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Sunshine regulation tools at EU and national levels in the energy sector

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SUMMARY

- Introduction
- **CEER:** exchange of good practices and benchmarking among European regulators
- **CRE:** the experience of the French Energy Regulatory Commission and the outcomes of « soft regulation»
- Conclusions

INTRODUCTION

DEFINITION

« **Sunshine regulation** » : *soft law tools such as recommendations, guidelines, benchmarking, naming and shaming used to influence a change in behaviour or practice among market participants.*

≠ powers attributed to regulators within their competences : tariffs, obligations, sanctions.

APPLICATION IN THE ENERGY SECTOR

- “Sunshine regulation” : term that is not used in the energy sector.

But the tools described are in place and in use.

Q°: same goals and same efficiency at EU and national levels?

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1. The cooperation of European regulators within the CEER and the ACER

Respective priorities and common initiatives

CEER



- Consumers participation to the energy market
- Proper operation to the retail market
- Evolution of DSO role
- Training of CEER members
- Exchanges of good practices beyond the EU's borders

ACER



- Deepening the internal market: finalization and implementation of network codes, improvement of planning capacities within the framework of ten-year plans
- Establishment of the European wholesale market surveillance infrastructure
- Support for the development of trans-European infrastructures

Common initiatives

- Monitoring of the European energy market (Market monitoring report)
- Reflections on the future of the internal energy market ("Bridge to 2025", flexibility, contribution of interconnections to national capacity markets)
- Contribution to the European debate on energy policy

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2. Focus on the missions and tools of the Council of European Energy Regulators (CEER)

- CEER's members and observers : **39 national energy regulatory authorities (NRAs)** from across Europe.
- Not-for-profit association under Belgian law
- CEER supports its NRA members/observers in their responsibilities, **sharing experience and developing regulatory capacity and best practices:**
 - *working group meetings, workshops and events, development and publication of regulatory papers, in-house Training Academy.*
- NRAs develop common position papers, advice and forward-thinking recommendations to improve the electricity and gas markets for the benefit of consumers and businesses.

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- Promotion of : an harmonized regulatory environment and the consistent application of existing EU legislation.
- A key objective: to facilitate the creation of a single, competitive, efficient and sustainable Internal Energy Market in Europe that works in the consumer interest.
- Wide range of energy regulatory issues: wholesale and retail markets; consumer issues; distribution networks; smart grids; flexibility; sustainability; and international cooperation.

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Among the tools: benchmarks & reports with recommendations.



- ✓ No benchmark realized on « soft regulation » tools used among the Members of CEER.
- ✓ Mainly, as regulators, we all use the same tools:
- ✓ **Not the same target audience within CEER:** the addressees of the work are **the regulators**, not the market players or operators
- ✓ CEER's aim is not to act directly with market players :
 - it is to **study the application of European law in each Member State and by each regulator and try to harmonize it**

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3. Example : Market Monitoring Report

Monitoring markets and compliance with laws, rules and recommendations is an important element of regulators' work at national and EU level. CEER gathers and analyses data on a range of energy regulatory issues, providing a solid evidence base which can inform wider policy making.

- **ACER-CEER Market Monitoring Reports** consist of three volumes:
 - the Electricity Wholesale Market volume (assesses the functioning of the internal electricity wholesale market);
 - the Gas Wholesale Market volume (assesses the functioning of the internal gas wholesale market); and,
 - Energy Retail and Consumer Protection volume (evaluates retail markets performance across the EU, identifying relevant best practices to promote competition to the benefit of end consumers).

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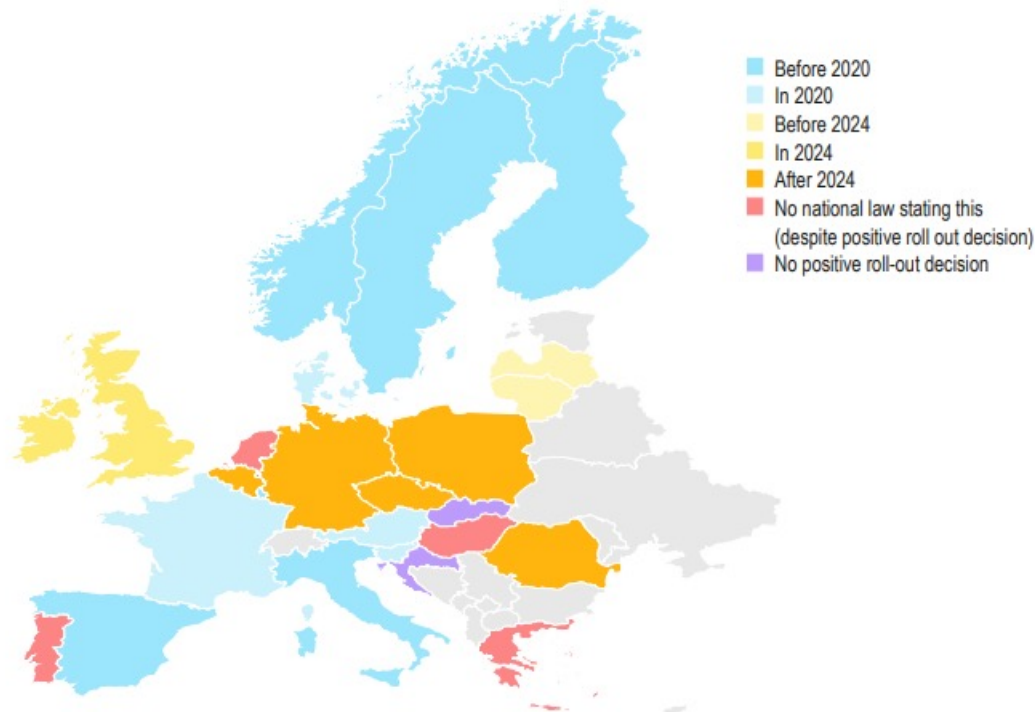
Example of main findings and recommendations from the Energy Retail and Consumer Protection volume 2021

