

New Public Administration Structures after Romania's EU Integration: the European Agencies

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I. European agencies – harmonising means on the European single market

The European agencies, specialised bodies affiliated to the European Union institutions, have been established to support the member states and their citizens to adapt to the European norms, to transpose and respect the *acquis*, but also to benefit from the single market de-regulation.

No matter if private or state owned, goods or services suppliers, importers or exporters, larger or smaller, the Romanian companies will more and more have to deal, in developing economic operations on the internal single market, with the European agencies, as forms of public administration.

Competence delegation

The core of partial delegation of competences stems from the word *agency* itself. National agencies delegate their competences upwards, to the agencies that provide Union-wide coverage, whereas the European Commission delegates downwards, to the same agencies, which want to be less institutional.

Even if the European agencies are not decision-making bodies, they are important to the Romanian economic operator. Those who ignore them diminish their chances to be successful on the European single market.

A few examples are clarifying.

The recently established *European Chemicals Agency (ECHA)*, based in Helsinki, ensures consistency in evaluating the chemical products with a view to registering them, and it offers opinions and recommendations as far as the authorisation and restriction procedures for some chemicals are concerned.

European Aviation Safety Agency (EASA) is in charge of certifying various types of airplanes, components and subassemblies throughout EU. A Romanian producer of aeronautical equipment cannot ignore it if it wants to have access on the single market. EASA can initiate legislative rules and provides technical expertise to the European Commission and to the member states.

European Food Safety Authority (EFSA) provides the European Commission with objective scientific recommendations regarding all the stages in manufacturing and distributing food products. Due to the fact that EFSA assesses the risks involved by the food chain throughout the entire “route” of a product (the so-called product “tracing and tracking”), it can have, through its activity, an impact on the Romanian food companies.

Intelligent Energy Executive Agency (IEEA) can guide a Romanian company that is interested in using renewable energy, by offering access to the European funds allocated to this field.

Community Plant Variety Office (CPVO) is useful for the farmers who want to grow genetically modified organisms as this agency provides the European Commission with scientific approvals to new plant varieties.

Translation Centre for the Bodies of the European Union (CdT) is becoming more and more interesting for Romanians, on condition that the commissioner for multilingualism makes wise use of the phrase “the country I know best”, connotatively used by the impartial eurocrats.

European Maritime Safety Agency (EMSA) has a great importance to the companies that develop their activities in the maritime field, taking into account that 90% of the European Union foreign trade takes place on sea, including the Black Sea and the Danube. Besides consultative tasks, EMSA has recently received operational tasks to combat pollution.

European Medicines Agency (EMA) cannot be indifferent to a pharmaceutical industry as big as the Romanian one, in which the Ranbaxy Indian group has entered exactly for access to the EU internal single market.

Office for Harmonisation in the Internal Market (OHIM) deals with the EU trademark and the community “design” registration according to the international norms regarding intellectual property. The Romanian companies, which will break the intellectual property rights on the European common market, will be investigated by OHIM.

Community Fisheries Control Agency (CFCA), set up in 2005, coordinates the control and the inspections in the member states, Romania included, and it makes sure that the single fisheries policy is obeyed.

European Railway Agency (ERA) reinforces safety and interoperability of railways in the member states. The fact that the legislation will gradually be adopted with a view to establishing an integrated European railway area will force the big Romanian operators to cooperate with ERA.

These are only a few examples.

There are, of course, agencies with a reduced impact on Romanian companies, which are relevant for other sectors; for instance, European Defence Agency (EDA), European Police Office (EUROPOL), European Union's Judicial Cooperation Unit (EUROJUST), European Monitoring Centre on Racism and Xenophobia (EUMC) etc.

The advantages of an independent central agency

The first advantage for citizens, for contributors, but also for companies, is that of reduced costs. The agencies are usually financed through contributions, which means less money spent from the Community budget.

In terms of advantages for economic operators, the agencies avoid, on the one hand, the European Institutions rigidity and their possible excessive bureaucracy, and on the other hand, they eliminate the segmentation of norms on markets circumscribed by the member states borders, which otherwise would multiply the procedures of accreditation, evaluation and acceptance of the products on the market.

Hierarchically situated between the European Commission and the governmental authorities, *the agencies* often offer solutions for the processes of internal single market reinforcement, of legislative harmonisation, without creating the impression of a sovereignty transfer from the member states. In general, the agencies make the sectors they deal with more visible at a Pan - European level; the existence itself of a specialised agency proves that the policies are focused on that market segment.

