

## CEER Legal Training on Evolving Regulatory Processes in European Energy Policy

13-14 February 2017

CEER Office, Cours Saint-Michel 30a (5th floor), 1040 Brussels

### *COURSE PROGRAMME*

**Monday, 13 February 2017**  
**10:30–18:00**

#### **DAY 1: Governance, Independence of NRAs and the European Decision-Making Framework**

##### **WELCOME AND INTRODUCTION**

**10:30-10:45** Opening remarks and round-table introduction of the participants

- **Ms Nadia Horstmann, BNetzA, CEER LTF Chair**

**10:45-11:30** Keynote speech: Short state of play of the European Commission's "Clean Energy for All Europeans" Proposals

- **Ms Edith Hofer, European Commission, Secretariat General, Directorate D – Policy Coordination**

**Discussion/Q&A**

#### **SESSION 1 GOVERNANCE AND INDEPENDENCE OF NATIONAL REGULATORY AUTHORITIES (NRAs)**

By assessing recent developments, it can be seen that governance has become one of the most significant issues with regard to the functioning of the Agency for the Cooperation of Energy Regulators (ACER), especially when it comes to decision-making and cooperation of National Regulatory Authorities (NRAs) within ACER. Setting a proper governance framework is also one of the main targets of the European Commission's new proposals on "Clean Energy for All Europeans", also known as "The Winter Package". In order to establish a successful governance framework there is a need for independent regulators. Thus the rules and principles setting out the regulators' independence have been enhanced during recent years. Several reports and studies have been dedicated to the assessment of this important issue. Regulators' independence is constantly being supervised by the European Commission.

The first part of this session highlights the changes introduced by ACER Process Groups concerning ACER governance rules. An overview of governance principles set out in other EU Agencies will provide an outlook on what could be adopted or improved within ACER in order to achieve a better functioning of the Agency through the effective cooperation of

NRAs. Which rules have already been changed and which rules still have to be adopted? Which decision-making mechanisms are the most suitable for the specificities of the European energy market?

In the second part of the session the results and conclusions of recent independence reports will be presented. The discussion will focus on the assessment of how different principles of independence are being interpreted and applied in practice as well as in the ruling of the European Court of Justice (ECJ).

**11:30-13:00** Recent developments on the balance of powers between EU Agencies and competent national authorities

- Development of governance rules (Rules of Procedure of the ACER Board of Regulators, Guidance to the ACER Director, New Rules of Procedure of the ACER Working Groups, An outlook on agreed positions on governance)
- Governance rules applicable to other EU Agencies and their practices – Experience of ESMA governance and development of Regulatory Technical Standards

- **Ms Fay Geitona, ACER, Senior NRA Coordinator**
- **Mr Koen Locquet, CREG, CIBM Chair**
- **Ms Sophie Vuarlot-Dignac, ESMA**

**Discussion/Q&A**

**13:00-14:00** *Lunch Break – CEER Office*

**14:00-15:45** Regulatory independence - Assessment and improvement of NRAs' setup

- NRAs' independence assessment
- How to ensure NRA and ACER independence and recent ECJ ruling
- Findings of/lessons from OECD report on "Being an Independent Regulator"

- **Ms Katharina Tappeiner, E-Control, RBM Chair**
- **Ms Maria-Isabella Detand, CREG, PWS Chair**
- **Ms Anna Pietikainen, OECD**

**Discussion/Q&A**

**15:45-16:00** *Coffee break*

## **SESSION 2 CROSS-BORDER COOPERATION BETWEEN NRAs – HOW DOES THE EUROPEAN DECISION-MAKING MECHANISM WORK?**

This session explores how NRAs deal with one of the most important regulatory challenges introduced by the Network Codes / Guidelines – decisions on cross-border issues. Which measures and processes have been developed by NRAs for this purpose? What can be learnt from the experience gained to date and what can be improved? Can recently created cross-border decision mechanisms be deployed for other co-operational tasks and duties of NRAs?

- 16:00-17:15** Assessment of the arrangements for cross-border decisions under the ACER Board of Regulators (BoR)/European Regulators' Forum (ERF)
- Cross-border decisions under the ACER BoR/ERF and how do they work in practice?
  - Assessment of the arrangements of the ERF and how to make the process more efficient?

