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ACER

Agency for the Cooperation
of Energy Regulators

- Emergence of the
European Energy Regulator

Alberto Pototschnig
Director

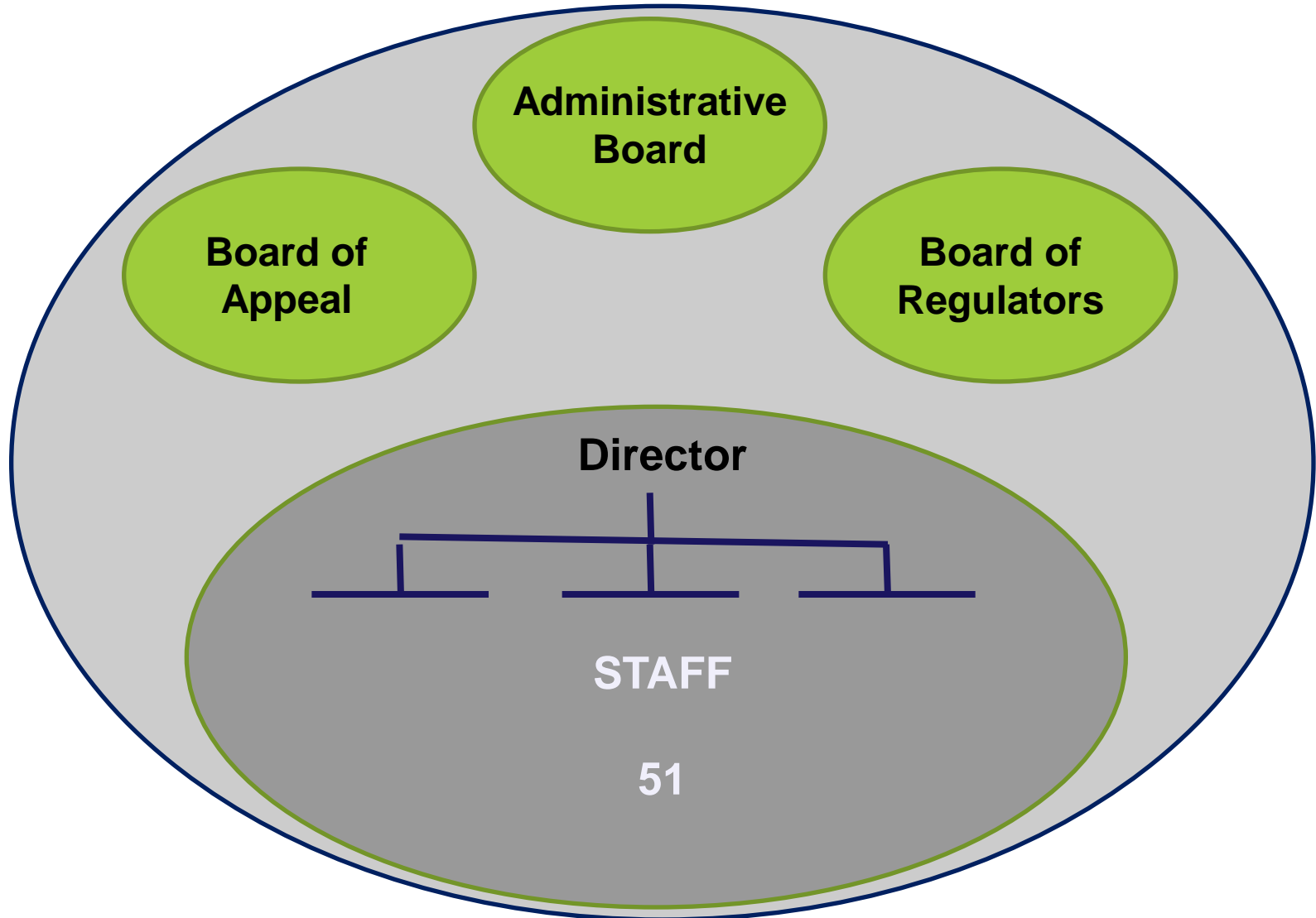
Regulation and Liberalization of Energy Markets:
Russian Experience and the EU 3rd Energy Package
Brussels, 4 October 2010

- ACER is NOT a European Energy Regulator!
 - Regulatory powers are still in the hands of the National Regulatory Authorities (NRAs)
 - In fact, the 3rd package has reinforced the role and powers of the NRAs
 - ACER only have “residual” regulatory powers

*“The purpose of the Agency shall be to **assist** the [NRAs] in exercising, at Community level, the regulatory tasks performed in the Member States and, where necessary, to **coordinate** their action”.*

