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# BEREC, ACER, ERGP, IRG-Rail – one year down the road: Does every sector need to have one?

CERRE Regulatory Forum  
Brussels, 14 December 2011

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## I. The German model: Multi-sector Regulation



**BNetzA's regulatory competences comprise the following sectors:**



- **electricity**
- **gas**
- **telecommunications**
- **post**
- **railway**



### Advantages with regard to regulatory decisions

#### Reflection of market realities

- Networks are increasingly converging.
- Struggling over competences between different authorities can be avoided.

#### Synergies

- Similar questions arise in all sectors.
- Broad expertise can be made use of.
- Expertise and experiences from other sectors can easily pour in regulatory decisions.

#### Regulatory Consistency

- Close co-operation of experts from different sectors allows consistent regulatory approaches and measures.



### **General Advantages of a multi-sectoral approach:**

- Regulatory capture can be avoided.
- Regulator can take its decisions based on a wider perspective.
- Broad expertise strengthens the regulator's role as political adviser.
- Multi-sector competences strengthen the regulator's independence.



## **II. European co-operation in the telecommunications and energy sector**

## Overview

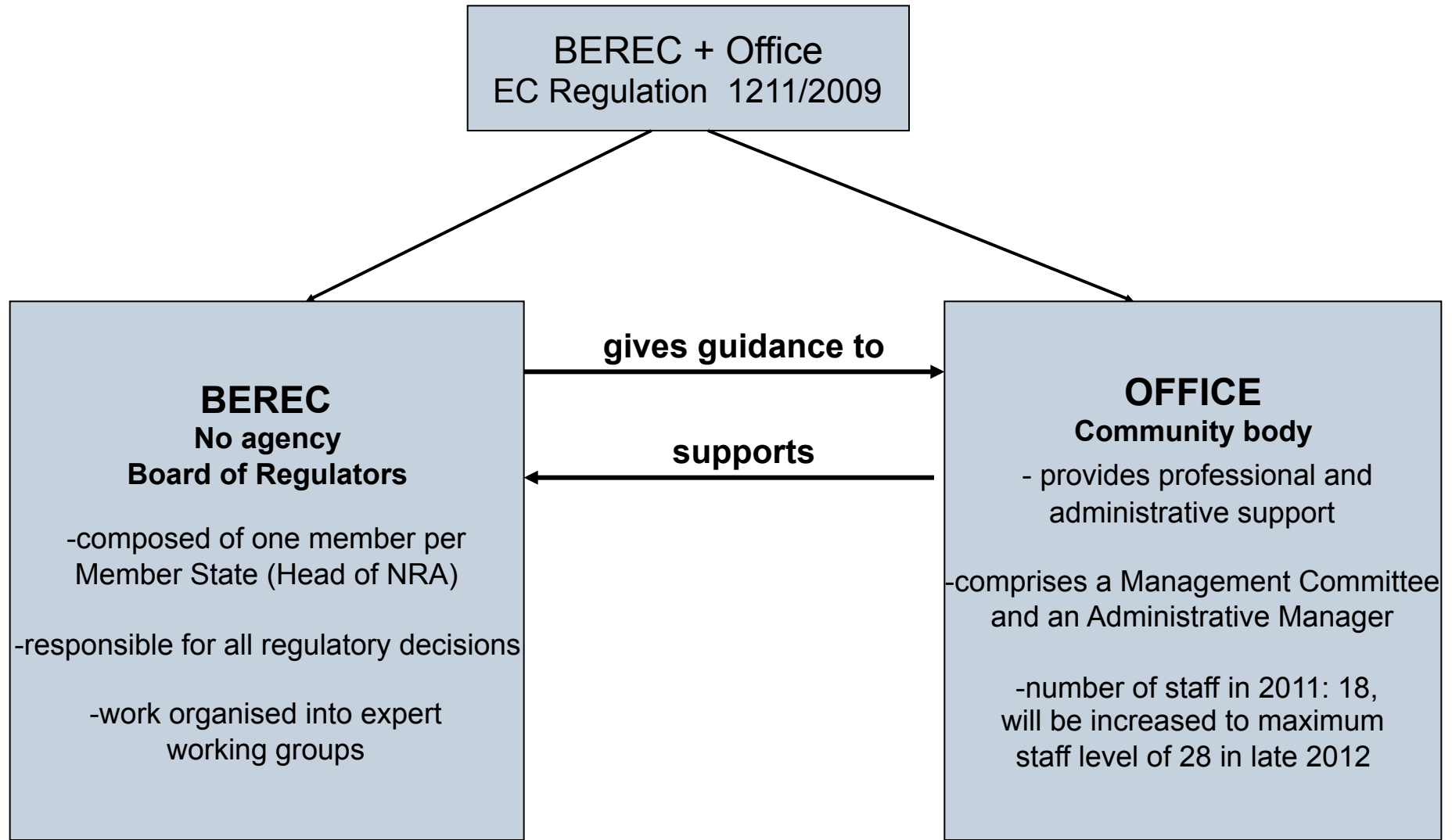


	Telecommunications	Energy
Informal NRA-platform / formal non-profit association	<b>IRG</b> 1997 / May-2008	<b>CEER</b> 2000 / June-2003
Official Commission advisory group (decisions)	<b>ERG</b> 2002	<b>EREGG</b> November 2003
Own proposals regarding future development of a strengthened group: bottom-up approach	<i>Enhanced</i> ERG Letter Nov. 2006 Answ. 27-02-07 Pro: pan-European services	EREGG <i>plus</i> CEER comm. 06 2nd comm. 08-02-07 Pro: European grid + cross-bord. problem
Commission's proposals European Agency: top-down approach	EECMA (13-11-07) European Electronic Comm. Market Authority	ACER (19-09-07) Agency for Cooperation of Energy Regulators
2009 EU framework EC Regulation adopted by Council and EP	<b>BEREC</b> (26-10-09) 2-tier model consisting of Board of Regulators / supportive Office	<b>ACER</b> (25-06-09) Agency solution Reg. EC-713/2009

