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Single European Sky

lessons from

EU energy regulation

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Comparable structural issues

Strong national interest (state ownerships).

Global competition/sector & pressure on costs.

Trade-off between cost, capacities & utilization.

Inflexible monopoly organization.

Affordability of services, scalability of costs, lack of cost control.

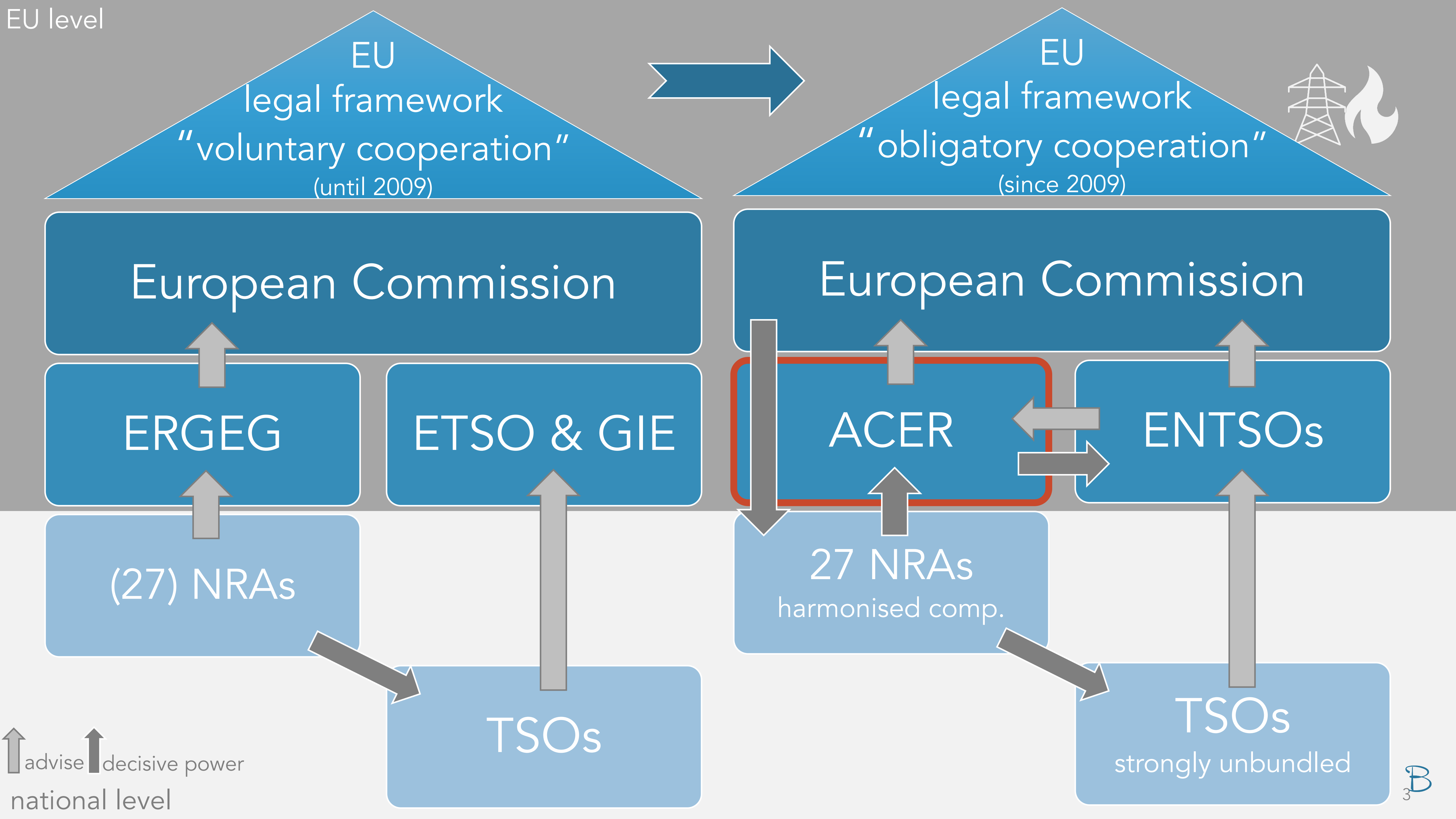
Environmental pressure.

Security/Safety/SoS aspects.

Strengthening system services user rights.

Resistance to implement needed restructuring.

Importance of sector for economy & society.


