DRAFT REPORT


Committee on Industry, Research and Energy

Rapporteur: Morten Helveg Petersen

(Recast – Rule 104 of the Rules of Procedure)
Symbols for procedures

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in *bold italics* in the left-hand column. Replacements are indicated in *bold italics* in both columns. New text is indicated in *bold italics* in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in *bold italics*. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in *bold italics* and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
CONTENTS

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION........................................5

EXPLANATORY STATEMENT............................................................................................31

ANNEX: LIST OF ENTITIES FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT .........................................................................................................................34

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS................................35

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Ordinary legislative procedure – recast)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2016)0863),

– having regard to Article 294(2) and Article 194(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0494/2016),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the German Bundestag, the French Senate and the Romanian Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,

– having regard to the opinion of the European Economic and Social Committee of 31 May 2017

– having regard to the opinion of the Committee of Regions of ...,

– having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts,

– having regard to the letter of ... from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 104(3) of its Rules of Procedure,

– having regard to Rules 104 and 59 of its Rules of Procedure,

– having regard to the report of the Committee on Industry, Research and Energy and the opinion of the Committee on Budget (A8-0000/2017),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward

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1 Not yet published in the Official Journal.
2 Not yet published in the Official Journal.
codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) Due to the close interconnection of the Union electricity grid and the increasing need to cooperate with neighbouring countries to maintain grid stability and integrate large volumes of renewable energies, regional operational centres will play an important role for the coordination of transmission system operators. The Agency should guarantee regulatory oversight over the regional operational centres where necessary.

Amendment

(7) Due to the close interconnection of the Union electricity grid and the increasing need to cooperate with neighbouring countries to maintain grid stability and integrate large volumes of renewable energies, regional operational centres will play an important role for the coordination of transmission system operators. The Agency should guarantee regulatory oversight over the regional operational centres. It should monitor the decision-making processes between the regional operational centres, the transition system operators and the national regulatory authorities.

Or. en

Justification

The development of the ROCs as mere advisory bodies to national TSOs shows that the desired regional TSO cooperation with regional decision making will not come easily. A European regulatory oversight is needed throughout the establishment and implementation of ROCs.

Amendment 2

Proposal for a regulation
Recital 17
(17) Since the stepwise harmonisation of the Union energy markets involves finding regional solutions regularly as an interim step, it is appropriate to reflect the regional dimension of the internal market and to provide for appropriate governance mechanisms. **Regulators responsible for coordinated regional approvals should be able to prepare Board of Regulators decisions on issues of regional relevance in a regional subcommittee of the Board of Regulators, unless those issues are of general importance for the Union.**

(17) Since the stepwise harmonisation of the Union energy markets involves finding regional solutions regularly as an interim step, it is appropriate to reflect the regional dimension of the internal market and to provide for appropriate governance mechanisms. **Decisions on proposals for joint regional terms and conditions or methodologies should therefore be taken by the competent regulatory authorities of the region concerned unless those decisions have a tangible impact on the internal energy market. Decisions on issues which have significant relevance beyond the region concerned should be taken by the Agency.**

Or. en

**Justification**

In light of the principle of subsidiarity, the decisions on the proposals for joint regional terms and conditions or methodologies should be taken by the regulatory authorities concerned unless they have a tangible effect on the internal energy market (notably where the issue at stake has a significant relevance beyond the concerned region), in which case it is proposed that they are taken by the Agency. (See for more details also the proposals for amendments for Articles 5 and 7 below).

**Amendment 3**

**Proposal for a regulation**

**Article 2 – paragraph 1 – point d**

**Text proposed by the Commission**

(d) take **individual** decisions in the specific cases referred to in Articles 6, 8, and 11 of this Regulation,

**Amendment**

(d) take decisions in the specific cases referred to in Articles 4 to 13 and Article 16 of this Regulation;

Or. en

**Justification**

The proposed point (d) is intended to capture all the decisions to be taken by the Agency and is linked with other amendments on related articles.
Amendment 4

Proposal for a regulation
Article 4 – paragraph 4 a (new)

Text proposed by the Commission

4a. The Agency may request the ENTSO for Electricity and the ENTSO for Gas to provide the information necessary for the fulfilment of its tasks pursuant to:

(a) this Regulation;


(c) the network codes adopted pursuant to Article 6 of Regulation (EC) No 715/2009 and Articles 54 and 55 of Regulation (EU) .../... [proposed Electricity Regulation, COD(2016)0379];

(d) the guidelines adopted pursuant to Article 23 of Regulation (EC) No 715/2009 and Article 57 of Regulation (EU) .../... [proposed Electricity Regulation, COD(2016)0379].

The Agency’s tasks as referred to in the first subparagraph shall include verification of the compliance of the ENTSO for Electricity and the ENTSO for Gas with the legislative acts, network codes and guidelines referred to in points (a) to (d) thereof.