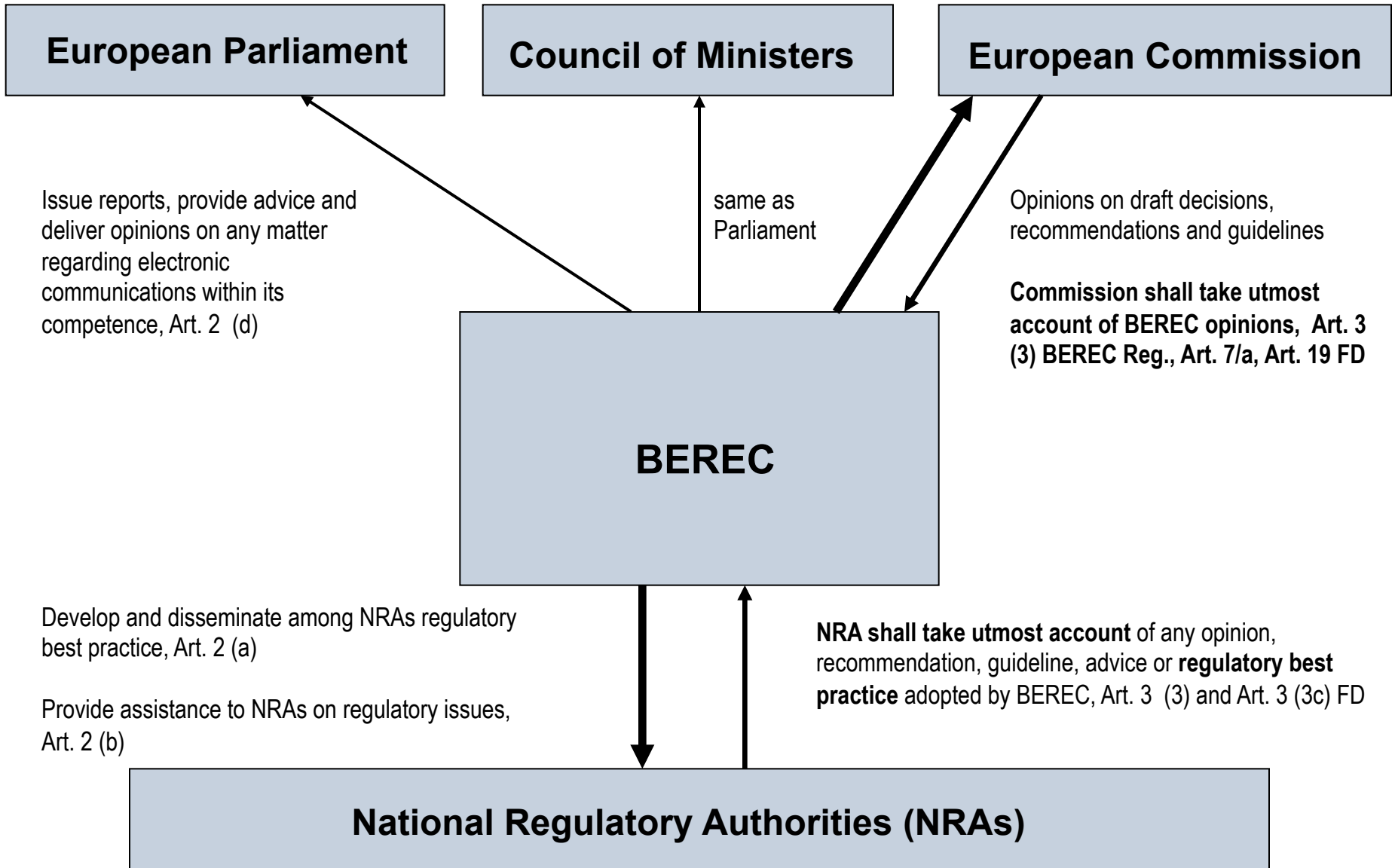


- It is BEREC's main purpose to ensure a consistent application of the European framework through the development of common approaches (best regulatory practice principles) in order to develop the internal market.
- BEREC takes a formal role in relation to specific measures, e.g. Art 7/7a FD notifications.
- Commission and NRAs have to take utmost account of BEREC positions/opinions.
- Two pillar approach to BEREC – Board of Regulators (no agency) combined with supportive Office.
- BEREC has a stronger role than ERG on the European level, interacting directly with the European institutions.
- Internal decision making procedures more formalized (voting for decision taking, see rules of procedure), helps to go beyond the „least common denominator“ and to have more ambitious Common Positions – enhances cooperation and harmonisation.
- Strong engagement of NRAs is needed to make BEREC work.