As far as the enterprisers are concerned, the agencies very often reduce the business costs. If, for instance, a Romanian company registers its new chemical product at ECHA or the medicine at EMEA, it makes its way into all the 27 member states, without having to pay registration fees in every single member state.

As for the European Commission, the agencies represent a big advantage in the sense that they take over the technical tasks. Thus, the European Commission has to deal only with its basic tasks.

The European agencies' drawbacks

The agencies are not a panacea for the harmonisation of the European single market. Many times they lack the power or the instruments to persuade the member states to apply the European legislation. Some other times they are not sufficiently held responsible for not accomplishing their own tasks or they do not prove that they serve the member states and that they are their “property”. As usually, the administrative structures tend to expand, to encourage bureaucracy, to obtain privileges.

Less relevant for the economic operator, the agencies are not so representative for the idea of integration. After they have settled down in various European cities, the agencies forget sometimes to fly the European Union’s flag, and the people who visit them have no idea that they appeal to the services of a European Union structure.

Decentralisation, the very essence of the European agencies, becomes devoid of content when their managers try to go beyond their status and take up executive roles, in order to justify certain organisational structures.

Another drawback brought about by agencies is the risk of doubling the tasks of some national institutions, if the procedures simplification process is not watched. As long as a state does not want to recognise the evaluation made by the European agency for some products, it invents new bureaucratic “filters”, and the economic operator has to make a double effort.

A possible European agency in Romania?

Since most of the member states host a European agency, Romania has every right to wish the same thing.

On 29 January 2007 the European MP John Bowis was explaining at “*Friend of Europe*”, a European think tank in Brussels that during his previous visits in one of the two new EU member states, he was suggested establishing, in that state, a European agency, not an ordinary one, but an imaginary “Agency of Mental Health”. Leaving aside the sarcasm that could be sensed in the MP’s voice, his commentary is a proof of how big the temptation is for any of the member states to host such an agency.

Even the proximity of such premises can be beneficial for the economic operator, plus the jobs it creates, and also the opportunity for the interested companies to communicate with the agency’s employees. We can notice how the lobby made by companies and employees has gradually attracted some agencies in the countries with a specific interest.

Pragmatically speaking, a question arises: *how can the European agencies help the Romanian companies?* In a free market economy, the state, partially replaced by the European regulators, has to offer equal opportunities for a loyal competition to all companies. The companies need a healthy business environment, which promotes competitiveness. Initially, if the regulators can’t do too much good in this respect, at least they shouldn’t do any harm! From this perspective, a ***European Agency of Integrity*** could be useful for the European companies, be they “*societas europea*” (SE) or under national jurisdiction. For instance, an independent agency, which has enough competences and instruments at its disposal to prevent ex high officials from getting to the top of some companies they had been working with towards the end of their mandate. An agency able to separate economy from politics, a situation also noticed by the analyst Martin

Wolf (FT/31 January 2007): the global economy is doing very well, but the politics hinders it.

If this is only an imaginary agency, there is at least one on its way of coming into being, which Romania could be tempted to host: ***The Agency for the Cooperation of Energy Regulators***.

II. The European Agency of Regulation in the Field of Energy

The European Commission suggested, in September 2007, the establishment of an “Agency for the cooperation of energy regulators”, abbreviated ACER. Its official birth certificate will consist of a Regulation to be approved by the EU Parliament and Council.

1. The Draft Regulation on setting up the Agency

Presented by the European Commission (E.C.) under the number COM (2007) 530, the draft contains enough details about the future Agency, in order to raise the economic operators’ interest in the European energy market. We will approach only a few of them, which are potentially of interest to Romania.

The political motivation for the E.C.’s approach is identifiable in the first sentences of the project’s explanatory memorandum: “*Electricity and gas are at the heart of Europe’s well-being. Without a competitive and efficient European electricity and gas market, Europe’s citizens will pay excessive prices for what is one of their most fundamental daily needs*”.

A few steps that preceded the idea of ACER are worth mentioning. In October 2005 the European summit, at Hampton Court, called for a “European energy policy”. On 8 March 2006, the E.C. published the “Green Paper” of the European energy policy and on 10 January 2007 E.C. released the paper “*An Energy Policy for Europe*”. The 2007 Spring

European Council invited the E.C. to suggest further measures, related to the following specific topics:

- the separation of production from distribution;
- the harmonisation of the powers of the national energy regulators;
- the establishment of a mechanism for cooperation among national regulators;
- the creation of a mechanism meant to coordinate the networks functioning, including their security;
- greater transparency on the market.