Or. en

Justification

The Agency must be able to obtain from ENTSO-E and ENTSO-G the information necessary to monitor their compliance with the objectives and provisions in the Electricity and Gas Regulations and the network codes and guidelines.
Amendment 5
Proposal for a regulation
Article 4 – paragraph 4 b (new)

Text proposed by the Commission

4b. Where appropriate, the Agency may take binding decisions addressed to the ENTSO for Electricity and the ENTSO for Gas in order to ensure that they comply with the legislative acts, network codes and guidelines referred to in the first subparagraph of paragraph 4a.

Or. en

Justification

When, through its oversight activities, the Agency detects an instance of non-compliance, thus jeopardising the well-functioning of the Internal Energy Market, the Agency should be able to intervene with a binding decision.

Amendment 6
Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

2. In cases where the network codes and guidelines developed pursuant to Chapter VII of [recast Electricity Regulation as proposed by COM(2016) 861/2] provide for the development of proposals for terms and conditions or methodologies for the implementation of those network codes and guidelines which require regulatory approval by all regulatory authorities or by all regulators of the concerned region, the terms and conditions or methodologies shall be submitted for revision and approval to the Agency.

Amendment

2. In cases where the network codes and guidelines developed pursuant to Chapter VII of Regulation (EU) .../... of the European Parliament and of the Council [proposed recast Electricity Regulation, COD(2016)0379] provide for the development of proposals for terms and conditions or methodologies for the implementation of those network codes and guidelines which require approval by the regulatory authorities of all Member States, the proposed terms and conditions or methodologies shall be submitted for revision and approval to the Agency.

In cases where the network codes and guidelines developed pursuant to Chapter VII of Regulation (EU) .../... [proposed recast Electricity Regulation,
COD(2016)0379] provide for the development of proposals for joint regional terms and conditions or methodologies for the implementation of those network codes and guidelines which require approval by all regulatory authorities of the region concerned, the proposed terms and conditions or methodologies shall be notified to the Agency. The Agency shall decide on those terms and conditions or methodologies, in accordance with Article 7(1), (2) and (3) in the following circumstances:

(a) where the competent national regulatory authorities have not been able to reach agreement within the period specified in the relevant network codes and guidelines; or

(b) upon the joint request from the competent national regulatory authorities; or

(c) where the terms and conditions or methodologies have a tangible impact on the internal energy market, in particular in cases where an issue has significant relevance beyond the region concerned.

Before approving the terms and conditions or methodologies, the Agency shall revise and change them where necessary in order to ensure that they are in line with the purpose of the network code or guideline and contribute to market integration, non-discrimination and the efficient functioning of the market. The procedure for the coordination of regional tasks in accordance with Article 7 shall apply.

The approval of ACER should be required only for proposals for terms and conditions to be applied EU-wide. Proposals for regional terms and conditions or methodologies should only be referred for decision to the Agency where the issue at stake has a tangible impact on the internal energy market, where the concerned regulatory authorities fail to agree or upon their joint request.
Amendment 7

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission

2. The Agency may, in accordance with its work programme, at the request of the Commission or at its own initiative, make recommendations to assist regulatory authorities and market players in sharing good practices.

Amendment

2. The Agency may, in accordance with its work programme, at the request of the Commission or at its own initiative, make recommendations to assist regulatory authorities and market players in sharing good practices and ensuring full compliance with existing regulation.

Or. en

Justification

It is important for the internal market that ACER proactively issues recommendations to assist NRAs in improving the compliance with regulations, in particular provisions of cross-border relevance. This amendment is necessary to maintain the internal logic and consistence with other amendments.

Amendment 8

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

3. The Agency shall provide a framework within which national regulatory authorities can cooperate. It shall promote cooperation between the national regulatory authorities and between regulatory authorities at regional and Union level to ensure interoperability, communication and monitoring of regional performance in those areas which are still not harmonised at Union level and shall take into account the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where the Agency considers that binding rules on such cooperation are required, it shall make the appropriate recommendations to the Commission.

Amendment

3. The Agency shall provide a framework within which national regulatory authorities can cooperate in order to ensure speedy and efficient decision-making on issues with cross-border relevance. It shall promote cooperation between the national regulatory authorities and between regulatory authorities at regional and Union level to ensure interoperability, communication and monitoring of regional performance in those areas which are still not harmonised at Union level and shall take into account the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where the Agency considers that binding rules on
such cooperation are required, it shall make the appropriate recommendations to the Commission.

Justification

A faster and more efficient handling of cross-border issues will be essential to advance the internal market. Therefore, the Regulation should be more specific on the requested cooperation among NRAs. This amendment is necessary to maintain the internal logic and consistence with other amendments.