## Two-tier-approach of BEREC



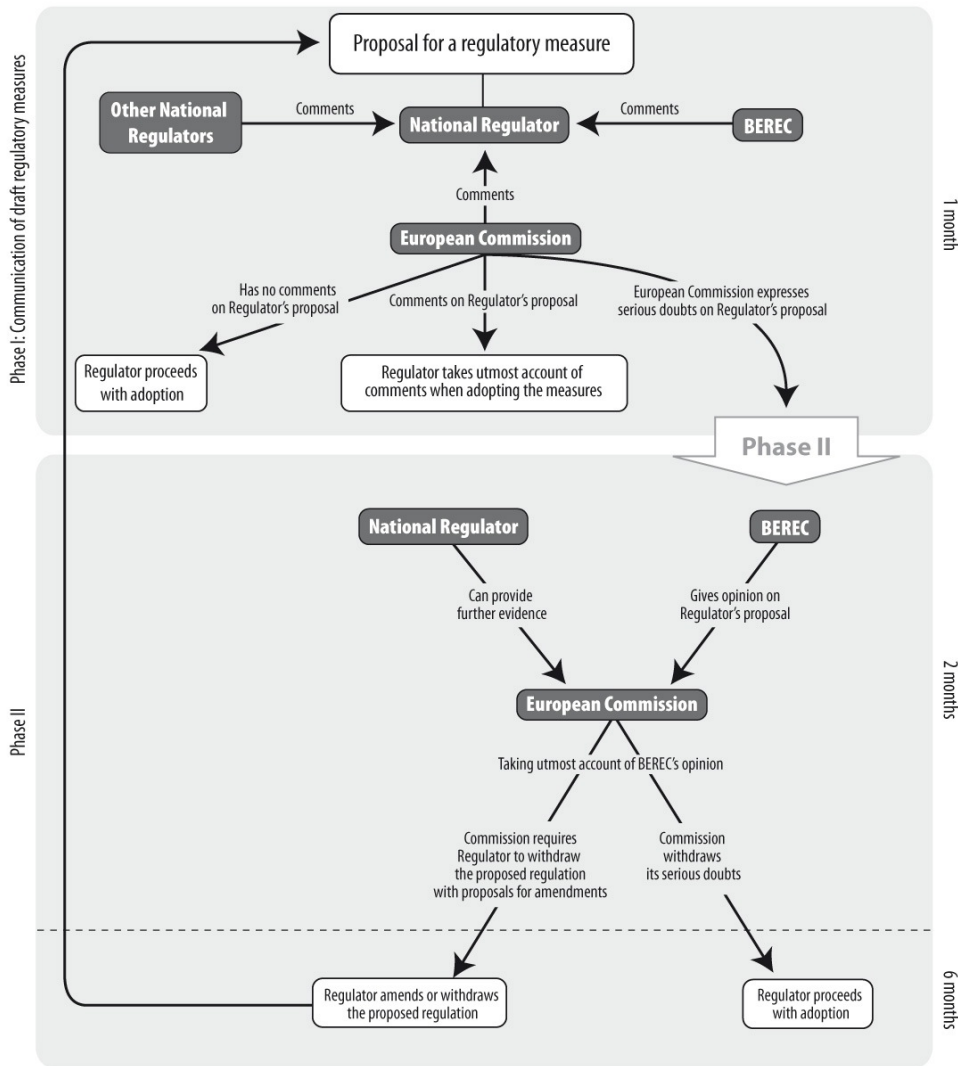
## BEREC's role in interacting with the institutions