Article 1(2), Regulation (EC) No. 713/2009

● ACER's Governance (1)



● The Administrative Board (1)

- is composed of 9 members and 9 alternates:
 - » 2 + 2 appointed by the Commission
 - » 2 + 2 appointed by the European Parliament
 - » 5 + 5 appointed by the Council
- ensures that ACER carries out its mission and performs the tasks assigned to it in accordance with Regulation (EC) No. 713/2009
- formally appoints the members of the Board of Regulators
- appoints the members of the Board of Appeal
- formally appoints the Director upon a favourable opinion by the Board of Regulators
- exercises, in consultation with the Board of Regulators, disciplinary authority over the Director

● The Administrative Board (2)

- adopts ACER's Work Programme (by 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators) and transmits it to the European Parliament, the Council and the Commission
- adopts and, if necessary, revises a Multi-annual Programme
- draws up the ACER's implementing rules for giving effect to the Staff Regulations

● The Board of Regulators

- comprises:
 - » one senior representative and one alternate per Member State from the current senior staff of NRAs
 - » one non-voting representative of the Commission
- provides Opinions to the Director on ACER's opinions, recommendations and decisions that are considered for adoption
- provides Guidance, within its field of competence, to the Director in the execution of his tasks
- approves the Work Programme of the Agency for the coming year and present it by 1 September of each year for adoption by the Administrative Board

● The Board of Appeal

- comprises:
 - » 6 members and 6 alternates
 - » selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector
- considers appeals lodged by any natural or legal person, including NRAs, against a decision by ACER:
 - » which is addressed to that person, or
 - » which, although in the form of a decision addressed to another person, is of direct and individual concern to that person

Lodging an appeal with the Board of Appeal is not a prerequisite for action in front of the Court of First Instance or the Court of Justice

● ACER's Activities

Types of acts which ACER can adopt

**Opinions and
recommendations**

TSOs

NRAs

EP

Council

Commission

**Individual decisions in specific cases
(residual power)**

● ACER's Areas of Activity

ACER's Tasks regarding ...



ENTSOs

NRAs

Framework Guidelines and Network Codes

Terms and conditions for access to and operational security of cross-border infrastructure

TPA Exemptions

Other areas

● ACER's Tasks regarding ENTSOs (1)

Task	Type of Action	Legal Basis
Opinion on draft statutes, list of members and draft rules of procedure of ENTSOs	Opinion to ENTSOs	Article 6(1) AReg; Article 5(2) E&GReg
Monitor execution of tasks of ENTSOs	Monitoring	Article 6(2) AReg; Article 9 E&GReg
Opinion on draft annual work programme, draft Community-wide Network Development Plans (NDP) and other relevant documents (e.g. annual summer and winter supply outlooks)	Opinion to ENTSOs	Article 6(3)(b) AReg; Article 8(3), 9(2) E&GReg

● ACER's Tasks regarding ENTSOs (2)

Task	Type of Action	Legal Basis
Opinion on consistency of national 10-year NDP with Community-wide 10-year NDP	Opinion (to NRAs)	Article 8(11) E&GDir
Opinions/recommendations where draft ENTSO annual work programme or draft Community-wide 10-year NDP do not contribute to IEM objectives/principles	Opinion, recommendation to ENTSOs, EP, Council and Commission	Article 6(4) AReg; Article 9(2) E&GReg
Monitor progress as regards implementation of projects to create new interconnector capacity	Monitoring	Article 6(7) AReg

● ACER's Tasks regarding ENTSOs (3)

Task	Type of Action	Legal Basis
Monitor implementation of Community-wide NDPs	Monitoring	Article 6(8) AReg; Article 8(11) E&GReg
Investigate reasons for inconsistencies between Community-wide NDPs and their implementation, and make recommendations	Recommendation to TSOs, NRAs or other competent bodies	Article 6(8) AReg; Article 8(11) E&GReg
Monitor regional cooperation of TSOs; due account of outcome of cooperation taken when formulating its opinions, recommendations and decisions	Monitoring	Article 6(9) AReg; Article 12 E&GReg

● ACER's Tasks regarding ENTSOs (4)

Task	Type of Action	Legal Basis
Approve compliance programme of joint undertakings for regional cooperation participated by vertically-integrated TSOs	Approval	Article 6(4) E&GDir