Amendment 9

Proposal for a regulation
Article 6 – paragraph 10 a (new)

Text proposed by the Commission

Amendment

10 a. The Agency may request the national regulatory authorities to ensure enforcement of its legally binding decisions.

Justification

Once the Agency issues a binding decision, it also needs to be implemented and, if necessary, penalties should be imposed in case of non-compliance. With respect to the latter, the Agency relies on NRAs.

Amendment 10

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. For decisions pursuant to Article 5(2) last sentence of the present Regulation, on joint regional terms and conditions or methodologies to be developed under network codes and guidelines pursuant to Chapter VII of the [recast Electricity Regulation as proposed by COM(2016) 861/2] which regularly deleted
concern a limited number of Member States and require a joint regulatory decision at regional level, the Agency may be assisted by a subset of the Board of Regulators, consisting only of the regulatory authorities of the concerned region, following the procedure in paragraphs 2 to 4 of this Article.

Justification

The proposed decision making process entails an assessment of the impact of the joint regional proposal on the internal energy market. Where their impact is not tangible, the decisions are taken by the regulators of the region concerned. After the Agency has been notified of the joint agreements, the Agency shall issue a recommendation where those agreements are not consistent with the objectives and the provisions of the Directive and Regulation and the network codes and guidelines.

Amendment 11

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission

2. The Director shall assess the possible impact of the joint proposal on the internal market and issue an opinion if the joint proposal is mainly of regional relevance or if it has a tangible impact on the internal market, notably in cases where the issue at stake has a significant relevance beyond the concerned region.

Amendment

2. Within one month of notification of the proposal for joint regional terms and conditions or methodologies to the Agency in accordance with the second subparagraph of Article 5(2), the Director may, on his or her own initiative or at the request of the Board of Regulators, require the regulatory authorities of the region concerned to refer the proposal to the Agency for decision where the proposal has a tangible impact on the internal energy market notably in cases where the issue at stake has a significant relevance beyond the concerned region.

Justification

The proposed decision making process entails an assessment of the impact of the joint regional proposal on the internal energy market. Where their impact is not tangible, the
decisions are taken by the regulators of the region concerned. After the Agency has been notified of the joint agreements, the Agency shall issue a recommendation where those agreements are not consistent with the objectives and the provisions of the Directive and Regulation and the network codes and guidelines.

Amendment 12

Proposal for a regulation
Article 7 – paragraph 2 a (new)

Text proposed by the Commission

2 a. The Agency shall take a decision within the period specified in the relevant network codes and guidelines. That period shall begin on the day following that on which the proposal was notified, in accordance with the second subparagraph of Article 5(2).

Amendment

Or. en

Justification

The proposed decision making process entails an assessment of the impact of the joint regional proposal on the internal energy market. Where their impact is not tangible, the decisions are taken by the regulators of the region concerned. After the Agency has been notified of the joint agreements, the Agency shall issue a recommendation where those agreements are not consistent with the objectives and the provisions of the Directive and Regulation and the network codes and guidelines.

Amendment 13

Proposal for a regulation
Article 7 – paragraph 3

Text proposed by the Commission

3. The Board of Regulators shall, if appropriate, and notably taking into account the opinion of the Director, establish a regional subgroup consisting of the concerned members of the Board of Regulators to revise the proposal and make a recommendation to the Board of Regulators on the approval, including possible amendments.

Amendment

3. Where the regulatory authorities of the region concerned are required to take a decision on the proposal for terms and conditions or methodologies without referring it to the Agency pursuant to the second subparagraph of Article 5(2), they shall issue such a decision after consulting, and taking into consideration the opinion of, the Director, in particular as regards the consistency of the decision.
with the objectives and the provisions of Regulation (EU) .../... [proposed recast Electricity Regulation, COD(2016)0379] and Directive (EU) .../...[proposed Directive on common rules for the internal market in electricity, COD(2016)0380] and the network codes and guidelines developed pursuant to Chapter VII of that Regulation.

Or. en

Justification

The proposed decision-making process entails an assessment of the impact of the joint regional proposal on the internal energy market. Where their impact is not tangible, the decisions are taken by the regulators of the region concerned. After the Agency has been notified of the joint agreements, the Agency shall issue a recommendation where those agreements are not consistent with the objectives and the provisions of the Directive and Regulation and the network codes and guidelines.