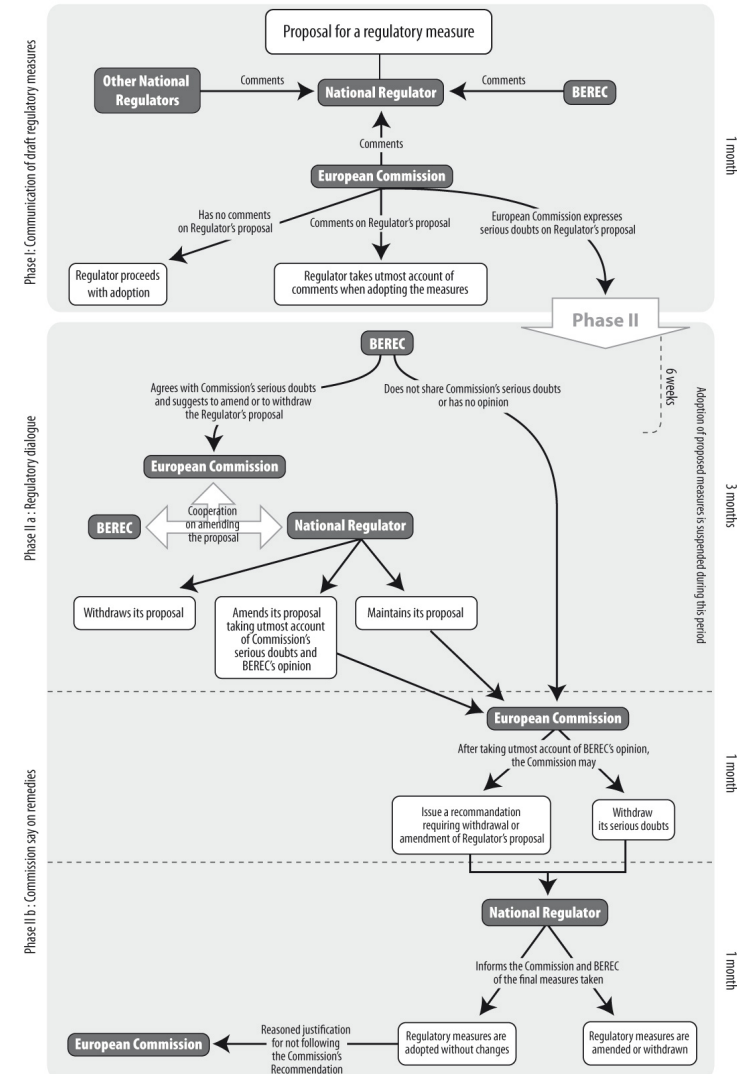
# Art. 7/7a-Procedure



## Market definition and SMP-finding – Art. 7 FD



## Remedies imposition – Art. 7a FD applied since 26 May 2011





### Preliminary evaluation of BEREC after 2 years:

- BEREC has maintained continuity with regard to its predecessor ERG.
- Documents are drafted in expert working groups and adapted in the plenary.
- Office has more and more found its role in order to serve the Board and the working groups.
- The first practical cases under the Article 7a-procedure have been conducted successfully.
- But: Generally the Art. 7/7a-procedures appear to be very complex and bureaucratic.
- The potential impacts of an enhanced cooperation on the regulatory balance are still relevant:
  - Stronger peer review elements and the legal obligation of NRAs to take utmost account of common positions risk that NRAs' flexibility (discretion) to finetune regulation to national circumstances is limited too much.
  - The complex Art. 7/7a-procedure bears the risk of diffusion of responsibilities between the different levels. A potential lack of certainty could undermine regulatory effectiveness.
- ➔ Decentralized implementation of regulation should be retained. Effective regulation on the national level by NRAs will avoid distortions that create barriers to the internal market.



- **Midterm Strategic Plan of BEREC**
  - promotes harmonisation
  - prepares better for important challenges
  - streamlines work programme
  - increases transparency
  
- Procedure:
  - Public consultation with stakeholders will start December 2011
  - Final document is planned for early 2012
  - will be updated regularly



- ACER was established on the basis of a EU regulation as a European agency. It is legal entity itself.
- But: Unlike other agencies the bodies of ACER also include a board of regulators consisting of senior representatives of NRAs.
- Main tasks of ACER:
  - Co-ordination of activities of NRAs at EU level
  - Advising the Commission
  - Involvement in rule-making (Framework Guidelines for Network Codes) and creation of 10-year network development plan
  - Individual decisions in certain areas



### Preliminary evaluation of ACER after 2 years:

- Set up of ACER has reached an advanced level.
- Influence of ACER has increased compared to its predecessor ERGEG.
- Tasks and competences go beyond the ones of ERGEG.
- Shifting of competences to the European level has been an appropriate step due to the existence of cross-border problems in the energy sector.
- In the field of energy an agency on the European level seems to be better prepared to tackle the problems than a less formalised co-operation.



### **III. European co-operation in the post and railways sector**



## ERG-Postal Services

- Establishment of the ERG-Postal Services to create a „*regulatory level playing field*“ and develop „*Best-practice*“ principles.
- Against the background of full market opening on 1 Jan. 2011 in nearly all EU-15 MS according to the Postal Services Directive (2008/6/EC) co-operation and exchange of experiences between NRAs is more and more important.
- ERG-P has been set up by Commission Decision of 10th August 2010 (similar to the decisions to establish ERG and ERGEG)
- Inaugural meeting was held in Brussels on 1st December 2010.
- BNetzA and 26 NRA of other EU Member States are members, 3 candidate countries + 4 EFTA-NRAs as well as the Commission are observers
- Secretariat to be provided by the Commission
- Work in 5 working groups started beginning 2011 (reg. accounting etc.)
- 2nd Plenary meeting held in Paris on 24 November 2011.



### Independent Regulators' Group – Rail

- Inaugural meeting of national rail regulators to set up the IRG Rail on 9th June 2011 in The Hague where the Memorandum of Understanding was signed on the initiative of independent NRAs (without involvement of the Commission)
- Membership is open to NRAs of an EU Member State, an EFTA State, an EU accession country or a candidate for EU membership. NRAs must be independent from their government, railway undertakings and infrastructure managers.
- So far 17 national regulators are joining the group.
- Co-operation aims to
  - contribute to the promotion of competition and to the development of an European internal market in railways
    - by fostering consistent regulatory approaches,
    - by developing best practices,
    - by speaking with a single voice on community level,
  - play an essential role in addressing future regulatory challenges,
  - improve NRAs own performance and expertise.
- 5 working groups have been set up so far.
- 2nd Plenary held on 28/29 November 2011 in Bonn.