The third point above was the starting point of the idea of the *European agency for the cooperation of energy regulators*.

The aim of the Agency, in accordance with the E.C.'s document, is to supplement, at a community level, the activities developed by the national regulators in the field of energy. It has to guarantee that the regulating functions exerted by the state authorities at a national level, in accordance with the directives 2003/54/EC and 2003/55/EC, are appropriately coordinated and, if needed, completed at the EU level. The Agency has to monitor the cooperation among the transport system operators in the electricity and gas sectors, as well as the completion of the tasks of the European networks of transport system operators for electricity and the European networks of transport system operators for gas. The final beneficiary of this monitoring will be the **internal market**. The agency will have to have competences to transmit some non-binding guidelines, which are not compulsory for the regulators and the market operators, with a view to an effective good practices exchange.

The agency will also have a consultative role, between the national authorities and the Commission. It will have to grant the players on the energy market the certainty they need for their investment-related de-

cisions. Thus, the Agency will contribute to a more substantial set of rules with a view to deepening the energy market integration through a more efficient inter-state trade.

ACER will have to be a watch dog for the total independence of the national regulators' action in relation to any interest on the market, without any instructions from any government or any other interference of any public or private entity.

According to the Draft Regulation, in order to complete its mandate, the Agency must be independent and it must benefit of the necessary technical capacities, transparency and efficiency.

The Agency is “*a Community body with legal personality*” and can issue the following ***types of documents***:

- notifications addressed to transmission system operators;
- notifications addressed to regulatory authorities;
- notifications and recommendations addressed to the Commission;
- individual decisions in specific cases.

2. The Agency's Administration

The Agency is headed by a *director*, an *administrative board*, which consists of 12 members, six appointed by the Commission and the other six by the Council, with a five-year mandate, which can be reconfirmed only once. A *Board of Appeal* is called any time needed, which makes decisions through the qualified majority of at least 4 out of its 6 members.

It can bring an action before the Court of First Instance of the Court of Justice in order to contest a decision made by the Board of Appeal.

It also benefits from all the privileges and immunities of EU institutions.

A schematic image of the Agency has been described by an EC expert at the “European Voice” Conference on 7 February 2008, in Brussels¹:

<i>Functions and methods of implementation</i>	
<p>The main functions:</p> <ul style="list-style-type: none"> - it provides a framework for national regulators to cooperate - it supervises the cooperation among the transmission system operators (TSOs) - it has individual decisional powers (e.g. requests for exceptions and regulating conditions among the member states) - it has an advisory role for the Commission - it has the power to adopt optional orientations 	<p>Methods of implementation:</p> <ul style="list-style-type: none"> - the Administrative Board - the Board of Appeal - 40-50 employees - annual budget: € 6-7mil.

3. The first reactions to the EC proposal of setting up the Agency

On 24 January 2008, the Draft Regulation was discussed within the *Industry, Research and Energy (ITRE)* Committee of the European Parliament.

The **first observation** made by the MPs refers to the danger of bureaucracy. Unless it is granted sufficient regulatory power, independent from any other exterior influences, the Agency risks to make the current procedures even more bureaucratic, and thus it does not con-

¹ “Gas and electricity markets: working for consumers or national champions?”, Walter Tretton, European Commission, DG Competition

tribute to the main aim that animated the initiators, which is market deregulation.

The **second observation** refers to the fact that ACER will not actually have any direct regulatory authority at national or European level. The role of the Agency is only restricted to consolidating the national regulators and their independence. Thus, an enhancement of the investments in the inter-state transmission of energy is attempted.

The **third observation**, maybe the most important one, urges to more courage in deregulating the market, because the measures in the “third energy legislative package” are not enough to create a *single European market of energy*. In this sense, some of the deputies requested that ACER should be more than a advisory body, with clearer competences, even in setting the prices for electricity.