Amendment 14

Proposal for a regulation
Article 7 – paragraph 4

Text proposed by the Commission

4. **When the Board of Regulators decides on its opinion on the proposal, it shall take due account of the recommendation of the regional subgroup.**

Amendment

4. **Where the regulatory authorities of the region concerned have reached an agreement on the proposal, including with regard to any amendments thereto, the coordinating national regulatory authority shall, without delay, notify the agreement to the Agency. Within three months of notification, the Agency shall issue a recommendation if it considers the agreement to infringe Regulation (EU) .../... [proposed recast Electricity Regulation, COD(2016)0379] or Directive (EU) .../...[proposed Directive on common rules for the internal market in electricity, COD(2016)0380], to be inconsistent with the objectives of those legislative acts, or to be inconsistent with the network codes or guidelines adopted pursuant to Chapter VII of that Regulation.**
**Justification**

The proposed decision making process entails an assessment of the impact of the joint regional proposal on the internal energy market. Where their impact is not tangible, the decisions are taken by the regulators of the region concerned. After the Agency has been notified of the joint agreements, the Agency shall issue a recommendation where those agreements are not consistent with the objectives and the provisions of the Directive and Regulation and the network codes and guidelines.

**Amendment 15**

**Proposal for a regulation**

**Article 7 – paragraph 5**

**Text proposed by the Commission**

5. The regulatory authorities of the region shall jointly designate a single coordinating national regulatory authority responsible for the coordination of the **regional subgroups** of the **national regulatory authorities**. The function of the coordinating national regulatory authority shall rotate every two years. The coordinating national regulatory authority shall act as contact point for all concerned parties, including for the Agency. It may request information relevant for the implementation of regulatory functions at regional level from all concerned parties on its own initiative or at the request of another national regulatory authority or authorities of the region and shall provide the Agency with information concerning the regional activities of the national regulatory authorities of the region.

**Regulatory authorities acting in regional subgroups of the Board of Regulators shall make sufficient resources available to enable the group to carry out its functions.**

**Amendment**

5. The regulatory authorities of the region shall jointly designate a single coordinating national regulatory authority responsible for the coordination of the **national regulatory authorities** of the region. The function of the coordinating national regulatory authority shall rotate every two years. The coordinating national regulatory authority shall act as contact point for all concerned parties, including for the Agency. It may request information relevant for the implementation of regulatory functions at regional level from all concerned parties on its own initiative or at the request of another national regulatory authority or authorities of the region and shall provide the Agency with information concerning the regional activities of the national regulatory authorities of the region.
Justification

The proposed decision making process entails an assessment of the impact of the joint regional proposal on the internal energy market. Where their impact is not tangible, the decisions are taken by the regulators of the region concerned. After the Agency has been notified of the joint agreements, the Agency shall issue a recommendation where those agreements are not consistent with the objectives and the provisions of the Directive and Regulation and the network codes and guidelines.

Amendment 16

Proposal for a regulation
Article 8 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Agency, in close cooperation with the national regulatory authorities and the ENTSO for Electricity, shall monitor and analyse the performance of regional operational centres, taking into account the reports provided for in Article 43 paragraph 4 recast Electricity Regulation as proposed by COM(2016) 861/2.</td>
<td>1. The Agency, in close cooperation with the national regulatory authorities and the ENTSO for Electricity, shall monitor and analyse the performance of regional operational centres, taking into account the reports provided for in Article 43(4) of Regulation (EU) .../... [proposed recast Electricity Regulation, COD(2016)0379]. The Agency shall ensure that the regional operational centres comply with their obligations under Regulation (EU) .../... [proposed recast Electricity Regulation, COD(2016)0379], the network codes adopted pursuant to Articles 54 and 55 thereof and the guidelines adopted pursuant to Article 57 thereof.</td>
</tr>
</tbody>
</table>

Or. en

Justification

The compliance of ROCs, which operate beyond national borders, with their obligations under the legislation, is most effectively ensured by the Agency. When the Agency detects that ROCs do not comply, it should be able to intervene with a binding decision.

Amendment 17

Proposal for a regulation
Article 8 – paragraph 2 – point d
Amendment 18

Proposal for a regulation
Article 9 – paragraph 1 – point c

Text proposed by the Commission

(c) request information from Nominated Electricity Market Operators where appropriate.

Amendment

(c) request, by way of decision, information from Nominated Electricity Market Operators.

Justification

In order to enable the Agency to carry out its oversight activities effectively and to detect possible cases of non-compliance, it is crucial that the Agency can take binding decisions in order to obtain the required information.

Amendment 19

Proposal for a regulation
Article 15 a (new)

Text proposed by the Commission

Article 15 a

Decision-making

1. Before taking the decisions provided for in this Regulation, the Agency shall inform the addressee of the decision and shall set a time limit for
submission of the addressee’s observations, taking full account of the urgency, complexity and potential consequences of the matter.

2. Decisions taken by the Agency shall be fully reasoned for the purpose of allowing an appeal on the merits.

3. The addressees shall be informed of the legal remedies available pursuant to this Regulation.

4. The Agency shall make its decisions publicly available, subject to business confidentiality. The identity of the addressees and the main content of the decision are to be included, unless the making of such information publicly available would be in conflict with the legitimate interests of market participants in the protection of their business and commercial secrets or could seriously jeopardise the proper functioning and integrity of energy markets of the Union.