EU level
EU
legal framework
"voluntary cooperation"
(until 2009)
European Commission
ERGEG
ETSO & GIE
(27) NRAs
TSOs
EU
legal framework
"obligatory cooperation"
(since 2009)
European Commission
ACER
ENTSOs
27 NRAs
harmonised comp.
TSOs
strongly unbundled
advise
decisive power
national level

EU level

EU legal framework "voluntary cooperation" (until 2009)

NRAs	TSOs
voluntary cooperation at EU level	(voluntary) representation of interest
different organisational frameworks	different & weak unbundling
different competencies	"only" DG COMP oversight

EU legal framework "obligatory cooperation" (since 2009)

NRAs	TSOs
obligatory cooperation at EU level	obligatory cooperation at EU level under EC scrutiny
harmonised competencies	harmonised & strong unbundling rules
minimum financing requirements	EC (DG ENER) supervision of unbundling

national level

Agency for the Cooperation of Energy Regulators

- An EU agency with separate legal personality.
  - Structure similar to a classic NRA (exception BoR).
- Energy regulation became European (not only national).
- ACER is not an EU regulator.
  - The 3rd package (2009) strengthened NRAs w.r.t. competencies & financing.
- ACER installed to deal with <u>cross-border aspects</u> of regulation.
- ACER is the fall back solution if NRAs do not agree.

- All revisions of the legal framework gave ACER additional tasks & competencies so far.

ACER's competencies & limits

- Meroni doctrine (13.06.1958) - EU Commission may delegate executive powers to an EU agency (only) if:
  - the tasks are clearly defined,
  - there is a limited scope for action / decision-making, &
  - the agency is strictly monitored & evaluated.
- Romano doctrine (14.05.1981) – EU agencies cannot adopt normative measures.
- Consequences for ACER:
  - ACER can only make recommendations to the Commission.
- However, the CFI decided a little less strictly in 2014:
  - ESMA decision (22.01.2014) somewhat extended the scope for action in the transfer of responsibilities.

ACER is competent if NRAs cannot agree.

ACER organisation vs. EU regulatory rules

Organisation: ACER

Bodies: AB | Director | BoR (Majority vote) | BoA

Working groups
- Electricity
- Gas
- Wholesale trading

Departments
- Electricity
- Gas
- Market Surveillance & Conduct
- Market Integrity & Transparency
- Corporate Services

108 FTEs (TAs, SNEs & CAs) & numerous (~200+FTEs) NRA experts in 2020.

- 27 national energy policies,
- 13 EU Regulations & Directives,
- 14 EU Network Codes & Guidelines,
- 40 individual ACER decision in 2020 alone,
- plus national laws & ordinances

govern the EU Internal Energy Market.

How much regulation is needed?

- The answer is not always totally clear & might change over time.
- Natural monopolies vs. services which can be provided by the market.
- Different players & service call for different approaches to deliver on targets.

