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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**establishing a European Union Agency for the Cooperation of Energy Regulators**  
**(recast)**

(Text with EEA relevance)

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## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

##### *Policy Context*

European citizens spend a significant part of their income on energy, and energy is an important input for European industry. At the same time, the energy sector plays a key role in the obligation to reduce greenhouse gas emissions in the Union by at least 40% until 2030 with an expected share of 50% of renewables by 2030.

The proposals for a recast of the Directive on common rules for the internal market in electricity, the Regulation on the electricity market and the Regulation establishing a European Union Agency for the Cooperation of Energy Regulators are part of the Commission's broader package of initiatives ("Clean Energy for All Europeans"). The Package comprises the Commission's key proposals to implement the Energy Union, as foreseen in the Energy Union Roadmap<sup>1</sup>. It includes both legislative proposals as well as non-legislative initiatives to create a conducive enabling framework to deliver tangible benefits for citizens, jobs, growth and investments while contributing to all five dimensions of the Energy Union. The key priorities for the package are thus energy efficiency first, the EU's global leadership in renewables, and a fair deal for energy consumers.

Both the European Council<sup>2</sup> and the European Parliament<sup>3</sup> have repeatedly stressed 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. Competitive prices are essential for achieving growth and consumer welfare in the European Union, and hence are at the heart of EU energy policy. The current electricity market design is based on the rules of the "Third Energy Package"<sup>4</sup>, adopted in 2009. These rules have subsequently been complemented by legislation against market abuses<sup>5</sup> and implementing

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<sup>1</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy COM/2015/080 final.

<sup>2</sup> Outcome of the Council Meeting 3429<sup>th</sup> Meeting, transport, Telecommunications and Energy, 26 November 2015 14632/15, Outcome of the Council Meeting, 3472<sup>nd</sup> Meeting, Transport, Telecommunications and Energy, 6 June 2016 9736/16.

<sup>3</sup> European Parliament Resolution of 13 September 2016 on Towards a new Market Design (P8\_T A(2016) 0333).

<sup>4</sup> Directive 2009/72 of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.8.2009, p. 55–93 (henceforth the "Electricity Directive"); Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity repealing Regulation (EC) No 1228/2003, OJ L 211, 14.8.2009, p. 15–35 (henceforth "Electricity Regulation"); Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators. OJ L 211, 14.8.2009, p. 1–14 (henceforth "ACER Regulation"),

<sup>5</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency OJ L 326, 8.12.2011, p. 1–16; Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council OJ L 363, 18.12.2014, p. 121–142.

legislation concerning electricity trade and grid operation rules<sup>6</sup>. The EU internal energy market is built on well-established principles, such as the right of access for third parties to electricity grids, free choice of suppliers for consumers, robust unbundling rules, the removal of barriers to cross-border trade, market supervision by independent energy regulators, and the EU-wide cooperation of regulators and grid operators within the Agency for the Cooperation of Energy Regulators (ACER) and the European Network of Transmission System Operators (ENTSO).

The Third Energy Package has brought tangible progress for consumers. It has led to increased liquidity of European electricity markets and significantly increased cross-border trade. Consumers in many Member States can now benefit from more choice. Increased competition notably on wholesale markets helped to keep wholesale prices in check. New consumer rights introduced by the Third Energy Package have clearly improved the position of consumers in energy markets.

New developments have led to fundamental changes in European electricity markets. The share of electricity generated from renewable energy sources (RES-E) has steeply increased. This shift towards RES-E will continue as it is a key condition to fulfil the Union's obligations under the Paris Agreement on climate. The physical nature of RES-E – more variable, less predictable and decentralised than traditional generation – requires an adaptation of market and grid operation rules to the more flexible nature of the market. In parallel, state interventions, often designed in an uncoordinated manner, have led to distortions of the wholesale electricity market, with negative consequences for investments and cross-border trade<sup>7</sup>. Significant changes are also taking place on the technological side. Electricity is traded almost European-wide through so-called "market coupling", jointly organised by power exchanges and transmission system operators. Digitalisation and the rapid development of internet-based metering and trading solutions enable industry, businesses and even households to generate and store electricity, as well as participate in electricity markets via so-called 'demand response' solutions. The electricity market of the next decade will be characterised by more variable and decentralised electricity production, an increased interdependence between Member States and new technological opportunities for consumers to reduce their bills and actively participate in electricity markets through demand response, self-consumption or storage.

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<sup>6</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency OJ L 326, 8.12.2011, p. 1–16; Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council OJ L 163, 15.6.2013, p. 1–12; Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management OJ L 197, 25.7.2015, p. 24–72; Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators OJ L 112, 27.4.2016, p. 1–68; Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection OJ L 223, 18.8.2016, p. 10–54; Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules OJ L 241, 8.9.2016, p. 1–65; Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation OJ L 259, 27.9.2016, p. 42–68; other Guidelines and network codes have been endorsed Member States' approval and are awaiting adoption.

<sup>7</sup> See Communication from the Commission "Delivering the internal electricity market and making the most of public intervention", C(2013) 7243 final of 5.11.2013.

The present electricity market design initiative thus aims to adapt the current market rules to new market realities, by allowing electricity to move freely to where it is most needed when it is most needed via undistorted price signals, whilst empowering consumers, reaping maximum benefits for society from cross-border competition and providing the right signals and incentives to drive the necessary investments to decarbonise our energy system. It will also give priority to energy efficiency solutions, and contribute to the goal of becoming a world leader in energy production from renewable energy sources, thus contributing to the Union's target to create jobs, growth and attract investments.

### *Adapting market rules*

The existing market rules are based on the predominant generation technologies of the last decade, i.e. centralised, large-scale fossil fuel-based power plants with limited participation of consumers. As variable RES-E will play an increasing role in the generation mix in future, and consumers should be enabled to participate in the markets if they wish so, the rules need to be adapted. Short-term electricity markets which allow trading RES-E across borders are key for the successful integration of RES-E into the market. This is because most generation from renewables can only be accurately forecasted shortly before the actual production (due to weather uncertainties). The creation of markets which allow participation at short notice before actual delivery (so-called "intraday" or "balancing" markets) are a crucial step to enable RES-E producers to sell their energy at fair terms and it will also increase liquidity in the market. Short-term markets will provide new business opportunities for participants to offer "back-up" energy solutions at times of high demand and scarce renewable generation. This includes the possibility for consumers to shift their demand ("demand response"), storage operators or flexible generators. While dealing with variability in small regions can be very expensive, aggregation of variable production over larger areas could help consumers save significant amounts of money. Yet, integrated short-term markets are still missing.

The shortcomings of the current market arrangements reduce the attractiveness of the energy sector for new investment. An adequately interconnected, market-based energy system in which prices follow market signals will stimulate the necessary investments into generation and transmission in an effective manner and ensure that they are made where they are most needed by the market, thereby minimising the need for state-planned investments.

National market rules (e.g. price caps) and state interventions currently hinder prices from reflecting when electricity is scarce. Furthermore, price zones do not always reflect actual scarcity if poorly configured and instead follow political borders. The new market design aims to improve price signals to drive investment in areas where it is needed most, reflecting grid constraints and demand centres, rather than national borders. Price signals should also allow for adequate remuneration of flexible resources (including demand-response and storage), as these resources rely on rewards for shorter periods of time (e.g. modern gas plants which are only used for peak hours or the reduction of industrial demand at times of peak demand or system stress). Effective price signals also ensure the efficient dispatch of existing generation assets. It is therefore critical to review any existing rules that distort price formation (such as rules prioritising the dispatch of certain installations) in order to activate and fully realise the flexibility potential that the demand side can offer

### *Putting consumers at the heart of the energy market*

Fully integrating industrial, commercial and residential consumers into the energy system can avoid significant costs for 'backup' generation; costs which consumers would otherwise end up paying. It even allows consumers to benefit from price fluctuations and to earn money

through participation in the market. Activating consumer participation is therefore a prerequisite for managing the energy transition successfully and in a cost-effective way.

Delivering a new deal for energy consumers is a key commitment of the Energy Union. However, current market rules often do not allow consumers to benefit from these new opportunities. Although consumers can generate and store electricity as well as manage their energy consumption more easily than ever, the current design of the retail market prevents them from being able to fully benefit from such opportunities.

In most Member States, consumers have little or no incentive to change their consumption in response to changing prices in the markets, as real-time price signals are not passed on to final consumers. The market design package is an opportunity to deliver on this commitment. More transparent real time price signals will stimulate consumer participation, either individually or through aggregation, and make the electricity system more flexible, facilitating the integration of electricity from renewable energy sources. Besides offering great energy saving potential for households, technological developments mean that appliances and systems, such as smart white electronics, electric vehicles, electric heating, air conditioning and heat pumps in insulated buildings and district heating and cooling, can automatically follow price fluctuations and, on a large scale, offer a significant and flexible contribution to the electricity grid. In order to enable consumers to benefit financially from those new opportunities, they must have access to fit-for-purpose smart systems as well as electricity supply contracts with dynamic prices linked to the spot market. In addition to consumers adjusting their consumption to price signals, new demand services are currently emerging whereby new market actors offer to manage the electricity consumption of a number of consumers by paying them a compensation for their flexibility. Although such services are already encouraged under existing EU legislation, the evidence suggests that these provisions have not been effective in removing the primary market barriers for those service providers to enter the market. Sharpening these provisions is necessary to further encourage such new services.

In many Member States, electricity prices do not follow demand and supply, but are regulated by the public authorities. Price regulation can limit the development of effective competition, discourage investments and the emergence of new market players. The Commission therefore committed in its Energy Union Framework Strategy<sup>8</sup> to phase-out regulated prices below cost and to encourage Member States to establish a road map for the phasing-out of all regulated prices. The new market design aims at ensuring that supply prices are free of any public intervention, and only with duly justified exceptions.

Rapidly falling technology costs mean that more and more consumers are able to reduce their energy bills by using technologies such as rooftop solar panels and batteries. However, self-generation is still hampered by a lack of common rules for 'prosumers'. Appropriate rules could remove these barriers, e.g. by guaranteeing consumers' rights to generate energy for their own consumption and sell surplus into the grid, while taking into account the costs and benefits for the system as a whole (e.g. appropriate participation in grid costs).

Local energy communities can be an efficient way of managing energy at community level by consuming the electricity they generate either directly for power or for (district) heating and cooling, with or without a connection to distribution systems. To ensure that such initiatives can freely develop, the new market design requires Member States to put in place appropriate legal frameworks to enable their activities.

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<sup>8</sup> See Communication "A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy", COM/2015/080.

Today, more than 90% of variable renewable electricity sources are connected to distribution grids. The integration of local generation has in fact contributed to a significant increase in network tariffs for household consumers. In addition, taxes and levies to finance grid extensions and renewables' investments have risen drastically. The new market design and the revision of the Renewables Directive provide an opportunity to address these shortcomings, which can disproportionately impact certain household consumers.

Allowing Distribution System Operators (DSOs) to manage some of the challenges associated with variable generation more locally (e.g. by managing local flexibility resources) could significantly reduce network costs. However, since many DSOs are part of vertically integrated companies which are also active in the supply business, regulatory safeguards are necessary to guarantee the DSOs' neutrality in their new functions, e.g. in terms of data management and when using flexibility to manage local congestions.

Another key driver to competition and consumer engagement is information. Previous Commission consultations and studies have shown that consumers complain about a lack of transparency in electricity markets, reducing their ability to benefit from competition and actively participate in markets. Consumers do not feel informed enough about alternative suppliers, the availability of new energy services and complain about the complexity of offers and procedures for switching suppliers. The reform will also ensure data protection as an increased use of new technologies (notably smart metering systems) will generate a range of energy data carrying high commercial value.

In putting consumers at the heart of the energy market, an essential consideration in the new market design is how to ensure that the most vulnerable in society are protected and that the overall number of energy-poor households will not further increase. With rising levels of energy poverty as well as a lack of clarity on the most appropriate means of tackling consumer vulnerability and energy poverty, the new market design proposal requires Member States to duly measure and regularly monitor energy poverty based on principles defined at EU level. The revised Energy Efficiency and Energy Performance of Building Directives provide for further measures to tackle energy poverty.

#### *Security of electricity supply*

Security of electricity supply is indispensable in modern societies which largely depend on electricity and internet driven systems. It is therefore necessary to assess the ability of the European electricity system to offer sufficient generation and flexibility to ensure reliable electricity supply at all times (resource adequacy). Ensuring security of supply is not only a national obligation, but a key pillar of European energy policy<sup>9</sup>. This is because security of supply can, in a fully interconnected and synchronised network with well-functioning markets, be organised far more efficiently and competitively than on a purely national basis. Grid stability in individual Member States often heavily depends on electricity flows from neighbouring countries and potential security of supply problems therefore usually have a regional impact. For this reason, the most efficient remedies to national generation deficits are often regional solutions, allowing Member States to benefit from generation surpluses in other countries. A coordinated European adequacy assessment should therefore be introduced, following a jointly agreed methodology, in order to obtain a realistic picture of possible generation needs, taking into account the integration of electricity markets and potential flows from other countries. If the coordinated adequacy assessment shows that capacity mechanisms are necessary in certain countries or regions, such mechanisms should be designed so as to minimise distortions to the internal market. Clear and transparent criteria to minimise

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<sup>9</sup> See Article 194(1)(b) TFEU.

distortions of cross-border trade, maximise use of demand response, and reduce impacts affecting decarbonisation should therefore be defined to avoid the risk of fragmented national capacity mechanisms creating new market barriers and undermining competition<sup>10</sup>.

### *Strengthening regional cooperation*

The close interconnection of EU Member States through the common trans-European grid is unique in the world and a great asset when it comes to dealing efficiently with the energy transition. Without the ability to rely on generation or demand resources from other Member States, the costs of the energy transition for consumers would increase significantly. Today, system operation across borders is much more interrelated than it was in the past. This is due to the increase in variable and decentralised generation, together with closer market integration, especially in shorter market time intervals. This also means that national actions by regulators or grid operators can have an immediate effect on other EU Member States. Experience has shown that uncoordinated national decisions can lead to significant costs for European consumers.

The fact that some interconnectors are only used to 25% of their capacities, often due to uncoordinated national limitations, and that Member States have not been able to agree on appropriate price zones illustrates that there is a need for more coordination between Transmission System Operators (TSOs) and regulators. Successful examples of voluntary and mandatory cooperation between TSOs, regulators and governments have shown that regional cooperation can improve market functioning and reduce costs significantly. In certain areas, e.g. for the EU-wide 'market coupling' mechanism, TSO cooperation has already become mandatory, and the system of majority voting on some issues has proven to be successful in areas where voluntary cooperation (leaving each TSO a veto right) did not lead to efficient results for regional problems. Following this successful example, mandatory cooperation should be expanded to other areas in the regulatory framework. To this end, TSOs could decide within 'Regional Operational Centres' (ROCs) on those issues where fragmented and uncoordinated national actions could negatively affect the market and consumers (e.g. in the fields of system operation, capacity calculation for interconnectors, security of supply and risk preparedness).

### *Adapting regulatory oversight to regional markets*

It appears appropriate to also adapt regulatory oversight to the new realities of the market. All main regulatory decisions are currently taken by national regulators, 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<sup>11</sup>, 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 which require a coordinated regional decision would contribute to faster and more effective

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<sup>10</sup> See in this context also the proposal for a Regulation of the European Parliament and the Council on risk preparedness in the electricity sector, covering risks to security of supply related to the management of electricity crisis situations.

<sup>11</sup> See e.g. Article 9 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197, 25.7.2015, p. 24–72.

decision-making on cross-border issues. National regulators, deciding within ACER on those issues through majority voting, would remain fully involved in the process.

It also appears appropriate to better define the role of ENTSO-E in order to strengthen its coordination role and render its decision-making process more transparent.

#### *Text clarifications*

Finally, the recast of the Electricity Regulation, the Agency Regulation and the Electricity Directive will be used to provide some editorial clarifications on some of the existing rules and to restructure some of them in order to make the highly technical rules of the three acts more comprehensible, without touching upon the substance of the provisions.

- **Consistency with other provisions and proposals in the policy area**

The market design initiative is strongly linked to other energy and climate legislative proposals brought forward in parallel. These notably include initiatives to improve Europe's energy efficiency, a renewable energy package, and the overarching initiative addressing governance and reporting mechanisms for the Energy Union. All those initiatives aim at implementing the necessary measures to achieve the objective of a competitive, secure and sustainable Energy Union. The intention of packaging the different initiatives, consisting of multiple legislative and non-legislative levers, is to ensure utmost coherence of the different but closely interlinked policy proposals.

Therefore, although the current proposal is centred on updating market rules so as to make a clean energy transition economically advantageous, these provisions work in synergy with the wider EU climate and energy policy framework. These links are further explained in the Commission's Impact Assessment<sup>12</sup>.

The proposal is closely linked to the proposal for a revised Renewable Energy Directive, providing for a framework to achieve the 2030 renewable target, including also principles in relation to support schemes for renewable energy sources, which would make them more market-oriented, cost-effective and more regionalised in scope in cases where Member States are opting to keep support schemes. Those measures aimed at the integration of renewable energies in the market, such as provisions on dispatching, market-related barriers to self-consumption and other market access rules – previously contained in the Renewable Energy Directive –, have now been integrated in the Electricity Regulation and the Electricity Directive.

The proposal for a Regulation on the Governance of the Energy Union will contribute to ensuring policy coherence by streamlining planning and reporting obligations by Member States so as to better support the convergence towards energy and climate goals set at EU level. As a new planning, reporting and monitoring instrument, it shall provide a temperature gauge on the state of progress from a Member State on the implementation of European-wide market requirements introduced by the present acts.

The proposal for a Regulation on risk preparedness in the electricity sector complements the current proposal, focusing in particular on government actions to manage electricity crisis situations and to prevent short term risks for the electricity system.

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<sup>12</sup> [OP: Please insert Link to Impact Assessment]



The current proposal is closely aligned with the Commission's competition policy in the field of energy. It incorporates notably the results of the Commission's Sector Inquiry on Capacity Mechanisms, ensuring full coherence with the Commission's energy state aid enforcement policy.

- **Consistency with other Union policies**

The proposal seeks to implement key objectives of the Energy Union, as defined in the Framework Strategy for a resilient Energy Union with a forward-looking climate change policy. As already stated above, the details of the package are also in line with the recent global-level engagement by the Union to achieve ambitious climate targets under the agreement found in Paris at the 21<sup>st</sup> UN Conference of the Parties (COP21). The current proposal is mutually reinforcing and complementary to the proposal for the revision of the EU Emissions Trading System made in July 2015.

