

## EU Winter Energy Package in the Slovak Republic

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### *Abstract*

In this article, the authors deal with the adoption of the EU Winter Energy Package and ACER as an independent European authority which supports cooperation among national regulatory authorities. The EU Winter Energy Package brought very significant changes in the energy sector to Slovakia. The main task of EU Winter Energy Package is to facilitate the transition of individual Member States of the European Union to the so-called clean energy based on renewable energy sources and to achieve the interconnection of energy markets of the individual Member States of the European Union. As the main tool of achieving the interconnection of energy markets of the individual Member States of the European Union should be reinforcement of powers of ACER.

**Keywords:** Winter Energy Package EU, Agency for Cooperation of Energy Regulators (ACER), powers, renewable energy resources, energy, energy markets.

### 1. Introduction

We would like to clarify what is the purpose of the EU Winter Energy Package and how it should have an impact on the electricity produced in the EU in practice. In our view, this is an important step. The objective pursued by this Winter Energy Package is to accelerate processes that aim to create a single electricity market, where renewable energy sources, respectively clean energy will play a key role. The Clean Energy Package (or fourth energy package) representing the legislative package of several regulations and directions of the European Commission and the European Parliament.

The European Union's objective is to facilitate the transition of Member States to clean energy, thereby taking a significant step towards achieving the creation of an Energy Union in the European Union, thus meeting the objectives and commitments of the Paris Climate Change Agreement. The new policy framework provides regulatory certainty, notably through the introduction of the first national energy and climate plans to support the necessary investments in this important sector. This proposal for legislative changes should enable European consumers to become fully active players in the energy market. At the same time, the European Union is setting two new targets by 2030: to achieve 32% of total electricity produced in the European Union from renewable sources, and the second to relate to energy efficiency of at least 32.5% –

with a possible upward revision concerning the electricity market. These ambitious goals should result in stimulating the competitiveness of the industry in Europe, fostering growth and creating new jobs, reducing energy expenditure, helping to address energy poverty and improving air quality. If the individual proposals are fully implemented, this will lead to steeper emission reductions for the whole of the European Union compared to what was expected in the previous period (around 45% by 2030 compared to 1990 compared to the current 40% reduction target). With these measures, the European Commission has set itself the EU would be the world leader in the production of electricity from renewable sources (Hancher & Winters, 2017).

At the same time, these measures are intended to positively affect the consumer, who is to become a central element of the energy market, by supporting the European Union decentralization of energy, i.e. consumers will produce and consume electricity at the same time. The European Union wants to take this step mainly because, in most Member States, consumers are hardly motivated to change consumption in response to market change, because prices in individual Member States do not follow market principles and are subject to different charges which are often unrelated to themselves price of electricity/gas.<sup>1</sup> In the Slovak republic are these tariffs determined by Regulatory Office for Network industries (RONI) as the national regulatory authority based on national legislation. The European Union tries set in the EU Winter Energy Package to unify tariffs which regard common single energy market across of all member states. In this point we can see that the European Union try to interfere into strict national issue such as price regulation.

## 2. EU agencies in general

Furthermore, the article will deal with the issue of EU agencies and their origin, status, classification. EU agencies were established to carry out specific tasks in accordance with European Union law. This is very important because we then understand the context in which ACER was created. We are particularly interested in ACER because it was established that the various regulators as well as the individual market players involved should start working together to agree on procedures that will lead to the creation of a single energy market.

Currently, several agencies are set up by the European Parliament and the Council of the European Union in different countries of the European Union.<sup>2</sup> EU agencies can broadly be defined as bodies governed by European public law that are institutionally separate from the EU institutions, have their own legal personality and a certain degree of administrative and financial autonomy and have clearly specified tasks (Vos, 2018: 5). It can therefore be stated that these agencies are agencies have a certain autonomy and in independence and they are decentralized.

In general, their main role is to help European institutions to implement policies and take decisions in individual areas. They work alongside the main EU institutions and Member States, feeding them evidence-based advice to help shape informed policies and laws at the EU and national level. Several authors refer to EU agencies as relatively independent, but in order to identify with this assertion, it would be necessitate a detailed analysis of several aspects.