Full regulation — oversight

Transportation services

Storage services

Conversion services

LNG services

Wholesale trading

Commodities

Supply

The European way:
Cooperation to achieve the Internal Market

Member States

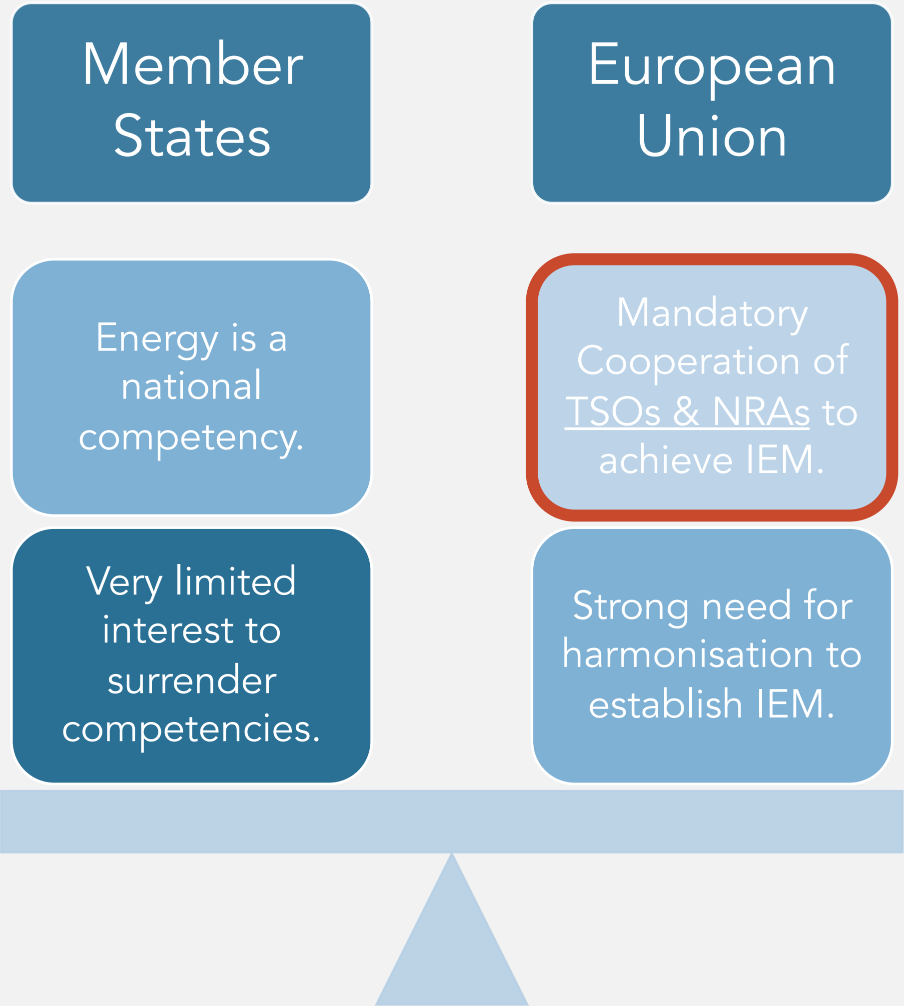
European Union

Energy is a national competency.

Very limited interest to surrender competencies.

Strong need for harmonisation to establish IEM.

The European way:
Cooperation to achieve the Internal Market



- (Strong) NRAs have to cooperate to achieve agreements.
- Technical experts (TSOs) cooperate on a daily (operational) basis & within an EU network (ENTSOs) to develop solutions for technical & market issues.
- ENTSOs develop, under the guidance of ACER, technical & market rules (network codes) which are made legally binding at EU level (MS involvement).
- Despite all complexity, the system works well, even though not very quick.

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List of acronyms & references

- MS – Member State
- ERGEG – European Group of Energy Regulators
- ETSO – European Transmission System Operator (Electricity); GIE – Gas Infrastructure Europe
- NRA – National Regulatory Authority
- TSO – Transmission System Operator
- ACER – Agency for the Cooperation of Energy Regulators; www.acer.europa.eu
- ENTSOs – European Network of Transmission System Operators for Electricity/Gas; www.entsoe.eu, www.entsog.eu
- BoR – Board of Regulators (ACER)
- BoA – Board of Appeal (ACER)
- AB – Administrative Board (ACER)
- AEWG – ACER Electricity Working Group
- AGWG – ACER Gas Working Group
- AMIT WG – ACER Monitoring, Integrity & Transparency Working Group
- OU – Ownership unbundling
- ITO – Independent Transmission System Operator
- ISO – Independent System Operator
- SoS – Security of Supply

Energy regulation is constantly evolving - 1/2

1951 - 1970
- Start of European cooperation / integration based on post-war energy needs.

1970 - 1986
- Several serious crisis situations.
- Increasing demand for energy.
- European cooperation & common political measures.

1986 - 1992
- Internal market & liberalisation being discussed.

1990er
- Creation of "the EU".
- Increasing importance of renewable energies & environmental protection.
- Stepwise liberalisation of energy markets.

1991
- Transit Directive.

1994
- Energy Charter Treaty.

1996/ 1998
- 1st Energy package.

Energy regulation is constantly evolving - 2/2

2000	• 3 targets: Sustainability, Security of Supply & Competitiveness; Energy policy becomes EU competency.
2003	• 2nd Energy package; European Regulators' Group for Electricity & Gas (ERGEG) advising the EC.
2009	• 3rd Energy package; Foundation of the Agency for the Cooperation of Energy Regulators.
2010	• 1st Gas-SoS Regulation.
2011	• Wholesale market surveillance (REMIT) Regulation.
2013	• Energy infrastructure package - TEN-E Regulation, CEF.
2015	• Energy Union.
2017	• 2nd Gas-SoS Regulation.
2019	• Clean Energy Package.
2021	• 2nd TEN-E Regulation; Hydrogen/Decarbonised gases package(?)