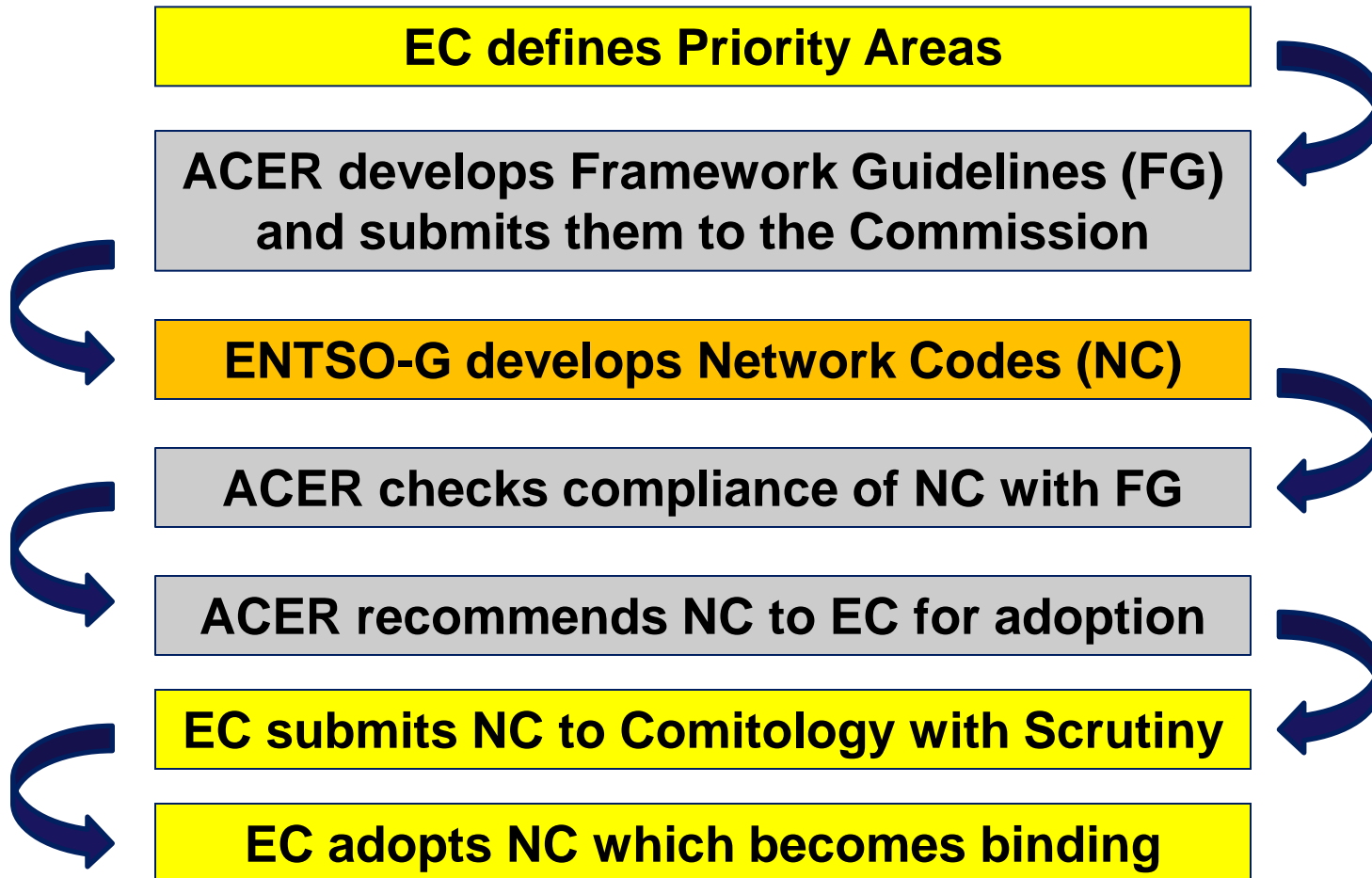
● ACER's Tasks regarding NRAs (1)

Task	Type of Action	Legal Basis
Opinion on whether a decision by NRA complies with Guidelines or other relevant provisions	Opinion (upon request) to the Commission or NRA	Article 7(4) AReg; Article 39 EDir Article 43 GDir
Recommendations on compatibility of technical rules	Recommendation	Article 5 EDir Article 8 GDir
Inform Commission or MS concerned where a NRA does not comply with opinion of Agency	Information to the Commission or concerned MS	Article 7(5) AReg
Opinion when a NRA encounters, in a specific case, difficulties with application of Guidelines	Opinion to NRA	Article 7(6) AReg

● ACER's Tasks regarding NRAs (2)

Task	Type of Action	Legal Basis
<p>Provide framework for NRAs' cooperation. Promote cooperation between NRAs and regulatory authorities at regional and EC level. Make recommendations on binding rules on the compatibility of regulatory frameworks between regions</p>	<p>Recommendation to the Commission</p>	<p>Article 7(3) AReg; Article 6(2) E&GDir</p>
<p>Recommendations for sharing good practices</p>	<p>Recommendation to NRAs and market players</p>	<p>Article 7(2) AReg</p>

