European Union Agency for the Cooperation of Energy Regulators. Recast

2016/0378(COD) - 26/02/2018 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Industry, Research and Energy adopted the report by Morten Helveg PETERSEN (ALDE, DK) on the proposal for a regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast).

The committee recommended that the European Parliament adopt its position at first reading under the ordinary legislative procedure, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission.

Members amended the Commission proposal as follows:

Aims: the Agency shall assist the regulatory authorities referred to in the Electricity Recast Directive and in Directive 2009/73/EC of the European Parliament and of the Council on common rules for the internal market for natural gas:

- to exercise, at Union level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action,
- to mitigate and settle disputes between them,
- to contribute to the establishment of **high quality common regulatory and supervisory practices**, ensuring the consistent, efficient and effective application of Union legal acts in order to achieve the Union’s climate and energy goals.

The Agency shall act **independently** in the interest of the Union alone. It shall make autonomous decisions, benefit from separate **annual budget allocations**, and have **sufficient human and financial resources** to properly carry out its obligations.

Recommendations and decisions of the Agency: Members considered that the Agency should issue opinions and recommendations for the ENTSO for Electricity, the ENTSO for Gas, the EU DSO entity, the transmission system operators, the regional coordination centres and nominated electricity market operators.

They shall make every effort to comply with the Agency's advice and recommendations addressed to them.

In exceptional circumstances, in order to safeguard the proper functioning of the internal energy market, ACER should be able to adopt decisions addressed to such entities to ensure that they comply with their obligations certain energy law.

The Agency shall issue a decision only where:

- the failure to comply affects the efficient functioning of the internal energy market;
- no competent authority has taken measures or the measures taken by one or more competent authorities have not been sufficient to ensure compliance.

Monitoring and reporting on the electricity and natural gas sectors: the Agency shall be able to request national regulatory authorities, ENTSO for electricity, ENTSO for gas, regional coordination centres, the EU DSO entity and designated electricity market operators to make available to it **any information it needs** to carry out its supervisory tasks, where appropriate through binding decisions.

Regional regulatory governance: Members believe that **proposals for joint regional terms and conditions** or methodologies for the implementation of 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. A proposal shall be considered to have a tangible impact on the internal energy market where it would: (i) have a tangible impact on end-consumers beyond the region concerned, or (ii) significantly affect the Union's energy interests beyond the region concerned.

Decisions on issues of significant relevance beyond the region concerned shall be taken by the Agency.

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 guidelines.

Tasks of the Agency concerning national regulatory authorities: the Agency may provide the Commission with an opinion regarding a particular national regulatory authority's independence or lack of resources and technical capabilities upon its own initiative.

The Agency shall provide a **framework** within which national regulatory authorities can cooperate in order to ensure efficient decision-making on issues with cross border relevance.

National regulatory authorities shall ensure the implementation of the Agency's decisions.

Charges: the proposed amendments seek to allow 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. The Commission would determine the amount of fees and charges, and their terms of payment.

Procedural safeguards: Members proposed an Article concerning procedural safeguards for addressees of the Agency setting out ACER's decision-making process to ensure that decisions are properly reasoned and justified in order to allow for legal remedies. For all Agency decisions, the rules of procedure shall ensure a transparent and reasonable decision-making process, guaranteeing fundamental procedural rights based on the rule of law. Decisions shall be made public while preserving the confidentiality of commercially sensitive information.

Lastly, 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.

The Director shall be appointed by the Administrative Board following a favourable opinion of the Board of Regulators and after approval of the European Parliament.