## Rail Freight Regulation

- chaired by BNetzA
- first position paper on key issues of the rail freight regulation adopted November 2011

## Charges

- chaired by ARAF -

# IRG-rail

*Independent Regulators' Group - Rail*

## Economic Equilibrium

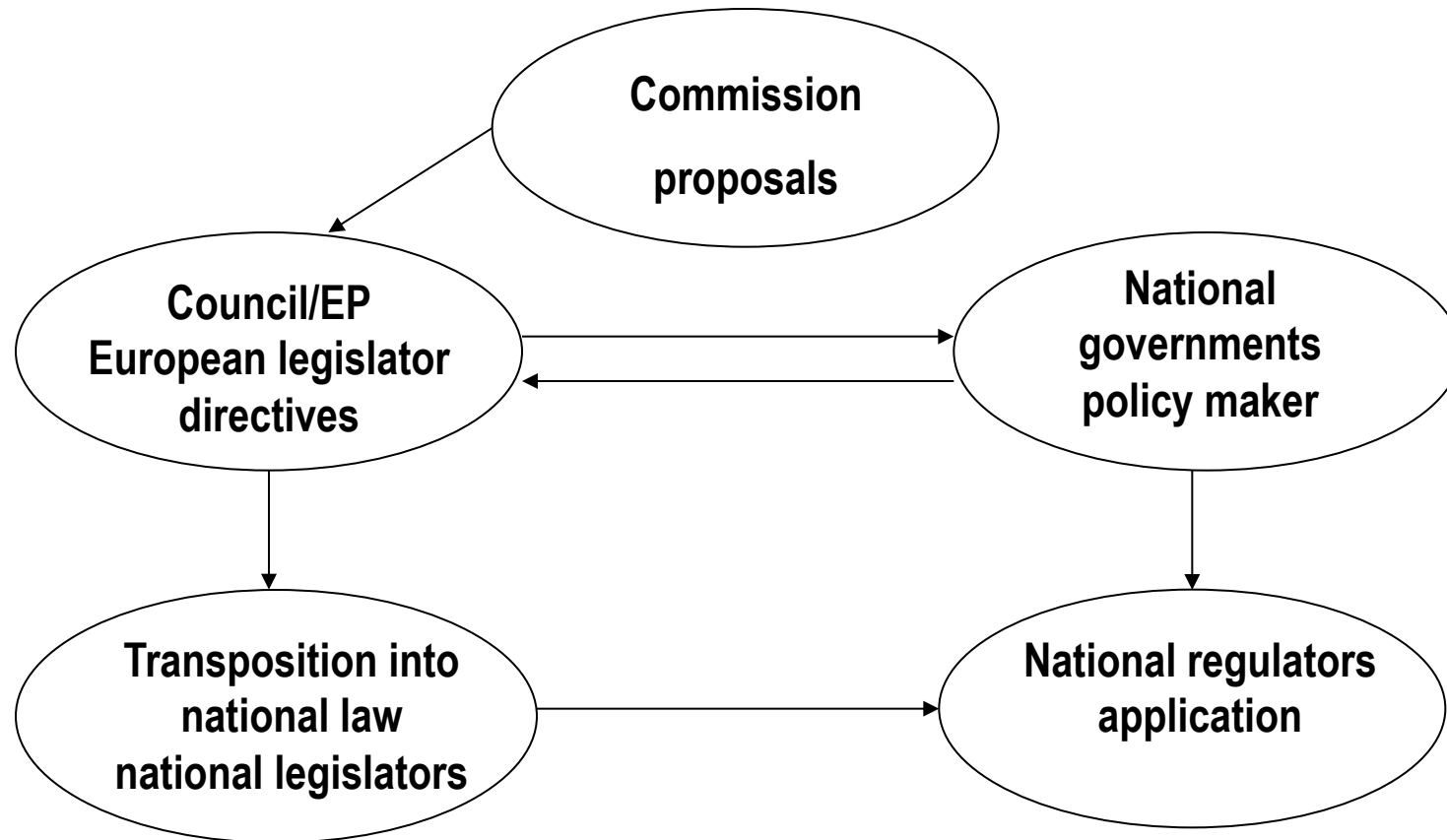
- chaired by ORR
- Guidance for assessment of economic equilibrium of public service contracts adopted November 2011