- Comparison tool websites *“can help consumers find alternative suppliers. NRAs should ensure that all consumers have access to and are aware of national comparison tools to unlock the savings available from switching supplier”.*
- Supplier of last resort: *“To protect consumers, MSs and NRAs should ensure that a supplier of last resort is in place to ensure that consumers always have access to an energy supplier”.*
- Complaint data: *“European energy consumers file millions of complaints to their suppliers and distribution system operators (DSOs) across the EU each year. Invoicing, billing and debt collection are the most common reasons to complain about both electricity and gas suppliers. Complaint data should be better categorised, analysed and interpreted to understand where retail markets can be improved, which today takes place in only three MSs”*

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- Smart meters and dynamic contracts: In eleven MSs, electricity consumers can choose real-time or hourly energy pricing. The availability of dynamic contracts, while clearly implying more exposure to wholesale price volatility, can enable consumers to participate in the energy markets. *The roll-out of smart meters is key to ensuring the availability of dynamic contracts to all consumers.*

Figure 34: Target year by when the 80% rate of electricity smart meters will be reached in EU MSs and Norway



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4. Example of exchange of good practice

Regulatory Benchmark Monitoring Working group (RBM)

Report on dynamic regulation: state of play of dynamic regulation tools among regulators (regulatory sandbox, pilot projects, pilot regulation)

- Knowing the tools used and how to implement them has inspired some States and regulators to implement them as well.
- Effect on market players as well, as these tools allow them to temporarily derogate from the existing legal framework to test and develop innovations.

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Goal?

Efficiency?

Legitimacy?

II. CRE'S EXPERIENCE OF SOFT LAW TOOLS

Report on compliance with codes of conduct and independence of network operators (RCBCI)

- The independence of network operators and compliance with their codes of conduct is a fundamental element of the proper functioning of the markets.
- Every 2 year
- Report on the compliance of network operators with their obligations under the Energy Code, such as *non-discrimination, objectivity, transparency and the preservation of commercially sensitive information*.
- The **edition of 2021** “confirms that the network operators are generally complying with the rules of independence and good conduct and have, for the most part, remedied or launched actions to remedy the situations of non-compliance identified in the previous reports. However, developments are still expected on certain specific points, including several already highlighted in previous reports, in particular as regards human resources at DSOs (situation of certain managers), or the services provided by the vertically integrated company for several DSOs”.

II. CRE'S EXPERIENCE OF SOFT LAW TOOLS

Example on trademark confusion (1/3)

- Article L.111-64 of the Energy Code states that *"the operator of a distribution network serving more than 100,000 customers and the production or supply companies that control it [...] shall refrain from any confusion between their corporate identity, their communication practices and their brand strategy"*.
- The objective of non-confusion is, among other things, to enable consumers in the retail market to **PERCEIVE** the DSO (distributor) and its parent company (supplier, producer) as two **INDEPENDENT** and **DISTINCT** players.



« the persistent confusion between ERDF and EDF [...] results from the excessive proximity between their corporate identities, their acronyms and their logos»

RCBCI 2013-2014

II. CRE'S EXPERIENCE OF SOFT LAW TOOLS

Example on trademark confusion (2/3)

- In June 2015, the DSO proposed an evolution of the ERDF brand with an action plan.



"the differentiation factors proposed by ERDF in June 2015 may not be sufficient to compensate for the remaining confounding factors"

Deliberation of 23 June 2015

- In the summer of 2015, the Chairman of the CRE referred the matter to CoRDIS (Dispute Settlement and Sanctions Committee).
- In January 2016, ERDF announced that it would change its name by the summer to differentiate itself from its parent company.
- On 31 May 2016, the DSO revealed its **new name ENEDIS**, which is no longer confusing with the brand name used by the historical supplier EDF.



II. CRE'S EXPERIENCE OF SOFT LAW TOOLS

Example on trademark confusion (3/3)



- Obligation to separate the DSO (URM) from the historical supplier (UEM)
- CRE has noted in its reports that the corporate identity and logo of URM are particularly close to those of UEM → likely to lead to confusion.
- No action taken by URM
- **2018:** The Chairman of the CRE had referred the matter to the Dispute Resolution and Sanctions Committee (CoRDIS)
- **2021:** the CoRDIS sanctioned the companies UEM and URM to financial penalties of €75,000 and €50,000 respectively, for having maintained, since 1 June 2021, a confusion between their corporate identities, communication practices and brand strategy. As part of the proceedings, URM and UEM announced the creation of a new brand for the network operator by 2021.

THANK YOU FOR YOUR ATTENTION