

Basics of Legal Aspects of Regulatory Work

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Legal environment and work of the Regulator

- An efficient system of a regulating the energy sector is highly dependant on the legal environment in which it functions.
- The legal environment must provide the necessary basis for this efficiency – how?
- Clear definition of competences
- Linking competences with power to sanction
- Failure might lead to “Regulatory creep”

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The role of the lawyers in a regulatory body

- 4 general categories in which the role of lawyers can be brought under:
 - 1. Normative (rule-setting)
 - 2. Monitoring (enforcement)
 - 3. Resolution of disputes
 - 4. Representation in courts or before other bodies

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The role of the lawyers in a regulatory body (2)

Specific tasks within general categories:

- Forward proposals for individual decisions
- Ensure legal assistance in the process of issuing regulations, as well as endorsing regulation drafted by others
- Ensure in-house dissemination of specific information relating to the existing legal framework in order to make sure that the staff and the decision-makers apply the relevant legal provisions in force

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The role of the lawyers in a regulatory body (3)

- Inform the staff on the legal acts passed and bring the obligations deriving from these legal acts to the attention of the decision-makers within the regulatory body
- Propose changes to existing regulation or propose new regulation
- Take part in negotiation teams (if applicable)
- Ensure the implementation and transposition of European Union legislation (if applicable)

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The role of the lawyers in a regulatory body (4)

- Multi-disciplinary nature of the energy sector should always be kept in mind.

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How are legal aspects considered during the decision making procedure?

- Lawyers have to be included in the decision-making process from the very beginning
- Legality of decisions
- Legal form of decisions
- Result?
- Reduced possibility of unnecessary contesting of regulatory decisions & increased credibility of the Regulator

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Legal guarantees for the regulator's independence in decision-making

- Where? Found in relevant primary or secondary legislation
- Goal? Avoid arbitrary and give more credibility to the decisions
- The guarantees relate to:
- Legal independence (status)
- Functional independence
- Financial independence

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Legal guarantees for the regulator's independence in decision-making (Legal independence)

- Dependant on the position in the general legal (constitutional) framework:
 - Governmental body
 - Part of the State/Public Administration
 - Independent public institution

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Legal guarantees for the regulator's independence in decision-making (Functional independence)

- Dependant on:
 - Sharing of powers with other institutions
 - Appointment and revocation of the decision-makers
 - Possibilities of contesting regulatory decisions (type of decision, reasons and competence)

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Legal guarantees for the regulator's independence in decision-making (Financial independence)

- Dependant on:
 - State Budget *or* not?
 - Are the necessary (requested) funds obtained in practice?

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Establishment of regulation & Enforcement of regulation

- Both functions are inherent to Regulators.
- Establishment of regulation:
 - passing regulation
 - approving regulation
 - other possibilities of rule setting

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Establishment of regulation & Enforcement of regulation (2)

- Enforcement of regulation:
 - ensuring compliance with regulation in force
 - detection of non-compliance is not enough to ensure compliance – sanctions provided for in the given legal framework have to be applied

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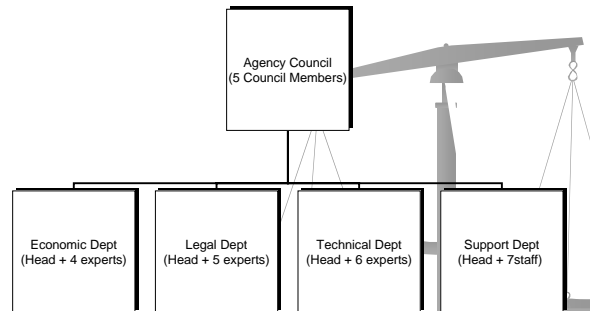
Regulatory process in AERS (In-house proceedings/lawsuits/dispute resolution)

- The Regulatory process in AERS is dependant on the regulatory function
- The process per default goes through two obligatory phases:
 - Work group level (*or* Department level)
 - Agency Council
- Two additional phases possible:
 - Public debate
 - Government decision

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Regulatory process in AERS (2)



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Regulatory process in AERS (2)

- Normative function
 - Passing regulation (all phases applied)
 - Endorsing regulation (public debate dependant on the body drafting the regulation)

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Regulatory process in AERS (3)

- Monitoring (enforcement)
 - Strong cooperation with other bodies (basis for cooperation set out in the Energy Law)
 - Monitoring done directly by AERS in some cases (obligatory phases applied)
- Dispute resolution and legal representation (obligatory phases applied)

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Regulatory process in AERS (4) Lawsuits/Dispute resolution

- Active role in resolving disputes relating to refusal of connection to the grids
- AERS decisions in dispute resolution are final (cannot be appealed) in the administrative procedure BUT can be contested in an administrative dispute procedure before the Supreme Court (one case so far)

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Conclusion

- Are lawyers needed in the energy sector?
- Multi-disciplinary nature of the energy sector should always be kept in mind!

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