European Union Agency for the Cooperation of Energy Regulators. Recast

2016/0378(COD) - 30/11/2016 - Legislative proposal

PURPOSE: to amend the Regulation establishing the Agency for the cooperation of energy regulators (ACER).

LEGISLATIVE ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the European Parliament adopted a resolution in September 2016 stressing that a well-functioning integrated energy market is the best tool to guarantee affordable energy prices, secure energy supplies and to allow for the integration and development of larger volumes of electricity produced from renewable sources in a cost efficient manner.

The current electricity market design is based on the rules of the Third Energy Package, adopted in 2009. The latter has brought tangible progress for consumers but **new developments have led to fundamental changes in European electricity markets.** These include (i) an increase in the share of electricity generated from renewable energy sources (RES-E); (ii) **state interventions** leading to distortions of the wholesale electricity market, with negative consequences for investments and cross-border trade; (iii) significant changes are also taking place on the **technological** side.

The electricity market design initiative aims to adapt the current market rules to new market realities. It also appears appropriate to also **adapt regulatory oversight** to the new realities of the market. National regulators currently take all main regulatory decisions even in cases where a common regional solution is needed. While ACER has been successful in providing a forum for the coordination of national regulators with diverging interests, its main role is currently confined to coordination, advising and monitoring. While market actors increasingly cooperate across borders and decide on certain matters concerning grid operation and electricity trading with qualified majority at a regional or even Union level, there is no equivalent for these regional decision-making procedures at regulatory level. **Regulatory oversight therefore remains fragmented,** leading to a risk of diverging decisions and unnecessary delays. Strengthening the powers of ACER for those cross-border issues that require a coordinated regional decision would contribute to faster and more effective decision-making on cross-border issues. Accordingly, the Commission feels it necessary to amend the Regulation (EC) No 713/2009 establishing ACER.

The proposal for a recast of the Regulation on the electricity market, the proposal for the recast of the Directive on common rules for the internal market in electricity, and this proposal on the recast of the Regulation establishing a European Agency for the Cooperation of Energy Regulators are part of the Commission's broader package of initiatives ("Clean Energy for All"). That Package comprises the Commission's key proposals to implement the Energy Union.

IMPACT ASSESSMENT: legislative options to improve ACER on the basis of the existing framework were thus considered. The option endorsed by the Impact Assessment enables the adaptation of the EU institutional framework to the new realities of the electricity system.

CONTENT: the main points of the proposal are as follows:

Objectives and tasks: the proposal preserves the main role of ACER as a coordinator of the action of national regulators has been preserved. Limited additional competences have been assigned to ACER **in those areas where fragmented national decision-making on issues with cross-border relevance would lead to problems** or inconsistencies for the internal market. For example, the creation of **regional operational centres** (ROCs) in the proposal for a recast of the Directive on common rules for the internal market in electricity calls for supra-national monitoring which needs to be performed by ACER, as the ROCs cover several Member States. Similarly, the introduction of an EU-wide coordinated adequacy assessment in the recast of Regulation 714/2009 on the internal electricity market calls for a regulatory approval of its methodology and calculations that may only be attributed to ACER as the adequacy assessment is to be performed across Member States.

While the assignment of new tasks to ACER will require a reinforcement of its staff, the coordinating role of ACER will lead to a **lower burden for national authorities**, thus freeing up administrative resources at national level. The proposed approach will streamline regulatory procedures (e.g. by introducing direct approval within ACER instead of 28 separate approvals). The coordinated development of methodologies (e.g. concerning adequacy assessment) will reduce the workload for national authorities and avoid extra work resulting from potential problems through non-aligned national regulatory action.

The list of tasks has been updated to include **ACER's duties in the field of wholesale market supervision and cross-border infrastructure**, which were attributed to ACER subsequent to the adoption of the Regulation.

With respect to the **adoption of electricity network codes**, ACER is given more responsibility in elaborating and submitting the final proposal for a network code to the Commission, while maintaining ENTSO-E's role as a technical expert. The proposal also includes a formal place for DSOs to be represented at EU level, notably in the development of network code proposals, in line with an increase in their responsibilities. The Agency is given the competence to decide on terms, methodologies and algorithms for the implementation of electricity network codes and guidelines.

For tasks in a regional context concerning only a limited number of national regulators, a **regional decision-making process is introduced**. Accordingly, the Director would have to give his opinion on whether the issue in question is primarily of regional relevance. If the Board of Regulators agrees that this is the case a regional sub-committee of the Board of Regulators should prepare the decision in question, which would finally be taken or rejected by the Board of Regulators itself. Otherwise the Board of Regulators would decide without the intervention of a regional sub-committee.

The proposal also defines a number of new tasks for ACER concerning the coordination of certain functions related to the Regional Operational Centres within the Agency, concerning the supervision of Nominated Electricity Market Operators and related to the approval of methods and proposal related to generation adequacy and risk preparedness.

The main features of the **existing governance structure**, in particular the Board of Regulators, are preserved.

It should be noted that, in general, the rules concerning ACER are adapted to the Common Approach EU on decentralised agenciesagreed between the European Parliament, the Council and the Commission. However, the Commission states that **limited deviations** from the Common Approach is warranted since it considers it premature to transfer decision-making powers to a Management Board as provided for in the Common Approach.

BUDGETARY IMPLICATIONS: the budgetary impact associated to the proposal under this package concerns the resources of the Agency for the Cooperation of Energy Regulators (ACER). Essentially, the

new tasks to be carried out by ACER, notably as regards the assessment of system adequacy and the establishment of Regional Operation Centres, require a phasing in of 18 additional full-time staff in the Agency in 2020, as well as corresponding financial resources amounting to EUR 1 038 000 in 2020.