong political will;
- clear economic benefits;
- EU financial support;
- EU regulation obligations;
- clearly defined plan, dates, responsible parties;
- supervisory role of the European Commission.
Electricity Price Dynamics in NordPool

Source: NordPool
Development in the Gas Sector

Isolated market

Diversification of sources & routes

Common Baltic gas market (2020)
LNG Projects and the Main Drivers

Source: ENTSO-G
Preconditions for a Regional Project

- Security of supply / economic viability
- Clear vision for gas market development
- Competing infrastructure
- Economic viability and clear financial side, including national policy externalities
- Agreement at an early stage
Governance – Avoiding Mistakes

- Regional / national approach
- Voluntary / compulsory approach
- Political / operational level
Thank you!

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Brussels, 24.03.2017
Role of ACER as an implementing authority under remit

Jean-Théodore Godin
Avocat
Plan

• ACER’s role: theory *versus* practice
• Legal issues
  – Scope of Guidance
  – Interpretation of REMIT
  – Relief letter
  – Nature of ACER Package
• Conclusion
ACER’s role
Quick reminder

- EU Agency
- ACER Regulation (Regulation 713/2009 (ACER))
- REMIT (Regulation 1227/2011) & REMIT IA (Regulation 1348/2014)
Role granted by REMIT

- European register
- Monitor wholesale markets
- Report & recommend
- Coordinate NRA’s
- Cross-border investigation
- Non-binding guidance
ACER Package

- Non-Binding Guidance
- Recommendations to the Commission
- REMIT Reporting User Package
- ACER Staff Letters
- Q&A and FAQ
- REMIT Quarterly
ACER’s Regulatory role and Governance

Selected issues
- Scope of Guidance
- Interpretation of Remit
- Relief letter
- Nature of ACER Package
1. Scope of Guidance

Art 16.(1) REMIT:

“The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2 [of REMIT], as appropriate”.

“the Agency shall aim to ensure that national regulatory authorities carry out their tasks under [that] Regulation in a coordinated and consistent way”.

Interpretation of ACER:

“The Agency may issue guidance both on the application of the definitions set out in Article 2 of REMIT and on other issues of application of REMIT (…)”.

Why is this problematic?
• Lack of a legal basis
• Completely overlooks the NRAs
2. Interpretation of Remit

Market participants have to publish and disclose inside information (Art. 4 REMIT), on website and through web feeds (Art. 10(1) REMIT IA) to enable the Agency to collect these data efficiently.

- Market participants have to provide and report wholesale energy market transactions and fundamental data to ACER (Art. 8 REMIT).
- Establish reporting procedures, standards and electronic formats based in Articles 6, 8 and 9. (Art. 10(3) REMIT IA).

Interpretation of ACER

ACER has developed a framework for inside information reporting by market participants (thereby confusing the reporting of data and the disclosure of inside information).


Why is this problematic?
- Lack of legal basis
- Recommendations 2012 and 2013 : “Regulated Information”
3. Relief letter

This Letter
“provide(s) time-limited no-action relief from the requirement to report upon reasoned request of the Agency the contracts and details of transactions in relation (contracts reportable at request of ACER)”

Why is this problematic?
• suspends the application of legally binding provisions
• high level of legal uncertainty

“This letter, and the positions taken therein, represent the view of the Department only, and do not necessarily represent the positions or views of the Agency or of any other office or department of the Agency. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements stipulated in REMIT or in Commission Regulation (EU) No 1348/2014. Further, this letter, and the relief contained therein, is based upon the information currently available to the Department. Any different, changed or omitted material facts or circumstances might render this no-action relief void.”
• ACER Recommendations 2012 and 2013 versus EC’s REMIT IA
4. Nature of ACER Package

- not legally binding

- addressed to the NRAs only and published for transparency purposes;
  E.G. Guidance “the non-binding Guidance on the application of REMIT provided in this document is directed to National Regulatory Authorities (NRAs) to ensure the required coordination and consistency in their monitoring activities under REMIT. It is deliberately drafted in non-legal terms and made public for transparency purposes only.”

- or addressed to market participants but in no way provide a legal interpretation.
  E.G. FAQs: “This documents is directed to the public but in no way provide a legal interpretation of REMIT and do not by any means substitute (applicable legislation)”.

Why is this problematic?
- these documents come from ACER, an All NRAs body;
- ACER is the primary European expert in the field of energy;
- ACER has an unmatched capacity to create compromise among regulators;
- these documents are made public;
- their non-binding character also needs to be assessed against their actual wording (e.g. section 4.6, last § of the Guidance)
What does this tell us about Acer?

• In a nutshell
  o ACER Regulation
  o REMIT
  o ACER Package

• Why is this problematic?
  o Legal certainty vs political choice
  o Winter Package
Questions?
Thank you for your attention!

