

CEER Specialised Legal Training on the European Green Deal and remaining legal challenges in the Implementation of Clean Energy Package

28 & 29 October 2021
Online / CEER Office Brussels



COURSE PROGRAMME

Thursday, 28 October 2021 – 10:15-17:00 (CET)

Friday, 29 October 2021 – 09:00-16:00 (CET)

Level B: Specialised course

Since the adoption of the “Clean Energy for All Europeans” (CEP) in July 2019 where a new market design and a new set of governance rules have been introduced, the National Regulatory Authorities (NRAs) face numerous challenges in implementing the given framework. Under these circumstances, some open issues still have to be solved and common understandings and approaches still have to be developed. While several Member States have not yet fully transposed the legislative framework of the CEP into their respective national legislation, the European Commission, meanwhile, already published its further plans – the European Green Deal proposal including, inter alia, the TEN-E Regulation revision, the EU Climate pact & climate law, the Fit for 55-package as well as the expected Hydrogen and Gas Market Decarbonisation Package. Alongside these provisions, strategies have also been introduced such as the European Commission’s Strategy on Hydrogen or on Offshore renewable energy.

These new developments bring not only new opportunities but also new regulatory challenges that make an adequate assessment and review necessary.

*This CEER Specialised Legal Training will provide an update on **the European Green Deal today**, its proposal and strategies including, inter alia, the TEN-E Regulation revision, EU Climate pact & climate law, Fit for 55-package, ... and aims at examining the possible consequences for NRAs and their regulatory practice. The programme will also address the still remaining legal and regulatory challenges for NRAs after the implementation of the Clean Energy Package. Furthermore, implementation challenges regarding other evolving energy topics will be presented and discussed. This training also focuses on the **judicial review** of ACER’s decisions, with the practical examples from recent appeal cases of the ACER’s decisions at national level and decisions of the European General Court and the European Court of Justice. The training finally addresses the highly topical and newly emerging issues for NRAs such as **offshore renewable energy**, sector integration & **hydrogen, dynamic regulation** from the NRAs’ perspective.*

This CEER Specialised Legal Training offers an extensive overview for the legal staff of NRAs, while other staff members are also invited to attend.

DAY 1: Thursday, 28 October 2021
10:15-17:00

WELCOME AND INTRODUCTION

10:15-10:45 Opening remarks and roundtable introduction of the participants

Barbara Heremans, CREG
Alexander Linov, BNetzA
Vice Chairs CEER Legal Affairs Committee, Course Directors

SESSION 1 THE EUROPEAN GREEN DEAL TODAY – WHAT DOES IT MEAN FOR NRAs AND WHAT ARE THE CHALLENGES?

Following the communication of its ambitious and extensive “European Green Deal”, the EC has announced and come up with various legislative proposals, *i.e.* TEN-E Regulation revision, EU Climate pact & climate law, FIT for 55-package, “Hydrogen and Gas Market Decarbonisation Package” - revision of Gas directive and regulation,... In addition, several strategies have been issued (*i.e.* series of Strategies on Hydrogen, Renovation wave, Offshore renewable energy, Smart sector integration,...). The EC also consulted on updating competition policies in view of Green Deal objectives (*i.e.* the State Aid Guidelines revision: relevant elements for energy sector and NRAs, integration of SDGs in the European Semester reporting, Sustainability Reporting Directive). All this brings numerous challenges for stakeholders and NRAs. This session aims at providing an overview of the ongoing and expected changes, novelties and their impact on the regulatory practice.

10:45-12:00 The European Green Deal today – Overview & state of play of legislative packages and strategies

- Update on series of EU Green Deal communications and legislative measures, European Climate pact & law, Fit for 55-package,...
- What does it mean for NRAs? What are the challenges for NRAs?
- Milestones and action plans for CEER and NRAs and CEER advocacy strategy

Debate with the speakers on questions from the audience

Oliver Koch, European Commission, DG ENER
Morten Petersen, European Parliament, Vice-Chair ITRE Committee
Nadia Horstmann, BNetzA, Chair CEER European Policy Unit

12:00-13:00 Lunch Break

SESSION 2 SELECTION OF EU GREEN DEAL ENERGY FOCUS POINTS

Throughout 2020, the EC has adopted several strategies on different topics, including:

- A new dedicated strategy on hydrogen in Europe, which aims at bringing together different strands of action – from research and innovation via production and infrastructure to the international dimension. This strategy explores how producing and

using renewable hydrogen can help decarbonise the EU economy in a cost-effective way.