- **Developing Framework Guidelines and Network Codes**



● ACER's Tasks regarding FG and NC (1)

Task	Type of Action	Legal Basis
Submit non-binding framework guideline to the Commission; if necessary, review non-binding framework guideline and re-submit it to the Commission	Submit draft to the Commission	Article 6(4) AReg; Article 6(2)-(4) E&GReg
Opinion on network codes	Opinion to ENTSO	Article 6(4) AReg; Article 6(7) E&GReg
Submit network codes and recommend that it be adopted	Submit draft to the Commission	Article 6(4) AReg; Article 6(9)+(10), 7(1) E&GReg
Duly reasoned opinion, where ENTSO-E or ENTSO-G has failed to implement network codes	Opinion to the Commission	Article 6(5) AReg; Article 8(2), 9(1) E&GReg

● ACER's Tasks regarding FG and NC (2)

Task	Type of Action	Legal Basis
Prepare and submit draft network codes if asked by the Commission when ENTSO has failed to develop them	Submit draft to the Commission	Article 6(4) AReg; Article 6(9)+(10), 7(1) E&GReg
Propose amendments to network codes	Submit draft to the Commission	Article 6(4) AReg; Article 6(9)+(10), 7(1) E&GReg
Monitor and analyse implementation of network codes and Guidelines, report to the Commission	Monitoring, reporting to the Commission	Article 6 AReg; Article 9 E&GReg

● ACER's Tasks regarding to access to CB infrastructure

Task	Type of Action	Legal Basis
Decisions on cross-border infrastructure	Decision	Article 8(1)-(3), (5) Article 7(7) AReg; Article 17 EReg Article 36 GDir

ACER decides if:

- **The concerned NRAs fail to reach an agreement, or**
- **Jointly requested by the concerned NRAs**

● ACER's Tasks regarding TPA exemptions

Task	Type of Action	Legal Basis
Exemption decisions for new interconnectors; fees	Decision	Article 9(1) AReg; Article 17(5) EReg Article 36(4) GDir

ACER decides if:

- The concerned NRAs fail to reach an agreement, or
- Jointly requested by the concerned NRAs

● ACER's Tasks in other areas

Task	Type of Action	Legal Basis
Opinion on decisions of NRAs on certification of TSOs	Opinion (upon request) to the Commission	Article 9(2) AReg; Article 3(1) E&GReg Article 11(6) E&GDir
Monitor internal markets in electricity and natural gas. Publish annual report on monitoring results	Monitoring. Annual report	Article 11 AReg
Opinion and/or recommendations, upon request or on its own initiative, on any of the issues relating to the purpose for which ACER has been established	Opinion/ recommendation to the European Parliament, the Council and the Commission	Article 5 AReg

● Priority Action Area for 2011 as identified in the Work Programme

- Framework Guidelines for Network Codes
- opinions on the compliance of Network Codes with the corresponding Framework Guidelines
- opinions on the draft statutes, list of members and draft rules of procedure of the ENTSOs
- opinions on the 10-year NDP
- decisions on cross-border congestion management or TPA exemptions
- organisation of the monitoring functions

● General Principles of ACER's Action: Consultation

- “In carrying out its tasks [...] the Agency shall **consult extensively and at an early stage** with market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an **open and transparent manner**, in particular when its tasks concern transmission system operators” (Art 10(1), AReg)

● General Principles of ACER's Action: Transparency

- ACER shall ensure that the public and any interested parties are, where appropriate, given objective, reliable and easily accessible information, in particular with regard to the results of its work
- All documents and minutes of consultation meetings conducted during the development of framework guidelines or during the amendment of network codes shall be made public
- Before adopting framework guidelines or proposing amendments to network codes, ACER shall indicate how the observations received during the consultation have been taken into account and shall provide reasons where those observations have not been followed
- ACER shall make public, on its own website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board, of the Board of Regulators and of the Board of Appeal.

● Participation of Third Countries

- ACER shall be open to the participation of third countries
 - » which have concluded **agreements** with the Community
 - » whereby they **have adopted and are applying Community law** in the field of energy and, if relevant, in the fields of environment and competition
- Under the relevant provisions of those agreements, arrangements shall be made specifying, in particular:
 - » the nature, scope and procedural aspects of the involvement of those countries in the work of ACER
 - » including provisions relating to financial contributions and to staff

● ... and finally ... see you soon



in Ljubljana

- ... and finally ... see you soon



in Ljubljana

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Alberto Pototschnig
Director
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Russian Experience and the EU 3rd Energy Package
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