EC’s 2005 sector inquiry highlighted serious shortcomings in the EU energy sector

- Too much market concentration in most national markets.
- A lack of liquidity, preventing successful new entry.
- Too little integration between Member States’ markets.
- An absence of transparently available market information, leading to distrust in the pricing mechanisms.
- An inadequate level of unbundling between network & supply interests with negative repercussions on market functioning & investment incentives.
- Customers tied to suppliers through long-term downstream contracts.
- Balancing markets & small balancing zones favoured incumbents.

Objectives of EU energy regulation

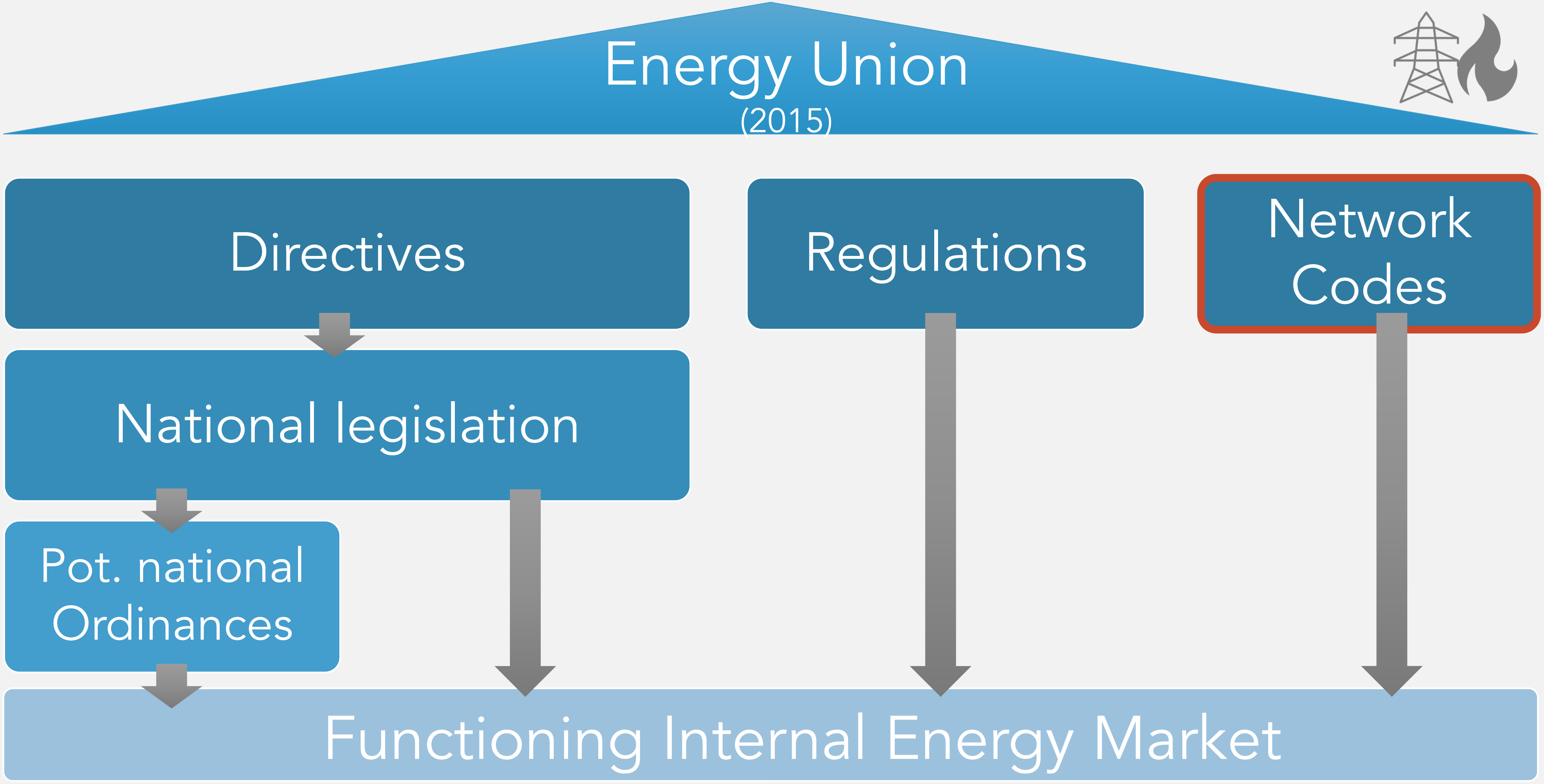
Functioning Internal Energy Market

- Cost reductions / international competition of energy costs.
- Maintaining & improving security of supply.
- Establishment of a (single) liquid market.
- Opening the European market.
- Removing regulated retail prices.
- Strengthening of end customer & network user rights.
- Decarbonization (increasing importance over time).