Jeantheodore.godin@lexlitiscenter.be
Coffee break

10:50 – 11:10

In partnership with

Commission for Electricity and Gas Regulation
Session 2
Tools of regulation

MODERATOR:
ADRIEN DE HAUTECLOCQUE, COURT OF JUSTICE OF THE EU
Session 2
Tools of regulation

GUEST KEY-NOTE SPEAKER
ANNE HOUTMAN, FORMER PRINCIPAL ADVISOR IN DG ENERGY AT THE EUROPEAN COMMISSION
NEW GOVERNANCE AND REGULATION IN THE ENERGY SECTOR: WHAT DOES THE FUTURE HOLD FOR NETWORK CODES?
Charikleia Vlachou
*Maître de conférences*
*Université d’Orléans*
INTRODUCTION

- Network Codes & Guidelines as the « technical » backbone of the IEM
  - Sets of rules applying to a cross-border or market integration issue
  - Three Families: Market rules, System Operation, Network Connection
  - Current challenges

- What does the future hold for network codes?
  - I. Streamlining the adoption procedure
  - II. Ensuring effective implementation
# A. A Complex Development Process

<table>
<thead>
<tr>
<th>Organization</th>
<th>Stage</th>
<th>Timeline</th>
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<td>Commission</td>
<td>Annual priority list</td>
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<tr>
<td>ACER</td>
<td>Framework Guideline</td>
<td>6 months</td>
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<tr>
<td>ENTSO-E</td>
<td>Develop Network Code</td>
<td>12 months</td>
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<tr>
<td>ENTSO-E</td>
<td>Consultations</td>
<td></td>
</tr>
<tr>
<td>ACER</td>
<td>Reasoned opinion</td>
<td>3 months</td>
</tr>
<tr>
<td>(ENTSO-E/G may amend or resubmit)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission</td>
<td>Adoption via comitology</td>
<td></td>
</tr>
</tbody>
</table>
A. A COMPLEX DEVELOPMENT PROCESS

- Informal practices
- Article 55 – Proposal E-Regulation
  - New timeframe for the annual priority list
  - New areas
    - Distribution tariff structures, Rules for the provision of non frequency ancillary services, Demand response, Energy storage and demand curtailment rules, Cybersecurity rules, Rules concerning ROCs, Curtailment of generation and redispatch of generation and demand
  - New actors
  - Clearer role for ACER
B. AN ADOPTION PHASE ALIGNED WITH THE LISBON TREATY

- From the RPS procedure (Decision 2006/512/EC)
  - Regulatory Committees
  - Informal MS meetings

- To the delegated acts (art. 290 TFEU)
  - “A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act”
B. An adoption phase aligned with the Lisbon Treaty

### B. An adoption phase aligned with the Lisbon Treaty

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Regulatory Procedure with scrutiny</th>
<th>Delegated acts (article 290 TFEU)</th>
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<tr>
<td>Framework</td>
<td>Article 5a Decision 2006</td>
<td>Case by case basis</td>
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<tr>
<td>Committees</td>
<td>Comitology committees - opinion</td>
<td>Expert groups – no legally binding opinion</td>
</tr>
<tr>
<td>EP / Council</td>
<td>Unequal footing</td>
<td>Equal footing</td>
</tr>
</tbody>
</table>
| Veto              | 1. Commission exceeded its competencies  
                    2. Incompatibility with the aim or content of the basic act  
                    3. Violation of the principles of subsidiarity or proportionnality | Unlimited grounds |
| Revocation        | -                                  | Right to revoke the delegation    |
B. AN ADOPTION PHASE ALIGNED WITH THE LISBON TREATY

- Interinstitutional Agreement on Better Law-Making of 13 April 2016
  - « The Commission commits to gathering, prior to the adoption of delegated acts, all necessary expertise, including through the consultation of Member States’ experts and through public consultations »
  - Equal access of the Parliament and Council’s experts to all related meetings and documents
  - Invitation in meetings by the European Parliament or the Council
  - Prompt alignment of all secondary law
  - Establishment of a public register for delegated acts
  - Negotiations on non-binding delineation criteria - articles 290 and 291 TFEU
B. AN ADOPTION PHASE ALIGNED WITH THE LISBON TREATY

- NCs, Guidelines (and amendments) adopted as delegated acts (articles 54(1), 57(2), 64 Proposal E-Regulation)
  - Minimum degree of harmonisation
  - Regional specificities
  - Proportionality
  - National network codes that do not affect cross-border trade

- NCs and Guidelines
  - Content, Consultations, Amendments
    - « and other stakeholders where relevant » (57(7) Proposal E-Regulation)
II. ENSURING EFFECTIVE IMPLEMENTATION

- Electricity
  - “In electricity the focus over the next few years will be on the full implementation of all the Network Codes and Guidelines across the European Union and on the assessment of whether and how the Electricity Target Model could be improved or refined to meet the impending challenges” (ACER, Programming document 2017)

- NCs&Guidelines entered into force
  - Regulation 2015/1222 establishing a Guideline on Capacity allocation and Congestion Management
  - Regulation 2016/631 establishing a NC on requirements for grid connection of generators
  - Regulation 2016/1388 establishing a NC on Demand Connection
  - Regulation 2016/1447 establishing a network code on Requirements for Grid Connection of High Voltage Direct Current Systems and Direct Current-connected power park modules
  - Regulation 2016/1719 establishing a Guideline on Forward Capacity Allocation
A. MORE SPECIFIC TASKS FOR ACER