Further, to the extent that a revision of the electricity market design is aimed at making Europe's energy market more competitive and accessible for new energy technologies, the proposal also contributes to fulfilling the Union's objectives to generate jobs and growth. By offering market opportunities for new technologies, the proposal will spur the uptake of a number of services and products that would give European businesses a first-mover advantage as the clean energy transition advances globally.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for the proposed measures is Article 194 of the Treaty on the Functioning of the European Union (TFEU), which consolidated and clarified the competences of the EU in the field of energy. According to Article 194 TFEU, the main aims of the EU's energy policy are to: ensure the functioning of the energy market; ensure security of energy supply in the Union; promote energy efficiency and energy saving and the development of new and renewable forms of energy; and promote the interconnection of energy networks.

The present initiative also builds upon a comprehensive set of legislative acts that have been adopted and updated during the past two decades. With the objective of creating an internal energy market, the EU has adopted three consecutive legislative packages between 1996 and 2009, with the overarching aim of integrating markets and liberalising national electricity and gas markets. These provisions cover a wide range of aspects, from market access to transparency, consumer rights and the independence of regulatory authorities, to name a few.

With an eye on existing legislation and the general trajectory of growing energy market integration, the current initiative should thus also be seen as part of an ongoing effort to ensure the integration and effective operation of Europe's energy markets.

Recent calls from the European Council<sup>13</sup> and the European Parliament for action at EU level to complete the European energy market have also created further ground for action.

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<sup>13</sup> In February 2011, the European Council set the objective of completing the internal energy market by 2014 and developing interconnection to end the grid isolation of certain Member States by 2015. In June 2016, the European Council also called for a Single Market Strategy in the field of energy, with action plans to be proposed by the Commission and to be implemented by 2018.

- **Subsidiarity**

The proposed changes to the provisions of the Regulation on electricity markets, the Directive on common rules for the internal electricity market and the Regulation establishing a European Agency for the Cooperation of Energy Regulators are necessary to achieve the purpose of an integrated EU electricity market and cannot be reached at national level in an equally efficient manner. As set out in detail in the evaluation of the recast legislative acts<sup>14</sup>, evidence has shown that isolated national approaches have led to delays in the implementation of the internal energy market, leading to sub-optimal and incompatible regulatory measures, unnecessary duplication of interventions and delays in correcting market inefficiencies. The creation of an internal energy market that delivers competitive and sustainable energy for all cannot be achieved on the basis of fragmented national rules where they concern the trading of energy, the operation of the shared grid and a certain amount of product standardisation.

The increasing interconnection of EU electricity markets requires closer coordination between national actors. National policy interventions in the electricity sector have a direct impact on neighbouring Member States due to energy interdependence and grid interconnections. Ensuring the stability of the grid and its efficient operation is increasingly difficult to do at national level alone, as rising cross-border trade, the uptake of decentralised generation and enhanced consumer participation, all increase the potential for spill-over effects. No state can effectively act alone and the consequences of unilateral action have become more pronounced over time. This general principle applies across the range of measures introduced by the current proposal, whether they concern energy trading, the operation of the grid and consumers' effective participation.

Since common regional issues which require a coordinated decision often have a significant economic impact on individual Member States, past experience has shown that voluntary cooperation, while useful in many areas of cooperation between Member States, has often not been able to overcome technically complex conflicts with significant distributive effects between Member States<sup>15</sup>. Existing voluntary initiatives, such as the Pentalateral Energy Forum, are also limited in their geography, as they only cover parts of the EU electricity market and do not necessarily combine all countries which are physically most closely interconnected.

To illustrate on a concrete example, uncoordinated national policies concerning the principles for distribution tariffs may distort the internal market to an extent that distributed generation or energy storage services will be under very different incentives to participate in the market. With the uptake of new technologies and energy services increasingly traded across borders, EU action has a significant value in ensuring a level playing field and more efficient market outcomes for all parties involved.

The coordinating function of ACER has been adapted to new developments in energy markets, such as the increased need for coordination in times of higher energy flows across borders and the rise of energy production from volatile RES-E. The independent national regulatory authorities (NRAs) play a major role in providing regulatory oversight over their national energy sector. A system which becomes more and more interdependent between the Member States both when it comes to market transactions and system operation requires, however, regulatory oversight beyond national borders. ACER is the body established to provide such regulatory oversight as far as situations are concerned which cover more than

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<sup>14</sup> [OP please add link to Impact assessment – evaluation part].

<sup>15</sup> See e.g. the discussion on congestion management in central Europe, where divergent national interests led to significant delays on the way to more market integration.

two Member States. 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 [recast Electricity Regulation as proposed by COM(2016) 861/2] 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 Electricity Regulation as proposed by COM(2016) 861/2] 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. .

- **Proportionality**

The policy choices covered by the Electricity Regulation, the Electricity Directive and the Agency Regulation seek to adapt the electricity market design to the increasing share of decentralized generation and to ongoing technological developments.

The proposed reforms are strictly oriented on what is indispensable to achieve the necessary progress for the internal market, while leaving utmost competencies and responsibilities for Member States, national regulators and national actors.

Options considering a more far-reaching harmonisation, e.g. by proposing a single independent European energy regulator, a single integrated European transmission system operator or more straightforward prohibitions of state interventions without exemption possibilities have been consistently dismissed in the Impact Assessment. Instead the proposals aim at well-balanced solutions which only restrict the national scope for regulatory action where coordinated action clearly brings more benefits for the consumer.

The policy options adopted are aimed at creating a level playing field amongst all generation technologies and removing market distortions so that, amongst other things, renewable energy sources may compete on an equal footing in the energy market. In addition, all market participants would bear a financial responsibility for keeping the grid in balance. Barriers to services that provide flexibility to the grid, such as demand-response services, will be removed. Further, the measures seek to create a more liquid short-term market, so that price fluctuations can properly reflect scarcity and offer adequate incentives for a flexible grid.

At retail market level, Member States will also be encouraged to progressively phase-out blanket price regulation, starting with prices below cost. Vulnerable consumers can be protected by a transitional price regulation. To further increase competition, the use of contract termination fees will be restricted, so as to encourage switching. Equally, high-level principles shall ensure that energy bills are clear and easy to understand, and non-discriminatory access to consumer data will be granted, all whilst keeping in place general privacy provisions.

In line with the evolution of cross-border trade in electricity and the gradual integration of the market, the institutional framework will be adapted in line with the need for additional

regulatory cooperation and new tasks. ACER is to be given additional tasks, especially in the regional operation of the energy system, all whilst keeping the national regulators' centre role in energy regulation.

All of the options have been extensively checked to meet the requirements of proportionality, in the Impact Assessment accompanying the proposal. It should be noted here that the proposed policies present a compromise between bottom-up initiatives and top-down steering of the market. In keeping with proportionality, the measures do not in any way substitute the role of national governments, NRAs and TSOs in carrying out a variety of critical functions. If anything, national regulators are encouraged to come together more effectively in a regional setting, both formally and informally, to address issues arising from the management of the electricity system at a scale that is commensurate with the scale of the problem.

Far from endorsing a "full harmonisation" approach, the measures seek to create a level playing field for all market players, particularly where market opportunities extend beyond national borders. Ultimately, a certain standardisation of rules and products is essential to the effective trading of electricity across borders; whilst decisions concerning the operation of the grid would lead to sub-optimal market outcomes if left to single Member States and regulators acting in isolation. Direct experience in the formulation and adoption of common network and trading rules (so called "Network Codes" and "Guidelines") since the Third Energy Package of 2009 has shown a clear added value in having regulators and national authorities coming around the table to agree common rules and methodologies, both on high level and technical principles.

There is an increasing competitiveness gap between retail and wholesale markets, with the former still lagging behind in terms of service offer and tangible benefits to consumers. By monitoring energy poverty, transparency and clarity of consumer information and access to data, the proposed measures will not unduly limit national prerogatives.

- **Choice of legal instrument**

The proposal will amend the key legal acts that were part of the Third Energy Package. These include the Electricity Regulation (No 714/2009) and the Electricity Directive (No 2009/72/EC), alongside the Regulation establishing ACER (No 713/2009). The choice of a recast of said legal acts will enhance legal clarity. Recourse to an amending act may have been inadequate to address a wide set of new provisions. The choice of the instrument thus calls for a revision of rules already adopted and implemented, as a natural evolution of current legislation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fit-for-purpose checks of existing legislation**

The Commission services have evaluated the performance of the current legislative framework (Third Energy Package) against five set criteria: relevance, effectiveness, efficiency, coherence and EU added value. A stand-alone evaluation has been carried out alongside the Impact Assessment, and the results of the evaluation have been reflected in the problem identification of the impact assessment.

The evaluation found that, overall, the Third Energy Package's aim to increase competition and remove obstacles to cross-border competition in electricity markets has been met. Active enforcement of the legislation has led to positive results for electricity markets and consumers, and markets are in general less concentrated and more integrated than in 2009. As

regards retail markets, the set of new consumer rights introduced by the Third Energy Package have clearly improved the position of the consumer in energy markets.

However, the success of the rules of the Third Energy Package in developing the internal electricity market remains limited in a number of fields, both at the wholesale and the retail level. In general, the evaluation showed that large gains can still be made by an improvement of the market design framework, as shown by untapped general welfare gains and ultimate benefits to consumers. At the level of wholesale markets, barriers to cross-border trade persist and interconnector capacities are rarely fully exploited. These originate, amongst other things, from insufficient cooperation between national grid operators and regulators on the shared use of interconnectors. The national perspective of the parties involved still prevents effective cross-border solutions in many cases and ultimately limits otherwise beneficial cross-border flows. The picture is not the same across all markets and timeframes, with varying degrees of integration across day-ahead, intra-day and balancing markets.

With regards to retail markets, competition performance could be significantly improved. Electricity prices still vary significantly from Member State to Member State for non-market reasons, and prices have risen steadily for households as a result of significant increases in non-contestable charges in recent years; these being network charges, taxes and levies. With regard to consumer protection, rising energy poverty, as well as lack of clarity on the most appropriate means of tackling consumer vulnerability and energy poverty, have been a drag on the further deepening of the internal energy market. Switching-related fees such as contract termination charges continue to constitute a significant financial barrier to consumer engagement. In addition, the high number of complaints related to billing<sup>16</sup> suggests that there is still scope to improve the comparability and clarity of billing information.

In addition to shortcomings in meeting the original objectives sought by the Third Energy Package, a new set of challenges has emerged which had not been envisaged at the time of preparing the Third Energy Package. These include, as mentioned above, the very strong increase of renewable sources in electricity generation, the increase of state interventions in the electricity markets for security of supply purposes, and changes taking place on the technological side. These have all led to significant changes in the way markets operate, especially during the past five years, to a dampening of the positive effect of the reforms for consumers and also an untapped potential from modernisation. This has opened a gap in the existing legislation regarding how to deal with these developments.

In line with the outcome of the evaluation and the related Impact Assessment, the current proposal seeks to close the gap and present an enabling framework to reflect technological developments in the sector as our energy systems' transition to new production and consumption models.

- **Stakeholder consultations**

In preparation for the present initiative, the Commission has conducted several public consultations. These were open to EU citizens and Member States' authorities, energy market participants and their associations, as well as to any other relevant stakeholders, including SMEs and energy consumers.

Three consultations and their respective results shall be highlighted in particular:

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<sup>16</sup> European Commission (2016), ' Second Consumer Market Study on the functioning of retail electricity markets for consumers in the EU ',

1) Resource adequacy related issues were the subject of a public consultation<sup>17</sup> conducted from 15 November 2012 to 7 February 2013, as per the "*Consultation on generation adequacy, capacity mechanisms, and the internal market in electricity*". This was aimed at obtaining stakeholders' views on ensuring resource adequacy and security of electricity supply in the internal market.

The consultation received 148 individual responses from public bodies, industry (both energy producing and consuming) and academia. A detailed chart of responses to the consultation is available online<sup>18</sup>, as well as all individual contributions and a summary of results from the consultation<sup>19</sup>.

2) A public consultation dedicated to electricity retail markets and end-consumers<sup>20</sup> was conducted from 22 January 2014 to 17 April 2014. The Commission received 237 responses to the consultation, with about 20% of submissions coming from energy suppliers, 14% from DSOs, 7% from consumer organisations, and 4% from NRAs. A significant number of individual citizens also participated in the consultation. A full summary of responses is available on the Commission's website<sup>21</sup>.

3) A wide public consultation<sup>22</sup> on a new energy market design was conducted from 15 July 2015 to 9 October 2015.

The Commission received 320 replies to this consultation. About 50% of submissions have come from national or EU-wide industry associations. 26% of answers originated from companies active in the energy sector (suppliers, intermediaries, consumers) and 9% from network operators. 17 national governments and several NRAs also fed back on the consultation. A significant number of individual citizens and academic institutes participated to the consultation as well. A detailed description of stakeholders' opinions under each of the specific policy options is available in the Impact Assessment accompanying this legislative initiative.

- **Collection and use of expertise**

The preparation of the proposed regulation and the Impact Assessment is based on a large body of material, all of which is referenced in the footnotes in the Impact Assessment. These include close to 30 studies and modelling tools, conducted mostly by independent external parties, aimed at assessing specific options under the current proposal. These are listed in full

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<sup>17</sup> European Commission (2012) 'Consultation Paper on generation adequacy, capacity mechanisms and the internal market in electricity'  
[https://ec.europa.eu/energy/sites/ener/files/documents/20130207\\_generation\\_adequacy\\_consultation\\_document.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/20130207_generation_adequacy_consultation_document.pdf)

<sup>18</sup> [https://ec.europa.eu/energy/sites/ener/files/documents/Charts\\_Public%20Consultation%20Retail%20Energy%20Market.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/Charts_Public%20Consultation%20Retail%20Energy%20Market.pdf)

<sup>19</sup> European Commission (2012) Consultation on generation adequacy, capacity mechanisms, and the internal market in electricity  
<https://ec.europa.eu/energy/en/consultations/consultation-generation-adequacy-capacity-mechanisms-and-internal-market-electricity>

<sup>20</sup> European Commission (2014) Consultation on the retail energy market  
<https://ec.europa.eu/energy/en/consultations/consultation-retail-energy-market>

<sup>21</sup> [https://ec.europa.eu/energy/sites/ener/files/documents/Charts\\_Public%20Consultation%20Retail%20Energy%20Market.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/Charts_Public%20Consultation%20Retail%20Energy%20Market.pdf)

<sup>22</sup> European Commission (2015) Consultation on a new Energy Market Design COM(2015) 340 final  
<https://ec.europa.eu/energy/en/consultations/public-consultation-new-energy-market-design>

under Annex V of the Impact Assessment. The studies cover a range of methodologies, with a focus on quantitative estimates of economic and social cost benefit analyses.

In addition, the Commission has also been conducting a sector inquiry into national capacity mechanisms whose interim outcomes were promptly fed into the preparatory phase of the current proposal<sup>23</sup>. The results from these studies have complemented the extensive feedback obtained by stakeholders as described above and, overall, have given the Commission an extensive evidence basis on which to ground the current proposals.

- **Impact assessment**

All proposed measures are supported by the Impact Assessment. The Regulatory Scrutiny Board issued a positive opinion on 7 November 2016. The manner in which the Regulatory Scrutiny Board's views were taken into account is set out in Annex I of the Impact Assessment.

The Impact Assessment looked at a number of policy options for each problem set identified. These problem sets and the alternative routes for intervention are listed below:

*Adapting Market Design to the rise in renewables and technological development:*

The Impact Assessment endorsed an enhancement of current market rules in order to create a level-playing field among all generation technologies and resources by removing existing market distortions. It addresses rules that discriminate between resources and which limit or favour the access of certain technologies to the electricity grid. In addition, all market participants would bear financial responsibility for imbalances caused on the grid and all resources would be remunerated in the market on equal terms. Barriers to demand-response would be removed. The chosen option would also strengthen short-term markets by bringing them closer to real-time in order to provide maximum opportunity to meet flexibility needs and by rendering balancing markets more efficient. The chosen option includes measures that would help pulling all flexible distributed resources concerning generation, demand and storage, into the market via proper incentives and a market framework better adapted to them and measures to better incentivise DSOs.

A non-regulatory approach was dismissed as providing little scope for improving the market and ensuring a level-playing field among resources. Indeed, the current EU regulatory framework in the relevant areas is limited or even non-existent for other areas. Furthermore, voluntary cooperation was deemed not to provide the appropriate level of harmonisation or certainty to the market. Equally, the option of full harmonisation of market rules was also discarded as the changes might breach proportionality principles and would generally be unnecessary given the state of European energy markets at present.

*Addressing future generation investments and uncoordinated capacity mechanisms*

Various policy options going beyond the baseline scenario were assessed, with each option proposing varying degrees of alignment and coordination among Member States at EU level, and a different extent to which market participants would rely on energy market payments.

A so-called 'energy-only market' option would see European markets being sufficiently improved and interconnected that it provides the necessary price signals to spur investments in new resources and in the right places. In such a scenario, no capacity mechanisms would be required any longer.

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<sup>23</sup> Interim Report of the Sector Inquiry on capacity Mechanisms, C(2016) 2107 final.

The chosen option builds on this energy-only market scenario but does not discard the possibility for Member States of using capacity mechanisms, provided however these are based on a shared resource adequacy assessment methodology carried out in full transparency through ENTSO-E and ACER and comply with common design features for better compatibility between national capacity mechanisms and harmonised cross-border cooperation. This option builds on the European Commission Guidelines on state aid for environmental protection and energy 2014-2020, alongside the Sector Inquiry on capacity mechanisms.

A non-regulatory approach was rejected as existing provisions under EU legislation are not sufficiently clear and robust to cope with the challenges facing the European electricity system. In addition, voluntary cooperation may not provide for appropriate levels of harmonisation across all Member States or certainty to the market. Legislation is needed in this area to address the issues in a consistent way. The option in which, based on regional or EU-wide generation adequacy assessments, entire regions or ultimately all EU Member States would be required to roll out capacity mechanisms on a mandatory basis was discarded as being disproportionate.

#### *Under-performance of Retail Markets: slow deployment and low levels of services*

The endorsed option includes a gradual phasing-out by Member States of blanket price regulation by a deadline set in EU legislation, starting with prices below costs. This option allows for transitional price regulation for vulnerable consumers. To increase consumer engagement, the use of contract termination fees is restricted. Consumer confidence in comparison websites is to be fostered through national authorities implementing a certification tool. In addition, high-level principles will ensure that energy bills are clear and easy to understand, through minimum content requirements. Member States are also required to monitor the number of households on energy poverty. Finally, to allow the development of new services by new entrants and energy service companies, non-discriminatory access to consumer data is ensured.