3rd energy package designed to fill gaps left by 1st (1998) & 2nd (2003) liberalisation package

Focus on Cooperation between (MSs,) NRAs & TSOs.

- Unbundling (OU, ISO, ITO).
- Improved coordination of EU TSOs (ENTSOs).
- Foundation of ACER.
- Harmonised competencies & independence of NRAs.
- Improved consumer rights.


Energy Union
(2015)
Directives
Regulations
Network Codes
National legislation
Pot. national Ordinances
Functioning Internal Energy Market

Increasing workload for ACER & it's BoA

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- 14 Network Codes & Guidelines,
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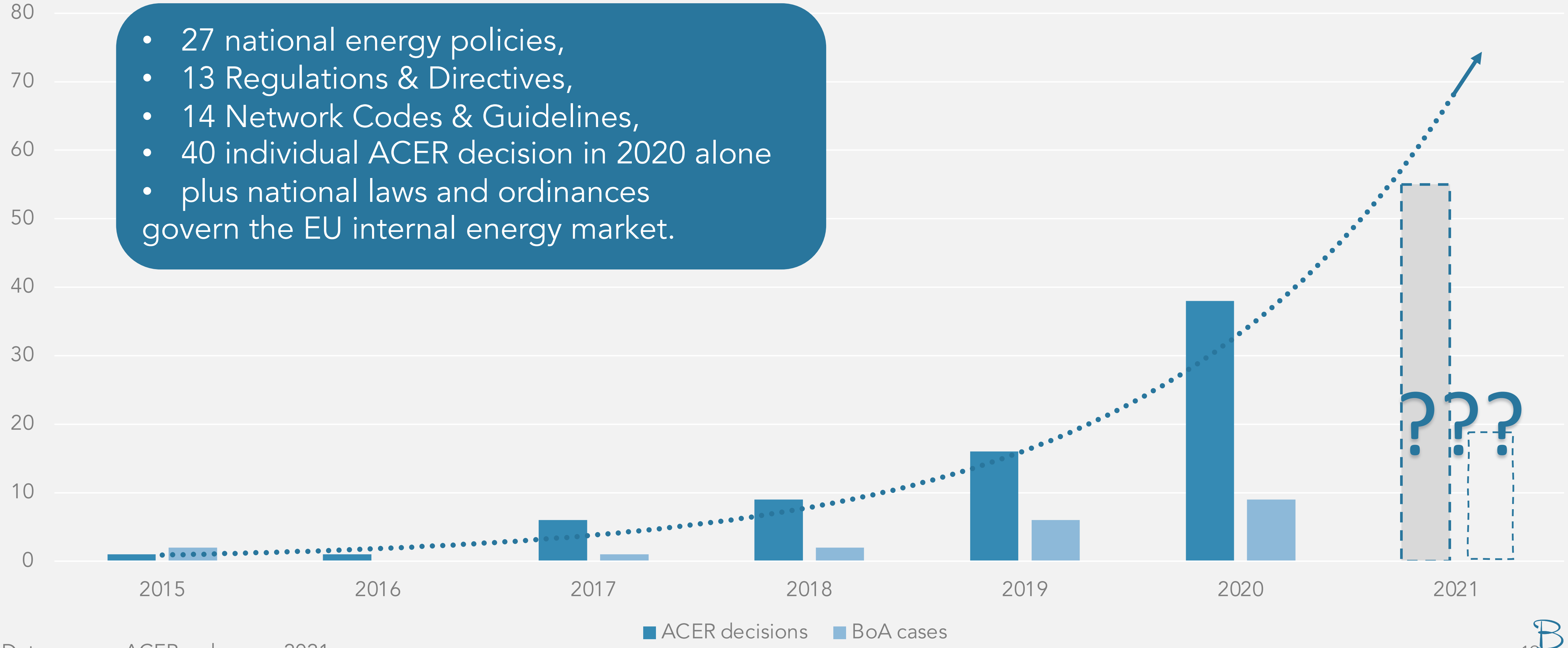
govern the EU internal energy market.