## Market Monitoring

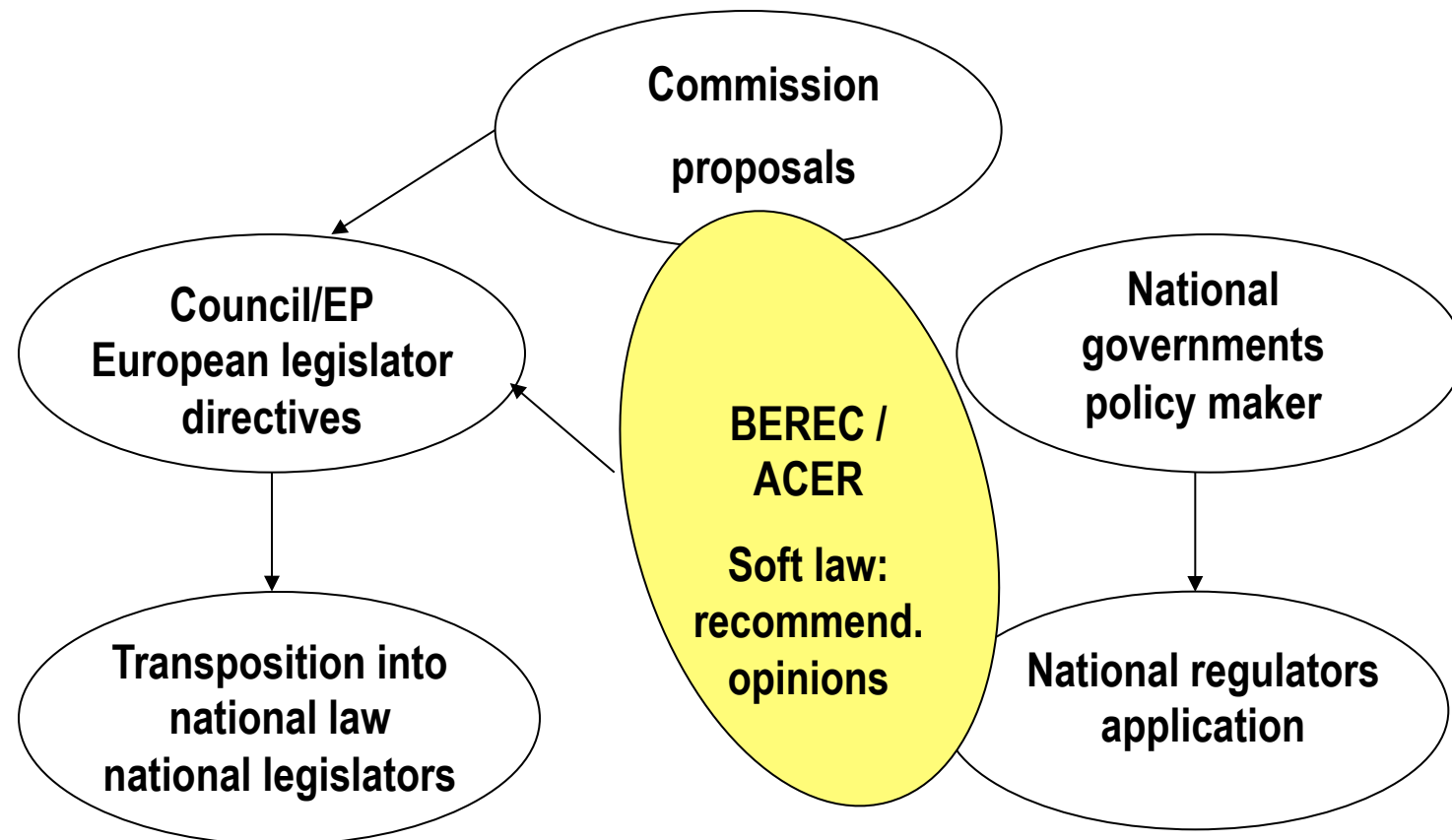
- chaired by NMa
- common list of indicators adopted November 2011

## First Package Recast

- chaired by BNetzA
- Three position papers on the first package recast adopted since June 2011