Or. en

Justification

This amendments introduces provisions on the Agency’s decision-making process similar to those stipulated in the ESMA, EBA and EIOPA funding regulations. They intend to ensure that decisions are justified and open to judicial review.

Amendment 20

Proposal for a regulation
Article 16 – paragraph 3 a (new)

Text proposed by the Commission

3 a. The Agency may request national regulatory authorities, the ENTSO for Electricity, the ENTSO for Gas, the regional operational centres, the EU entity of Distribution System Operators (EU DSO) and the Nominated Electricity Market Operators to provide any information necessary for the purpose of carrying out of monitoring pursuant to
this Article. For that purpose the Agency shall have the power to issue decisions.

The Agency may request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats. Before requesting information in accordance with this Article and in order to avoid duplication of reporting obligations, the Agency shall take account of any relevant existing statistics produced and disseminated by the European Statistical System.

Where information is not available or is not made available in a timely manner by the ENTSO for Electricity, the ENTSO for Gas, the regional operational centres, the EU DSO or the Nominated Electricity Market Operators, the Agency may address a reasoned request to the competent national regulatory authority in order to obtain information from the transmission system operators, the regional operational centres and the Nominated Electricity Market Operators in accordance with Article 41(4)(c) of Directive 2009/73/EC and Articles ... of Directive (EU) .../[proposed Directive on common rules for the internal market in electricity, COD(2016)0380].

Where information is not available, or is not made available, in a timely manner, the Agency may address a reasoned request directly to the relevant energy market participants. The reasoned request shall explain why the information concerning the individual energy market participants is necessary. The Agency shall inform the relevant competent national regulatory authorities of all requests to the energy market participants.

At the request of the Agency, the competent national regulatory authorities shall assist the Agency in collecting the information.
The Agency may use confidential information received pursuant to this Article only for the purposes of carrying out the tasks assigned to it in this Regulation.

Or. en

Justification

In order to carry out its monitoring and reporting obligations effectively, the Agency should have the right to request and obtain all necessary information. This amendment is necessary to maintain the internal logic and consistence with other amendments.

Amendment 21

Proposal for a regulation
Article 19 – paragraph 8

Text proposed by the Commission

8. The members of the Administrative Board shall undertake to act independently and objectively in the public interest. For that purpose, each member shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to his independence or any direct or indirect interest which might be considered prejudicial to his independence. Those declarations shall be made public annually.

Amendment

8. The members of the Administrative Board shall undertake to act independently and objectively in the public interest, without seeking or following any political instructions. For that purpose, each member shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to his independence or any direct or indirect interest which might be considered prejudicial to his independence. Those declarations shall be made public annually.

Or. en

Justification

The Administrative Board should act independently and objectively in the public interest and should not seek or follow political instructions. The independence of the Agency from political interference is essential for it to perform its function properly and ensure market confidence.
Amendment 22
Proposal for a regulation
Article 20 – paragraph 1 – point h

Text proposed by the Commission

(h) in consultation with the Board of Regulators, exercise disciplinary authority over the Director. In addition, in accordance with paragraph 2, it shall exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to conclude a Contract of Employment.

Amendment

(h) in consultation with the Board of Regulators, exercise disciplinary authority over the Director.

Justification

Selecting and appointing staff is an essential component of managing the Agency, for which the Director should be responsible. Therefore, the current regime, which confers this power to the Director should be maintained.

Amendment 23
Proposal for a regulation
Article 20 – paragraph 2

Text proposed by the Commission

2. The Administrative Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Director and defining the conditions under which that delegation of powers can be suspended. The Director shall be authorised to sub-delegate those powers.

Amendment

deleted

Or. en

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Justification

Selecting and appointing staff is an essential component of managing the Agency, for which the Director should be responsible. Therefore, the current regime, which confers this power to the Director should be maintained.

Amendment 24

Proposal for a regulation
Article 20 – paragraph 3

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>3. Where exceptional circumstances so require, the Administrative Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Director and those sub-delegated by the latter and in favour of itself or delegate them to one of its members or to a staff member other than the Director.</td>
<td>deleted</td>
</tr>
</tbody>
</table>

Or. en

Justification

Selecting and appointing staff is an essential component of managing the Agency, for which the Director should be responsible. Therefore, the current regime, which confers this power to the Director should be maintained.

Amendment 25

Proposal for a regulation
Article 23 – paragraph 1

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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</thead>
<tbody>
<tr>
<td>1. The Board of Regulators and sub-committees pursuant to Article 7 shall act by a simple majority of the members present, with one vote for each member, except for the opinion pursuant to paragraph 5(b) which shall be taken on the basis of a two-thirds majority of its members present.</td>
<td>1. The Board of Regulators shall act by a simple majority of the members present, with one vote for each member, except for the opinion pursuant to paragraph 5(b) which shall be adopted on the basis of a two-thirds majority of members present.</td>
</tr>
</tbody>
</table>
Justification

The proposed deletion is to ensure consistency with the amendments proposed concerning Article 7, on the regional subsets of the Board of Regulators.