Data source: ACER webpage, 2021

NRA goals, duties & competencies*

Focus on Cooperation between 27 NRAs.

- Functioning (competitive) internal/regional market.
- Third Party Access.
- Network access, technical & market rules, GTCs.
- Tarification transmission & distribution networks.
- Energy watch dog (surveillance)
- Consumer protection.
- Right to request information.
- Effective, proportional & exemplary penalties.
- Dispute settlement.
- Market integrity (REMIT).

* in 3rd package

ACER's core business*

Development of cross-border regime for gas & electricity.

Opinions & recommendations to COM, EP, Coun. & ENTSOs.

Overview ENTSOs.

Improvement NRA cooperation & review of decisions.

GTCs for network access & oper. security for x-b infrastructures.

Exemption decsions.

REMIT.

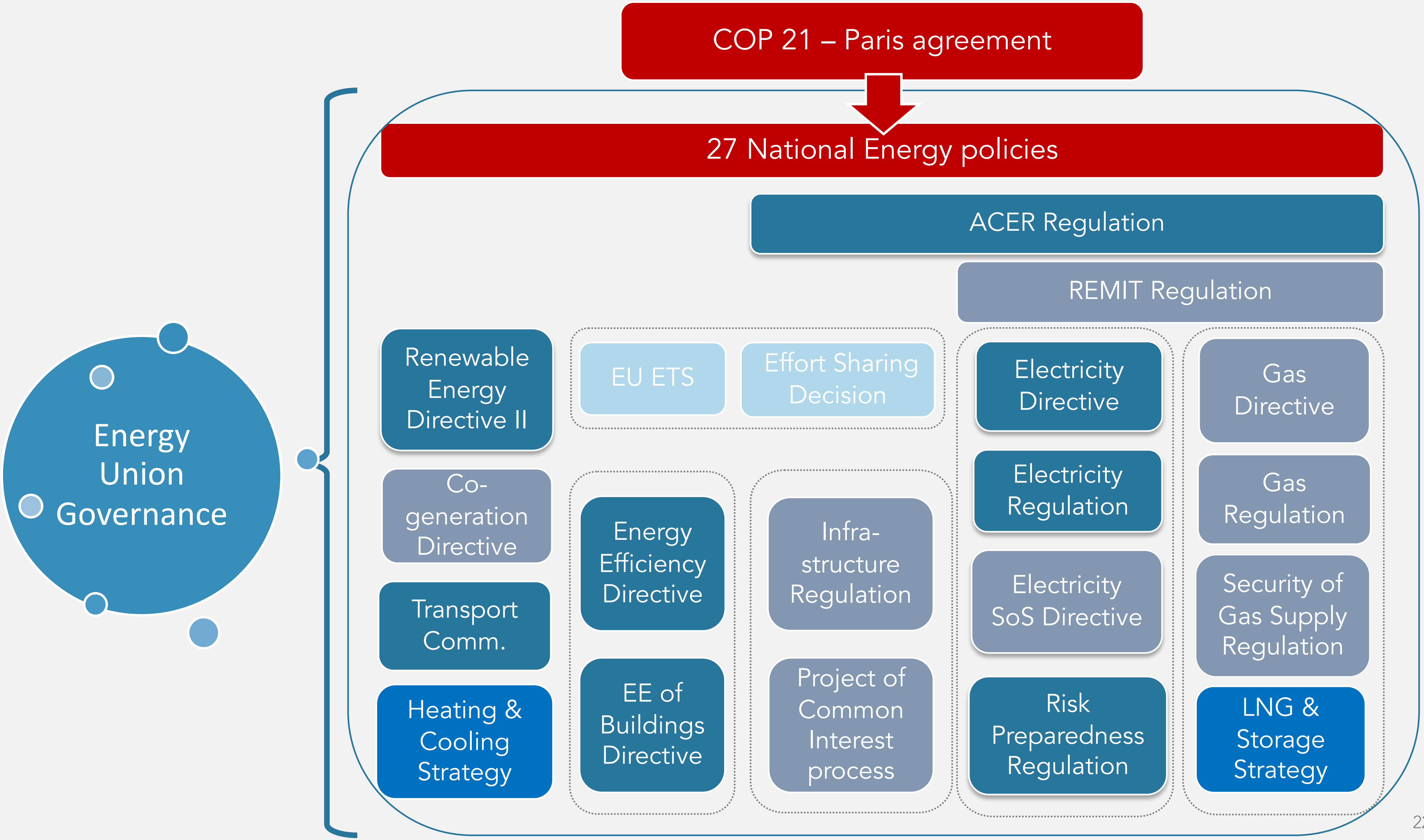
Network development planning.