Presently, there is no general legal basis to create EU agencies. The current prevailing view in legal literature and case law of the European Court of Justice is that EU agencies may be created on the relevant Treaty article that provides the legal basis in a specific policy area.

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<sup>1</sup> New rules for the Agency for the Cooperation of Energy Regulators (ACER). Retrieved from [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599300/EPRS\\_BRI\(2017\)599300\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599300/EPRS_BRI(2017)599300_EN.pdf).

<sup>2</sup> Total number of agencies amounting to 36.

Several authors have tried to classify these agencies. The academic literature has therefore come up with several classifications of agencies, varying from functional to instrumental typologies. The last and most recent breakdown comes from 2018, which states that EU agencies can be categorized according to a functional, numerical and legal taxonomy. From our point of view, it is important a legal perspective, agencies can be distinguished according to their legal basis, the nature of their powers, the instruments that they may adopt and the autonomy in decision-making (Vos, 2018: 5). As regards their legal basis, we can distinguish agencies that have been created by a Commission act, a Council joint action, or a European Parliament and Council act. According to the nature of their powers and the instruments, they have at their disposal agencies can be divided into agencies with and without decision-making powers to adopt binding legal instruments. As regards the autonomy to adopt specific acts, agencies may be divided into three categories.

These are the following categories: (1) agencies that need prior approval for the conclusion of an act, (2) agencies that need prior consultation with the Commission, and (3) agencies that can autonomously adopt acts.

Slovak and Czech authors talk about several classification criteria, for example on the basis of the nature of powers (materialistic point of view):

- (a) Decision-making agencies,
- (b) Quasi-regulatory agencies,
- (c) Coordinating agencies.

(a) Decision-making agencies are agencies empowered to issue individual administrative acts which are subject to review by the Court of Justice of the European Union, in particular in actions for annulment. These include, for example Community Plant Variety Office (CPVO), Agency for the Cooperation of Energy Regulators European Union Intellectual Property Office (EUIPO), European Union Aviation Safety Agency (EASA).

(b) Quasi-regulatory agencies are empowered to issue underlying decisions on applications submitted by bodies in the framework of centralized Community procedures, the final decision being generally taken by the Commission. These include, for example of such agencies are European Maritime Safety Agency (EMSA), European Food Safety Authority (EFSA) or European Medicines Agency (EMA)

(c) Coordinating agencies are agencies with no authority or make binding decisions, but are generally active in coordinating and disseminating European policies, for example European Environment Agency (EEA).

In the Slovak republic there is another categorization, which is very frequent in the recent development (so-called sectorial categorization), which is used as a criterion of the EU policy within which the agency operates (so-called formalist viewpoint). It is possible to recognize agencies: regulatory agencies, executive agencies, financial market supervisory agencies, EUROATOM agencies.

- Regulatory agencies

(1) Common Policy Agencies. Common policy agencies are not EU bodies but have their own legal subjectivity. They are established by regulation. Here we can include: internal market agencies, agricultural and fisheries policy agencies, transport policy agencies, Trans-European Network policy agencies, public health and consumer protection agencies, environmental policy agencies, education, research and technological development policy agencies, joint agencies.

(2) Agencies of the area of freedom, security and justice. Here we can include: human rights agencies, agencies for the protection of external borders, asylum and immigration, agencies for police and judicial cooperation in criminal matters.

(3) Agencies under Common Security and Defense Policy.

- Executive agencies

These EU agencies are entrusted with the performance of tasks relating to individual Union programs. They shall in particular be responsible for managing the projects, carrying out the necessary checks, collecting and providing information to the Commission.

- Financial market supervisory agencies

Their task is primarily to supervise the financial market and the Union's financial system as a whole.

- EUROATOM agencies

EUROATOM agencies carrying out tasks related to the activities of the European Community, in particular in the fields of trade and import of ore, nuclear research, etc.

In this article we will focus on the Agency for the Cooperation of Energy Regulators (hereinafter ACER). The Agency ACER is an independent European structure which fosters cooperation among European energy regulators. ACER ensures that market integration and the harmonization of regulatory frameworks are achieved within the framework of the EU's energy policy objectives. In the Slovak republic, such a regulatory body in the field of energy is the Regulatory Office for Network Industries.