Amendment 26

Proposal for a regulation

Article 24 – paragraph 1

Text proposed by the Commission

1. The Agency shall be managed by its Director, who shall act in accordance with the guidance referred to in Article 23(5)(a) and, where provided for in this Regulation, the opinions of the Board of Regulators. Without prejudice to the respective roles of the Administrative Board and the Board of Regulators in relation to the tasks of the Director, the Director shall neither seek nor follow any instruction from any government, from the Union institutions, or from any other public or private entity or person. The Director shall be accountable to the Administrative Board. The Director may attend the meetings of the Board of Regulators as an observer.

Amendment

1. The Agency shall be managed by its Director, who shall act in accordance with the guidance referred to in the second sentence of Article 23(5)(a) and, where provided for in this Regulation, the opinions of the Board of Regulators. Without prejudice to the respective roles of the Administrative Board and the Board of Regulators in relation to the tasks of the Director, the Director shall neither seek nor follow any instruction from any government, from the Union institutions, or from any other public or private entity or person. The Director may attend the meetings of the Board of Regulators as an observer.

Justification

Without prejudice to the respective roles of the Administrative Board and the Board of Regulators, to protect the independence of the Agency’s regulatory action, the Director should not be accountable to the Bodies of the Agency. Instead, the Director should be accountable to the European Parliament, as is foreseen by the current ACER Regulation.

Amendment 27

Proposal for a regulation

Article 25 – paragraph 1 – point c
(c) draft, adopt and publish opinions, recommendations and decisions. Opinions, recommendations and decisions referred to in Articles 3 to 11 and 14, shall only be adopted if they have received a favourable opinion of the Board of Regulators;

(c) draft, adopt and publish opinions, recommendations and decisions. Opinions, recommendations and decisions referred to in Articles 3 to 6, Article 7(2) and (4), Articles 8 to 11 and Article 14 shall only be adopted if they have received a favourable opinion of the Board of Regulators;

Justification

This is to exclude articles 7(1), 7(3) and 7(5) from the requirement of a favourable opinion as it is deemed unnecessary.

Amendment 28

Proposal for a regulation
Article 25 – paragraph 1 – point k

(k) be responsible for deciding whether it is necessary for the purpose of carrying out the Agency's tasks in an efficient and effective manner to locate one or more staff in one or more Member States for the purpose of carrying out the Agency's tasks in an efficient and effective manner. The decision to establish a local office requires the prior consent of the Commission, the Administrative Board and the Member State or Member States concerned. The decision shall specify the scope of the activities to be carried out at that local office in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency.

(k) be responsible for deciding whether it is necessary for the purpose of carrying out the Agency's tasks in an efficient and effective manner to locate one or more staff in one or more Member States. The decision shall specify the scope of the activities to be carried out at that local office in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency.

Justification

Given the current and persistent resource limitations of the Agency, the opening of local
offices is not a priority for the Agency and in any case should be kept within the management responsibility of the Director.

Amendment 29
Proposal for a regulation
Article 25 – paragraph 1 – point k a (new)

Text proposed by the Commission

(k a) with respect to the staff of the Agency, exercise the powers referred to in Article 39(3).

Amendment

Or. en

Justification

Selecting and appointing staff is an essential component of managing the Agency, for which the Director should be responsible. Therefore, the current regime, which confers this power to the Director should be maintained.

Amendment 30
Proposal for a regulation
Article 29 – paragraph 5

Text proposed by the Commission

5. The Board of Appeal may exercise any power which lies within the competence of the Agency, or it may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the Board of Appeal.

Amendment

5. The Board of Appeal may confirm the decision, or it may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the Board of Appeal.

Or. en

Justification

When ruling on an appeal brought against a decision adopted by the Agency, the Board of Appeal should only be able to either confirm the decision taken by the Agency or remit the case to the competent body of the Agency.
Amendment 31

Proposal for a regulation
Article 30 – paragraph 1

Text proposed by the Commission

1. Where justified and in particular to support the regulatory work of the Director and of the Board of Regulators on regulatory issues, the Administrative Board may establish working groups.

Amendment

1. Where justified and in particular to support the regulatory work of the Director and of the Board of Regulators on regulatory issues, the Agency may establish working groups.

Or. en

Justification

As noted in the ACER Regulation, cooperation at Union level should continue to be available to the Agency. In this respect, the working groups are intended to support the work of the Director and of the Board of Regulators on regulatory issues. The Administrative Board is not the right body to establish such working groups.