- Specific obligations under NCs&Guidelines (ACER, Working Programming Document 2017)
  - « (a) Reporting on different aspects of the Network Codes and Guidelines beyond the implementation monitoring (e.g. report on the efficiency of bidding zones pursuant to Regulation (EU) 2015/1222);
  - (b) Monitoring the development of aspects of the Network Codes and Guidelines as well as entities having obligations pursuant to the Network Codes and Guidelines (e.g. monitoring of NEMO’s progress in establishing and performing single day-ahead or intraday coupling and providing reports and recommendations to European Commission pursuant to Article 7 of Regulation (EU) 2015/1222);
  - (c) Overseeing processes and entities’ obligations pursuant to the Network Codes and Guidelines (e.g. coordination of monitoring activities of entity or entities performing the MCO functions pursuant to Article 82 of Regulation (EU) 2015/1222);
  - (d) Publishing of reports and other documents to be developed pursuant to the Network Codes and Guidelines;
  - (e) Requesting specific actions from different entities pursuant to the Network Codes and Guidelines (e.g. the Agency may request ENTSO-E to draft the technical report on bidding zones and TSOs to launch the review of bidding zones);
  - (f) Maintaining different registers pursuant to the Network Codes and Guidelines (e.g. the Agency needs maintain a list of designated NEMOs, their status and where they operate on its website pursuant to Article 4 of Regulation (EU) 2015/1222) »
A. MORE SPECIFIC TASKS FOR ACER

  - Obligations for TSOs and other entities to develop proposals for terms and conditions or methodologies, which need to be approved by all NRAs or a group of NRAs
    - Around 40 terms and conditions and methodologies developed at European level and approved by all NRAs
    - Around 30 terms and conditions and methodologies developed and approved by TSOs and NRAs of individual regions, where the number of regions established for different purposes varies between 5 and 10.

- **ACER**
  - Reporting to the Commission on TSOs’, NEMOs’ or other entities’ failure to submit terms and conditions or methodologies for the approval by NRAs (article 9(4))
  - Opinion on the terms and conditions upon request by NRAs within 3 months (article 9(9))
  - « Surrogate » role in case NRAs are not able to reach a common position or upon their joint request (article 9(11))
A. MORE SPECIFIC TASKS FOR ACER

- Regulatory approval – article 5 Proposal for ACER Regulation
  - « it is useful to streamline the procedure for the regulatory approval of regional or Union-wide terms and conditions or methodologies (...) by submitting them directly to the Agency in order for national regulators, represented in the Board of Regulators, to be able to decide upon them »
  - ACER - Revision and approval of proposals for terms and conditions or methodologies for the implementation of NCs&Guidelines which require regulatory approval by all regulatory authorities or by all regulators of a concerned region
B. MONITORING THE IMPLEMENTATION

- Effective monitoring: a « key function of the Agency » - article 9 E Reg repeated in 29 of Proposal E-Regulation
  - Implementation by ENTSO-E
  - Monitor, analyse and report back to the Commission on the implementation of NCs & Guidelines
    - « (a) Timely identification an reporting on delays and barriers in the implementation of the NCs and Guidelines
    - (b) Providing opinions on ENTSO-E’s plan for the monitoring of the implementation of the adopted Network Codes and Guidelines;
    - © Providing opinions and requirements on ENTSO-E and other entity's reports related to implementation monitoring;
    - (d) Determination of a list of relevant information to be communicated by ENTSO-E to the Agency for the purpose of its monitoring activities pursuant to the adopted Network Codes and Guidelines;
    - (e) Providing recommendations to assist NRAs and market players in sharing good practices, where necessary. » (ACER Programming Document 2017)
  - 7th monitoring Report
    - « increasingly sophisticated » and « enriched with additional indicators to measure the effectiveness of various NCs » (ACER Programming Document 2017)
B. MONITORING THE IMPLEMENTATION

- Organisation and coordination of stakeholders’ involvement in monitoring
  - European stakeholder committees

- Innovations to ensure consistency in the monitoring
  - Q&A platform on the ACER website with respect to NC implementation

- Developping ex-post evaluations on the impact of FGs&NCs
  - October 2015- study for a methodology proposal to evaluate the impact of the gas NCs and Guidelines in terms of implementation&market effects
B. MONITORING THE IMPLEMENTATION

- Resource strains
  - European Commission:
    - «consider the implementation work of network codes and guidelines as priority in the coming years and to shift resources internally» (working programme 2016)
    - Staff allocation between the development and the implementation phase (working programme 2017)

- Compliance
  - Multi-stage procedure leading to a veto power of the Commission with respect to decisions of an NRA that does not comply with NCs and Guidelines
    - Article 63 Proposal E-Directive
CONCLUSIONS

- Streamlined and updated procedure on the basis of the experience acquired
- Focus on implementation issues

Thank you very much for your attention!
Charikleia.vlachou@univ-orleans.fr
PXs and CACM: a new role in a better regulatory environment?