Other options considered, but discarded, included a full harmonization of consumer legislation alongside extensive consumer safeguards; exemptions to price regulation defined at EU level on the basis of either a consumption threshold or a price threshold; a standard data handling model to be enforced and the responsibility assigned to a neutral market actor such as a TSO; all switching fees including contract termination fees would be banned and the content of energy bills partially harmonized; and finally, an EU framework to monitor energy poverty based on an energy efficiency survey done by Member States of the housing stock as well as preventive measures to avoid disconnections are put in place. These options were all discarded on grounds of subsidiarity and proportionality principles. Maintaining the status quo was not considered a viable option either by almost all of the stakeholders consulted.

#### *Improvement of the institutional framework and role of the Agency*

The Third Package institutional framework aims at fostering the cooperation of NRAs as well as between TSOs. Since their establishment, ACER and the ENTSOs have played a key role in the progress towards a functioning internal energy market. However, the recent developments in the European energy markets that are considered in the current Impact Assessment and the subsequent proposals of the Market Design Initiative require an adaptation of the institutional framework. In addition, the implementation of the Third Package has also highlighted areas with room for improvement concerning the framework applicable to ACER and the ENTSOs. In terms of options considered for reforming the institutional framework, a business as usual scenario was discarded for it would open up regulatory and



market surveillance gaps, in line with evolving market provisions introduced elsewhere in this proposal as well as with the ongoing progress at EU level of secondary legislation.

A non-regulatory approach of "stronger enforcement" and voluntary collaboration without any new, additional measures to adapt the institutional framework was considered. Improved enforcement of existing legislation entails the continued implementation of the Third Package and full implementation of network codes and guidelines – as described under option "business as usual" – combined with stronger enforcement. However, stronger enforcement alone would not provide any improvement to the current institutional framework.

A legislative option transforming ACER to something closer to a pan-European regulator was also considered but ultimately discarded. In order for the Agency to perform such a role, it would require a significant reinforcement of ACER's budget and staff as this would make a strong concentration of experts in the Agency necessary. It appears also appropriate to maintain the involvement of national regulators in the Agency's decision-making process and not to substitute systematically majority decisions by national regulators through decisions by the director.

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. It also addresses the resulting need for additional regional cooperation and the existing and anticipated regulatory gaps in the energy market, thereby providing for flexibility by a combination of bottom-up and top-down approaches.

In addition, in order to address the existing regulatory gap as regards NRAs' regulatory functions at regional level, the policy initiatives under this option would set out a flexible regional regulatory framework to enhance the regional coordination and decision-making of NRAs. This option would introduce a system of coordinated regional decisions and oversight of certain topics by NRAs of the region (e.g. ROCs and others deriving from the proposed market design initiatives) and would give ACER a role for safeguarding the EU-interest.

#### *Fundamental rights*

The present proposal may have an impact on a number of fundamental rights established by the Charter on Fundamental Rights of the EU, in particular: the respect for private and family life (Article 7), the right to protection of personal data (Article 8), the prohibition of discrimination (Article 21), the right to social assistance (Article 34), access to services of general economic interest (Article 36), the integration of a high level of environmental protection (Article 37) and the right to an effective remedy (Article 47).

This is addressed in particular through a number of provisions concerning consumer protection, energy poverty, protection of vulnerable customers, access to services of general economic interest, data protection and privacy.

A summary of the Impact Assessment can be found on the Commission website<sup>24</sup>, alongside the positive opinion of the Regulatory Scrutiny Board.

- **Regulatory fitness and simplification**

The proposal may increase administrative requirements, albeit to a limited extent. For example, by bringing in a level-playing field for all technologies to participate fully in energy

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<sup>24</sup> [OP: Please insert Link to Impact Assessment]

markets, these technologies would have to abide with a number of market compliance requirements that may generate some administrative workload.

The measures envisaged to improve the liquidity and integration of energy markets may also generate some short-term impact to businesses as these would have to adapt for new energy trading arrangements. These are however considered minimal compared to the baseline scenario of no action, as the economic gains of the reform would very largely surpass any short or long-term administrative reorganization.

Equally, the gradual phasing out of regulated prices at Member State level will require NRAs to step up efforts in monitoring markets, ensuring efficient competition and guaranteeing consumer protection. These impacts may be offset by increased consumer engagement, which would naturally act to foster competition in the market.

The range of activities to be performed under the updated institutional setting shall also generate a new set of requirements for engagement at administrative level on the part of national regulators and transmission operators. These include participation within ACER and through the decision-making processes leading to the agreement of methodologies and practices for the smooth trading of energy at the border.

A detailed administrative and economic impact on business and public authorities for each of the policy options considered can be found in chapter 6 of the Impact Assessment.

#### **4. 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) which are described in the Legislative Financial Statement accompanying the Commission proposal for a recast of the Regulation establishing 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 up to 18 additional FTE in the Agency in 2020, as well as corresponding financial resources.

#### **5. OTHER ELEMENTS**

##### **• Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the transposition and compliance of the Member States and other actors with the measures that shall be ultimately adopted, and shall take enforcement measures if and when required. In addition, as it has already done in the context of the implementation of the Third Energy Package, the Commission will provide guidance documents providing assistance on the implementation of the adopted measures.

Across monitoring and implementation purposes, the Commission will notably be supported by ACER. The annual reporting by the Agency and parallel evaluations carried out by the Commission, together with the reporting from the Electricity Coordination Group are all part of the provisions in the current initiative. The Agency will be invited to further review its monitoring indicators to ensure their continuing relevance for monitoring progress towards the objectives underlying the present proposals, so that these may be adequately reflected, amongst other things, through ACER's annual market monitoring report document.

Parallel to the proposed initiatives, the Commission will bring forward an initiative concerning the governance of the Energy Union that will streamline the planning, reporting and monitoring requirements. Based on the initiative of the governance of the Energy Union, the current monitoring and reporting requirements of the Commission and Member States in

the Third Energy Package will be integrated in horizontal progress and monitoring reports. More information on the streamlining of the monitoring and reporting requirements can be found in the impact assessment for the governance of the European Union.

A more extensive treatment of monitoring mechanisms and benchmark indicators can be found in Chapter 8 of the Impact Assessment.

## **6. EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSALS**

### **• Proposal for a Directive of the European Parliament and of the Council on common rules for the internal market in electricity (Recast)**

*Chapter I* of the proposed Directive provides some clarifications to the scope and subject matter of the Directive, emphasising the focus on consumers and the importance of the internal market and its main principles. It provides also for an update of the main definitions used in the Directive.

*Chapter II* of the proposed Directive lays down the general principle that Member States have to ensure that the EU electricity market is competitive, consumer-centred, flexible and non-discriminatory. It emphasises that national measures should not unduly hamper cross-border flows, consumer participation or investments. It further enshrines the principle that supply prices shall be market-based, subject to duly justified exceptions. The chapter also clarifies certain principles relating to the functioning of the EU electricity markets, such as the right to choose a supplier. It also provides for updated rules on possible public service obligations which may be imposed by Member States on energy undertakings under certain circumstances.

Chapter III of the proposed Directive reinforces pre-existing consumer rights and introduces new rights that aim at putting consumers at the heart of the energy markets by ensuring that they are empowered and better protected. It sets rules on clearer billing information and on certified comparison tools. It contains provisions ensuring that consumers are able to freely choose and change suppliers or aggregators, are entitled to a dynamic price contract and are able to engage in demand response, self-generation and self-consumption of electricity. It entitles every consumer to request a smart meter equipped with a minimum set of functionalities. It also improves pre-existing rules on the consumers' possibility to share their data with suppliers and service providers by clarifying the role of the parties responsible for data management and by setting a common European data format to be developed by the Commission in an implementing act. It also aims to ensure that energy poverty is addressed by Member States. It further requires Member States to define frameworks for independent aggregators and for demand response along principles that enable their full participation in the market. It defines a framework for local energy communities which may engage in local energy generation, distribution, aggregation, storage, supply or energy efficiency services. It further provides some clarifications to pre-existing provisions on smart meters, single points of contacts, and rights to out-of-court settlement, universal service and vulnerable consumers.

Chapter IV of the proposed Directive provides for some clarifications concerning the tasks of DSOs, notably relating to the activities of DSOs concerning the procurement of network services to ensure flexibility, the integration of electrical vehicles and data management. It also clarifies the role of DSOs with respect to storage and recharging points for electric vehicles.

Chapter V of the proposed Directive summarises the general rules applicable to TSOs, largely based on existing text, providing only some clarifications concerning ancillary services and the new Regional Operational Centres.

Chapter VI of the proposed Directive, setting out the rules on unbundling as developed in the Third Energy Package, remains unchanged as concerns the main substantive rules on unbundling, notably with respect to the three regimes for TSOs (ownership unbundling, independent system operator and independent transmission operator), as well as with respect to the provisions on TSO designation and certification. It only provides a clarification on the possibility for TSOs to own storage or to provide ancillary services.

Chapter VII of the proposed Directive contains the rules on establishment, scope of powers and duties as well as rules of functioning of the independent national energy regulators. The proposal notably emphasises the obligation of regulators to cooperate with neighbouring regulators and ACER in case issues of cross-border relevance are concerned and updates the list of tasks of regulators, inter alia with respect to the supervision of the newly created Regional Operational Centres.

Chapter VIII of the proposed Directive changes some general provisions, inter alia on derogations to the Directive, exercise of delegated powers by the Commission and the Committee established under comitology rules pursuant to Regulation (EU) No 182/2011.

The new Annexes to the proposed Directive set out more requirements on comparison tools, billing and billing information and amends pre-existing requirements for smart meters and their roll-out.

- **Proposal for a Regulation of the European Parliament and of the Council on the internal electricity market (Recast)**

Chapter I of the proposed Regulation sets out the scope and subject matter and the definitions of terms used in it. It emphasises the importance of undistorted market signals to provide for increased flexibility, decarbonisation and innovation and updates and complements the main definitions used in the Regulation.

Chapter II of the proposed Regulation introduces a new Article which sets out the key principles to be respected by national energy legislation in order to allow for a functioning internal electricity market. It also sets out the main legal principles for electricity trading rules within different trading timeframes (balancing, intraday, day-ahead and forward markets), including principles for price formation. It clarifies the principle of balancing responsibility and provides for a framework for more market compatible rules for the dispatch and curtailment of generation and demand response, including conditions for any exceptions thereof.

Chapter III of the proposed Regulation describes the process to define bidding zones in a coordinated manner, in line with the review process created in Regulation 1222/2015 establishing a Guideline on Capacity Calculation and Congestion Management<sup>25</sup>. In order to address the persisting problem of significant national limitations to cross-border electricity flows, the conditions for such exceptional limitations are clarified, notably by rules that shall ensure that electricity imports and exports are not restricted by national actors for economic reasons. This Chapter further contains amendments to pre-existing principles for transmission and distribution network tariffs and sets a procedure for fostering the progressive convergence

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<sup>25</sup> Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management OJ L 197, 25.7.2015, p. 24–72.

of transmission and distribution tariff methodologies. It also sets out amended rules for the usage of congestion rents.

Chapter IV of the proposed Regulation sets out new general principles for addressing resource adequacy concerns by Member States in a coordinated manner. It sets out principles and a procedure for the development of a European resource adequacy assessment to better determine the need for capacity mechanisms and, if appropriate, the setting of a reliability standard by Member States. It clarifies how and under which conditions capacity mechanisms can be introduced in a market-compatible manner. It also clarifies market compatible design principles for capacity mechanisms, including rules for the participation of capacity located in another Member State and for interconnection usage. It sets out how Regional Operational Centres, national TSOs, the ENTSO for electricity and national regulators via ACER will be involved in the development of technical parameters for the participation of capacities located in another Member State as well as the operational rules for their participation.

Chapter V of the proposed Regulation sets out the tasks and duties of the ENTSO for Electricity and the monitoring tasks of ACER in this regard whilst clarifying its duty to act independently and for the European good. It defines the mission of Regional Operational Centres and provides for criteria and a procedure for defining system operation regions covered by each Regional Operational Centre and the coordination functions that these centres perform. It also sets out working and organisational arrangements, consultation requirements, requirements and procedures for the adoption of decisions and recommendations and their revision, the composition and responsibilities of the management board and liability arrangements of Regional Operational Centres. The chapter also incorporates rules on the connection of cogeneration units, previously included in Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency. The rules on a ten-year network development plan, inter-transmission system operator compensation, information exchange and certification remain largely unchanged.

Chapter VI of the proposed Regulation sets up a European entity for DSOs, defines a procedure for its establishment and its tasks including with regard to the consultation of stakeholders. It also provides detailed rules on the cooperation between DSOs and TSOs with regard to the planning and operation of their networks.

Chapter VII of the proposed Regulation sets out pre-existing powers and rules for the Commission to adopt delegated acts in the form of network codes or guidelines. It provides for clarifications as to the legal nature and the adoption of network codes and guidelines and enlarges their possible content to areas such as distribution tariff structures; rules for the provision of non-frequency ancillary services; demand response, energy storage and demand curtailment rules; cyber security rules; rules regarding to Regional Operational Centres; and, the curtailment of generation and redispatch of generation and demand. It simplifies and streamlines the procedure for the elaboration of electricity network codes and gives national regulators the possibility to decide within ACER on issues concerning the implementation of network codes and guidelines. It also includes the European entity for DSOs and other stakeholders more closely in the procedure of the development of proposals for electricity network codes.

Chapter VIII of the proposed Regulation sets out the final provisions of the proposed Regulation. It includes the pre-existing rules for the exemption of new direct current interconnectors from certain requirement of the Electricity Directive and Regulation whilst clarifying the procedure for subsequent amendments made by NRAs thereof.

The Annex to the proposed Regulation defines in more detail the functions attributed to the Regional Operational Centers created by the Regulation.

- **Proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast)**

In general, the rules concerning ACER are proposed to be adapted to the "Common Approach" on EU decentralised agencies agreed between the European Parliament, the Council of the EU and the European Commission (Common Approach)<sup>26</sup>. Keeping limited deviations from the "Common Approach" is, however, warranted for ACER at the present stage.

Chapter I of the proposed Regulation describes the role, objectives and tasks of ACER and the type of acts that it can adopt, and provides for rules on consultations and monitoring. 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 Chapter 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.

Chapter II of the proposed Regulation contains organisational rules relating to the Administrative Board, the Board of Regulators, the Director, the Board of Appeal and, as a new provision, on the Agency's working groups. While adapting several individual provisions to the Common Approach on EU decentralised agencies or to the new Council voting rules, the main features of the existing governance structure, in particular the Board of Regulators, are preserved.

This deviation of ACER, from the Common Approach is justified as follows:

The main objectives of European Electricity Policy, security of supply, affordability of electricity and decarbonisation could be reached most cost effectively by an integrated European electricity market. Accordingly, the electricity transmission infrastructure is progressively interconnected, increasing volumes of electricity are traded cross border, generation capacities are shared at a European scale and the transmission system is operated

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<sup>26</sup> See Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19.7.2012.

taking regional, cross-border aspects into account. The present legislative packages further enhance these trends which are expected to result in efficiencies to the benefit of European customers.

A precondition for the creation of an internal electricity market is the opening of the sector to competition. As in other sectors of economy as well, the opening of the electricity market required new regulations, in particular with regard to the transmission and distribution system, and regulatory oversight. To this effect, independent regulatory authorities were put in place. These entities remain with a particular responsibility when it comes to overseeing national and European rules applicable to the electricity sector.

However, with the increasing cross-border trade and system operation which takes the regional and European context into account, NRAs were required to increasingly coordinate their action with NRAs from other Member States. ACER was designed to become the platform for this interaction and fulfils this duty since its creation in 2011. The body within the Agency where most opinions, recommendations and decisions of the Agency are prepared, together with ACER staff, is thus the Board of Regulators comprising senior representatives of the NRAs and a non-voting representative of the Commission. The first years of the existence of the Agency have shown that the Board of Regulators managed to contribute effectively to the fulfilment of the tasks of the Agency.

Since energy markets are still largely regulated at national level, national regulators are actors with a key role for energy markets. The main role of ACER is not the execution of delegated regulatory Commission competencies, but the coordination of the regulatory decisions of independent national regulators. The present legislative proposal still largely preserves this distribution of roles. The current structure strikes a fine-tuned balance of powers between the different actors, having regard to the special features of the developing internal energy market. Changing the balance at this stage might risk jeopardising the implementation of the policy initiatives in the legislative proposals and thereby would pose obstacles to the further integration of the energy market which is the main purpose of the present proposal. It therefore appears as premature to transfer decision-making powers to a Management Board as provided for in the Common Approach. Instead it seems rather appropriate to keep the current structure which ensures that the national regulators act without any direct intervention of EU institutions or Member States in the specific matters. At the same time, the overall work of the regulators remains subject to the approval of the EU institutions via programming, budgetary and strategic documents. EU institutions are also involved in administrative matters. As a consequence, it is not proposed to change the set-up and operation of the existing Board of Regulators.

Likewise, it is not proposed to adapt the concept of the Administrative Board to the model of the Common Approach Management Board. The Agency's Administrative Board in its existing composition proved to be particularly effective and efficient over the last years. Its operation is assured by representatives of the European Parliament, the Council and the Commission.

Even though at this stage, the Commission does not find it appropriate to adapt the governance structure of the Agency fully to the Common Approach, it will continue to monitor if the described deviations from the Common Approach are still justified, with the next evaluation scheduled for 2021 which in addition to an assessment of the Agency's objectives, mandate and tasks will have a particular focus on the governance structure of the Agency.

Chapter III of the proposed Regulation contains financial provisions. Several individual provisions are proposed to be adapted to the Common Approach on decentralised agencies.

Chapter IV of the proposed Regulation updates several individual provisions in line with the Common Approach and contains otherwise largely unchanged provisions on staff and liability



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↓ 713/2009 (adapted)

2016/0378 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing an ~~an~~  European Union  Agency for the Cooperation of Energy Regulators (recast)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty ~~establishing the European Community~~  on the Functioning of the European Union , and in particular Article ~~95~~  194(2)  thereof,  
Having regard to the proposal from the European Commission,  
After transmission of the draft legislative act to the national parliaments,  
Having regard to the opinion of the European Economic and Social Committee,  
Having regard to the opinion of the Committee of the Regions,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

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↓ new

(1) Regulation (EC) No 713/2009 of the European Parliament and of the Council<sup>27</sup> has been substantially amended. Since further amendments are to be made, that Regulation should be recast in the interest of clarity.