- **Mr Ernst Tremmel, ACER**
- **Mr Matthew Ramsden, Ofgem**

#### **Discussion/Q&A**

- 17:15-17:45** Experience on cross-border cooperation between power exchanges

- **Mr Olaf Islei, EPEX SPOT**

- 17:45-18:00** Wrap up of Day 1

- **Ms Nadia Horstmann, BNetzA, CEER LTF Chair**

- 18:00-19:00** Reception drinks – For those who wish to join, we will host a small drinks reception at the CEER office – all participants and lecturers welcome!

**- END FIRST DAY -**

**Tuesday, 14 February 2017**  
**09:00-16:00**

## **Day 2: Network Codes/Guidelines Implementation Update and Judicial Review of ACER's/NRAs' Acts**

### **SESSION 3 EXPERIENCE IN IMPLEMENTATION OF NETWORK CODES/GUIDELINES**

This session deals with the challenges of the implementation of the Network Codes/Guidelines. As various Network Codes/Guidelines are already being implemented, it is being observed that certain aspects, acts, tasks or processes defined in the Network Codes/Guidelines need to be further interpreted or clearly defined. The experiences will be presented from different points of view from various market players. Who are the responsible parties for the implementation and to which extent? Which party monitors what and how are the monitoring obligations being met? What is the governance framework for new tasks introduced in the Network Codes/Guidelines? Has the early implementation practice contributed to a successful implementation of the Network Codes/Guidelines? How can an amendment process of certain provisions be initiated and by whom? What are the difficulties and gaps? What can, or has to be improved?

**09:00-09:30** Update on current status of adopted and pending Network Codes/Guidelines

- **Mr Alexander Linov, BNetzA**

#### **Discussion/Q&A**

**09:30-11:30** Stakeholders' perspective: Panel discussion on implementation practice of Network Codes/Guidelines

- Implementation example of Capacity Allocation and Congestion Management Guideline (CACM GL)
- Implementation example of Balancing Network Code (BAL NC) and Capacity Allocation Mechanism Network Code (CAM NC)
- The role of other stakeholders – platform for implementation of Network Codes/Guidelines

- **Ms Anne De Geeter, ENTSO-E**
- **Mr Malcolm Arthur, ENTSG**
- **Mr Joost Gottmer, Alliander/EDSO for Smart Grids**

#### **Discussion/Q&A**

**11:30-11:45** *Coffee break*

**11:45-12:30** Monitoring and amendments procedure of Network Codes/Guidelines and other legal acts

- Outcome and impact of the monitoring of implementation of Network Codes

- How does the amendments procedure work, who is involved, who can trigger?
- Outlook Winter Package – How will the process be amended?

- **Mr Jan Papsch, European Commission**

## **Discussion/Q&A**

*12:30-13:30 Lunch Break*

## **SESSION 4 JUDICIAL REVIEW OF REGULATORY DECISIONS TAKEN ON THE BASIS OF NETWORK CODES/GUIDELINES**

Network Codes / Guidelines foresee binding legal acts for some newly created regulatory fields and processes. Some of these acts only have an impact on a national level, whereas others are of a regional or pan-European nature. In this session the discussion focuses on possibilities of legal actions. What is the remedy? Who is entitled to complaint? What are the competences and limits of different judicial instances? Alongside the binding legal acts there can be acts with non-binding effect (such as opinions, recommendations or reports), some of which might indirectly establish certain rights or obligations for third parties. Is there also a remedy against such acts?

**13:30-14:15** Judicial review of NRA legal acts implementing Network Codes/Guidelines - Procedure applicable (parties, subject and jurisdiction); challenging All-NRA-decisions

- **Ms Ulrike Giera, E-Control**

## **Discussion/Q&A**

**14:15-15:45** Judicial review of ACER legal acts

- Description of the process of legal review of EU Agencies' Acts (ruling of European Court of Justice)
- Case study of the first judicial review of ACER decision

- **Ms Alessandra Fratini, FratiniVergano - European Lawyers**
- **Mr Adrien de Hauteclocque, European Court of Justice**

## **Discussion/Q&A**

**15:45-16:00** Wrap-up of Day 2

- **Ms Nadia Horstmann, BNetzA, CEER LTF Chair**

**- END SECOND DAY -**