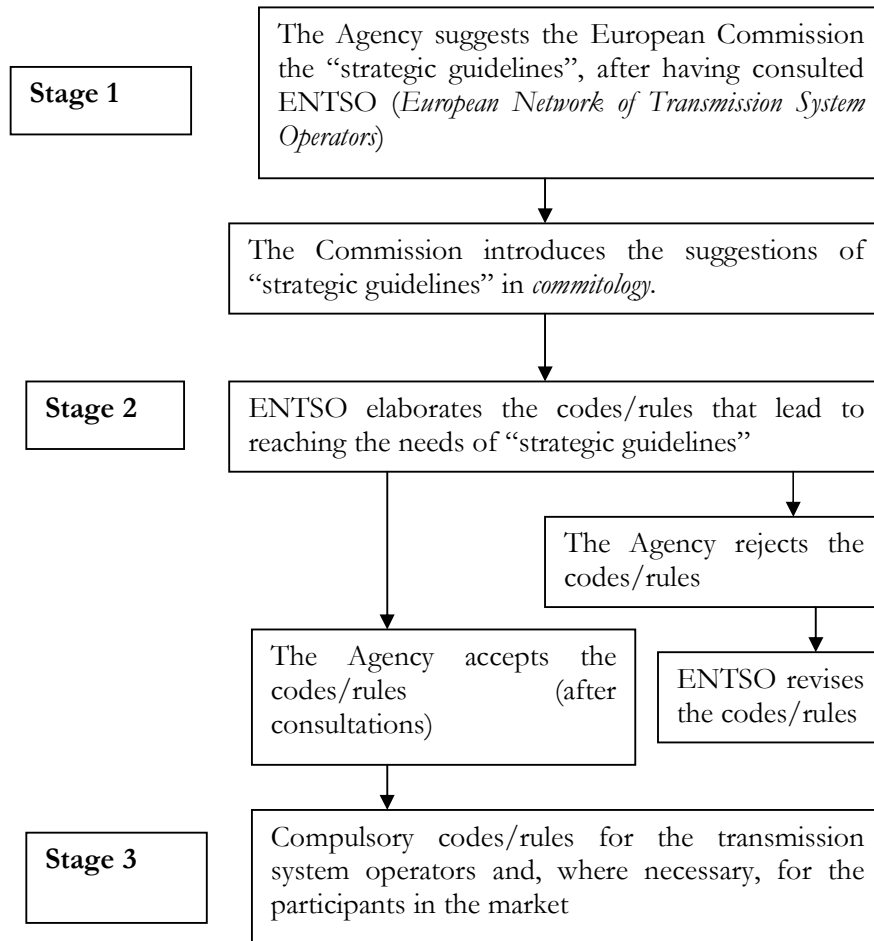
The consolidation of ACER powers beyond the EC proposals faces, at least, two obstacles:

- the political disagreement among some member states;
- the EU treaties do not allow the European Commission to grant a body powers the Commission itself doesn't have.

Some MEPs request that ACER should have the capacity to solve the problems related to the unfair, discriminatory or ineffective access to the network that go across the national boundaries. ACER is even wanted to be able to impose sanctions if the barriers against inter-state commerce are not eliminated.

However, as previous experience shows, it is expected that the Agency be granted at least the powers stipulated in the EC Draft Regulation.

4. The Agency in the scheme of the regulatory bodies in the field of energy

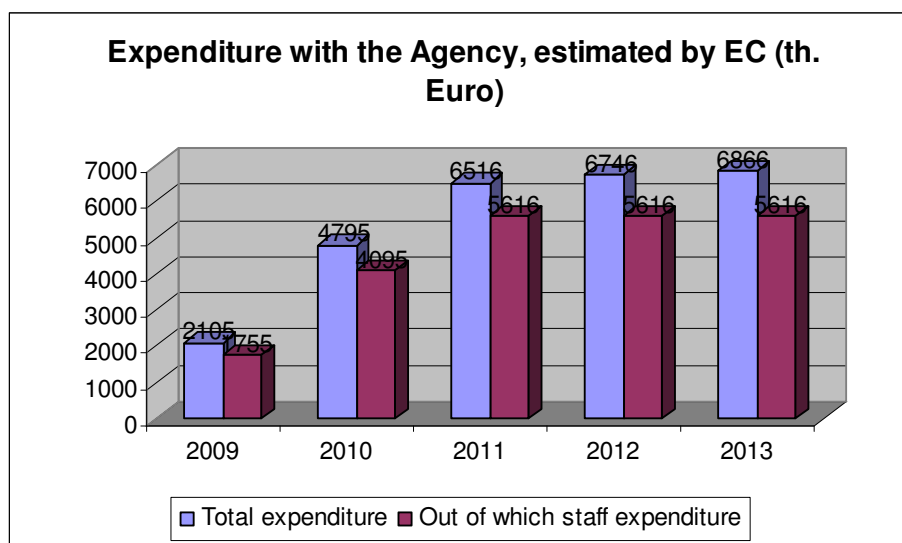


Source: adaptation after "Bundesnetzagentur", the German federal agency for electricity, gas, telecommunications, postal services and railways

5. The Agency's budget

The budget proposed in the financial description, annexed to the Regulations, is based on an estimated 48-person staff and comprises expenditure associated with buildings, and also movable, operating, administrative and mission expenditure.