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↓ 713/2009 recital 1 (adapted)

~~The Communication of the Commission of 10 January 2007 entitled ‘An Energy Policy for Europe’ highlighted the importance of completing the internal markets in electricity and natural gas. Improving the regulatory framework at Community level was identified as a key measure to achieve that objective.~~

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<sup>27</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1)

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↓ 713/2009 recital 2 (adapted)

~~An independent advisory group on electricity and gas, called the European Regulators Group for Electricity and Gas (EREG) was established by Commission Decision 2003/796/EC<sup>28</sup> to facilitate consultation, coordination and cooperation between the regulatory bodies in Member States, and between those bodies and the Commission, with a view to consolidating the internal markets in electricity and natural gas. That group is composed of representatives of the national regulatory authorities established pursuant to Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity<sup>29</sup> and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas<sup>30</sup>.~~

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↓ 713/2009 recital 3 (adapted)

~~The work undertaken by the ACER EREG since its establishment has made a positive contribution to the internal markets in electricity and natural gas. However, it is widely recognised by the sector, and has been proposed by the EREG itself, that voluntary cooperation between national regulatory authorities should now take place within a Community structure with clear competences and with the power to adopt individual regulatory decisions in a number of specific cases.~~

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↓ 713/2009 recital 4 (adapted)

~~The European Council of 8 and 9 March 2007 invited the Commission to propose measures to set up an independent mechanism for national regulators to cooperate.~~

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↓ new

- (2) The creation of the Agency has manifestly improved coordination between regulators on cross-border issues. Since its creation, the Agency has received new important tasks concerning the monitoring of wholesale markets under Regulation (EU) No 1227/2011 of the European Parliament and of the Council<sup>31</sup> and in the field of cross-border energy infrastructure under Regulation (EU) No 347/2013 of the European Parliament and Council<sup>32</sup>.

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<sup>28</sup> OJ L 296, 14.11.2003, p. 34.

<sup>29</sup> OJ L 176, 15.7.2003, p. 37.

<sup>30</sup> OJ L 176, 15.7.2003, p. 57.

<sup>31</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

<sup>32</sup> Regulation (EU) No 347/2013 of the European Parliament and Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

- (3) It is projected that the need for coordination of national regulatory actions will increase further in the coming years. Europe's energy system is in the middle of its most profound change in decades. More market integration and the change towards more variable electricity production requires increased efforts to coordinate national energy policies with neighbours and to use the opportunities of cross-border electricity trade.
- (4) Experience with the implementation of internal market rules has shown that uncoordinated national action can lead to severe problems for the market, notably in closely interconnected areas where decisions of Member States often have a tangible impact on their neighbours. To achieve the positive effects of the internal electricity market for consumer welfare, security of supply and decarbonisation Member States, and in particular independent national regulators, are required to cooperate on those regulatory measures which have a cross-border effect.
- (5) Fragmented national state interventions in energy markets constitute an increasing risk to the proper functioning of cross-border electricity markets. The Agency should therefore be given a role in the development of a coordinated European Adequacy Assessment, in close cooperation with the European Network of Transmission System Operators for Electricity ("ENTSO for Electricity"), in order to avoid the problems of fragmented national assessments which follow different uncoordinated methods and do not sufficiently take into account the situation in neighbouring countries. The Agency should also supervise the technical parameters developed by the ENTSO for Electricity for an efficient participation of cross-border capacities and other technical features of capacity mechanisms.
- (6) Security of electricity supply requires a coordinated approach to prepare against unexpected supply crises. The Agency should therefore coordinate national actions related to risk preparedness, in line with [Risk Preparedness Regulation as proposed by COM(2016) 862].
- (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.
- (8) As large parts of new electricity generation will be connected at local level, distribution system operators will play an important role when it comes to operating the European electricity system in a flexible and efficient manner.

↓ 713/2009 recital 5 (adapted)

- (9) ~~The~~ Member States should cooperate closely, eliminating obstacles to cross-border exchanges of electricity and natural gas with a view to achieving the objectives of ~~Community~~ ☒ the Union ☒ energy policy. ~~On the basis of the impact assessment of the resource requirements for a central entity, it was concluded that an independent central entity offered a number of long term advantages over other options. An~~ ☒ European Union ☒ Agency for the Cooperation of Energy Regulators (the Agency) ~~should be~~ ☒ was ☒ established ☒ by Regulation (EC) No 713/2009 ☒ in order to fill the regulatory gap at ~~Community~~ ☒ Union ☒ level and to contribute towards the effective functioning of the internal markets in electricity and natural gas.

The Agency ~~should also enable~~ ☒ enables ☒ national regulatory authorities to enhance their cooperation at ~~Community~~ ☒ Union ☒ level and participate, on a mutual basis, in the exercise of ~~Community~~ ☒ Union ☒ -related functions.

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↓ 713/2009 recital 6 (adapted)

- (10) The Agency should ensure that regulatory functions performed by the national regulatory authorities in accordance with [the recast Electricity Directive as proposed by COM(2016) 864/2] ~~2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity~~<sup>33</sup> and Directive 2009/73/EC of the European Parliament and of the Council ~~of 13 July 2009 concerning common rules for the internal market in natural gas~~<sup>34</sup> are properly coordinated and, where necessary, completed at ~~the Community~~ ☒ Union ☒ level. To that end, it is necessary to guarantee the independence of the Agency from electricity and gas producers, transmission and distribution system operators, whether public or private, and consumers and to ensure the conformity of its actions with ~~Community~~ ☒ Union ☒ law, its technical and regulatory capacities and its transparency, amenability to democratic control and efficiency.
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↓ 713/2009 recital 7

⇒ new

- (11) The Agency should monitor regional cooperation between transmission system operators in the electricity and gas sectors as well as the execution of the tasks of the European Network of Transmission System Operators for Electricity (ENTSO for Electricity), and the European Network of Transmission System Operators for Gas (ENTSO for Gas). ⇒ The Agency should also monitor the implementation of the tasks of other entities with regulated functions of Union-wide dimension, such as energy exchanges. ⇐ The involvement of the Agency is essential in order to ensure that the cooperation between transmission system operators ⇒ and the operation of other entities with Union-wide functions ⇐ proceeds in an efficient and transparent way for the benefit of the internal markets in electricity and natural gas.
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↓ 713/2009 recital 8

- (12) The Agency should monitor, in cooperation with the Commission, the Member States and relevant national authorities, the internal markets in electricity and natural gas and inform the European Parliament, the Commission and national authorities of its findings where appropriate. Those monitoring tasks of the Agency should not duplicate or hamper monitoring by the Commission or national authorities, in particular national competition authorities.

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<sup>33</sup> ~~See page 55 of this Official Journal.~~

<sup>34</sup> See page 94 of this Official Journal.

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↓ 713/2009 recital 10 (adapted)  
⇒ new

- (13) ~~It is appropriate to~~ ☒ The Agency ☒ provides an integrated framework ~~within~~ which ☒ enables ☒ national regulatory authorities ~~are able~~ to participate and cooperate. That framework ~~should~~ facilitates the uniform application of the legislation on the internal markets in electricity and natural gas throughout the ~~Community~~ ☒ Union ☒. As regards situations concerning more than one Member State, the Agency ~~should be~~ ☒ has been ☒ granted the power to adopt individual decisions. That power should under ⇒ clearly specified ⇐ ~~certain~~ conditions cover technical ⇒ and regulatory ⇐ issues ⇒ which require regional coordination ⇐ , ~~the~~ ⇒ notably concerning the implementation of network codes and guidelines, cooperation within regional operational centres, ⇐ the regulatory ~~regime for~~ ⇒ decisions necessary to effectively monitor wholesale market integrity and transparency, decisions concerning ⇐ electricity and natural gas infrastructure that connects or that might connect at least two Member States and, as a last resort, exemptions from the internal market rules for new electricity interconnectors and new gas infrastructure located in more than one Member State.

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↓ 713/2009 recital 9 (adapted)  
⇒ new

- (14) The Agency has an important role in developing framework guidelines which are non-binding by nature ("framework guidelines"), ~~with which a~~ Network codes ~~must~~ ☒ should ☒ be in line ☒ with those framework guidelines ☒. It is also considered appropriate for the Agency, and consistent with its purpose, to have a role in reviewing ⇒ draft ⇐ network codes (~~both when created and upon modification~~) to ensure that they are in line with the framework guidelines ⇒ and provide for the necessary degree of harmonisation ⇐, before it ~~may recommend~~ ☒ submits ☒ them to the Commission for adoption.

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↓ new

- (15) With the adoption of a set of network codes and guidelines which provide for a stepwise implementation and a further refinement of common regional and Union-wide rules, the role of the Agency in monitoring the implementation of the network codes and guidelines has increased. Effective monitoring of network codes and guidelines is a key function of the Agency and crucial for the implementation of internal market rules.

- (16) From experience with the implementation of network codes and guidelines it has emerged that it is useful to streamline the procedure for the regulatory approval of regional or Union-wide terms and conditions or methodologies to be developed under the guidelines and network codes by submitting them directly to the Agency in order for national regulators, represented in the Board of Regulators, to be able to decide upon them.

(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.

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↓ 713/2009 recital 11 (adapted)

(18) Since the Agency has an overview of the national regulatory authorities, it should have an advisory role towards the Commission, other ~~Community~~  Union  institutions and national regulatory authorities as regards the issues relating to the purpose for which it was established. It should also be required to inform the Commission where it finds that the cooperation between transmission system operators does not produce the results which are needed or that a national regulatory authority whose decision is not in compliance with the Guidelines does not implement the opinion, recommendation or decision of the Agency appropriately.

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↓ 713/2009 recital 12

(19) The Agency should also be able to make recommendations to assist regulatory authorities and market players in sharing good practices.

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↓ 713/2009 recital 13

(20) The Agency should consult interested parties, where appropriate, and provide them with a reasonable opportunity to comment on proposed measures, such as network codes and rules.

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↓ 713/2009 recital 14 (adapted)

(21) The Agency should contribute to the implementation of the guidelines on trans-European energy networks as laid down in Regulation (EU) No 347/2013 of the European Parliament and of the Council<sup>35</sup> ~~Decision No 1364/2006/EC of the~~

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<sup>35</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

~~European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks<sup>36</sup>~~, in particular when providing its opinion on the non-binding ~~Union~~ ~~Community~~-wide ten-year network development plans ( ~~Union~~ ~~Community~~-wide network development plans) in accordance with Article ~~4~~ ~~6~~(3) of this Regulation.

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↓ 713/2009 recital 15

(22) The Agency should contribute to the efforts of enhancing energy security.

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↓ 713/2009 recital 16

⇒ new

(23) ⇒ In order to ensure that the Agency's framework is efficient and coherent with other decentralised agencies, the rules governing the Agency should be aligned to the Common Approach agreed between the European Parliament, the Council of the EU and the European Commission on decentralised agencies<sup>37</sup>. However, insofar as necessary, ⇐ ~~the~~ structure of the Agency should be adapted to meet the specific needs of energy regulation. In particular, the specific role of the national regulatory authorities needs to be taken fully into account and their independence guaranteed.

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↓ new

(24) Additional changes to the present regulation may be envisaged in the future in order to bring the regulation fully in line with the Common Approach on decentralised agencies. Based on the current needs of energy regulation, deviations from the Common Approach are necessary. This proposal therefore does not prejudice any further amendments to the Founding Regulation of the Agency which the Commission may wish to propose following further evaluation, as provided for in this act or on its own initiative.

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↓ 713/2009 recital 17

(25) The Administrative Board should have the necessary powers to establish the budget, check its implementation, draw up internal rules, adopt financial regulations and appoint a Director. A rotation system should be used for the renewal of the members of the Administrative Board who are appointed by the Council so as to ensure a balanced participation of Member States over time. The Administrative Board should act independently and objectively in the public interest and should not seek or follow political instructions.

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<sup>36</sup> ~~OJ L 262, 22.9.2006, p. 1~~

<sup>37</sup> Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19.7.2012.

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↓ 713/2009 recital 18 (adapted)  
⇒ new

- (26) The Agency should have the necessary powers to perform its regulatory functions in an efficient, transparent, reasoned and, above all, independent manner. The independence of the Agency from electricity and gas producers and transmission and distribution system operators is not only a key principle of good governance but also a fundamental condition to ensure market confidence. Without prejudice to its members' acting on behalf of their respective national authorities, the Board of Regulators should therefore act independently from any market interest, should avoid conflicts of interests and should not seek or follow instructions or accept recommendations from a government of a Member State, from ⇒ Union institutions ⇐ ~~the Commission~~ or another public or private entity ⇒ or person ⇐ . The decisions of the Board of Regulators should, at the same time, comply with ~~Community~~ ☒ Union ☒ law concerning energy, such as the internal energy market, the environment and competition. The Board of Regulators should report its opinions, recommendations and decisions to the ~~Community~~ ☒ Union ☒ institutions.

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↓ 713/2009 recital 19 (adapted)  
⇒ new

- (27) Where the Agency has decision-making powers, interested parties should, for reasons of procedural economy, be granted a right of appeal to a Board of Appeal, which should be part of the Agency, but independent from its administrative and regulatory structure. ⇒ In order to guarantee its functioning and full independence, the Board of Appeal should have a separate budget line in the budget of the Agency. ⇐ In the interest of continuity, the appointment or renewal of the members of the Board of Appeal should allow for partial replacement of the members of the Board of Appeal. The decisions of the Board of Appeal ☒ can ☒ ~~may~~ be subject to appeal before the Court of Justice of the European ☒ Union ☒ ~~Communities~~.
- (28) ⇒ The Agency should exercise its decision-making powers in line with the principles of fair, transparent and reasonable decision-making. All procedural rules of the Agency should be laid down in its rules of procedures. ⇐

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↓ 713/2009 recital 20 (adapted)  
⇒ new

- (29) The Agency should be mainly financed from the general budget of the ~~European~~ Union, by fees and by voluntary contributions. In particular, the resources currently pooled by regulatory authorities for their cooperation at ~~Community~~ ☒ Union ☒ level should continue to be available to the Agency. The ~~Community~~ ☒ Union ☒ budgetary procedure should remain applicable as far as any subsidies chargeable to the general budget of the ~~European~~ Union are concerned. Moreover, the auditing of accounts should be undertaken by ⇒ an independent external auditor ⇐ ~~the Court of~~



~~Auditors~~ in accordance with Article ~~94~~ ~~107~~ of ~~the~~ Commission Delegated Regulation (EU) No 1271/2013<sup>38</sup> ~~Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities~~<sup>39</sup>.

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↓ 713/2009 recital 21 (adapted)

- (30) ~~After the establishment of the Agency, its~~ ~~the~~ The Agency's ~~the~~ budget should be assessed by the budgetary authority on an ongoing basis, with reference to the Agency's workload and performance. The budgetary authority should ensure that the best standards of efficiency are met.
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↓ 713/2009 recital 22 (adapted)

- (31) The Agency should have highly professional staff. In particular, it should benefit from the competence and experience of staff seconded by the national regulatory authorities, the Commission and the Member States. The Staff Regulations of Officials of the European Communities ("the Staff Regulations") and the Conditions of employment of other servants of the European Communities ("the Conditions of Employment"), laid down in Regulation (EEC, Euratom, ECSC) No 259/68<sup>40</sup> and the rules adopted jointly by the ~~European Community~~ ~~the~~ Union ~~the~~ institutions for the purpose of applying those regulations should apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, should adopt appropriate implementing rules.
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↓ new

- (32) The regulatory work of the Director and the Board of Regulators pursuant to this Regulation, may be supported by working groups.

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<sup>38</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

<sup>39</sup> OJ L 357, 31.12.2002, p. 72.

<sup>40</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

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↓ 713/2009 recital 23 (adapted)

- (33) The Agency should apply the general rules regarding public access to documents held by ~~Community~~ ☒ Union ☒ bodies. The Administrative Board should establish the practical measures to protect commercially sensitive data and personal data.
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↓ new

- (34) Through the cooperation of national regulators within the Agency it is evident that majority decisions are a key pre-requisite to achieve progress on matters concerning the internal energy market which have significant economic effects in various Member States. National regulators should therefore vote with simple majority within the Board of Regulators.
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↓ 713/2009 recital 24

~~The Agency should be accountable to the European Parliament, the Council and the Commission, where appropriate.~~

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↓ 713/2009 recital 25 (adapted)

- (35) Countries which are not members of the ~~Community~~ ☒ Union ☒ should be able to participate in the work of the Agency in accordance with appropriate agreements to be concluded by the ~~Community~~ ☒ Union ☒ .
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↓ 713/2009 recital 26

~~The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>41</sup>.~~

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↓ 713/2009 recital 27

~~In particular, the Commission should be empowered to adopt the Guidelines necessary in situations in which the Agency becomes competent to decide upon the terms and conditions for access to and operational security of cross-border infrastructure. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~

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<sup>41</sup> OJL 184, 17.7.1999, p. 23.

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↓ 713/2009 recital 28 (adapted)

(36) ~~The Commission should submit to the European Parliament and to the Council by three years after the first director has taken up his duties, and every four years thereafter, a report on the Agency's specific tasks and the results achieved, accompanied by any appropriate proposals. In that report, the Commission should make suggestions on additional tasks for the Agency.~~

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↓ 713/2009 recital 29 (adapted)

(37) Since the objectives of this Regulation, namely the participation and cooperation of national regulatory authorities at ~~Community~~ ☒ Union ☒ level, cannot be sufficiently achieved by the Member States and can therefore be better achieved at ~~Community~~ ☒ Union ☒ level, the ~~Community~~ ☒ Union ☒ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

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↓ new

(38) The Agency's host Member State should provide the best possible conditions to ensure the smooth and efficient functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

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↓ 713/2009 (adapted)

⇒ new

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### ~~ESTABLISHMENT AND LEGAL STATUS~~ ☒ OBJECTIVES AND TASKS ☒

#### *Article 1*

##### ~~Subject matter~~ ☒ Establishment and objectives ☒

1. This Regulation establishes a ~~an~~ ☒ European Union ☒ Agency for the Cooperation of Energy Regulators ("the Agency").
2. The purpose of the Agency shall be to assist the regulatory authorities referred to in Article ~~57~~ ~~35~~ of [the recast Electricity Directive, as proposed by COM(2016) 864/2]

~~Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity<sup>42</sup> and Article 39 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas<sup>43</sup> in exercising, at ~~⊗~~ Union ~~⊗~~ Community level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action.~~

~~3. Until the premises of the Agency are ready, it will be hosted on Commission premises.~~

#### Article 42

### **Type of acts of the Agency**

The Agency shall:

- (a) issue opinions and recommendations addressed to transmission system operators, ~~⇒~~ regional operational centres and nominated electricity market operators ~~⇐~~ ;
- (b) issue opinions and recommendations addressed to regulatory authorities;
- (c) issue opinions and recommendations addressed to the European Parliament, the Council, or the Commission;
- (d) take individual decisions in the specific cases referred to in Articles 6, ~~7~~, 8, and 11 ~~9~~ ~~⊗~~ of this Regulation ~~⊗~~,
- (e) submit to the Commission non-binding framework guidelines ("framework guidelines") in accordance with Article ~~55~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2]<sup>44</sup> ~~of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity<sup>45</sup>~~ and Article 6 of Regulation (EC) No 715/2009 of the European Parliament and of the Council<sup>46</sup> ~~of 13 July on conditions for access to the natural gas transmission networks.~~

## **CHAPTER II**

### **TASKS**

#### Article 53

### **General tasks**

The Agency may, upon a request of the European Parliament, the Council or the Commission, or on its own initiative, provide an opinion or a recommendation to the European Parliament, the Council and the Commission on any of the issues relating to the purpose for which it has been established.