Amendment 32

Proposal for a regulation
Article 30 – paragraph 2

Text proposed by the Commission

2. The working groups shall be composed of experts from the staff of the Agency, from national regulatory authorities and from the Commission, as necessary. The Agency shall not be responsible for the costs of the participation of experts from the staff of national regulatory authorities in the Agency working groups.

Amendment

2. The working groups shall be composed of experts from the staff of the Agency, from national regulatory authorities and, as observers, from the Commission, as necessary. The Agency shall not be responsible for the costs of the participation of experts from the staff of national regulatory authorities in the Agency working groups.

Or. en

Amendment 33

Proposal for a regulation
Article 30 – paragraph 3
3. The **Administrative** Board shall adopt and publish internal rules of procedure for the functioning of the working groups.

3. The **Director, after consulting the Board of Regulators**, shall adopt and publish internal rules of procedure for the functioning of the working groups.

**Justification**

The development of the Agency’s internal rules of procedure should fall under the responsibility of the Director, who is responsible for the management of the Agency, after consultation of the Board of Regulators, instead of the Administrative Board.

**Amendment 34**

**Proposal for a regulation**

**Article 32 – paragraph 1**

**Text proposed by the Commission**

1. Fees shall be due to the Agency for requesting an exemption decision pursuant to Article 11(1) and for decisions on cross border cost allocation provided by the Agency pursuant to Article 12 of Regulation (EU) No 347/2013.

1. Fees shall be due to the Agency for the following:

(a) requesting an exemption decision pursuant to Article 11(1) and **taking** decisions on cross border cost allocation provided by the Agency pursuant to Article 12 of Regulation (EU) No 347/2013;

(b) **requesting registration as reporting party pursuant to the third subparagraph of Article 11(1) of Commission Implementing Regulation (EU) No 1348/2014 and ongoing supervision of registered reporting parties by the Agency**;

(c) overseeing the activities and the cooperation of transmission system operators, including through the **ENTSO for Electricity.**
One way to overcome ACER’s persistent underfunding and shortage of human resources would be to allow the Agency to charge fees for some of its activities.

**Amendment 35**

**Proposal for a regulation**  
**Article 32 – paragraph 2**

**Text proposed by the Commission**  
2. The fees referred to in paragraph 1 shall be set by the Commission.

**Amendment**  
2. The fees referred to in paragraph 1 shall be set by the Commission after consulting the Agency.

**Justification**

One way to overcome ACER’s persistent underfunding and shortage of human resources would be to allow the Agency to charge fees for some of its activities.

**Amendment 36**

**Proposal for a regulation**  
**Article 32 – paragraph 2 a (new)**

**Text proposed by the Commission**

2 a. The fees referred to in paragraph 1(b) shall cover all the necessary costs of the Agency relating to the assessment, registration and ongoing supervision of reporting parties in accordance with Article 8 of Regulation (EU) 1227/2011 and with Article 11 of Commission
Implementing Regulation (EU) 1348/2014. The fee charged shall cover all administrative costs incurred by the Agency for its assessment, registration and ongoing supervision of a particular reporting party and shall be proportionate to its turnover.

Justification

One way to overcome ACER’s persistent underfunding and shortage of human resources would be to allow the Agency to charge fees for some of its activities.
EXPLANATORY STATEMENT

Introduction

On 30 November 2016, the European Commission presented the “Clean Energy for All Europeans” package of proposed measures to keep the European Union competitive, as the clean energy transition is changing the global energy landscape. As part of this package, the Commission proposed a recast of Regulation (EU) No 713/2009 establishing the Agency for the Cooperation of Energy Regulators (ACER).

The proposal aims to adapt the legal framework for ACER to changes in the energy markets and addresses the need for enhanced regional cooperation. It gives ACER a stronger role in the development of network codes and the coordination of regional decision-making. It furthermore assigns ACER a number of new tasks related to the Regional Operational Centres (ROCs) that are to be established, the supervision of Nominated Electricity Market Operators (NEMOs) and the assessment of generation adequacy and risk preparedness.

The rapporteur believes that ACER will play a central role in the implementation of the clean energy package and in ensuring a well-functioning energy market to the benefit of all EU energy consumers (private households, SMEs, large-scale businesses and industries). He therefore broadly welcomes the Commission’s proposal and the increased scope of responsibilities it foresees for the Agency.

However, the rapporteur considers that the proposed Regulation needs to be improved and clarified in some respects to further strengthen the Agency’s ability to effectively fulfil its tasks.

Regional regulatory governance

The Commission’s proposal under Article 5(2) provides for the development of proposals for terms and conditions or methodologies for the implementation of network codes and guidelines, which require regulatory approval by all regulatory authorities or by all regulators of the concerned region, to be submitted for revision and approval to the Agency.