Conference “New governance and regulation in the electricity sector”
24 March 2017

Régine Feltkamp
Professor at Law (VUB)
Attorney at Law (MODO)

&

Gerrit Hendrikx
Scientific researcher (VUB)
Attorney at Law (MODO)
Content paper:


Purpose paper:

- Assess content of CACM against CACM’s objectives
- Assess impact of CACM for power exchanges (PXs); and
- Assess the new rules CACM introduces regarding certain elements of governance of single day-ahead and intraday market coupling (terms and conditions or methodologies (TCM), cooperation, costs)

Agenda of our presentation

- Brief explanation of what market coupling is
- General overview of the content of CACM on the 3 abovementioned items
- Presentation of our key findings on the 3 abovementioned items
Market coupling = coupling the order books of different PXs

- PXs match sale and purchase orders for bidding zone
- If cross-border => capacity on interconnectors needs to be taken into account
  - Electricity and transmission capacity are traded simultaneously = implicit allocation of capacity
  - Simultaneous calculation of electricity prices and cross-border flows across in a region

- Until CACM, based on a voluntary cooperation (except certain aspects related to capacity allocation)
  - Common algorithm/systems, operations

Day-ahead market coupling

PCR users and members

Source: PCR Project presentation
http://www.mercatoelettrico.org/En/MenuBiblioteca/Documents/20160727_PCRStandardPresentation_detailed_PMU.pdf
MARKET COUPLING (2)

PX 1
- Sale orders 100
- Purchase orders 150

PX 2
- Sale orders 250
- Purchase orders 200

50 (Surplus traded depending on price)

Cross-border: available capacity on interconnector?

PXs and CACM: a new role in a better regulatory environment?
CACM = mandatory rules for single day-ahead (DA) and intraday coupling (ID)

- Not only rules regarding TSOs’ activities in relation to capacity allocation and congestion management

- But also rules regarding
  - Different aspects of market coupling as such (algorithm, products traded, prices, processes, clearing and settlement of trades, firmness of allocated capacity)
  - The introduction of a prior designation scheme for PXs in each MS => “NEMOs” (art. 4-6)
  - Different aspects of the cooperation between TSOs and NEMOs
    - Tasks NEMOs (art. 7) vs. tasks TSOs (art. 8)
    - Adoption of TCM by NEMOs (and TSOs) and approval by NRAs (art. 9)
    - NEMOs and TSOs to cooperate for day-to-day management (art. 10)
    - Cost allocation, cost sharing and cost recovery (art. 74-80)
  - Obligation for NEMOs and TSOs to participate
ASSESSMENT 1: CONTENT vs. OBJECTIVES (2)

LIMITED JUSTIFICATIONS

- **Limited justifications** for introducing mandatory rules on single DA and ID coupling

- **Cons. 3:**
  - Necessity for genuinely integrated electricity market => enable clear EU legal framework for an efficient capacity allocation & congestion management

- **Cons. 19:**
  - PXs’ bids & offers are necessary input for capacity allocation, hence institutional framework for PXs is required
  - Common requirements for designation of NEMOs will facilitate achievement of aims Regulation 714/2009

- **Cons. 20:**
  - Need of regulation or at least oversight of PXs, since coupling requires cooperation between potentially competing PXs

- Justifications translated into objectives of CACM as regards PXs (art. 3)

- Justified increase of regulation for PXs?

PXs and CACM: a new role in a better regulatory environment?
A NEW MARKET PLAYER: THE NEMO

NEMO: entity designated by the competent authority MS to perform tasks related to single DA or ID coupling

- Tasks defined in art. 7 CACM:
  - General description: act as market operator to perform coupling (in cooperation with TSOs)
  - List of tasks: individual + joint tasks
    - Individual: e.g. receiving orders, matching & allocating orders in accordance with single DA/ID coupling, publishing prices and clearing and settlement of contracts
    - Joint: MCO-functions

Tasks can only be performed by a “designated” NEMO

- Application file
- Fulfilment of designation requirements
- Specific rule for existing PX-monopolies = one NEMO designated
- “European passport”-mechanism
- Supervision (“home country rule”) => revocation possible

ASSESSMENT 2: IMPACT CACM ON PXs ACTIVITIES (1)

PXs and CACM: a new role in a better regulatory environment?
ASSESSMENT 2: IMPACT CACM ON PXs ACTIVITIES (2)

A NEW MARKET PLAYER: THE NEMO

- NEMO designation = introduction of license obligation = constraint on the freedom to conduct business

- **Scope** of license obligation? (all PXs activities vs. market coupling only?)