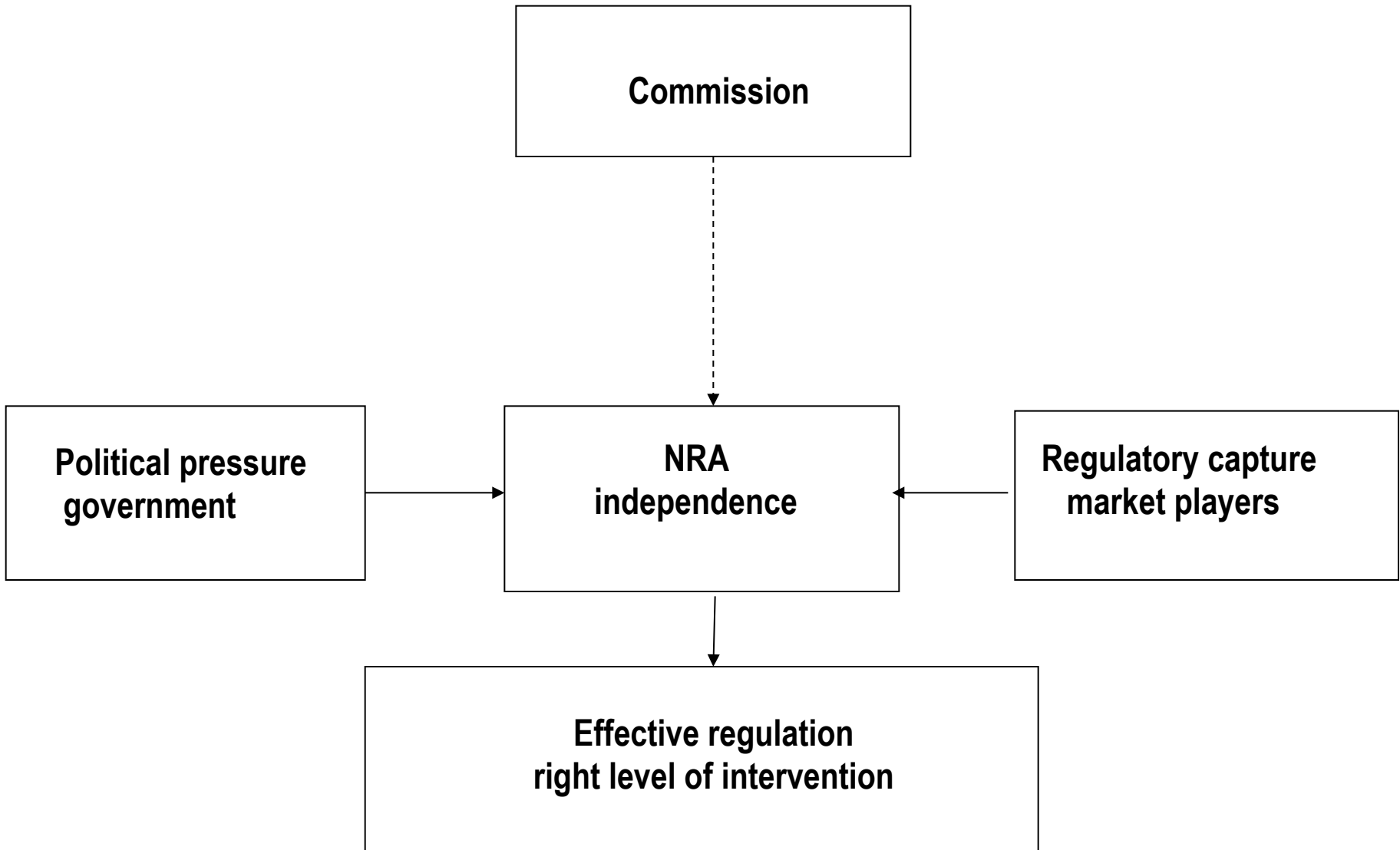


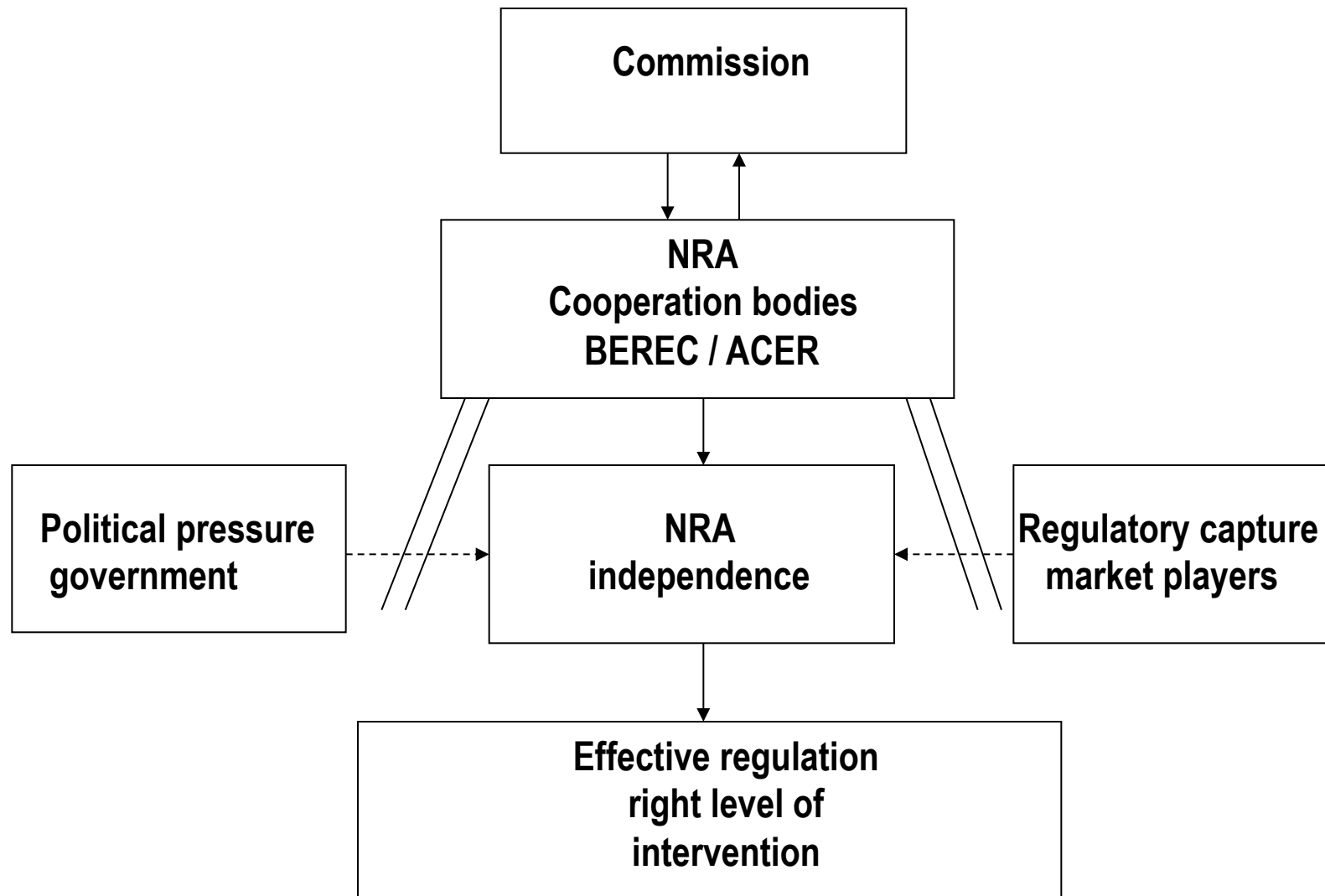
Multi-level model: European and national level of legislation and implementation (application)