Participation in PCI process.

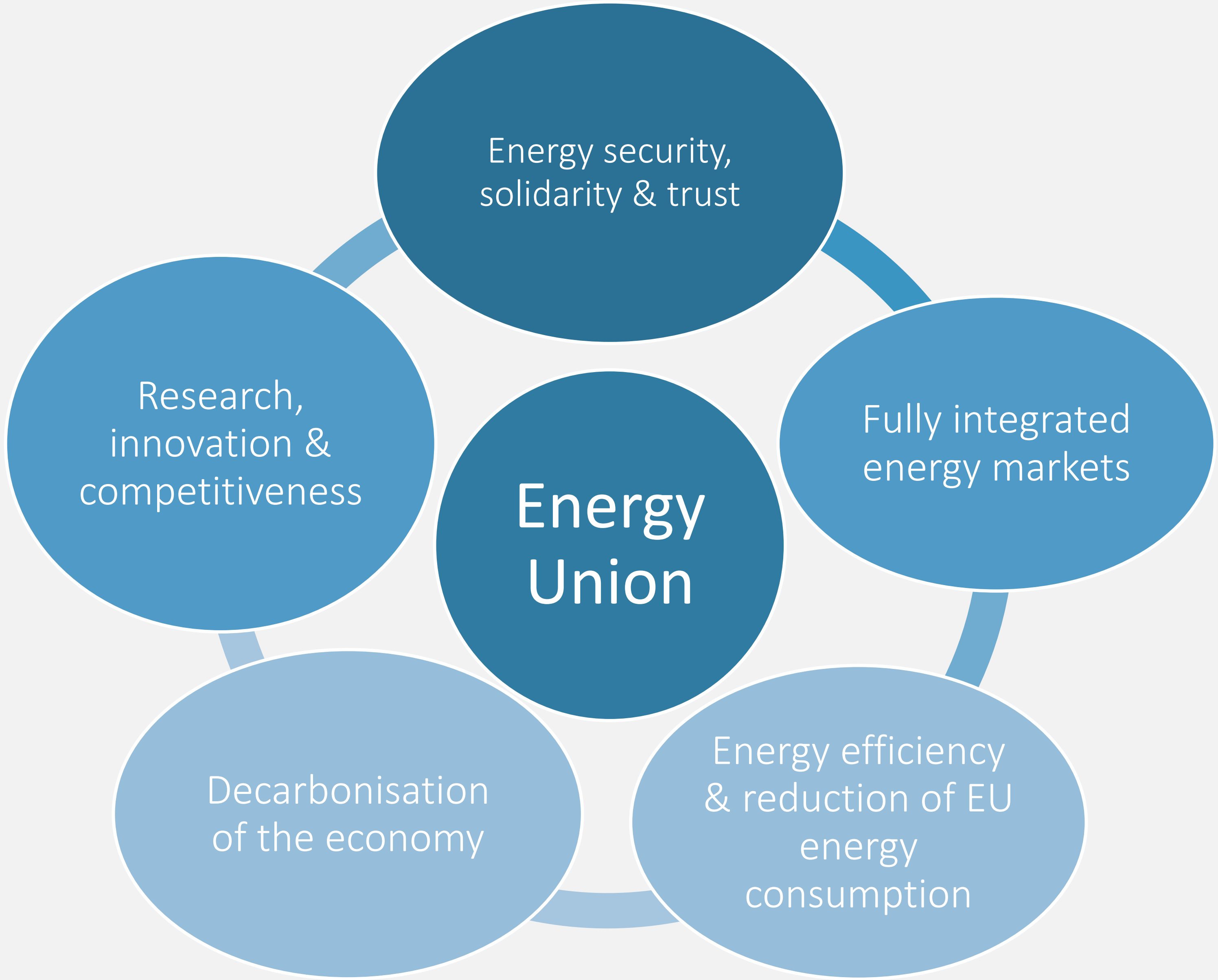
Member Gas Coordination Group.