<sup>42</sup> ~~See page 55 of this Official Journal.~~

<sup>43</sup> ~~See page 94 of this Official Journal.~~

<sup>44</sup> ~~See page 15 of this Official Journal.~~

<sup>45</sup> ~~See page 15 of this Official Journal.~~

<sup>46</sup> ~~Regulation (EC) No 715/2009 of the European Parliament and the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).~~

## Article 64

### **Tasks of the Agency as regards the cooperation of transmission system operators**

1. The Agency shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure of the ENTSO for Electricity in accordance with Article 26 ~~5~~(2) of [OP: recast Electricity Regulation as proposed by COM(2016) 861/2] and on those of the ENTSO for Gas in accordance with Article 5(2) of Regulation (EC) No 715/2009.
2. The Agency shall monitor the execution of the tasks of the ENTSO for Electricity in accordance with Article 29 ~~9~~ of [OP: recast Electricity Regulation as proposed by COM(2016) 861/2] and of the ENTSO for Gas in accordance with Article 9 of Regulation (EC) No 715/2009.
3. The Agency ~~shall~~  ~~⇒~~  may  ~~⇐~~ provide an opinion:
  - (a) to the ENTSO for Electricity in accordance with Article ~~8(2)~~ 27(1)(a) of [recast Electricity Regulation as proposed by COM(2016) 861/2] and to the ENTSO for Gas in accordance with Article 8(2) of Regulation (EC) No 715/2009 on the network codes; and
  - (b) to the ENTSO for Electricity in accordance with ~~the first subparagraph of~~ Article 27(1) ~~9(2)~~ ~~(b) and (h)~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2], and to the ENTSO for Gas in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No 715/2009 on the draft annual work programme,  on  the draft ~~Community~~  Union  -wide network development plan and other relevant documents referred to in Article 27(1) ~~8(3)~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] and Article 8(3) of Regulation (EC) No 715/2009, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal markets in electricity and natural gas.
4. The Agency shall, based on matters of fact, provide a duly reasoned opinion as well as recommendations to the ENTSO for Electricity, the ENTSO for Gas, the European Parliament, the Council and the Commission, where it considers that the draft annual work programme or the draft ~~Community~~  Union  -wide network development plan submitted to it in accordance with ~~the second subparagraph of~~ Article 27(1) ~~9(2)~~ ~~(b) and (h)~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] and the second subparagraph of Article 9(2) of Regulation (EC) No 715/2009 do not contribute to non-discrimination, effective competition and the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access, or do not comply with the relevant provisions of [OP: recast Electricity Regulation as proposed by COM(2016) 861/2 and recast Electricity Directive as proposed by COM(2016) 864/2] or Directive 2009/73/EC and Regulation (EC) No 715/2009.

## Article 5

### **Tasks of the Agency as regards the development and implementation of network codes and guidelines**

1. The Agency shall participate in the development of network codes in accordance with Article 55 ~~6~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] and Article 6 of Regulation (EC) No 715/2009.  It shall in particular:

- (a) ~~The Agency shall~~ submit a non-binding framework ~~guideline~~ ☒ guidelines ☒ to the Commission where ☒ it is ☒ requested to do so under Article ~~6(2)~~55(3) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6(2) of Regulation (EC) No 715/2009. The Agency shall review the non-binding framework guideline and re-submit it to the Commission where requested to do so under Article ~~6(4)~~ 55(6) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6(4) of Regulation (EC) No 715/2009~~;~~;
- (b) ~~The Agency shall~~ provide a reasoned opinion to ~~the ENTSO for Electricity or the ENTSO for Gas~~ on the network code in accordance with ~~Article 6(7) of [Regulation (EC) No 714/2009] or~~ Article 6(7) of Regulation (EC) No 715/2009~~;~~;
- (c) ~~The Agency shall~~ submit the ⇨ revised ⇩ network code to the Commission ~~and may recommend that it be adopted~~ in accordance with Article ~~6(9)~~ 55(10) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or ☒ pursuant to ☒ Article 6(9) of Regulation (EC) No 715/2009. The Agency shall prepare and submit a draft network code to the Commission where ☒ it is ☒ requested to do so under Article ~~55(11)~~6(10) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6(10) of Regulation (EC) No 715/2009~~;~~;
- (d) ~~5. The Agency shall~~ provide a duly reasoned opinion to the Commission, in accordance with Article ~~55(13)~~9(1) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 9(1) of Regulation (EC) No 715/2009, where the ENTSO for Electricity or the ENTSO for Gas has failed to implement a network code elaborated under Article ~~27(1)(a)~~ 8(2) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 8(2) of Regulation (EC) No 715/2009 or a network code which has been established in accordance with Article ~~55(2)~~6(1) to (10) of ~~those Regulations~~ [recast Electricity Regulation as proposed by COM(2016) 861/2] and Article 6(1) to 10 of Regulation (EC) No 715/2009 but which has not been adopted by the Commission under Article 55(12) [recast Electricity Regulation as proposed by COM(2016) 861/2] and under Article 6 of (11) of ~~those Regulations~~ Regulation (EC) No 715/2009.
- (e) ~~6. The Agency shall~~ monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission in accordance with Article ~~55(12)~~ 6(11) of [recast Electricity Regulation as proposed by COM(2016) 861/2] and in Article 6(11) of Regulation (EC) No 715/2009, and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.

↓ new

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. 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.

3. In the context of the bidding zone review, the Agency shall approve and may request amendments to the methodology and assumptions that will be used in the bidding zone review process pursuant to Article 13 paragraph 3 of [recast Electricity Regulation as proposed by COM(2016) 861/2].

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↓ 713/2009 (adapted)

~~7. The Agency shall monitor progress as regards the implementation of projects to create new interconnector capacity.~~

~~8. The Agency shall monitor the implementation of the Community-wide network development plans. If it identifies inconsistencies between such a plan and its implementation, it shall investigate the reasons for those inconsistencies and make recommendations to the transmission system operators, national regulatory authorities or other competent bodies concerned with a view to implementing the investments in accordance with the Community-wide network development plans.~~

4. ~~9.~~ The Agency shall monitor the regional cooperation of transmission system operators referred to in Article ~~3112~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] and Article 12 of Regulation (EC) No 715/2009, and take ~~⊗~~ into ~~⊗~~ ~~due~~ account ~~of~~ the outcome of that cooperation when formulating its opinions, recommendations and decisions.

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↓ 713/2009 (adapted)

⇒ new

#### Article ~~67~~

##### Tasks ~~⊗~~ of the Agency ~~⊗~~ as regards the national regulatory authorities

1. The Agency shall adopt individual decisions on technical issues where those decisions are provided for in [OP: recast Electricity Directive as proposed by COM(2016) 864/2], Directive 2009/73/EC, [OP: recast Electricity Regulation as proposed by COM(2016) 861/2] or Regulation (EC) No 715/2009.
2. The Agency may, in accordance with its work programme, ~~or~~ at the request of the Commission ~~⇒~~ or at its own initiative ~~⇐~~, make recommendations to assist regulatory authorities and market players in sharing good practices.
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 ~~Community~~ ~~⊗~~ 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 ~~due~~ ~~⊗~~ into ~~⊗~~ account ~~of~~ 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.

4. The Agency shall provide an  factual  opinion, ~~based on matters of fact~~, at the request of a regulatory authority or of the Commission, on whether a decision taken by a regulatory authority complies with the ~~g~~Guidelines referred to in [recast Electricity Directive as proposed by COM(2016) 864/2], Directive 2009/73/EC, [recast Electricity Regulation as proposed by COM(2016) 861/2] or Regulation (EC) No 715/2009 or with other relevant provisions of those Directives or Regulations.
5. Where a national regulatory authority does not comply with the opinion of the Agency ~~as~~ referred to in paragraph 4 within four months from the day of receipt, the Agency shall inform the Commission and the Member State concerned accordingly.
6. When a national regulatory authority encounters, in a specific case, difficulties with the application of  the  ~~g~~Guidelines referred to in [recast Electricity Directive as proposed by COM(2016) 864/2], Directive 2009/73/EC, [recast Electricity Regulation as proposed by COM(2016) 861/2] or Regulation (EC) No 715/2009, it may request the Agency for an opinion. The Agency shall deliver its opinion, after consulting the Commission, within three months of receiving such request.
7. The Agency shall decide on the terms and conditions for access to and operational security of electricity and gas infrastructure connecting or that might connect at least two Member States ("cross-border infrastructure"), in accordance with paragraph 8 and following Article 8.

#### ~~Article 8~~

#### ~~Tasks as regards terms and conditions for access to and operational security of cross-border infrastructure~~

8. ~~1.~~ ~~For~~  As regards   regulatory issues with  cross-border  relevance  infrastructure, the Agency shall decide upon those regulatory issues that fall within the competence of national regulatory authorities, which may include the terms and conditions  for access and operational security, or methodologies with relevance  for  cross-border trade or  access and operational security,  or other regulatory issues with cross-border relevance  ~~only~~:
  - (a) where the competent national regulatory authorities have not been able to reach an agreement within a period of six months ~~from when~~  after referral  of the case was referred to the last of those regulatory authorities; or
  - (b) upon a joint request from the competent national regulatory authorities.

The competent national regulatory authorities may jointly request that the period referred to in point (a) ~~is~~  be  extended by a period of up to six months.

When preparing its decision, the Agency shall consult the national regulatory authorities and the transmission system operators concerned and shall be informed of the proposals and observations of all the transmission system operators concerned.

- ~~2. The terms and conditions for access to cross border infrastructure shall include:~~
  - ~~(a) a procedure for capacity allocation;~~



~~(b) a time frame for allocation;~~

~~(c) shared congestion revenues; and~~

~~(d) the levying of charges on the users of the infrastructure referred to in Article 17(1)(d) of Regulation (EC) No 714/2009 or Article 36(1)(d) of Directive 2009/73/EC.~~

9. ~~2.~~ Where a case has been referred to the Agency under paragraph ~~8~~ 1, the Agency:
- (a) shall ~~provide its~~  issue a  decision within a period of ~~6~~  six  months from the day of referral; and
  - (b) may, if necessary, provide an interim decision to ensure that security of supply or operational security of the infrastructure in question is protected.

~~4. The Commission may adopt Guidelines on the situations in which the Agency becomes competent to decide upon the terms and conditions for access to and operational security of cross border infrastructure. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(2) of this Regulation.~~

10. ~~5.~~ Where the regulatory issues referred to in paragraph ~~8~~ 1 include exemptions within the meaning of Article ~~59~~ 17 of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 36 of Directive 2009/73/EC, the deadlines provided for in this Regulation shall not be  cumulative  ~~cumulated~~ with the deadlines provided for in those provisions.

↓ new

## Article 7

### Coordination of regional tasks within the Agency

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 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.
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.
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.

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.
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.

#### *Article 8*

##### **Tasks of the Agency as regards regional operational centres**

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].
2. To carry out the tasks referred to in paragraph 1 in an efficient and expeditious manner, the Agency shall in particular:
  - (a) decide on the configuration of system operation regions pursuant to Article 33(1) of [recast Electricity Regulation as proposed by COM(2016) 861/2]
  - (b) request information from regional operational centres where appropriate pursuant to Article 43 of [recast Electricity Regulation as proposed by COM(2016) 861/2];
  - (c) issue opinions and recommendations to the European Commission, the Council and the European Parliament;
  - (d) issue opinions and recommendations to regional operational centres.

#### *Article 9*

##### **Tasks of the Agency as regards Nominated Electricity Market Operators**

In order to ensure that Nominated Electricity Market Operators carry out their functions under the [recast Electricity Regulation as proposed by COM(2016) 861/2] and Commission Regulation 1222/2015 of 24 July 2015<sup>47</sup>, the Agency shall:

- (a) monitor the Nominated Electricity Market Operators' progress in establishing the functions under Regulation 1222/2015;
- (b) issue recommendations to the Commission in accordance with Article 7(5) of Regulation 1222/2015
- (c) request information from Nominated Electricity Market Operators where appropriate.

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<sup>47</sup> Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197, 25.7.2015, p. 24–72

## Article 10

### Tasks of the Agency as regards generation adequacy and risk preparedness

1. The Agency shall approve and amend where necessary
  - (a) the proposals for methodologies and calculations related to the European resource adequacy assessment pursuant to Article 19(2), (3) and (5) of [recast Electricity Regulation as proposed by COM(2016) 861/2].
  - (b) the proposals for technical specifications for cross-border participation in capacity mechanisms pursuant to Article 21(10) of [recast Electricity Regulation as proposed by COM(2016) 861/2].
2. The Agency shall approve and amend where necessary the methodologies
  - (a) for identifying electricity crisis scenarios at a regional level as described in Article 5 of [Risk Preparedness Regulation as proposed by COM(2016) 862];
  - (b) for short-term adequacy assessments as described in Article 8 of [Risk Preparedness Regulation as proposed by COM(2016) 862].

↓ 713/2009 (adapted)

## Article 11

### ~~Other tasks~~ ☒ Tasks of the Agency as regards exemption and certification decisions ☒

~~1.~~ The Agency may decide on exemptions, as provided for in Article ~~59~~<sup>47</sup>(5) of [recast Electricity Regulation as proposed by COM(2016) 861/2]. The Agency may also decide on exemptions as provided for in Article 36(4) of Directive 2009/73/EC where the infrastructure concerned is located in the territory of more than one Member State.

~~2. The Agency shall provide an opinion, upon request by the Commission in accordance with the second subparagraph of Article 3(1) of Regulation (EC) No 714/2009 or the second subparagraph of Article 3(1) of Regulation (EC) No 715/2009, on decisions of national regulatory authorities on certification.~~

↓ 713/2009 (adapted)

⇒ new

## Article 12

### ☒ Tasks of the Agency as regards infrastructure ☒

⇒ With respect to trans-European energy infrastructure, the Agency, in close cooperation with the regulatory authorities and the ENTSOs, shall: ⇐

- (a) ~~7. The Agency shall~~ monitor progress as regards the implementation of projects to create new interconnector capacity~~;~~ <sub>;</sub>
- (b) ~~8. The Agency shall~~ monitor the implementation of the ~~Community~~ ☒ Union ☒ - wide network-development plans. If it identifies inconsistencies between ~~such a~~ ☒ those ☒ plans and ~~its~~ ☒ their ☒ implementation, it shall investigate the reasons for those inconsistencies and make recommendations to the transmission

system operators, national regulatory authorities or other competent bodies concerned with a view to implementing the investments in accordance with the ~~Community~~  Union  -wide network-development plans.

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↓ new

- (c) carry out the obligations laid out in Article 5, 11, 12 and 13 of Regulation (EU) No 347/2013.

### *Article 13*

#### **Tasks of the Agency as regards wholesale market integrity and transparency**

In order to effectively monitor wholesale market integrity and transparency, the Agency, in close cooperation with the regulatory authorities and other national authorities, shall

- (a) monitor wholesale markets, collect data and register market participants in accordance with Article 7 to 9 of Regulation (EU) 1227/2011<sup>48</sup>;
- (b) issue recommendations to the Commission in accordance with Article 7 of Regulation (EU) 1227/2011;
- (c) carry out investigations pursuant to Article 16(4) of Regulation (EU) 1227/2011.
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↓ 713/2009 (adapted)  
⇒ new

### *Article 14 ~~9~~*

#### **Commissioning of new tasks to the Agency**

The Agency may, in circumstances clearly defined by the Commission in Guidelines adopted pursuant to Article ~~57~~ ~~48~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 23 of Regulation (EC) No 715/2009 and on issues related to the purpose for which it has been established, be commissioned with additional tasks  respecting the limits of transfer of executive powers to Union agencies  ~~which do not involve decision-making powers~~.

### *Article 15 ~~10~~*

#### **Consultations and transparency**

1. In carrying out its tasks, in particular in the process of developing framework guidelines in accordance with Article ~~55~~ ~~6~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6 of Regulation (EC) No 715/2009, and in the process of proposing amendments of network codes under  Article 56 of [recast Electricity Regulation as proposed by COM(2016) 861/2] or  Article 7 of  Regulation (EC) No 715/2009  ~~either of those Regulations~~, the Agency shall

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<sup>48</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency OJ L 326, 8.12.2011, p. 1–16.

consult extensively and at an early stage with market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner, in particular when its tasks concern transmission system operators.

2. The Agency shall ensure that the public and any interested parties are, where appropriate, given objective, reliable and easily accessible information, in particular with regard to the results of its work.

All documents and minutes of consultation meetings conducted during the development of framework guidelines in accordance with Article ~~556~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6 of Regulation (EC) No 715/2009, or during the amendment of network codes  referred to in paragraph 1  ~~under Article 7 of either of those Regulations~~ shall be made public.

3. Before adopting framework guidelines ~~in accordance with Article 556 of Regulation (EC) No 714/2009 or Article 6 of Regulation (EC) No 715/2009~~, or proposing amendments to network codes  as referred to in paragraph 1  ~~under Article 7 of either of those Regulations~~, the Agency shall indicate how the observations received during the consultation have been taken into account and shall provide reasons where those observations have not been followed.
4. The Agency shall make public, on its own website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board, of the Board of Regulators and of the Board of Appeal.

#### Article ~~16~~ ~~11~~

##### **Monitoring and reporting on the electricity and natural gas sectors**

1. The Agency, in close cooperation with the Commission, the Member States and the relevant national authorities including the national regulatory authorities and without prejudice to the competences of competition authorities, shall monitor the  wholesale and retail  ~~internal~~ markets in electricity and natural gas,  compliance with the consumer rights laid down in [recast Electricity Directive as proposed by COM(2016) 864/2] and Directive 2009/73/EC,  access to the networks including access of electricity produced from renewable energy sources,  potential barriers to cross-border trade, state interventions preventing prices from reflecting actual scarcity, the performance of the Member States in the area of electricity security of supply based on the results of the European resource adequacy assessment as referred to in Article 19 of [recast Electricity Regulation], in particular taking into account the ex-post evaluation referred to in Article 16 of [Risk Preparedness Regulation as proposed by COM(2016) 862]  ~~and compliance with the consumer rights laid down in [recast Electricity Directive] and Directive 2009/73/EC.~~
2. The Agency shall ~~make public~~  publish annually a  ~~an annual~~ report on the results of the monitoring  referred to  ~~provided for~~ in paragraph 1. In that report, it shall identify any barriers to the completion of the internal markets in electricity and natural gas.
3. When  publishing  ~~making public~~ its annual report, the Agency may submit to the European Parliament and to the Commission an opinion on the  possible  measures ~~that could be taken~~ to remove the barriers referred to in paragraph 2.