The Agency is best placed to deal with proposals for terms and conditions or methodologies, which are to be applied EU-wide, i.e. those which require regulatory approval by all regulatory authorities. For regional terms and conditions or methodologies, the primary responsibility should rest with the regulatory authorities of the region concerned and they should only referred for decision to the Agency, where the issue at stake has a tangible impact on the internal energy market, where the concerned regulatory authorities fail to agree or upon their joint request.

Therefore, the amendments proposed by the rapporteur are intended to differentiate the decision making process. This entails an assessment of the impact of the joint regional proposals on the internal energy market. Where the proposals do not have a tangible impact on the internal energy market, the decisions are taken by the regulators of the region concerned after having consulted ACER’s Director. Subsequently, after the Agency has been notified of the joint agreements, the Agency shall issue a recommendation where those agreements are not consistent with the objectives and the provisions of the Directive and
Regulation and the network codes and guidelines.

**ACER’s oversight of EU-wide and regional entities in the electricity and gas sectors**

With greater emphasis put on regional and pan-European cooperation and coordination, effective oversight at this level becomes essential to ensure the completion and well-functioning of the Internal Energy Market.

The Agency’s oversight activity has, in the past, mainly focused on the ENTSOs, but has more recently been expanded to include the Nominated Electricity Market Operators (NEMOs) and should be further extended under the proposed recast to cover the Regional Operational Centres (ROCs). In fact, these entities will have operational responsibilities, which make effective oversight even more relevant. Compliance of these entities with their obligations under the legislation must therefore be ensured. Furthermore, effective oversight rests on the Agency having access and being able to require the necessary information.

When the Agency detects that one of the ENTSOs, a NEMO, a ROC – or any other entity operating at cross-border, regional or EU-wide level, e.g. the future EU DSO entity - does not comply with the objectives and the provisions in the Electricity Directive and Regulation and the Network Codes and Guidelines, thus jeopardising the well-functioning of the Internal Energy Market, the Agency should be able to intervene with a binding decision.

**ACER’s ability to obtain the information it requires to perform its monitoring function**

ACER already has extensive monitoring responsibilities under the current Regulation 713/2009. These are further expanded by the recast proposal to cover also the performance of ROCs and NEMOs. However, these monitoring responsibilities are not matched by general powers to request and obtain the relevant information.

Therefore, the Rapporteur tabled amendments giving the Agency the power to request any information it requires to effectively carry out its tasks from market participants and other entities, if necessary through binding decisions. To avoid the duplication of reporting obligations for energy market participants, that information should normally be provided by the national regulatory authorities, the ENTSOs, ROCs, the EU DSO Entity and NEMOs, which are closest to the energy market participants and should take into account already existing statistics. However, as a last resort, the Agency should be able to address a duly justified and reasoned request for information directly to an energy market participant where a national regulatory authority does not or cannot provide such information in a timely fashion. Member States’ national regulatory authorities should be obliged to assist the Agency in enforcing such direct requests.

**ACER’s lack of financial and human resources**

The rapporteur is extremely concerned by the persistent shortage of funding for the Agency, which is seriously undermining its ability to fulfil its existing statutory mandate, in particular with regard to the REMIT Regulation. If this situation is not addressed in the context of the 2018 budget, the completion of the internal energy market may be delayed and the integrity and transparency of wholesale energy trading put at risk, imposing higher costs to EU energy consumers. Furthermore, the additional tasks and responsibilities for ACER need to be
accompanied by an adequate reinforcement of ACER’s resources.

In light of the ongoing restrictions in the EU Budget, one way to overcome the current budgetary problems of the Agency would be to allow it to charge fees for some of its activities. Therefore, the rapporteur proposes amendments allowing ACER to collect fees for the registration of Registered Reporting Mechanisms, reporting trade and fundamental data under REMIT, and for the oversight of TSOs’ activities, including their cooperation through the ENTSOs.

**Other issues**

The rapporteur also proposes an Article which specifies ACER’s decision making procedure to ensure that decisions are fully reasoned and justified to allow judicial review. The decisions must be made public, whilst preserving the confidentiality of commercially sensitive information. Finally, a number of amendments are proposed with regard to the organisation of the Agency, among which are amendments to preserve the Director’s power to take certain management decisions, to ensure the independence of ACER’s Administrative Board from political instructions and to adjust certain procedures.
ANNEX: LIST OF ENTITIES
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities in the preparation of the draft report:

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<th>Entity</th>
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<td>ACER, Director</td>
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<td>Climate Action Network (CAN) Europe</td>
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<td>CEDEC - European federation of Local Energy Companies</td>
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<td>Coalition France pour l'efficacité énergétique (CFEE)</td>
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<td>German Association of Local Public Utilities</td>
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<td>Institut du développement durable et des relations internationales (IDDRI)</td>
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ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Will be included at the stage of the final report.

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