- The Offshore Renewable Energy Strategy with the aim to ensure that offshore renewable energy can help reach the EU's ambitious energy and climate targets. The strategy includes several ideas with an impact on market design and regional cooperation arrangements (i.e. offshore bidding zones, congestion income distribution, operational and regulatory set-up).

This session focuses on the different positions and papers of different organisations published following the strategies and the NRAs' perspectives and positions will be presented and discussed.

Furthermore, the following topics will also be discussed in the course of this session:

- Revision of the TEN-E Regulation
- The EU "Sustainable finance package" - Sustainability reporting directive

13:00-14:15 Offshore Renewable Energy

1. Offshore Renewable Energy developments

- State of play of offshore renewable energy: Legal and regulatory developments, positions and impacts
- Update on offshore wind & hybrid infrastructures: Overview of legal framework and developments, market and regulatory treatment overview, unbundling and regulatory model(s)

Elaine O'Connell, European Commission, DG ENER

2. CEER work on offshore renewable energy

- LAC report on NRAs' role and competences in Offshore wind, (ongoing) CEER work and advocacy on offshore

Barbara Heremans, CREG

3. Case study: 1st hybrid offshore interconnector "Combined Grid Solution"

- EC exemption decision

Morten Pindstrup, Energinet

Discussion/Q&A

14:15-15:00 Hydrogen and decarbonised gas market package – focus on hydrogen

EC Hydrogen Strategy and study

- EC Hydrogen Strategy "A hydrogen strategy for a climate-neutral Europe": relevant elements for NRAs and TSOs? Role and challenges?
- Study for EC on a regulatory framework for hydrogen: assessing the regulatory options for hydrogen infrastructure and markets in view of developing an EU regulatory framework for dedicated hydrogen networks and markets
 - Pathways for the development of dedicated hydrogen infrastructure, potential EU regulation for hydrogen networks and hydrogen markets

- Specific focus on legal aspects such as unbundling, network access/TPA options, exemption aspects
- ACER-CEER Position on the key regulatory requirements for achieving gas decarbonisation

Discussion/Q&A

*Tom Maes, CREG, Vice-Chair CEER Gas Working Group
João Gorenstein Dedecca, Trinomics (consultant EC Study)*

15:00-15:15 Coffee break

15:15-15:45 TEN-E Regulation revision

- EC evaluation and review of the Trans-European Energy Networks Regulation
- Review of the TEN-E Regulation: state of play

Discussion/Q&A

Irina-Mihaela Minciuna, European Commission, DG ENER

15:45-16:45 EU “Sustainable finance package”: Sustainability reporting directive

- Taxonomy and EU Sustainable Finance package & Strategy: relevant elements for energy sector, for NRAs and TSOs?
- Delegated acts sustainable finance - status quo
- EC proposal Corporate Sustainability Reporting Directive (CSRD) and proposal for European standardisation for sustainability reporting: main changes, coherence CSRD & Taxonomy,..

Discussion/Q&A

Chiara Petruzzo, ARERA, Vice-Chair CEER European Policy Unit

16:45-17:00 Wrap up of Day 1

*Barbara Heremans, CREG
Alexander Linov, BNetzA
Vice Chairs CEER Legal Affairs Committee, Course Directors*

DAY 2: Friday, 29 October 2021
09:00-16:00

SESSION 3 ONGOING LEGAL CHALLENGES OF CEP IMPLEMENTATION

Since 1 January 2020, all provisions of the Clean Energy Package Electricity Regulation (EU) 2019/943 are applicable to the electricity markets. The provisions of the new Electricity Directive (EU) 2019/944 had to be transposed into the national laws at the latest by 31 December 2020. In this transposition and implementation process many challenges for TSOs and NRAs became clear and were identified. How were these challenges handled? What lessons have been learnt? Which issues are still pending, are still unclear and what could still be improved?

