

Regulation and efficiency:

which governance model
for energy security after the
Winter Package?

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Outline

- Background: multilevel governance and energy security
- ACER and the agencification debate
 - Soft law and the accountability conundrum
 - An issue on internal governance
- The Winter Package: institutional underpinnings
- Tentative conclusions




Multilevel governance

- Energy security as a multi-dimensional concept
- EU level: interlocking competences
 - Art. 194 TFEU
 - Conflicting interests (EU-wide administrative culture?)
 - Policy and technical governance conondrums → triangular relationship
- Research question: which governance model for energy security at supranational level?
 - Good (market) governance principles

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1. **Multilevel governance**
 2. ACER and the agency debate
 - a. Soft law
 - b. Internal governance
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ACER – agencification?

- Third Energy Package → [Energy Security Strategy] → Energy Union → Winter Package
- ERGEG: a regulatory network?
- Agencification process
 - Dishomogeneity and structural inconsistencies
 - Sustainability tenets:
 - *Meroni/Romano*: institutional balance, discretion (290 TFEU)
 - *Shortselling*: an alternate legitimising scheme? (114 TFEU)
- Relationship with ENTSOs and CEER
- Conflicting goals: efficient governance? Optimal regulation and policy making?
 - Soft law
 - Internal governance

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Soft power and accountability

- Soft Law: 288(5) TFEU
- Relevant role in energy security (e. g. capacity mechanisms)
 - coordination/consistent application in multilevel governance
- Mismatch between actual effects and readiness of the ECJ to acknowledge them
- ACER soft law: flexibility (lack of discretion) v justiciability (institutional balance)
 - Framework Guidelines on network codes (EC → ENTSOs → steering legislation and optional bindingness)
 - Opinions to NRAs on cross-border issues → *E-control* case

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Internal governance dynamics

- Double nature of ACER
 - Director
 - Board of Regulators
- Internal decision-making mechanisms
 - Limited involvement of BoR
 - Appointment of the Director
 - BoR decides on a 2/3 majority over Director's proposal
- ROCs and supervision on ENTSOs (+ newly established EU DSO entity)

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Institutional innovations


- 2015 Energy Union Communication
- 2016 “Winter package”
 - Institutional trilogue
 - Proposed recast ACER Regulation
- Institutional innovations
 - Structural consistency in energy and environmental targets
 - Centralisation and independence
 - Double constitutional standard between ACER and NRAs?

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Tentative Conclusions

- Constitutionalisation of EU agencies in EU primary law
 - Legal basis
 - Limits to delegation
 - Delegated acts → homogeneous typology, justiciability
 - Accountability, institutional balance

- Rationalisation of decision-making processes accounting for a broader NRA involvement

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