## CHAPTER ~~III~~ II

### ORGANISATION ~~OF~~ OF THE AGENCY ~~OF~~

#### Article ~~17~~ 2

##### Legal status

1. The Agency shall be a ~~Community~~ ~~of~~ Union ~~of~~ body with legal personality.
2. In each Member State, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under national law. It shall, in particular, be able to acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be represented by its Director.

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↓ new

4. The seat of the Agency shall be Ljubljana, Slovenia.

The Agency may establish local offices in the Member States, subject to their consent and in accordance with Article 25(j).

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↓ 713/2009 (adapted)  
⇒ new

#### Article ~~18~~ 3

##### ~~Composition~~ ~~of~~ Administrative and Management Structure ~~of~~

The Agency shall ~~comprise~~ ~~be~~ composed of ~~the~~ :

- (a) an Administrative Board, which shall exercise the tasks set out in Article ~~13~~ 20;
- (b) a Board of Regulators, which shall exercise the tasks set out in Article ~~23~~ 15;
- (c) a Director, who shall exercise the tasks set out in Article ~~25~~ 17; and
- (d) a Board of Appeal, which shall exercise the tasks set out in Article ~~29~~ 19.

#### Article ~~19~~ 12

##### ~~of~~ Composition of the ~~of~~ Administrative Board

1. The Administrative Board shall ~~be~~ composed of ~~nine~~ ~~comprise~~ nine members. Each member shall have an alternate. Two members and their alternates shall be

appointed by the Commission, two members and their alternates shall be appointed by the European Parliament and five members and their alternates shall be appointed by the Council. No Member of the European Parliament shall be a member of the Administrative Board.

2. The term of office of the members of the Administrative Board and their alternates shall be four years, renewable once. For the first mandate, the term of office of half of the members of the Administrative Board and their alternates shall be six years.
3. ~~2.~~ The Administrative Board shall ~~appoint~~ ⇒ elect by a two-thirds majority ⇐ its Chairman and its Vice-Chairman from among its members. The Vice-Chairman shall automatically replace the Chairman if the latter is not in a position to perform his duties. The term of office of the Chairman and of the Vice-Chairman shall be two years, renewable once. The term of office of the Chairman and that of the Vice-Chairman shall expire when they cease to be members of the Administrative Board.
4. ~~3.~~ The meetings of the Administrative Board shall be convened by its Chairman. The Chairman of the Board of Regulators or the nominee of the Board of Regulators, and the Director shall participate, without the right to vote, in the deliberations unless the Administrative Board decides otherwise as regards the Director. The Administrative Board shall meet at least twice a year in ordinary session. It shall also meet at the initiative of its Chairman, at the request of the Commission or at the request of at least a third of its members. The Administrative Board may invite any person who may have a relevant opinion to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to its rules of procedure, be assisted by advisers or experts. The Administrative Board's secretarial services shall be provided by the Agency.
5. ~~4.~~ Decisions of the Administrative Board shall be adopted on the basis of a ⇐ simple ⇐ ~~two-thirds~~ majority of the members present, unless provided otherwise in this Regulation. Each member of the Administrative Board or alternate shall have one vote.
6. ~~5.~~ The rules of procedure shall set out in greater detail:
  - (a) the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums; and
  - (b) the arrangements governing the rotation applicable to the renewal of the members of the Administrative Board who are appointed by the Council so as to ensure a balanced participation of Member States over time.
7. ~~6.~~ A member of the Administrative Board shall not be a member of the Board of Regulators.
8. ~~7.~~ 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.

~~Tasks~~  **Functions**  **of the Administrative Board**

~~1.~~ ~~The Administrative Board shall:~~

- (a) after having consulted the Board of Regulators and obtained its favourable opinion in accordance with Article ~~23~~~~15~~(b), appoint the Director in accordance with Article ~~24~~(2)~~16~~(2)  and where relevant extend their term of office or remove them from office.
- (b) ~~2. The Administrative Board shall~~ formally appoint the members of the Board of Regulators in accordance with Article ~~22~~~~14~~(1).
- (c) ~~3. The Administrative Board shall~~ formally appoint the members of the Board of Appeal in accordance with Article ~~26~~(2)~~18~~(1)  and ~~(2)~~.
- (d) ~~4. The Administrative Board shall~~ ensure that the Agency carries out its mission and performs the tasks assigned to it in accordance with this Regulation.
- (e) ~~5. The Administrative Board shall~~ adopt, before ~~30 September~~ each year  the draft programming document referred to in Article 21 before its submission to the Commission for its opinion, and shall,  ~~after consulting~~  following the opinion of  the Commission and after having received approval by the Board of Regulators in accordance with Article 23(5)(c)~~15~~(3),  adopt  the ~~work programme~~  programming document  of the Agency ~~for the coming year~~  by a two thirds majority its members  and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.
- ~~6. The Administrative Board shall adopt and, if necessary, revise a multi-annual programme. That revision shall be based on an evaluation report, made by an independent external expert at the request of the Administrative Board. Those documents shall be made public.~~
- (f) ~~7. The Administrative Board shall~~  adopt by a two thirds majority, the annual budget of the Agency and  exercise its  other  budgetary ~~powers~~  functions  in accordance with Articles ~~31 to 35~~ ~~21 to 24~~.
- (g) ~~8. The Administrative Board shall~~ decide, after having obtained the agreement of the Commission, whether to accept any legacies, donations or grants from other  Union  Community sources or any voluntary contribution from the Member States or from the regulatory authorities. The opinion  of  ~~that~~ the Administrative Board ~~shall deliver~~  delivered  pursuant to Article ~~35~~~~24~~(5) shall address the sources of funding set out in this paragraph.
- (h) ~~9. The Administrative Board,~~ in consultation with the Board of Regulators, ~~shall~~ 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.
- (i) ~~10. The Administrative Board shall, where necessary,~~ draw up the Agency's implementing rules for giving effect to the Staff Regulations  and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations  pursuant to Article ~~39~~~~28~~(2).



- (j) ~~11. The Administrative Board shall~~ adopt practical measures regarding the right of access to the documents of the Agency, in accordance with Article ~~41~~<sup>30</sup>.
- (k) ~~12. The Administrative Board shall~~ adopt and publish the annual report on the activities of the Agency, on the basis of the draft annual report referred to in Article 25(h), and shall transmit that report to the European Parliament, the Council, the Commission , and  the Court of Auditors, ~~the European Economic and Social Committee and the Committee of the Regions~~ by ~~15 June~~  1 July  of each year. The annual report on the activities of the Agency shall contain an independent section, approved by the Board of Regulators, concerning the regulatory activities of the Agency during ~~the~~  that  year ~~considered~~.
- (l) ~~13. The Administrative Board shall~~ adopt and publish its own rules of procedure.

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↓ new

- (m) adopt the financial rules applicable to the Agency in accordance with Article 36;
- (n) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (o) adopt rules for the prevention and management of conflicts of interest in respect of its members as well as members of the Board of Appeal;
- (p) adopt and regularly update the communication and dissemination plans referred to in Article 41;
- (q) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of other servants, who shall be totally independent in the performance of their duties;
- (r) ensure appropriate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-Fraud Office ("OLAF");
- (s) authorise the conclusion of working arrangements in accordance with Article 43.
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.
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.

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↓ new

#### Article 21

### Annual and multi-annual programming

1. Each year, the Administrative Board shall adopt a programming document containing multi-annual and annual programming, based on a draft put forward by the Director, taking into account the opinion of the Commission and in relation to multiannual programming after consulting the European Parliament. It shall forward it to the European Parliament, the Council and the Commission no later than 31 January each year.

The programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. Annual and multi-annual programming shall include the strategy for relations with third countries or international organisations referred to in Article 43 and the actions linked to that strategy.

3. The Administrative Board shall amend the adopted annual work programme when a new task is given to the Agency.

Any substantial amendment to the annual work programme shall be adopted by the same procedure set out for the initial annual work programme. The Administrative Board may delegate the power to make non-substantial amendments to the annual work programme to the Director.

4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 45.

↓ 713/2009 (adapted)  
⇒ new

#### Article 22 ~~14~~

#### ⊗ Composition of the ⊗ Board of Regulators

1. The Board of Regulators shall ~~comprise~~ ⊗ be composed of ⊗ :
- (a) senior representatives of the regulatory authorities, in accordance with Article 56(1) of [Recast Electricity Directive] and Article 39(1) of Directive 2009/73/EC, and one alternate per Member State from the current senior staff of those authorities ⇒, both nominated by the national regulatory authority ⇐ ;
  - (b) one non-voting representative of the Commission.

Only one representative per Member State from the national regulatory authority may be admitted to the Board of Regulators.

Each national regulatory authority shall be responsible for nominating the alternate ~~to~~ member ~~to~~ from current staff of the national regulatory authority.

2. The Board of Regulators shall elect a Chairman and a Vice-Chairman from among its members. The Vice-Chairman shall replace the Chairman if the latter is not in a position to perform his duties. The term of office of the Chairman and of the Vice-Chairman shall be two-and-a-half years and shall be renewable. In any event, however, the term of office of the Chairman and that of the Vice-Chairman shall expire when they cease to be members of the Board of Regulators.

### Article 23

#### ~~to~~ **Functions of the Board of Regulators** ~~to~~

1. ~~to~~ The Board of Regulators ~~to~~ and sub-committees pursuant to Article 7~~to~~ shall act by a ~~two-thirds~~ ~~to~~ simple ~~to~~ majority of the members present, ~~to~~ 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 ~~to~~.
2. ~~to~~ The Board of Regulators shall adopt and publish its ~~to~~ rules of procedure, which shall set out in greater detail the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums. The rules of procedure may provide for specific working methods for the consideration of issues arising in the context of regional cooperation initiatives.
3. ~~to~~ When carrying out the tasks conferred upon it by this Regulation and without prejudice to its members acting on behalf of their respective regulatory authority, the Board of Regulators shall act independently and shall not seek or follow instructions from any government of a Member State, from the Commission, or from another public or private entity.
4. ~~to~~ The secretarial services of the Board of Regulators shall be provided by the Agency

### ~~Article 15~~

#### ~~Tasks of the Board of Regulators~~

5. ~~to~~ The Board of Regulators shall:
  - (a) provide opinions to the Director on the opinions, recommendations and decisions referred to in Articles 4 to 14, ~~6, 7, 8 and 9 that~~ ~~to~~ which ~~to~~ are considered for adoption. In addition, the Board of Regulators, within its field of competence, shall provide guidance to the Director in the execution of his tasks, ~~to~~ with the exception of decisions pursuant to Article 16(6) of Regulation 1227/2001<sup>49</sup>.~~to~~
  - (b) ~~to~~ The Board of Regulators shall deliver an opinion to the Administrative Board on the candidate to be appointed as Director in accordance with Article ~~2013~~(1)(a) and

<sup>49</sup> Regulation (EU) 1227/2011 of the European Parliament and of the Council of 25 October on wholesale energy market integrity and transparency, OJ L 326, 8.12.2011, p. 1.

Article ~~24~~<sup>16</sup>(2). ~~The Board of Regulators shall reach that decision on the basis of a three-quarters majority of its members.~~

- (c) ~~3. The Board of Regulators shall,~~ in accordance with Article ~~20(1)(e)~~<sup>13(5)</sup> and Article ~~25(f)~~<sup>17(6)</sup> and in line with the preliminary draft budget established in accordance with Article ~~33(3)~~<sup>23</sup>(1), approve the work programme of the Agency for the coming year and present it by 1 September of each year for adoption by the Administrative Board.
- (d) ~~4. The Board of Regulators shall~~ approve the independent section on regulatory activities of the annual report, in accordance with Article ~~20(1)(k)~~<sup>13(12)</sup> and Article ~~25~~<sup>17</sup>(g).
6. ~~5.~~ The European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by the members of that committee.

#### Article ~~24~~<sup>16</sup>

##### Director

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)~~<sup>15</sup>(1) 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 ~~Commission~~ <sup>⇒ Union institutions ⇐</sup>, or from any other public or private entity <sup>⇒</sup> 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 ⇐.
2. The Director shall be appointed by the Administrative Board following a favourable opinion of the Board of Regulators, on the basis of merit as well as skills and experience relevant to the energy sector, from a list of at least three candidates proposed by the Commission, following <sup>⇒ an open and transparent selection procedure ⇐</sup> ~~a public call for expression of interest~~. Before appointment, the candidate selected by the Administrative Board may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members. <sup>⇒</sup> For the purpose of concluding the contract with the Director, the Agency shall be represented by the Chairman of the Administrative Board ⇐.
3. The Director's term of office shall be five years. In the course of the nine months preceding the end of that period, the Commission shall undertake an assessment. In the assessment, the Commission shall examine in particular:
  - (a) the performance of the Director;
  - (b) the Agency's duties and requirements in the ~~the~~ <sup>the</sup> following ~~the~~ <sup>the</sup> coming years.

~~The assessment referred to in concerning point (b) shall be carried out with the assistance of an independent external expert.~~
4. The Administrative Board, acting on a proposal from the Commission, after having consulted and given the utmost consideration to the assessment and the opinion of the Board of Regulators on that assessment and only in those cases where it can be justified by the duties and requirements of the Agency, may extend once the term of

office of the Director by no more than ~~three~~ ⇒ five ⇐ years. ⇒ A Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the extended period. ⇐

5. The Administrative Board shall inform the European Parliament of its intention to extend the Director's term of office. Within one month before the extension of his term of office, the Director may be invited to make a statement before the competent committee of the Parliament and to answer questions put by the members of that committee.
6. If his term of office is not extended, the Director shall remain in office until the appointment of his successor.
7. The Director may be removed from office only upon a decision of the Administrative Board, after having obtained a favourable opinion of the Board of Regulators. The Administrative Board shall reach that decision on the basis of a ~~three-quarters~~ ⇒ two-thirds ⇐ majority of its members.
8. The European Parliament and the Council may call upon the Director to submit a report on the performance of his duties. The European Parliament may also invite the Director to make a statement before its competent committee and answer questions put by the members of that committee.

#### Article ~~25~~ 17

#### Tasks of the Director

⊗ The Director shall: ⊗

- (a) ~~1. The Director shall be responsible for representing~~ ⊗ be the legal representative of ⊗ the Agency and shall be in charge of its ⊗ day-to-day ⊗ management.
- (b) ~~2. The Director shall~~ prepare the work of the Administrative Board. He shall participate, without having the right to vote, in the work of the Administrative Board. ⇒ The Director shall be responsible for implementing the decisions adopted by the Administrative Board; ⇐
- (c) ~~3. The Director shall~~ ⇒ draft ⇐, adopt and publish ~~the~~ opinions, recommendations and decisions. ⊗ Opinions, recommendations and decisions ⊗ referred to in Articles 3 to 11 and 14 ~~5, 6, 7, 8 and 9~~, ⇒ shall only be adopted if they ⇐ ~~that~~ have received a favourable opinion of the Board of Regulators.;
- (d) ~~4. The Director shall~~ be responsible for implementing the annual work programme of the Agency under the guidance of the Board of Regulators and under the administrative control of the Administrative Board.;
- (e) ~~5. The Director shall~~ take the necessary measures, ⊗ in particular ⊗ notably as regards adopting internal administrative instructions and publishing notices, to ensure the functioning of the Agency in accordance with this Regulation.;
- (f) ~~6. Each year the Director shall~~ prepare a draft work programme of the Agency for the following year, and shall ⇒, after the adoption of the draft by the Administrative Board ⇐ submit it to the Board of Regulators, to the European Parliament and to the Commission by 30 June of that ⇒ 31 January ⇐ ⊗ every ⊗ year. ⇒ The Director shall be responsible for implementing the programming document and reporting to the Administrative Board of its implementation; ⇐

- (g) ~~7. The Director shall~~ draw up a preliminary draft budget of the Agency pursuant to Article ~~3323~~(1) and shall implement the budget of the Agency  in accordance with  pursuant to Article 34 and ~~3524~~;
- (h) ~~8. Each year the Director shall~~ prepare  each year   and submit to the Administrative Board  a draft annual report  including  ~~with~~ an independent section on the regulatory activities of the Agency and a section on financial and administrative matters;
- (i) ~~9. With~~ regard to the staff of the Agency, ~~the Director shall~~ exercise the powers provided for in Article ~~3928~~(3);

new

- (j) prepare an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-fraud Office (OLAF) and reporting on progress twice a year to the Commission and regularly to the Administrative Board;
- (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.

713/2009 (adapted)

Article ~~26~~ ~~18~~

Creation and composition of the  Board of Appeal

new

1. The Agency shall establish a Board of Appeal.

713/2009 (adapted)

new

~~2.~~ ~~1.~~ The Board of Appeal shall ~~comprise~~  be composed of  six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or ~~Community~~  Union  institutions with relevant experience in the energy sector. The Board of Appeal shall designate its Chairman. ~~The decisions of the Board of Appeal shall be~~

~~adopted on the basis of a qualified majority of at least four of its six members. The Board of Appeal shall be convened when necessary.~~

~~2.~~ The members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after  consulting  ~~consultation of~~ the Board of Regulators.

3. ~~6.~~  The Board of Appeal shall adopt and publish its rules of procedure.   
 Those rules shall set out in detail the arrangements governing the organisation and functioning of the Board of Appeal and the rules of procedures applicable to appeals before the Board, pursuant to this Article. The Board of Appeal shall submit to the Commission its draft rules of procedure. The Commission shall deliver an opinion on the draft rules of procedure within three months from the date of receipt of the rules. The Board of Appeal shall adopt and publish its rules of procedure within two months after receipt of the Commission's opinion. Any subsequent substantial changes to the rules of procedure shall be notified to the Commission. The Commission shall subsequently deliver an opinion on those changes.

The budget of the Agency shall comprise a separate budget line for the financing of the functioning of the registry for the Board of Appeal.

4.  The decisions of the Board of Appeal shall be adopted on the basis of a qualified majority of at least four of its six members. The Board of Appeal shall be convened when necessary .

#### Article 27

##### **Members of the Board of Appeal**

1. ~~3.~~ The term of office of the members of the Board of Appeal shall be five years. That term shall be renewable  once .
2. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in the Agency, in its Administrative Board or in its Board of Regulators  or in any of its Working Groups.  A member of the Board of Appeal shall not be removed during his term of office, unless he has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to that effect.