BEREC = Body of European Regulators for Electronic Communications

ACER = Agency for the Cooperation of Energy Regulators







### III. Modernisation of Networks

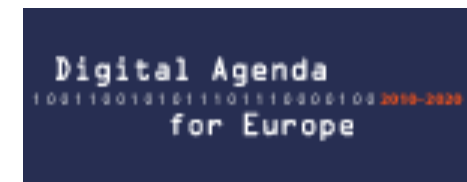


### ▪ The Federal Government's Broadband Strategy of February 2009

- Broadband access shall be available nationwide by the end of 2010
- A total of 75 percent of households shall be provided with access with transmission rates of 50 MBit/s by 2014 and nationwide as soon as possible

### ▪ Digital Agenda of the European Commission of August 2010

- 100% coverage of broadband access of EU citizens by 2013
- Provision of all EU citizens with broadband access with at least 30 MBit/s and 50% of European households with at least 100 MBit/s by 2020

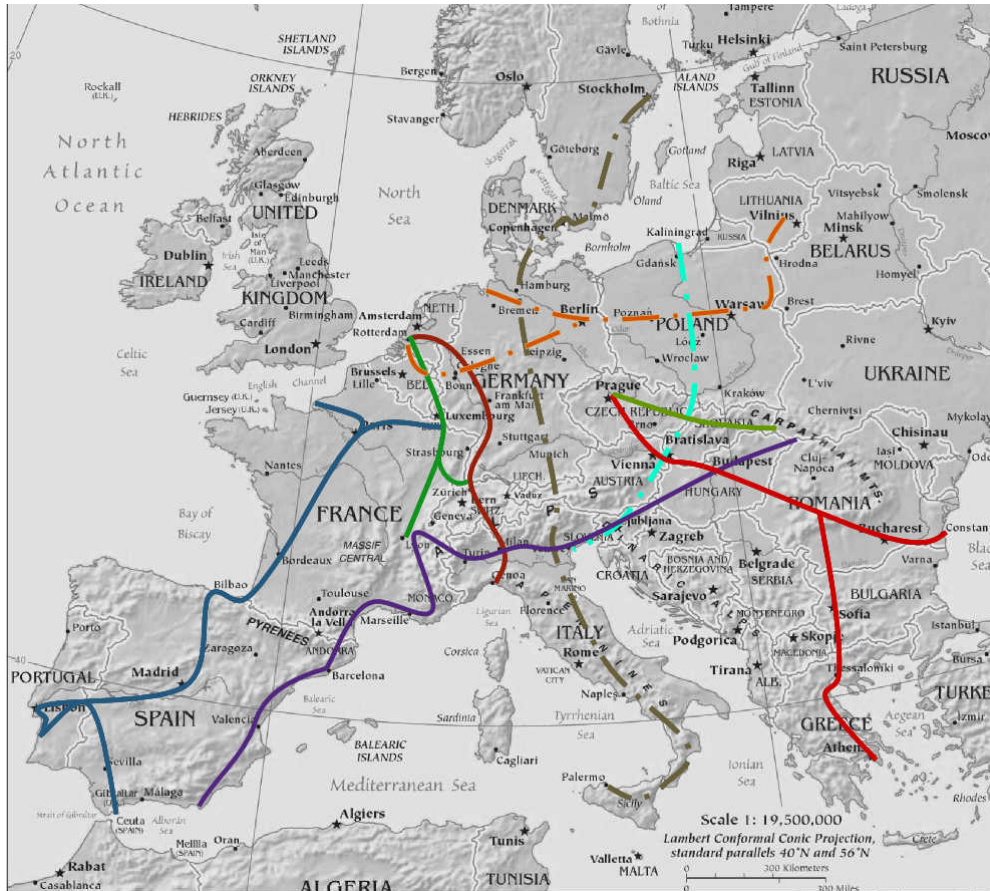




- **Shutdown of nuclear power plants**
  - Decision of the German government to permanently shut down the 8 power plants and to phase out the other nuclear power plants until the end of 2022 in June 2011.
  - Rapid expansion of renewable energies.
  
- **Energy Strategy 2020 of the European Commission of November 2010**
  - Pan-European integrated energy market with infrastructures
  - Europe's leadership in energy technology and innovation
  - Safe, secure and affordable energy through active consumers (Smart grids/ smart meters)
  - Communication from the Commission „Smart Grids: from innovation to deployment“, 12 April 2011, COM(2011) 202 final



## Key Challenges - Railway



- One of the key challenges in the railway sector is the planned creation of European freight transport corridors until the end of 2013 and 2015 respectively.
- Due to the cross-border nature of the corridors many questions must still be answered, reaching from the question of the competent regulatory authority to the regulatory control of pre-arranged train paths.



#### **IV. Fit to deal with the new challenges?**



- Since all markets and sectors have their own characteristics and conditions the level of European co-operation and the level of formalisation must be found individually for each sector.
- It must be closely and continuously analysed which problems have to be addressed and which tools are needed to tackle the problems.
- For the time being there is certainly no need to extent bodies such as BEREC / ACER to the railways and post sector.
- Is there a need to better reflect the converging landscape of network industries in the regulatory framework at the European level?
- Can we make all groups of European regulators
  - IRG/BEREC
  - CEER/ACER
  - ERG-Post
  - IRG-Raila success story?