<p>Agency's incomes consist mainly of:</p> <ul style="list-style-type: none"> - a subsidy from the EU budget; - taxes paid to the Agency for granting derogations - voluntary contributions of the member states or of their regulators. 	<p>Agency's types of expenditure are:</p> <ul style="list-style-type: none"> - staff expenditure; - administrative expenditure; - infrastructure-related expenditure - operating expenditure
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Source: the author's bar chart, following Annex 1 to COM(2007)530 final

The sums allocated for the staff have been calculated in accordance with the "key" used for the EC's staff expenditure, namely € 0.117 mil

a year for each person. Multiplied by 48 people, it reaches a maximum annual amount of € 5.616 mil, to be allocated starting 2011. A number of premises-related and administrative (mail, telecommunications, IT etc.) expenses are added.

The main staff expenditure will be allocated in accordance with the following progressive scheme:

No.	Semester	Recruitment	Total staff
1.	I – 2009	+ 10	10
2.	II – 2009	+ 10	20
3.	I – 2010	+ 10	30
4.	II – 2010	+ 10	40
5.	I – 2011	+ 8	48

The expenses related to purchasing movable goods will reach € 350,000 in the first two years, varying in the years to come according to the facilities offered by the host state. The operating costs will be added: meetings, studies, translations, publications and public relations, which will add up to € 1 mil a year. Trips inside and outside the EU (transport, accommodation, daily allowance) are estimated to be as much as €150,000 when the Agency becomes fully operational. The estimations are based on the current mission-related expenses attributed to the Directorate General of Transport and Energy (DG TREN), within the European Commission.

6. Agency's headquarters

The widely known competition among the member states for hosting a European agency relies on the obvious advantages offered by such premises: well-paid jobs, institutional tourism accompanied by the corresponding export of services, visibility among the member states and

even worldwide, using EU funds in the host country, bringing the decisional power closer to the host country etc.

The ACER employees, in their capacity as European Union clerks, will actually benefit from the same privileges as the European clerks in Brussels, Strasbourg, Luxembourg or in any other European Union city which the European institutions and agencies are based in. The Poles have made serious lobby to host a prestigious agency, with great future perspectives: *Frontex*. Earlier, the Finns had successfully fought to host the European Chemicals Agency (*ECHA*). A similar competition could have been observed, throughout the whole European integration process, in the case of the other agencies.

Bucharest could qualify for hosting ACER. Naturally, priority will be given to the new member states, and our country is one of them. Romania would also have the advantage of a solid energy-related potential, especially hydro, which provides it with a good positioning in the area of renewable energy sources. Its geographical position, bordering on the Black Sea, on the route of the energy transit networks from Central Asia to EU, qualifies it as a country of interest for the European energy-related policy. Moreover, still exploitable gas and oil resources, its long experience in the hydrocarbons industry, as well as the remarkable dimensions of the internal market which places Romania, in demographical terms, among the largest states of the Union, all these, plus the lack of European institutions or agencies in our country, make Bucharest eligible among the potential applicants for ACER premises.

I would add the high degree of privatisation and unbundling in the Romanian energy sector, which is above the EU average, and especially above the level of privatisation in some of the largest member states, which, somehow paradoxically, have participated in the privatisation in Romania with state-owned companies.

If the fundamental aim of the European energy market is to offer the consumers lower prices by stimulating competition, then ACER, as a

specialised agency on the internal energy market will be able to contribute to setting more accessible prices for the Romanian consumers, thus boosting their welfare.

The worst case scenario, that of applying, but failing to eventually host the agency, would offer the Romanian *eurocrats* an advantage in the future European negotiations.

However, a question could arise: does Romania have the necessary logistic capacity to manage such an agency? The answer is easy to give: a country, which hosted the francophone summit or NATO summit, which has world class administrative buildings and qualified personnel, can proudly hope for the status of ACER host.

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This paper on a reality of the community administrative structure, namely that of the *European agencies*, tries to raise awareness about the perspective of including, sooner or later, such structures in the Romanian public administration in a large sense, which come with their advantages and the mimetic effects they may produce, as a consequence of Romania's integration into the European Union.

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