#### Article 28

##### **Exclusion and objection in the Board of Appeal**

1. ~~4.~~ Members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
2. ~~5.~~ A member of the Board of Appeal shall inform the Board in the event that ~~he~~, for one of the reasons referred to in paragraph 1 or for any other reason, ~~considers~~  they consider  that a fellow member should not take part in any appeal proceedings. Any party to the appeal proceedings may object to the participation of a

member of the Board of Appeal on any of the grounds referred to in paragraph 4, or ~~if~~ in case of ~~if~~ suspected ~~of~~ bias. Such an objection shall be inadmissible if it is based on the nationality of a member or if, while being aware of a reason for objecting, the objecting party to the appeal proceedings has taken a procedural step in the appeal proceedings other than objecting to the composition of the Board of Appeal.

3. ~~6.~~ The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs ~~1 and 24~~ without the participation of the member concerned. For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. If the alternate ~~is~~ ~~if~~ finds himself ~~in~~ a similar situation to that of the member, the Chairman shall designate a replacement from among the available alternates.
4. ~~7.~~ The members of the Board of Appeal shall undertake to act independently and in the public interest. For that purpose, they 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 their independence or any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be made public annually.

↓ 713/2009 (adapted)  
⇒ new

#### Article ~~29~~ ~~19~~

#### ~~Appeals~~ ~~if~~ Decisions subject to appeal ~~if~~

1. Any natural or legal person, including national regulatory authorities, may appeal against a decision referred to in Articles 4 to 14 ~~7, 8 or 9~~ ~~⇒~~ of this Regulation and in Article 12(6) of Regulation (EU) No 347/2013 of the European Parliament and of the Council as well as in Article 9(11) of Commission Regulation (EU) 2015/1222 ~~⇐~~ which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.
2. The appeal, ~~together with~~ ~~if~~ including ~~if~~ the statement of ~~if~~ the ~~if~~ grounds ~~if~~ for appeal ~~if~~, shall be filed in writing at the Agency within two months ~~of~~ ~~if~~ from ~~if~~ the ~~day of~~ notification of the decision to the person concerned, or, in the absence thereof, within two months ~~if~~ from ~~if~~ ~~of~~ the day on which the Agency published its decision. The Board of Appeal shall decide upon the appeal within ~~two~~ ~~⇒~~ four ~~⇐~~ months of the lodging of the appeal.
3. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.
4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties as often as necessary to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentations.



5. The Board of Appeal may, ~~in accordance with this Article~~, 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.
6. 7. The decisions taken by the Board of Appeal shall be published by the Agency.

~~Article 20~~

~~Actions before the Court of First Instance and the Court of Justice~~

- ~~1. An action may be brought before the Court of First Instance or the Court of Justice, in accordance with Article 230 of the Treaty, contesting a decision taken by the Board of Appeal or, in cases where no right lies before the Board of Appeal, by the Agency.~~
- ~~2. In the event that the Agency fails to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.~~
- ~~3. The Agency shall be required to take the necessary measures to comply with the judgment of the Court of First Instance or the Court of Justice.~~

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↓ new

Article 30

**Working groups**

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.
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.
3. The Administrative Board shall adopt and publish internal rules of procedure for the functioning of the working groups.

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↓ 713/2009 (adapted)

## CHAPTER ~~IV~~ III

### ~~FINANCIAL PROVISIONS~~ ☒ ESTABLISHMENT AND STRUCTURE OF THE BUDGET ☒

#### Article ~~31~~ ~~21~~

#### ☒ Structure of the ☒ ~~B~~udget of the Agency

1. ☒ Without prejudice to other resources ☒ ~~the~~ revenues of the Agency shall ☒ be made up of ☒ ~~comprise, in particular:~~
  - (a) a ~~subsidy~~ ☒ contribution ☒ from the ☒ Union ☒ ~~Community, entered in the general budget of the European Union (Commission Section);~~
  - (b) fees paid to the Agency pursuant to Article ~~3222~~ ;
  - (c) ☒ any ☒ voluntary contributions from the Member States or from the regulatory authorities, under Article ~~20(1)(g)13(8)~~; ~~and~~
  - (d) legacies, donations or grants under Article ~~20(1)(g)13(8)~~.
2. The ☒ expenditure of the ☒ Agency's ~~expenditure~~ shall ~~cover~~ ☒ include ☒ staff, administrative, infrastructure, and operational expenses.
3. The ☒ revenue and expenditure of the ☒ Agency's ~~revenue and expenditure~~ shall be in balance.
4. All ~~Agency~~ revenue and expenditure ☒ of the Agency ☒ shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

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↓ 713/2009

#### Article ~~3222~~

#### Fees

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↓ 347/2013 Art. 20

1. Fees shall be due to the Agency for requesting an exemption decision pursuant to Article ~~119~~(1) and for decisions on cross border cost allocation provided by the Agency pursuant to Article 12 of Regulation (EU) No 347/2013 ~~of the European Parliament and of the Council of 17 April 2013 on guidelines for trans European energy infrastructure~~<sup>50</sup>.

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<sup>50</sup> OJ L 115, 25.4.2013, p. 39.

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

*Article ~~332~~*

**Establishment of the budget**

1. ~~By 15 February~~ Each year, the Director shall draw up a  provisional draft estimate  ~~preliminary draft budget~~ covering the operational expenditure and the programme of work anticipated for the following financial year, and shall forward that preliminary draft budget to the Administrative Board, together with a list of provisional posts.
2. Each year, the Administrative Board shall, on the basis of the  provisional draft estimate  ~~preliminary draft budget~~ prepared by the Director, ~~make and~~  adopt a provisional draft  estimate of revenue and expenditure of the Agency for the following financial year.
3. ~~The~~  The provisional draft  estimate, including a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by  31 January each year  ~~31 March~~. Prior to adoption of the estimate, the draft prepared by the Director shall be transmitted to the Board of Regulators, which may deliver a reasoned opinion on the draft.
4. The estimate referred to in paragraph ~~2~~ shall be transmitted by the Commission to the European Parliament and to the Council (~~the budgetary authority~~), together with the ~~preliminary~~ draft general budget of the ~~European~~ Union.
5. On the basis of the  draft  estimate, the Commission shall enter into the ~~preliminary~~ draft general budget of the ~~European~~ Union the  estimates  ~~forecasts~~ it considers necessary in respect of the establishment plan and the amount of the grant to be charged to the general budget of the ~~European~~ Union in accordance with Article  313 and following  ~~272~~ of the Treaty.
6. The  Council in its  budgetary authority  role  shall adopt the establishment plan for the Agency.
7. The budget of the Agency shall be  adopted  ~~drawn up~~ by the Administrative Board. It shall become final after the final adoption of the general budget of the ~~European~~ Union. Where necessary, it shall be adjusted accordingly.
8.  Any modification to the budget, including the establishment plan, shall follow the same procedure.
9. ~~§~~ The Administrative Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget of the Agency, in particular any project relating to property ~~such as the rental or purchase of buildings~~. The Administrative Board shall also inform the Commission of its intention. If either branch of the budgetary authority intends to issue an opinion, it shall, within two weeks of receipt of the information on the project, notify the Agency of its intention thereof. In the absence of a reply, the Agency may proceed with the planned project.

## Article 34~~24~~

### **Implementation and control of the budget**

1. The Director shall act as authorising officer and shall implement the Agency's budget.
2. By 1 March following the completion of each financial year, the Agency accounting officer shall forward to the Commission's accounting officer and the Court of Auditors the provisional accounts, accompanied by the report on budgetary and financial management over the financial year. The Agency's accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year. The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance  with  Article ~~147~~ 128 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>51</sup> ~~Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities~~<sup>52</sup> ("the Financial Regulation").

## Article 35

### **Presentation of accounts and discharge**

1. 1.  The Agency's accounting officer shall send the provisional accounts for the financial year (year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N+1)
2. 2.  The Agency shall send a report on the budgetary and financial management for year N to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of year N+1
- ~~3.~~ ~~By 31 March~~  of year N+1  ~~following the completion of each financial year,~~ the Commission's accounting officer shall forward the provisional accounts of the Agency, ~~accompanied by the report on budgetary and financial over the financial year,~~ to the Court of Auditors. The report on budgetary and financial management over the financial year shall also be forwarded to the European Parliament and the Council.
4. After receiving the observations of the Court of Auditors on the provisional accounts of the Agency  for year N  in accordance with the provisions of Article ~~129~~  148  of the Financial Regulation, the  accounting officer  ~~Director,~~ acting on his own responsibility, shall draw up the final accounts of the Agency  for that year. The Executive Director shall  ~~and~~ transmit them, for opinion, to the Administrative Board.
5. The Administrative Board shall deliver an opinion on the final accounts of the Agency  for year N .
6. The ~~Director~~  Agency's accounting officer  shall transmit the final accounts  for year N , accompanied by the opinion of the Administrative Board, by 1

<sup>51</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>52</sup> OJ L 248, 16.9.2002, p. 1.

July ☒ of year N+1 ☒ ~~following the completion of the financial year~~, to the European Parliament, the Council, the Commission and the Court of Auditors.

7. The final accounts shall be published ☒ in the *Official Journal of the European Union* by 15 November of year N+1 ☒.
8. The Director shall send ☒ to ☒ the Court of Auditors a reply to the latter's observations by ☒ 30 September of year N+1 ☒ ~~15 October~~. He shall also send a copy of that reply to the Administrative Board and the Commission.
9. The Director shall submit to the European Parliament, at the latter's request ~~and as provided for in Article 165 146(3) of the Financial Regulation~~, any information necessary for the smooth application of the discharge procedure for ☒ year N ☒ ~~the financial year in question~~ ☒ in accordance with Article 109(3) of Commission Delegated Regulation (EU) No 1271/2013 ☒.
10. The European Parliament, following a recommendation by the Council, acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Director for the implementation of the budget for the financial year N.

#### Article 36~~25~~

#### **Financial rules**

The financial rules applicable to the Agency shall be ☒ adopted ☒ ~~drawn up~~ by the Administrative Board after consulting the Commission. Those rules may deviate from Commission Delegated Regulation (EU) No 1271/2013 ~~Regulation (EC, Euratom) No 2343/2002~~ if the specific operational needs for the functioning of the Agency so require and only with the prior agreement of the Commission.

#### Article 26

#### **Anti-fraud measures**

- ~~1. For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>53</sup> shall apply to the Agency without any restriction.~~
- ~~2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)<sup>54</sup> and shall immediately adopt appropriate provisions for all staff of the Agency.~~
- ~~3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on the spot checks on the beneficiaries of monies disbursed by the Agency as well as on the staff responsible for allocating those monies.~~

<sup>53</sup> OJL 136, 31.5.1999, p. 1.

<sup>54</sup> OJL 136, 31.5.1999, p. 15.

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↓ new

*Article 37*

**Combating fraud**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No Regulation 883/2013, within six months from the day the Agency becomes operational, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and adopt appropriate provisions applicable to all employees of the Agency using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power to carry out an on-the-spot audit, as well as auditing on the basis of documents, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 and Regulation (Euratom, EC) No 2185/96.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct the audits and investigations referred to in this Article, according to their respective competences.

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↓ 713/2009 (adapted)  
⇒ new

**CHAPTER V**

**GENERAL ☒ AND FINAL ☒ PROVISIONS**

*Article ~~38~~27*

**Privileges and immunities ⇨ and Headquarters' Agreement ⇐**

1. The Protocol on Privileges and Immunities of the European Communities shall apply to the Agency.

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↓ new

2. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that

Member State together with the specific rules applicable in the host Member State to the Director, members of the Administrative Board, Agency staff and members of their families shall be laid down in a Headquarters' Agreement between the Agency and the Member State where the seat is located. That agreement shall be concluded after obtaining the approval of the Administrative Board.

↓ 713/2009 (adapted)

#### Article 39~~28~~

##### Staff

1. The Staff Regulations ~~of~~ of Officials of the European union ("the Staff Regulations") and ~~the~~, the Conditions of Employment ~~of~~ of Other Servants of the European Union ("the Conditions of Employment") ~~and~~ and the rules adopted jointly by the ~~European~~ ~~Union~~ ~~Community~~ institutions for the purpose of applying the Staff Regulations and the Conditions of Employment shall apply to ~~all~~ all the staff of the Agency, including its Director.
2. The Administrative Board, in agreement with the Commission, shall adopt appropriate implementing rules, in accordance with Article 110 of the Staff Regulations.
3. In respect of its staff, the Agency shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment.
4. The Administrative Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency.

#### Article 40~~29~~

##### Liability of the Agency

↓ new

1. The Agency's contractual liability shall be governed by the law applicable to the contract in questions.

Any arbitration clause contained in a contract concluded by the Agency shall be subject to the jurisdiction of the Court of Justice of the European Union.

↓ 713/2009 (adapted)

2. ~~In~~ In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties.
3. The Court of Justice ~~of~~ of the European Union ~~shall~~ shall have jurisdiction in ~~any~~ ~~dispute~~ ~~disputes~~ ~~over~~ ~~the~~ ~~remedying~~ ~~of~~ ~~such~~ ~~compensation~~ for damages referred to in paragraph 2. ~~.~~ .

4. 2. The personal financial liability and disciplinary liability of Agency staff towards the Agency shall be governed by the relevant provisions applying to the staff of the Agency.

#### Article ~~41~~<sup>30</sup>

##### ~~Access to documents~~ ☒ **Transparency and communication** ☒

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council ~~of 30 May 2001 regarding public access to European Parliament, Council and Commission documents~~<sup>55</sup> shall apply to documents held by the Agency.
2. The Administrative Board shall adopt practical measures for applying Regulation (EC) No 1049/2001 ~~by 3 March 2010~~.
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice, in accordance with the conditions laid down in Articles ☒ 228 ☒ ~~195~~ and ☒ 263 ☒ ~~230~~ of the Treaty respectively.

↓ new

4. The processing of personal data by the Agency shall be subject to the Regulation (EC) No 45/2001<sup>56</sup>. The Management Board shall establish measures for the application of Regulation (EC) No.45/2001 by the Agency, including those concerning the appointment of the Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.
5. The Agency may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks referred to in Article 3 to 14. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Administrative Board.

#### Article 42

##### **Protection of classified and sensitive non-classified information**

1. The Agency shall adopt its own security rules equivalent to the Commission's security rules for protecting European Union Classified Information ("EUCI") and sensitive non-classified information, inter alia, provisions for the exchange,

<sup>55</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

<sup>56</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).



processing and storage of such information, as set out in the Commission Decisions (EU, Euratom) 2015/443<sup>57</sup> and 2015/444<sup>58</sup>.

2. The Agency may also decide to apply mutatis mutandis the Commission's decisions referred to in paragraph 1. The security rules of the Agency shall cover, inter alia, provisions for the exchange, processing and storage of EUCI and sensitive non-classified information.

↓ 713/2009 (adapted)

#### *Article ~~43~~4*

##### ~~Participation of third countries~~ ☒ Cooperation agreements ☒

1. The Agency shall be open to the participation of third countries which have concluded agreements with the ☒ Union ☒ Community whereby they ☒ and which ☒ have adopted and are applying ☒ Union ☒ Community law in the field of energy and, ~~if relevant,~~ in the fields of environment and competition.
2. Under the relevant provisions of those agreements, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of those countries in the work of the Agency, including provisions relating to financial contributions and to staff.

↓ new

3. The Administrative Board shall adopt a strategy for relations with third countries or international organisations for which the Agency is competent. The Commission shall ensure that the Agency operates within its mandate and the existing institutional framework by concluding an appropriate working arrangement with the Agency's Director.

#### *Article 32*

##### ~~Committee~~

- ~~1. The Commission shall be assisted by a committee.~~
- ~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

<sup>57</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41)

<sup>58</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

*Article ~~44~~<sup>33</sup>*

**Language arrangements**

1. The provisions of Council Regulation No 1 ~~of 15 April 1958 determining the languages to be used by the European Economic Community~~<sup>59</sup> shall apply to the Agency.
2. The Administrative Board shall decide on the internal language arrangements for the Agency.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

~~CHAPTER VI~~

~~FINAL PROVISIONS~~

*Article ~~45~~<sup>34</sup>*

**Evaluation**

1. ⇒ No later than five years after the entry into force of the present regulation, and every five years thereafter, ⇐ ~~the~~ Commission, with the assistance of an independent external expert, shall carry out an evaluation ⇐ to assess the Agency's performance in relation to its objectives, mandate and tasks. The evaluation shall in particular address the possible need to modify the mandate of the Agency, and the financial implications of any such modification ⇐ ~~of the activities of the Agency. That evaluation shall cover the results achieved by the Agency and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall be based on extensive consultation in accordance with Article 10.~~

2. Where the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed

<sup>59</sup> Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

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↓ 713/2009 (adapted)  
⇒ new

3. ~~2.~~ The Commission shall submit the evaluation  findings  referred to in paragraph 1 ~~to~~  together with its conclusions to the European Parliament, the Council and to  the Agency's Board of Regulators. ⇒ The findings of the evaluation should be made public ⇐ ~~The Board of Regulators shall issue recommendations regarding changes to this Regulation, the Agency and its working methods to the Commission, which may forward those recommendations, together with its own opinion as well as any appropriate proposal, to the European Parliament and the Council.~~
4. ~~The first evaluation shall be presented by the Commission to the European Parliament and the Council by three years after the first Director has taken up his duties.~~ The Commission shall ~~subsequently~~ present  to the European Parliament and the Council  an evaluation at least every ~~four~~ ⇒ five ⇐ years.

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↓ new

#### Article 46

#### **Repeal**

Regulation (EC) No 713/2009 is repealed.

*References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.*

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↓ 713/2009 (adapted)

#### Article 47~~35~~

#### **Entry into force ~~and transitory measures~~**

~~1.~~ This Regulation shall enter into force on the  twentieth  ~~20th~~ day following that of its publication in the *Official Journal of the European Union*.

~~2. Articles 5 to 11 shall apply from 3 March 2011.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council on a European Union Agency for the Cooperation of Energy Regulators

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>60</sup>

Policy area: ENERGY

Activity: 32.02 Conventiounal and renewable energy

#### 1.3. Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action**<sup>61</sup>
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objective(s)

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The European Commission's Strategic Plan for 2016-2020 lies down the Commission's multiannual strategic objectives until the end of the decade. Under the framework of the Strategic Plan, the current proposal addresses "general objective A: A New Boost for Jobs, Growth and Investment".

By reforming the institutional framework underpinning the working of European energy markets, we are providing markets with appropriate governance mechanisms, as these are required to deliver sustainable and competitive energy for all.