09:00-09:40 Status of CEP implementation in the Member States - ongoing legal challenges

- Tour de table among the participating NRAs on the CEP implementation state of play in the different Member States
- Specific focus point: Energy Communities and the "Energy sharing" concept

Anne-Maud Orlinski, CRE, drafting team CEER Legal Affairs Committee deliverable on Energy Communities

09:40-10:00 Enforcement challenges for NRAs: enforcement challenges of regional decisions by NRAs and enforcement challenges of ACER decisions

Update and discussion on results of the "Ad Hoc Group on Compliance and Enforcement"

Discussion/Q&A

Maria-Isabella Detand, CREG

SESSION 4 JUDICIAL REVIEW – EUROPEAN COURTS ENERGY CASES AND ACER BOARD OF APPEAL DECISIONS

Binding legal acts are issued to ensure the proper implementation of the legislation in the energy sector. Some of these acts have an impact at a national level, whereas others are of a regional or pan-European nature. In this session, the discussion focuses on judicial review by the European Courts and review of ACER decisions by the Board of Appeal. In addition, a practical case study will be presented and discussed.

10:00-10:30 Update on decisions of the European General Court and the European Court of Justice in Energy cases

Update on the European General Court's and ECJ's decisions in energy cases, as well as other major cases of relevance to NRAs

Adrien de Hauteclouque, European Court of Justice

10:30-10:45 Coffee break

10:45-11:45 Update on decisions of ACER and of the ACER Board of Appeal

- Update on ACER decisions and implementation of appeal decisions within ACER
- Update on decisions of the ACER's Board of Appeal (BoA) – Review of ACER/BoA's decisions

Discussion/Q&A

Ernst Tremmel, ACER

Nadia Horstmann, ACER Board of Appeal

11:45-12:10 Case study: Baltic Cable case

Presentation and discussion on Baltic Cable case: Court interpretation and remedies, consequences NRA implementation,..

Rebecka Thuresson, Ei

SESSION 5 DYNAMIC REGULATION FROM THE NRAs' PERSPECTIVE

At latest since the 3D Strategy, CEER has focused on the topic of dynamic regulation. Different papers were published on the issue. The most recent internal report "*Dynamic Regulation State of Play - from DR to Smart Regulation*" was drafted by RBM WS. The report presents the state of play of Dynamic Regulation from the NRAs' perspective. It highlights the understanding, main developments and approaches of Dynamic Regulation in the energy sector. Following the report, a dynamic regulation platform has been established on the CEER website, allowing NRAs and stakeholder to exchange on the issue. The most common tools for implementation of dynamic regulation are pilot projects and sandboxes. It has been shown that implementation of these tools brings various legal challenges for the regulators. In this session the main outcome of the CEER work on dynamic regulation and a few practice examples of pilot projects will be presented and discussed.

12:10-12:30 Dynamic Regulation from the NRAs' perspective: CEER report on the state of play

Alexander Linov, BNetzA, drafting team of the RBM report on Dynamic Regulation

12:30-13:30 Lunch Break

13:30-14:00 Pilot projects and Regulatory sandboxes in the energy sector

- Concepts and different features of regulatory sandboxes and pilot projects
- Application of PP & RS in the energy sector: Overview of important cases, examples in different member states

Tim Schittekatte, Florence School of Regulation

**14:00 -15:00 Pilot projects and Regulatory sandboxes in practice:
NRAs regulatory challenges**

- French example on derogations to network and facilities access and its use to set up, on an experimental basis, technologies or innovative services to promote energy transition and smart grids and infrastructures
- Portuguese example: basket of pilot projects and modifications/ exemptions in legislation to that end, supervised by the Portuguese Regulator ERSE

Discussion/Q&A

*Vincent Harrop and Guillaume Bullier, CRE
Filipe Matias Santos, ERSE*

15:00-15:45 Group discussion and exchange on main takeaways

All participants and trainers

15:45-16:00 Wrap-up of Day 2 and the training

*Barbara Heremans, CREG
Alexander Linov, BNetzA
Vice Chairs CEER Legal Affairs Committee, Course Directors*