- Valid limitation of *freedom of establishment / freedom of services*?
  - **Art. 23, 49-62, 114 TFEU**
    - EP + Council can issue directives for coordination of rules concerning the taking-up and pursuit of activities (art. 53 TFEU)
    - EP + Council can adopt measures for approximation of provisions of MS to establish internal market (art. 114 TFEU)
    - Legal basis CACM: art. 18, (3), (b) and (5) Regulation 2009/714 => minimum harmonization rules for “trading” => justification for prior license?
  - Justification by **public policy** or imperative reason of overriding public interest?
    - Does the aim of “fair rules for cross-border exchanges” to enhance competition and good functioning of wholesale market require a prior license obligation?
    - Limitation of regulation to market coupling (and specifically to elements related to (implicit) allocation of capacity) sufficient?
    - Quid national authorisation schemes for PXs?
TERMS, CONDITIONS AND METHODOLOGIES (TCM)

TCM to be developed by NEMOs are divided into 3 categories:

- **TCM submitted for approval to all NRAs**
  - Adopted by consensus or qualified majority – blocking minority (art. 9, (2))
  - MCO-plan, algorithms, back-up methodology, products
- **TCM submitted for approval to NRAs of the concerned region**
  - Adopted by consensus (art. 9, (3))
  - Design and implementation of complementary regional auctions
- **TCM submitted to national competent authority**
  - No particular decision-making rule – consensus required?
  - Sharing of regional costs between NEMOs and TSOs

After submittal, NRAs have to decide within 6 months on TCM

- **Approving or requesting an amendment**
  - Additional 4 months (2 for developing amended TCM / 2 for decision NRAs)?
  - No decision on (amended) TCM – ACER to adopt decision within 6 months
  - Multiple requests for amendments or ACER to decide once an amended TCM is not approved?
  - No (amended) TCM submitted – Commission to ensure adoption within 4 months
  - Approval NRAs required for TCM adopted under supervision of Commission?

- **Delays** due to required approval by all NRAs (e.g. MCO-plan)
  - ACER as approving authority? / civil liability of NRAs?

ASSESSMENT 3: COUPLING GOVERNANCE (1)

PXs and CACM: a new role in a better regulatory environment?
ASSESSMENT 3: COUPLING GOVERNANCE (2)

TASK ALLOCATION AND COOPERATION NEMOs AND TSOs

- **Main challenge:** ensure good functioning of single DA and ID coupling
  - Reliable systems + good organisation of interactions between involved parties
  - Fair & non-discriminatory treatment <-> maintain competition between NEMOs

- **Task allocation** between NEMOs and TSOs
  - NEMO tasks (art. 7) and TSO tasks (art. 8)
  - TSOs obliged to participate in DA and ID coupling

- **Obligation to cooperate** for NEMOs and TSOs
  - Forced cooperation by mandatory task allocation
  - Obligation to cooperate (e.g. operating DA and ID coupling, adopting certain TCM, day-to-day management)
  - Content and scope not specified => legal uncertainty
    - Who has the lead when adopting TCM in cooperation?
    - Quid joint decision making for what concerns day-to-day management?
    - What are the consequences of not cooperating / non-compliance?
      - Suspension or termination of the contract? If not, how ensure compliance?
      - Liability for failure to cooperate => limitation of liability for allocated NEMO/TSO tasks?

- **Sanctioning mechanisms** at EU level required?
COSTS

Aim of CACM’s rules on costs (cons. 23 & 24)

- Ensuring that costs incurred efficiently to set up processes CACM are recovered
- Avoiding delays due to disputes on cost sharing by having rules prior to implementation process

Cost allocation (art. 76, (1))

- All common, regional, national costs of developing algorithms + developing/operating DA and ID coupling = NEMO costs? => includes TSOs’ costs
  - Why not allocate costs based on task allocation?

Cost sharing (art. 80)

- Cost sharing key for common costs (= resulting from coordinated activities all NEMOs or all TSOs): 1/8 equal per MS, 5/8 per consumption MS, 2/8 for NEMOs
  - Criterion: consumption= quid? Further sharing key TSOs-PXs?
  - NEMOs to bear 2/8 share of common (possibly regional) TSO / NEMO-TSO costs?

Cost recovery (art. 75 and 76, (3))

- Costs can be recovered if reasonable, efficient and proportionate for NRA MS
  - Through network tariffs, NEMO fees or other appropriate mechanisms
  - Divergence in assessment? Quid level playing field?
- NEMOs unable to recover 2/8 share common (possibly regional) costs?

ASSESSMENT 3: COUPLING GOVERNANCE (3)

PXs and CACM: a new role in a better regulatory environment?
CONCLUSION

➢ New role in a better regulatory environment?

- CACM has, as a mandatory EU-wide framework, certain advantages, but:
  - For certain elements necessity of rules is questionable
  - Framework is not complete
  - Framework gives rise to legal uncertainties
  - Implementation new framework gives rise to substantial costs
THINKING MUST NEVER SUBMIT ITSELF.

Thank you for your attention!
Lunch break

12:30 – 14:00

In partnership with
Session 3
Look into the future

MODERATOR:
FREDERIK VANDENDRIESSCHE, GHENT UNIVERSITY
Session 3
Look into the future

GUEST KEY-NOTE SPEAKER
PHILIP BAKER, SENIOR ADVISER @ RAP
Look to the future

24 March 2017

Presented by Phil Baker
Energy market - pulled in opposite directions

Integration
Regional or even pan-European markets

Energy market

Decentralization
Distributed resources, active consumers, prosumers
Market integration

- Regulation,
- Harmonization,
- Some transfer of powers from NRAs to ACER?