### 3. Agency for the cooperation of energy regulators

The Agency for the Cooperation of Energy Regulators as the European Union Agency, was established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators which was a part of Third Energy Package. The main goal of establishing ACER was to further progress the completion of the internal energy market both for electricity and natural gas. ACER was officially launched in March 2011 and has its seat in Ljubljana, Slovenia. The main purpose of existing ACER is to coordinate the regulatory decisions of independent national energy regulators (NRAs) at the European Union level.

As an independent European structure that fosters cooperation among European energy regulators, ACER ensures that market integration and the harmonization of regulatory frameworks are achieved within the framework of the European Union's energy policy objectives. The latter aim is to create more competitive, integrated market which offers consumers more choice. ACER also has a task to create an efficient energy infrastructure guaranteeing the free movement of energy across borders and the transportation of new energy sources, thus enhancing security of supply for EU businesses and consumers. Another task is to create monitored and transparent energy market guaranteeing consumers fairly, cost-reflective prices and the deterrence of abusive practices.

ACER is thus a central institution in the creation of a Single Energy Market to the benefit of all EU consumers.<sup>3</sup>Based on, these goals of ACER we can claim that the main task of ACER is to help to integrate all energy markets into one big European energy market. Generally, the European Union defined the goal of creating one market is defined in Article 3 paragraph 3 of the Treaty of the European Union.<sup>4</sup>

Concretely, the creation of the European energy market is described in Article 194 of the Treaty on the functioning of the European Union. In this article the goal is to define establishment and functioning of the internal market and with regard for the need to preserve and improve the environment. Union policy on energy shall aim, in a spirit of solidarity between Member States, to: ensure the functioning of the energy market; ensure the security of energy supply in the Union; promote energy efficiency and energy saving and the development of new and renewable forms of energy, and promote the interconnection of energy networks.

We could claim that all of these mentioning aspects representing the basic tasks of the ACER. Besides, they are corresponding with the aim of ACER which we mentioned previously in this article.

ACER plays a central role in the development of the network codes with a view to enhancing competition. It coordinates regional and cross-regional initiatives which favor market integration. Its responsibilities include monitoring functions with regard to progress in the implementation of the 10-year network development plans, the functioning of gas and electricity markets in general, and wholesale energy trading in particular. In its advisory role, ACER makes recommendations to the Commission regarding market regulation and priorities for transmission infrastructure. We have to say that the main ACERs partners in fulfilling this goal of the ACER are except NRAs also European networks of transmission system operators for electricity and gas (ENTSO E and ENTSO G).

According to the EU Winter Energy Package, ACER would monitor wholesale and retail markets in electricity and natural gas including for their compliance with the new consumer rights laid down in the proposed recast directive on common rules for the internal market in electricity. The agency would monitor potential barriers to border trade and state interventions that prevent prices from reflecting actual scarcity and assess the performance of Member States regarding the security of electricity supply. The changes the proposal would bring EPRS New rules for the Agency for the ACER. Background Proposal Views Legislative Process References border trade and state interventions that prevent prices from reflecting actual scarcity, and assess the performance of Member States regarding the security of electricity supply. ACER would have a new task, that of regulatory oversight of the regional operational centers, new entities covering several Member States at a time, which are being introduced as part of the recast internal electricity market regulation. ACER would supervise nominated electricity market operators (NEMOs) designated by the competent national authorities to perform tasks related to single day-ahead or single intraday coupling.<sup>5</sup> These steps seem to be useful for achieving one single energy market. Because if you want to have single energy market you need to have same rules for everyone on market which would be legally binding for all. Therefore, you need to have one authority which would control a behavior of stakeholders and when stakeholders would breach some rule, this authority must enforce the law.

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<sup>3</sup> Retrieved from [https://www.acer.europa.eu/en/The\\_agency/Pages/default.aspx](https://www.acer.europa.eu/en/The_agency/Pages/default.aspx).

<sup>4</sup> Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012M%2FTXT>.

<sup>5</sup> Briefing EU Legislation in Progress New rules for the Agency for the Cooperation of Energy. Retrieved from [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599300/EPRS\\_BRI\(2017\)599300\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599300/EPRS_BRI(2017)599300_EN.pdf).

Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (hereinafter Regulation of ACER) recasts the legislation establishing the agency (Regulation (EC) No 713/2009), adapting it to changes in the energy markets and addressing the need for enhanced regional cooperation. It gives ACER a stronger role in the development of network codes and the coordination of regional decision-making. It furthermore assigns it a number of new tasks related to the regional operational centers that are to be established, the supervision of nominated electricity market operators and the assessment of generation adequacy and risk preparedness. In the European Parliament, the proposal has been referred to the Committee on Industry, Research and Energy (ITRE), which adopted its report in February 2018. A provisional triologue agreement was reached on 11 December 2018. Parliament is expected to vote on the agreement during the March II 2019 plenary session. Third edition. The “EU Legislation in Progress” briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.<sup>6</sup>

According to new legislation which brought the EU Winter Energy Package ACER should do these obligations. Primary responsibility for regional terms and conditions or methodologies would rest with the regulatory authorities of the region concerned; they would only be referred to ACER for a decision if the issue at stake has a tangible impact on the internal energy market, or otherwise if the concerned regulatory authorities fail to agree, or upon their joint request; ACER would issue a recommendation where joint agreements are inconsistent with the objectives and the provisions of the Electricity Directive and Regulation, and the network codes and guidelines. ACER would intervene with a binding decision when it detects that an ENTSO, a Nominated Electricity Market Operator (NEMO), a Regional Operational Centre (ROC) or any other entity operating at cross-border, regional or EU-wide level (e.g. the future EU DSO entity) does not comply with the objectives and provisions of the Electricity Directive and Regulation, and the network codes and guidelines. ACER would have the power to request any information it requires to carry out its tasks effectively from market participants and other entities, if necessary, through binding decisions; this would strengthen ACER’s ability to perform its monitoring function. In the absence of ACER’s financial and human resources, ACER would be allowed to collect fees for the registration of Registered Reporting Mechanisms, reporting trade and fundamental data under REMIT, and for the oversight of Transmission system operator (TSO). ACER’s activities, including their cooperation through the ENTSOs; however, revenue received by ACER must not compromise its independence or objectivity. ACER’s decisions would have to be fully reasoned and justified to allow judicial review; they would have to be made public, whilst preserving the confidentiality of commercially sensitive information. National regulators would continue to vote by a two-thirds majority within the ACER Board of Regulators (rejecting the simple majority voting proposed by the Commission).

All of these obligations testify that ACER plays a key role in creating a common single European energy market. If we look at these competencies, we should find out that ACER could intervene in the national issues of each member state of the European Union. Therefore, we could say that a decision-making process of ACER is making on the supranational level. But in this context, we should underline, that all of these decisions are adopting by the board of regulators which consists of represents of each national regulatory authority. That’s why we can’t tell that ACER representing a relatively independent agency.

On the other hand, ACERs competencies are situated somewhere middle between national regulatory authorities and the European Commission. Besides of ACER has also directly

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<sup>6</sup> New rules for the Agency for the Cooperation of Energy Regulators (ACER). Retrieved from [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI%282017%2959930](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI%282017%2959930) o.



power on market of electricity stakeholders as TSOs, Distribution system operators (DSO), NEMOs for example. These subjects are established based on national law of each member state of the European Union. In the introduction, we characterized that ACER belongs to the group of decision-making agencies. In this context, we must adduce that all of these ACERs decisions based on Regulation of ACER are directly legal bidding for all market stakeholders from all member states of the European Union. Despite, that legally binding follow from the Regulation of ACER in the Slovak republic lawgiver put this obligation into the Slovak national law system.<sup>7</sup>

#### 4. Conclusions

In the future we can expect that the ACER would effectively use all of these new competencies in compliance with the main task of the ACER helping in the integration of energy markets in the European Union. In our opinion that the ACER would interfere to competencies of NRA much more than before. Perhaps we will see more conflicts of jurisdiction between NRAs and the ACER than before.

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<sup>7</sup> § 21a of Parliamentary Act no. 250/2012 Coll. on regulation of network industries.

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