For an ever-more interconnected energy market to function effectively, it needs adequate decisional fora for national regulators to come together. The integration of Europe's energy market goes hand in hand with ACER fulfilling such a role and being given the resources to meet the tasks it is assigned to.

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

###### ABM/ABB activity(ies) concerned

The initiative falls under Budget heading 32 02 10: Agency for the Cooperation of Energy Regulators (ACER)

###### Specific objective No

In addition to the activities already performed by the Agency at present, the current initiative seeks to expand upon ACER's tasks to meet a number of additional objectives whose importance for the ultimate welfare of European energy markets cannot be underestimated.

<sup>60</sup> ABM: activity-based management; ABB: activity-based budgeting.

<sup>61</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

This review of the Agency's tasks is thus far from being marginal, as ACER will be required to fulfill tasks of a new nature and of a large scope. These include, notably, new tasks in relation to the assessment of system security for the purposes of evaluating the introduction of capacity remuneration mechanisms, as well as the establishment and monitoring of Regional Operation Centres. These are a departure from business as usual for the Agency and justify the demand for additional posts as listed in this fiche.

To the extent that such new objectives have a bearing on the financial resources allocated to the Agency, they are being listed in full below. The below also includes reference to the Regulation from which the tasks originate (Electricity Regulation or Risk Preparedness Regulation) and where the tasks are either reflected or solely attributed in the ACER Regulation proposal.

1) Approving and amending methodologies linked to the newly introduced European generation adequacy assessment, as well as carrying an assessment of proposals for the introduction of new such mechanisms at national level. This task lies at the core of the strengthened approach to capacity mechanisms at European level, and is mandated by the Electricity Regulation, and reflected in Art. 9 of the ACER Regulation. We estimate a total of 7 FTE (Full Time Equivalents) needed for the task at full regime.

2) Surveilling market performance and in particular "flexibility barriers" at Member State level, including price interventions. In addition, ACER is to create a methodology for market performance against security of supply indicators. Market surveillance and development of the methodology is key to achieve market integration and competitiveness in these areas. The Electricity Regulation and ACER Regulation Art 11 spell this out, and would require 0.5 FTE.

3) Deciding upon the configuration of new Regional Operation Centres (ROCs) and carrying a regular monitoring and analysis of their performance. This includes the issuing of opinions and recommendations on a regular basis as needs arise. The establishment of ROCs is a pillar of the regionalisation approach, and would require an estimated 1.5 FTE. Art. 6 of ACER Regulation spells out the task.

4) Ensuring the interoperability, communication, and monitoring of regional performance outside areas not harmonised at EU level and not falling under point 3) above. This includes supporting and coordinating National Regulatory Authorities (NRAs) cooperating at regional level. These activities require 1 FTE and would be necessary to fully deliver on benefits from the regionalisation approach, as per Art. 7 of ACER Regulation.

5) Improving wholesale market efficiencies by, amongst other things: approving and amending methodologies with relevance for cross border electricity trade and other regulatory issues with cross-border relevance; establishing and implementing rules for the use of congestion income with the purpose of network investments; establishing rules for the reallocation of said income and possible disputes between actors; intra-day market monitoring to remove distortions and create more liquid trading. Overall, we foresee 3 FTE dedicated to the new tasks, as per Art 9 and 17 of the Electricity Regulation and Art. 7 of ACER Regulation.

6) Deciding upon NRAs disputes through a reinforced Board of Appeal as more cases are brought to the board following the parallel extension in scope of ACER's decisions and in light of a reinforced regional framework. These tasks would call for 1 FTE following Art. 19 of the ACER Regulation.

7) Establishing an EU entity of Distribution System Operators (EU DSO), ensuring its smooth functioning and cooperation between EU DSO and Transmission System Operators (TSOs). Similarly to the establishment of Regional Operation Centres (ROCs), the establishment of an EU DSO is vital in addressing challenges resulting from a more distributed energy system. 2 FTE would be needed as per Art. 50 of the Electricity Regulation.

8) Approving and amending methodologies for the identification of electricity crisis scenarios at regional level, with regular analysis and amendments of the methodology. These tasks are crucial to implementing the European risk preparedness approach as set out in the Risk Preparedness Regulation, and would call for 2 FTE.

It is noted for the reader's attention, that the list of tasks above-mentioned are linked to the more general estimates for new tasks and related staff needs as these can be found in the Impact Assessment – specifically under the annex on the reform of the institutional framework (chapter 3.4 of said Impact Assessment's annex document).

The original estimation provided for a rough bottom ceiling of around 18 extra staff under the proposed policy option, which is in line with the 18 full time equivalents specified by this fiche. The assessment of the present fiche should be considered however superior both in the level of detail of tasks specified, and in the accuracy of the estimates, as these have been carried out on the back of the concrete legislative acts proposed, something lacking at the time of the Impact Assessment exercise for obvious reasons.

It is also noted, as explained more fully in the accompanying Explanatory Memorandum to the Legislative Acts above-cited, that the additional tasks carried by ACER will abide to a subsidiarity principle, also to the extent to which they will act to free up resources at national levels for similar tasks.

#### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The sum effect of the proposal is to overall increase the functioning of wholesale and retail energy markets.

Accordingly, the net contribution of ACER's role across the new tasks, if executed effectively, will result in very large effects by way of market efficiencies and overall economic and social welfare gains. The Impact Assessment accompanying the set of proposals under the Market Design Initiative, estimate that the establishment of ROCs and the optimization of network functions to a regional level could lead to an additional EUR 1bn yearly approximately, whilst ensuring cross-border participation to capacity mechanisms will bring savings of EUR 2bn by 2030.

The supervision of the European adequacy assessment will lead to a more efficient regional coordination of capacity mechanism intended to ensure security of electricity supply, and thereby save costs for energy consumers. At present such mechanisms are financed for the most part through national levies and taxes, with consumers having to shoulder large, unnecessary costs from uncoordinated measures aimed at ensuring security of supply.

The methodologies for electricity trading and grid operation to be developed by ACER shall also increase the rate of energy market coupling, improving the use of capacity at the border, reducing congestions and reducing price distortions.

The beneficiaries of the initiative include market participants across the chain, as well as market operators and consumers. With more effective methodologies in place, market competition across the wholesale and retail markets shall also receive a boost.

Market monitoring activities and the spurring of cooperation across regulatory issues shall in fact ultimately enable prices to better reflect underlying market realities and allow declining wholesale energy prices to be better reflected at retail market level.

The setting up of regional-level operational entities shall also decrease the need for recourse to national electricity safeguards whose cost is borne by the system as a whole and by consumers in the last instance.

Increased regulatory cooperation shall also greatly increase security of supply across the EU, with a benefit to system operators and to the system at large.

The development of methodologies aimed at making the market more flexible shall also adequately benefit market operators offering flexibility services, and new technology providers catering to a more flexible energy grid.

#### 1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

The Agency's performance is already subject to a Commission-led evaluations taking place at regular time intervals and carried by external bodies to safeguard the neutrality of the assessment.

In addition, the Agency's annual Work Program, which is subject to European Commission scrutiny and opinion, provides for key performance indicators measuring ACER's performance against set targets.

Indicators would include timely delivery of agreed methodologies as these are mandated under the Regulation proposed; alongside effective cooperation amongst NRAs and the swift handling of appeals shall these be raised to its Board of Appeal. Other Agency level performance indicators include, under market transparency requirement, that the Agency carries an analysis of a given number of market data points per assessment cycle.

Carrying in mind the ultimate objective of integrating energy markets and the role played by ACER in bringing national authorities, transmission and distribution operators together, the effectiveness of ACER's action can be seen in improved market performance.

Such market performance is the object of an extensive Market Monitoring Annual Report by the Agency, including rates of interconnection use, market coupling performance, market mark-ups alongside a number of other market indicators that are directly related to the Agency's methodologies and activities.

## **1.5. Grounds for the proposal/initiative**

### *1.5.1. Requirement(s) to be met in the short or long term*

Allow ACER to engage in new activities as these are set by the Regulation and in line with evolving energy market developments; contributing to a competitive, sustainable and secure Energy Union.

### *1.5.2. Added value of EU involvement*

The need for EU action is based on the evidence that isolated national approaches can lead to sub-optimal measures, unnecessary duplication, market inefficiencies and "beggar-thy-neighbour" policies. In sum, the creation of an internal energy market that delivers competitive and sustainable energy for all, would be impossible without clear, shared rules on the trading of energy, the operation of the grid and a certain amount of product standardization. ACER provides a forum for national regulators to come together and agree on shared principles and methodologies.

The increasing interconnection of the EU electricity markets is opening up opportunities as well as challenges. In the lack of coordinated measures on issues that have direct consequences on cross-border electricity markets, the creation of an internal energy market would remain a utopia. National policy interventions in the electricity sector have direct impact on neighbouring Member States due to energy interdependence and grid interconnections. Ensuring the stability of the grid and its efficient operation is increasingly difficult to do at national level alone, as rising cross-border trade, the uptake of decentralised generation and enhanced consumer participation, all increase the potential for spill-over effects. No state can effectively act alone and the externalities of unilateral action have become heavier over time.

While Member States already collaborate on a voluntarily basis to a certain extent to address some of the above mentioned challenges, for example through regional initiatives such as the Pentilateral Energy Forum, these fora work as political coordination bodies and cannot take binding decisions on the detailed issues on which a decision is needed in order to avoid the current fragmentation of system operation, regulatory oversight and state interventions in electricity markets.



1.5.3. *Lessons learned from similar experiences in the past*

A Commission Evaluation of the Agency's activities was published on 22.1.2014 [C(2014)242 final]. The evaluation found that since its establishment, ACER has become a credible and respected institution playing a prominent role in the energy regulatory arena. Overall, ACER has been focusing on the right priorities as these have been set by its founding Regulation and by annual programming document. It is however noted that the Agency has lamented a lack in resources to meet its tasks and a degree of redeployment has been necessary to achieve statutory objectives. In this light, it is particularly important that new tasks assigned to the Agency under the current proposal are matched by budgetary and staff levels that are adequate and proportionate to the aim of creating a true Energy Union.

1.5.4. *Compatibility and possible synergy with other appropriate instruments*

The proposal is in line with the Juncker Commission's Political Guidelines as these made the achievement of a resilient Energy Union with a forward-looking climate policy one of its strategic objectives.

This ambition was confirmed in the Commission Work Programme for 2015 and further detailed in the Commission Framework Strategy for a Resilient Energy Union [COM(2015)80 final of 25.02.2015]. Further impetus for the creation of a sustainable and competitive European Energy Union has been given by ratification of the agreement reached at the United Nations 21st Conference of the Parties in Paris (COP21).

In addition, EU Climate and Energy goals to 2020 and 2030 foresee the integration of higher shares of renewable electricity generation resulting in an increased need for managing a flexible grid and ensuring a cost-effective, clean energy transition. To reach such objectives, stronger regulatory cooperation within ACER will be a pre-requisite.

**1.6. Duration and financial impact**

- Proposal/initiative of **limited duration**
  - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
  - Financial impact from YYYY to YYYY
- Proposal/initiative of **unlimited duration**
  - Implementation with a start-up period from 2018 to 2019,
  - followed by full-scale operation

**1.7. Management mode(s) planned<sup>62</sup>**

- Direct management** by the Commission through
  - executive agencies
- Shared management** with the Member States
- Indirect management** by entrusting budget implementation tasks to:
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 208 and 209;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

none
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<sup>62</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: <https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>.

## **2. MANAGEMENT MEASURES**

### **2.1. Monitoring and reporting rules**

*Specify frequency and conditions.*

All EU Agencies work under a strict monitoring system involving internal audit capability, the Internal Audit Service of the Commission, ACER's Administrative Board, the Court of Auditors and the Budgetary Authority. This system was laid down with the founding Regulation of ACER of 2009 and will continue to apply.

### **2.2. Management and control system**

#### *2.2.1. Risk(s) identified*

none

#### *2.2.2. Control method(s) envisaged*

Not applicable

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

Anti-fraud measures have been in place since ACER's establishment and will continue to apply. These stipulate, notably, that the Court of Auditors and OLAF, the European Anti-Fraud Office, may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Agency as well as on the staff responsible for allocating those monies. These provisions were part of ACER's funding Regulation Article 26 and will continue to apply.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Heading.....1A.....	Diff./Non-diff. <sup>63</sup>	from EFTA countries <sup>64</sup>	from candidate countries <sup>65</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	32.02.10: Agency for the Cooperation of Energy Regulators (ACER)	Diff.	NO	NO	NO	YES

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading..... ...]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/N O	YES/N O	YES/N O	YES/NO

<sup>63</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>64</sup> EFTA: European Free Trade Association.

<sup>65</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework		Number	Heading 1A
ACER ( new tasks only)			
Title 1:			
	Commitments	(1)	2020
	Payments	(2)	992 000
Title 2:			
	Commitments	(1a)	46 000
	Payments	(2a)	46 000
Title 3:			
	Commitments	(3a)	
	Payments	(3b)	
<b>TOTAL appropriations for ACER</b>	Commitments	= 1+1a +3a	280 000
	Payments	= 2+2a +3b	280 000
			1 038 000
			1 038 000

Please note that the budget figures above are based on the assumption of a progressive recruitment schedule, assuming on average six months presence of staff to be recruited in the first year.

<b>Heading of multiannual financial framework</b>	<b>5</b>	‘Administrative expenditure’
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EUR million (to three decimal places)

	2019	2020
DG: ENER supervision of new tasks only		
• Human Resources	0	0
• Other administrative expenditure	0	0
<b>TOTAL DG ENER</b>	0	0

<b>TOTAL appropriations under HEADING 5</b> of the multiannual financial framework	0	0
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EUR million (to three decimal places)

	2019	2020
<b>TOTAL appropriations under HEADINGS 1 to 5</b> of the multiannual financial framework		
Commitments	280 000	1 038 000
Payments	280 000	1 038 000

### 3.2.2. Estimated impact on ACER appropriations

- The proposal does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:
- Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs	Type <sup>66</sup>	Year N			Year N+1			Year N+2			Year N+3			Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL		
		Average cost	€	Cost	€	Cost	€	Cost	€	Cost	€	Cost	€	Cost	€	Cost	€	Total No	Total cost
<b>OUTPUTS</b>																			
SPECIFIC OBJECTIVE No 1 <sup>67</sup> ...																			
- Output																			
- Output																			
- Output																			
Subtotal for specific objective No 1																			
SPECIFIC OBJECTIVE No 2 ...																			
- Output																			
Subtotal for specific objective No 2																			
<b>TOTAL COST</b>																			

<sup>66</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).  
<sup>67</sup> As described in point 1.4.2. 'Specific objective(s)...

### 3.2.3. Estimated impact on ACER's human resources

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2019	2020
--	------	------

Officials (AD Grades)		
Officials (AST grades)		
Contract staff	8	14
Temporary staff	0	4
Seconded National Experts	0	0

<b>TOTAL</b>	8	18
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#### Estimated impact on the staff (additional FTE) – establishment plan

Function group and grade	2019	2020
AD16		
AD15		
AD14		
AD13		
AD12		
AD11		
AD10		2
AD9		2
AD8		



AD7		
AD6		
AD5		
AD Total	0	4
AST11		
AST10		
AST9		
AST8		
AST7		
AST6		
AST5		
AST4		
AST3		
AST2		
AST1		
AST Total		
AST/SC 6		
AST/SC 5		
AST/SC 4		
AST/SC 3		
AST/SC 2		
AST/SC 1		
AST/SC Total		
GRAND TOTAL	0	4

Estimated impact on the staff (additional) – external personnel

Contract agents	2019	2020
Function group IV	8	14
Function group III		
Function group II		
Function group I		
Total	8	14

Seconded National Experts	2019	2020
Total	0	0

Please note that the first recruitments are planned at the beginning of 2019, in order to prepare the implementation of the Regulation. Its adoption should come if possible at the end of 2018 and ideally before the elections of the European Parliament in May 2019.

As such, the composition of staff at cruising speed (18 FTE in 2020) might have to be reviewed in light of the outcome of the legislative procedure, so as to maintain an appropriate balance between job profiles and new tasks to be carried out. The Commission will thus reassess staff and budgetary needs for the following years in due time.

### 3.2.3.2. Estimated requirements of human resources for the parent DG

- The proposal/initiative does not require the use of additional human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>68</sup></b>							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the Delegations)							
<b>XX 01 04 yy<sup>69</sup></b>	- at Headquarters <sup>70</sup>						
	- in Delegations						
<b>XX 01 05 02 (AC, END, INT – Indirect research)</b>							
10 01 05 02 (AC, END, INT – Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>							

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary

<sup>68</sup> AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JED = Junior Experts in Delegations.

<sup>69</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

<sup>70</sup> Mainly for the Structural Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Fisheries Fund (EFF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

The ACER budget line ( 032010 ) will have to be increased of the annual amount specified in table 3.2.1

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>71</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>71</sup> See Articles 11 and 17 of Council Regulation (EU, Euratom) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020.

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>72</sup>						
		2018	2019	2020	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
ACER budget line 32 02 10 .....								

For miscellaneous ‘assigned’ revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>72</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.



Brussels, 30.11.2016  
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ANNEX 1

**ANNEX**

**to 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)**

{SWD(2016) 410}

{SWD(2016) 411}

{SWD(2016) 412}

{SWD(2016) 413}

## ANNEX I

### CORRELATION TABLE

<b>Regulation (EC) No 713/2009</b>	<b>This Regulation</b>
Article 1	Article 1
Article 4	Article 2
Article 5	Article 3
Article 6 (1) to (4 first sub-paragraph)	Article 4
Article 6	Article 5
Article 8	Article 6
-	Article 7
-	Article 8
-	Article 9
-	Article 10
Article 9	Article 11
Article 6 (7-8)	Article 12
-	Article 13
Article 9 (2) (second sub-paragraph)	Article 14
Article 10	Article 15
Article 11	Article 16
Article 2	Article 17
Article 3	Article 18
Article 12	Article 19
Article 13 (1-13)	Article 20
-	Article 21
Article 14 (1-2)	Article 22
Article 14 (3-6)	Article 23 (1-4)



Article 15	Article 23 (5-6)
Article 16	Article 24
Article 17	Article 25
Article 18	Article 26
Article 18(3)	Article 27
Article 18 (4-7)	Article 28
Article 19	Article 29
-	Article 30
Article 21	Article 31
-	Article 32
Article 22	Article 33
Article 23	Article 34
Article 24 (1-2)	Article 35
Article 24 (3 and following)	Article 36
Article 25	Article 37
-	Article 38
Article 27	Article 39
Article 28	Article 40
Article 29	Article 41
Article 30	Article 42
-	Article 43
Article 31	Article 44
Article 33	Article 45
Article 34	Article 46
-	Article 47
-	Article 48
Article 35	Article 49