Regional market

Regional operational entity

- System operation
- Harmonization
- Relationship with TSOs - could accountabilities be split?
Decentralization

- Decentralized renewables - major role in delivering decarbonisation
  - Currently 90% of renewables connected to distribution grids
- Increased flexibility requirement - demand side needs to play its part.
  - Reducing balancing costs, managing network constraints
- Markets & regulation - accommodate many more participants
  - Prosumers, active consumers, service providers
- Consequences uncertain
  - Regulation will need to more flexible & able to respond to rapid change
Winter package

Wholesale market reform

- Develop short-term markets
- De minimis trading value of 1 MW
- Prices capped only at VoLL
- Service definitions to reflect DR characteristics

Market to reflect real value of energy

- Prices capped only at VoLL
- Market to reflect real value of energy

Enabling customer participation

- Contract with aggregator without supplier’s permission
- No supplier-aggregator compensation
- Common & supportive prosumer rules
- Right to a smart meter & dynamic tariff
- Linking wholesale & retail markets

Wholesale market reform

Energy solutions for a changing world
Implementation may be challenging

- Scarcity pricing & removal of price caps other than when set at VoLL
  - Public, political acceptability?
  - Need for enhanced market monitoring?
- Accommodating prosumers
  - Network charging, how to apportion network costs appropriately?
- Dynamic energy tariffs
  - Risks for consumers
  - Need to protect customers who can’t or will not engage?
Network investment costs

• Incentivizing DSOs to innovate & consider alternatives to traditional investment
  • Majority of DSOs consider regulation is at best neutral in terms of innovation (Eurelectric). How best to incentivize?

• Contestable approach to network investment
  • Network costs are rising, can contestability provide better value for customers? Would it provide additional sources of investment?
  • Would a contestable approach & many small asset owners enhance the case for ISOs?
About RAP

The Regulatory Assistance Project (RAP) is a global, non-profit team of experts that focuses on the long-term economic and environmental sustainability of the power sector. RAP has deep expertise in regulatory and market policies that:

- Promote economic efficiency
- Protect the environment
- Ensure system reliability
- Allocate system benefits fairly among all consumers

Learn more about RAP at www.raponline.org
Energy Demand Response: which role for regulatory authorities?

David Haverbeke, Wouter Vandorpe & Raf Callaerts, Lawyers, Fieldfisher LLP Brussels

Governance and Regulation (CREG), 24 March 2017
Outline

• Introduction
  – Fieldfisher LLP > Brussels hub > European law > Energy & Utilities Practice

• What is Demand-Side Management / Flexibility / Demand Response?

• What role might/should NRAs play in allowing DR on the energy market?
  – Today
  – Tomorrow

• Conclusion
What is Demand-Side Management / Flexibility / Demand Response?
- Scheme

Gen → TSO → DSO → Sup → C

Access → Supply

Ancillary Services Flexibility

BRP

FSP

Authorities

ACER
European Commission
NRA'S
Energy Cabinets Administrations Stakeholders
What is Demand-Side Management / Flexibility / Demand Response?
- Concepts

- *Demand side management* (DSM) is: encouraging the consumer to use less energy during peak hours, or to move the time of energy use to off-peak times such as nighttime and weekends.

- No binding definition today // still more of a “regulatory concept“

- DSM is part of *Flexibility*, alongside storage and (flexible) generation

- Amongst the main DSM actions is *Demand Response* (DR) that entails specific pooling/collection of consumption (behaviour) as a part of optimisation of consumption generally for a group of consumers.
What is Demand-Side Management / Flexibility / Demand Response?
- To remember

• Just remember today:
  – DSM / flex / DR = new concepts on the energy market => new energy market players (aggregators, ESCO)
  – = consuming differently, not necessarily consuming less
  – Who takes care of this? New roles for NRAs? Rights & obligations?
Role for NRAs – today & in short term future

• **In general:** Energy Efficiency Directive + Electricity Market Directive proposal (art. 17, part of the Winter Package) make a reasonably good deal for DR + put NRAs at the forefront

• **In organised markets:**
  – already in EED (15.8): a specific and general DR non-discrimination principle => leads to general competences to NRAs as to DR issues related with this principle already today!
  – leads to “day-to-day” tasks for NRAs (EMD proposal)
    • The NRA enabling aggregation
    • The NRA defining technical modalities
    • The NRA providing market information
Role for NRAs – today & in short term future

– clarity in upcoming legislation (EMD proposal):
  • specific and elaborated competences to the NRA
  • further detail on (i) right to enter the market without consent from other market participants and (ii) (non-)compensation to supplier/BRP

• In “non-organised” market segments: DR via price signals
  – The NRA fixing tariffs (dynamic tariffs)
  – NRA / customer / supplier / dynamic supply contract (in EMD proposal: option to choose!)
Conclusion

