

AGENCY FOR THE COOPERATION OF ENERGY REGULATORS (ACER): QUOI DE NEUF AFTER THE COMMISSION'S PROPOSAL FOR A RECAST OF THE REGULATION ON ACER

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WHAT IS ACER

- ▶ European Union AGENCY created by Regulation 713/2009.
- ▶ Extended activities by **Regulations 838/2010** (Guidelines for the ITC mechanism and a common regulatory approach to transmission charging), **1227/2011** (REMIT), **347/2013** (Guidelines for trans-European energy infrastructure - TEN-E) and **2017/1938** (measures to safeguard the security of gas supply)
- ▶ **TASKS:** assistance, coordination of NRAs (Articles 1 para 2 Reg. 713/2009)
 - ▶ Issues (non-binding) opinions and recommendations to NRAs, TSOs, EU institutions (Article 4.a-c Reg. 713/2009, Art. 16 Reg. 1227/2011)
 - ▶ Takes binding individual decisions under certain conditions and in specific cases on cross-border infrastructure issues (Art. 4.d, 7, 8, 9 Reg. 713/2009)
 - ▶ Role in development of network codes
 - ▶ Monitors the functioning of EU gas and electricity markets and of wholesale energy trading (detect and prevent market abuse)

NEW PROPOSAL FOR CLEAN ENERGY FOR ALL EUROPEANS (WINTER PACKAGE)- NEW COMPETENCES OF ACER (COM(2016) 863 FINAL)

- ▶ On regulatory issues of cross-border relevance (previous responsibility of NRAs)
- ▶ Power to deal with issues affecting limited numbers of MS and not all of them
 - ▶ ACER's Director decides on regional relevance issues
- ▶ Monitor performance of national electricity and gas markets (wholesale and retail, in particular the security of supply, pricing, barriers to cross-border trade)
- ▶ Supervision of wholesale markets, ROCs, NEMOs (nominated by the NRAs)
- ▶ For cross-border infrastructure
 - ▶ Role in assessment of generation adequacy and risk preparedness
 - ▶ Role in the review process for regional electricity markets
 - ▶ Stronger role in development of network codes (final decision to the Commission)
 - ▶ Establish the entity for the DSO

IS THERE ANY BACK-LASH?

▶ FROM

- ▶ NRAs and MS (ACER's new competences, new voting majority)
- ▶ ENTSO-E (ACER's new competence in development of network codes, exercising oversight of regional cooperation)

WHAT ACER IS NOT

- ▶ ACER is NOT
- ▶ a Pan-European regulator
 - ▶ No general power to request and obtain relevant information
 - ▶ NRA's are involved in ACER's decision making
 - ▶ No power of enforcement
 - ▶ No significant reinforcement of ACER's budget and staff
- ▶ a EU-Federal Energy Regulatory Commission (FERC)

COMMISSION'S PROPOSAL - COMMON APPROACH ON EU DECENTRALIZED AGENCIES (JOINT STATEMENT OF THE EP, COUNCIL, COMMISSION)

Deviations from the Common Approach

1. Delegation of powers to EU Agencies compatible with Meroni doctrine (C-9/56) and ESMA jurisprudence (C-270/12)
2. Role of coordination of regulatory decisions of independent NRAs is not attributed to the Management Board

Composition of Board of Regulators

A representative of each NRA plus a non-voting representative of the Commission

Administrative Board

9 members and 9 alternates (2 members and their alternates from the **Commission**, 2 members and their alternates from the **EP** and 5 members plus their alternates from the **Council**)

not adapted to the model of the Common approach **Management Board**

One representative of each MS, two from the Commission, one from the EP, stakeholders (possibility of small-sized Executive Board for close monitoring Agency's activities)