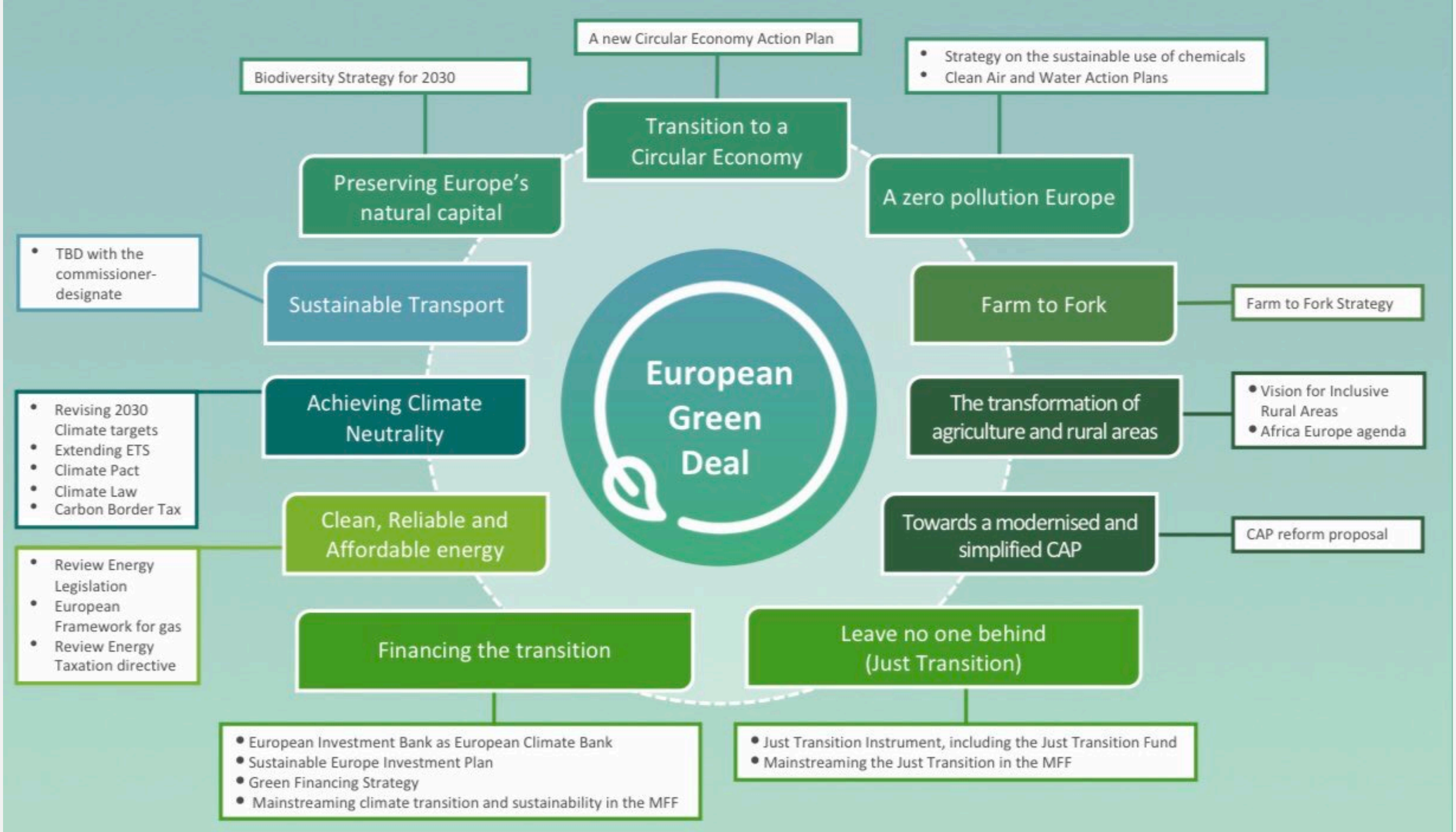
Monitoring.

* acc. to 3rd energy package & TEN-E regulation.


COP 21 – Paris agreement
27 National Energy policies
ACER Regulation
REMIT Regulation
Energy Union Governance
Renewable Energy Directive II
EU ETS
Effort Sharing Decision
Electricity Directive
Gas Directive
Co-generation Directive
Energy Efficiency Directive
Infra-structure Regulation
Electricity Regulation
Gas Regulation
Transport Comm.
Electricity SoS Directive
Security of Gas Supply Regulation
Heating & Cooling Strategy
EE of Buildings Directive
Project of Common Interest process
Risk Preparedness Regulation
LNG & Storage Strategy

Five dimensions of the Energy Union





Source: EC, 2019.