- New market parties and roles = New regulation needed = Implementation and technical input & control could be a role for NRAs
- Demand-Side Management / Flexibility / Demand Response (DR) = Very technical => NRA as technical authority absolutely needed
- NRAs are already (in EED) entitled to play a major role in allowing DR on the market:
  - In organised markets: DR non-discrimination principle:
    => leading to general competences for NRAs
    => leading to “day-to-day” tasks for NRAs (EMD Proposal)
  - In non-organised market segments: DR via price signals
- Clarity in upcoming legislation (Winter Package): specific and elaborated competences to the NRA + further details
- Expected need for appropriate DR related dispute settlement
Q&A - Contacts

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Energy & Utilities Practice
Fieldfisher LLP, Brussels

Fieldfisher is ranked as one of the leading energy & utilities law practices in Belgium, the UK and the EU in the most recent Chambers and Legal 500 listings
Regulation after agencification: uncertainty and hierarchy in the case of energy

Bernardo Rangoni (London School of Economics)

New governance and regulation in the energy sector, CREG and ULB, 24 March 2017, Brussels
What we know about agencies - diffusion

- from the late 1990s onwards, much delegation to European regulatory networks and then EU agencies

- thus bold claims about “the rise of the regulatory state”, “regulatory capitalism” and “agencification”
What we know less about policymaking

• attention to institutionalization of agencies overlooks study of their influence on policymaking

• under what conditions, and how, agencies contribute to development of regulation after agencification?

• all the more true because agencies face rivals, such as the ‘traditional’ executive body- the Commission
Research question and design

• Commission often favors distinct styles of policymaking processes

• thus question about conditions in which it engages with agencies, and how

• paper builds on unconventional, experimentalist interpretation of EU governance to clearly distinguish distinct types of policymaking processes
### Experimentalist vs. hierarchical policymaking

<table>
<thead>
<tr>
<th>1.</th>
<th>Member states and companies allowed to pursue different approaches</th>
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<td>2.</td>
<td>their different approaches compared</td>
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<td>3.</td>
<td>agreements on reforms developed on this basis</td>
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<td>4.</td>
<td>with high stakeholder participation</td>
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<th>1.</th>
<th>Member states and companies obliged to adopt uniform solutions</th>
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<td>2.</td>
<td>compliance with uniform solutions monitored</td>
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<td>3.</td>
<td>reforms not developed on basis of comparisons</td>
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<td>4.</td>
<td>with low stakeholder participation</td>
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Case study- energy

- energy saw much agencification- ERGEG and then ACER
- used as important example by literature on experimentalist governance
- within energy, crucial issue of congestion management from mid-2000s to present day across electricity and gas
Experimentalism in electricity

1. Reg. 1228/2003 allowed member states and companies to use different types of auctions (ie “explicit” or “implicit”) and subtypes (ie “volume” or “price coupling”)

2. comparisons notably through ERGEG “Regional Initiatives” and more broadly Florence Forum
Experimentalism in electricity

3. 2009 voluntary agreement on target model suggesting implicit auctions via price coupling based on comparisons, esp. “Trilateral Market Coupling” connecting Belgium, France and the Netherlands

4. reform agreed in Florence Forum and then formalized in Com. Reg. 2015/1222 through the ACER network code procedure- both featuring high stakeholder participation
Hierarchical policymaking in gas

1. reform based on ERGEG advice, not based on comparisons, suggesting shift from “interruptible” to “firm use-it-or-lose-it”

2. resulting Com. Dec. 2012/490/EU does not grant discretion, but rather, obliges member states and companies to adopt uniform solutions, namely firm uiol
Hierarchical policymaking in gas


4. adopted through comitology instead of Madrid Forum and ACER network code procedure, thus with low stakeholder participation
Wider implications

- variations in how agencies, after their creation, contribute to regulatory policymaking

- cannot be fully explained by hierarchy- powers of Commission were v. similar across electricity and gas
• consistent with uncertainty - inversely assessed based on specificity of Commission’s preferences about how to achieve its policy goals

• when Commission has only generic preferences, it employs agencies to compare distinct approaches and develop agreements on reforms on this basis

• when Commission has specific preferences, it employs agencies to develop reforms without conducting comparisons and to monitor compliance
• contrasts with literatures emphasizing importance of hierarchy

• suggests uncertainty is individually sufficient condition for experimentalist policymaking
From Passive to Prosumer: The Evolution of Energy Consumer in EU Law

Anna Butenko & Kati Cseres
Structure of the presentation

- Consumer types
- Prosumers and local energy
- Regulatory disconnection
- Consumer in EU energy law:
  - 1st Package
  - 2nd Package
  - 3rd Package
  - 4th Package
- Observations
The evolution of energy consumers

- **Passive**: do not participate in energy market, not interested in cheap versus expensive, grey versus green

- **Active**: participate in energy market, actively search for better deals, interested in cheap versus expensive, primary driver: pragmatic

- **Sustainable**: participate in energy market, actively search for better deals, interested in cheap versus expensive, grey versus green, primary driver: moral (e.g. 1970, anti-nuclear)

- Each type of consumers has own demands towards energy
Energy Prosumers

- Self-sufficiency (primitive) → ‘Plug & Play’ → Self-sufficiency (advanced, prosumerism)

- Local energy is energy produced by prosumers

- Motivation can be both prudential & moral

- First prosumers active as early as 1980

- Still marginal in Europe, but gaining ground due to technology development and price decreases
Energy prosumers as market actors

- Prosuming energy is nothing new

- BUT due to technology progress and digitalization, prosumers can* participate in flexibility and balancing markets (national energy market)

- Prosumers can* also trade energy, both on national market and among themselves (local energy market)

- Market access is essential

*Technically possible & economically feasible
Regulatory disconnection

- Gap between innovation and law, that occurs because innovation develops faster or differently than corresponding legal provisions

- Can manifest in a number of ways:
  - Regulatory void or gaps
  - Uncertainty in the application of existing regulations
  - Regulatory over- or under-inclusiveness
  - Regulatory obsolescence

- Not problematic by default- legal certainty is important, and some ‘lag’ in addressing new technologies is acceptable
Regulatory failure

- Regulatory disconnect is only problematic when leading to regulatory failure: If it ain’t broke, don’t fix it!

- Regulatory failure is characterized by inefficient regulatory outcomes:
  - Futility: the measure did not have any effect on X
  - Jeopardy: the measure had a positive effect on X as intended, but also produced unexpected negative side effects on Y
  - Perversity: the measure reached the opposite outcome

- Ways to address problematic regulatory disconnection:
  - Temporary/ experimental legislation
  - Technology-neutral legislation
  - Softer form of governance OR institutional dimension (e.g. regulator)
Consumers in First EU Energy Package I

- Goal: internal market, not oriented towards consumers

- Final customers are referred to as customers ‘buying electricity for […] own use’ (Article 2.9, Directive 96/92/EC)

- Energy consumers generally perceived as weak ➞ equivalent to passive consumption pattern

- Under-inclusiveness of active, sustainable & prosuming energy consumers ➞ regulatory disconnection established
Consumers in First EU Energy Package II

■ The First Energy Package did not achieve the set policy goals: ‘important shortcomings and possibilities for improving the functioning of the market remain’ (Recital 2 Directive 2003/54/EC) → regulatory failure?

■ Established regulatory disconnection is problematic in case of active consumers

■ Regulatory disconnection is not problematic in case of sustainable consumers and prosumers, as policy goals did not include sustainability, etc. → this highlights a problem with using reg. failure as a criterium, as it depends on policy
Consumers in Second EU Energy Package I

- Goal: free movement of energy & free choice of suppliers. Still focus on internal market, but more focus on consumers

- ‘Household customers’ purchase ‘electricity for their own household consumption, excluding commercial or professional activities’ (Article 2.19, Directive 2003/54/EC)

- The concept of the consumer as a weak party is replaced by that of the active consumer → equivalent to active consumption pattern

- Vulnerable consumers introduced as separate category
Consumers in Second EU Energy Package II

- Under-inclusiveness of sustainable & prosuming energy consumers → regulatory disconnection established

- The Second Energy Package did not reach its goal either-deemed insufficient & followed by the 3rd Package

- But can it be defined as regulatory failure? It did have a positive effect on market opening, but did not reach 100%- if we apply this as a criterion, probably all regulatory measures can qualify as ‘futile’

- Regulatory disconnection is not problematic in case of sustainable consumers and prosumers
Consumers in Third EU Energy Package

- In 2006-2007 the EU energy policy goals are broadened as to include competition, sustainability and security of supply.

- Accordingly, the adopted concept of the consumer was that of sustainable energy consumer, engaging in conscious choice of suppliers & energy efficiency.

- Prosumers are covered neither by the definition of consumer, nor by the definition of producer under-inclusiveness.

- Regulatory disconnection (prosumers) is problematic.
Prosumers in Fourth EU Energy Package


- Prosumers are not only recognized, but put center-stage

- It is recognized that prosumers should be able to act as producers or suppliers, have access to aggregators, etc.

- Effectively guarantees third party access to the infrastructure and market for prosumers

- Effectively closes the regulatory disconnection!
### Summary

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<tr>
<th>Consumer concept/Package</th>
<th>Passive</th>
<th>Active</th>
<th>Sustainable</th>
<th>Prosumer</th>
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- **Non-problematic disconnection**
- **No disconnection**
- **Problematic disconnection**
Main observations I

- There is an obvious evolution of the dominant consumer concept in EU energy law: passive → active → sustainable → prosumer

- This evolution can be linked to the changing EU policy goals: first focus on market opening & then broadening to three pillars of competition, sustainability and security of supply

- There is no link to the innovation & market developments’ pace: prosumers were active on the market much earlier than they were recognized in EU energy law
Main observations II

- Consumer concept has an instrumental role in EU law

- Regulatory disconnection is a useful framework to assess the relationship between innovation and regulation, but it has its weaknesses:
  - Only possible to identify regulatory disconnection when the innovation in question is reflected in the policy goals
  - Relatively easier to assess the effectiveness of regulatory measures post-factum
  - Regulatory measure that is not 100% reaching its goals is not automatically futile
  - Etc.
Thank you for your attention!

Anna Butenko

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Conclusion

MARIE-PIERRE FAUCONNIER
CREG