

# Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) <a href="#">2016/0378(COD)</a> Regulation</p>	Procedure completed
<p>European Union Agency for the Cooperation of Energy Regulators. Recast Repealing Regulation (EC) No 713/2009 <a href="#">2007/0197(COD)</a> Amended by <a href="#">2021/0423(COD)</a> Amended by <a href="#">2023/0076(COD)</a> Amended by <a href="#">2023/0077A(COD)</a> Amended by <a href="#">2023/0077B(COD)</a></p> <p>Subject 3.60.15 Cooperation and agreements for energy 8.40.08 Agencies and bodies of the EU</p> <p>Legislative priorities <a href="#">Joint Declaration 2018-19</a> <a href="#">Joint Declaration 2017</a></p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 <b>ITRE</b> Industry, Research and Energy	 <a href="#">PETERSEN Morten</a>	25/01/2017
		Shadow rapporteur	
		 <a href="#">LANGEN Werner</a>	
		 <a href="#">POCHE Miroslav</a>	
	 <a href="#">HENKEL Hans-Olaf</a>		
	 <a href="#">ŠKRLEC Davor</a>		
	 <a href="#">PAKSAS Rolandas</a>		
	 <a href="#">KAPPEL Barbara</a>		
	Committee for opinion	Rapporteur for opinion	Appointed
 <b>BUDG</b> Budgets		 <a href="#">GEIER Jens</a>	12/01/2017
 <b>ECON</b> Economic and Monetary Affairs		The committee decided not to give an opinion.	
 <b>IMCO</b> Internal Market and Consumer Protection		The committee decided not to give an opinion.	

	Committee for opinion on the recast technique <b>JURI</b> Legal Affairs	Rapporteur for opinion	Appointed
Council of the European Union	Council configuration <a href="#">Education, Youth, Culture and Sport</a> <a href="#">Transport, Telecommunications and Energy</a>	Meeting <a href="#">3693</a> <a href="#">3554</a>	Date 22/05/2019 26/06/2017
European Commission	Commission DG <a href="#">Energy</a>	Commissioner ŠEFČOVIČ Maroš	
European Economic and Social Committee European Committee of the Regions			

Key events			
30/11/2016	Legislative proposal published	<a href="#">COM(2016)0863</a>	Summary
19/01/2017	Committee referral announced in Parliament, 1st reading		
26/06/2017	Debate in Council	<a href="#">3554</a>	
21/02/2018	Vote in committee, 1st reading		
21/02/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
26/02/2018	Committee report tabled for plenary, 1st reading	<a href="#">A8-0040/2018</a>	Summary
28/02/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
12/03/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
23/01/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	<a href="#">PE633.002 GEDA/A/(2019)000446</a>	
25/03/2019	Debate in Parliament		
26/03/2019	Results of vote in Parliament		
26/03/2019	Decision by Parliament, 1st reading	<a href="#">T8-0228/2019</a>	Summary
22/05/2019	Act adopted by Council after Parliament's 1st reading		
05/06/2019	Final act signed		
05/06/2019	End of procedure in Parliament		
14/06/2019	Final act published in Official Journal		

Technical information	
Procedure reference	2016/0378(COD)

Procedure type	COD - Ordinary legislative procedure (ex-codicedision procedure)
Procedure subtype	Recast
Legislative instrument	Regulation
	Repealing Regulation (EC) No 713/2009 <a href="#">2007/0197(COD)</a> Amended by <a href="#">2021/0423(COD)</a> Amended by <a href="#">2023/0076(COD)</a> Amended by <a href="#">2023/0077A(COD)</a> Amended by <a href="#">2023/0077B(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 194-p2
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a> <a href="#">European Committee of the Regions</a>
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/8/08681

### Documentation gateway

Legislative proposal		<a href="#">COM(2016)0863</a>	30/11/2016	EC	Summary
Document attached to the procedure		SWD(2016)0410	01/12/2016	EC	
Document attached to the procedure		SWD(2016)0411	01/12/2016	EC	
Document attached to the procedure		SWD(2016)0412	01/12/2016	EC	
Document attached to the procedure		SWD(2016)0413	01/12/2016	EC	
Committee draft report		<a href="#">PE605.917</a>	14/06/2017	EP	
Opinion on the recast technique		<a href="#">PE607.821</a>	27/06/2017	EP	
Committee opinion	<b>BUDG</b>	<a href="#">PE605.971</a>	31/08/2017	EP	
Amendments tabled in committee		<a href="#">PE609.611</a>	21/09/2017	EP	
Amendments tabled in committee		<a href="#">PE610.755</a>	21/09/2017	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A8-0040/2018</a>	26/02/2018	EP	Summary
Coreper letter confirming interinstitutional agreement		<a href="#">GEDA/A/(2019)000446</a>	19/12/2018	CSL	
Text agreed during interinstitutional negotiations		<a href="#">PE633.002</a>	19/12/2018	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T8-0228/2019</a>	26/03/2019	EP	Summary
Draft final act		<a href="#">00083/2018/LEX</a>	05/06/2019	CSL	
Commission response to text adopted in plenary		<a href="#">SP(2019)437</a>	30/07/2019	EC	
Follow-up document		<a href="#">COM(2023)0682</a>	31/10/2023	EC	

### Additional information

Research document	<a href="#">Briefing</a>
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## European Union Agency for the Cooperation of Energy Regulators. Recast

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**BUDGETARY IMPLICATIONS:** the budgetary impact associated to the proposal under this package concerns the resources of the [Agency for the Cooperation of Energy Regulators](#) (ACER). Essentially, the new tasks to be carried out by ACER, notably as regards the assessment of system adequacy and the establishment of Regional Operation Centres, require a phasing in of 18 additional full-time staff in the Agency in 2020, as well as corresponding financial resources amounting to EUR 1 038 000 in 2020.

## European Union Agency for the Cooperation of Energy Regulators. Recast

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

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

Members amended the Commission proposal as follows:

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

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

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

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

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

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

The Agency shall issue a decision only where:

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

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

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

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

Before approving the terms and conditions or methodologies, the Agency shall revise and change them where necessary in order to ensure that they are in line with the purpose of the network code or guidelines.

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

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

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

**Charges:** the proposed amendments seek to allow ACER to collect fees for the registration of Registered Reporting Mechanisms, reporting trade and fundamental data under REMIT, and for the oversight of TSOs activities, including their cooperation through the ENTSOs. The Commission would determine the amount of fees and charges, and their terms of payment.

**Procedural safeguards:** Members proposed an Article concerning procedural safeguards for addressees of the Agency setting out ACER's decision-making process to ensure that decisions are properly reasoned and justified in order to allow for legal remedies. For all Agency decisions, the rules of procedure shall ensure a transparent and reasonable decision-making process, guaranteeing fundamental procedural

rights based on the rule of law. Decisions shall be made public while preserving the confidentiality of commercially sensitive information.

Lastly, a number of amendments are proposed with regard to the organisation of the Agency, among which are amendments to preserve the Directors power to take certain management decisions, to ensure the independence of ACERs Administrative Board from political instructions and to adjust certain procedures.

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

## European Union Agency for the Cooperation of Energy Regulators. Recast

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The European Parliament adopted by 558 votes to 75, with 31 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (recast).

The position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

### Enhanced missions and powers

The rules establishing the Agency for the Cooperation of Energy Regulators (ACER) have been amended and the Agency is to have more tasks and powers.

The Agency should assist the regulatory authorities referred to in the recast Directive on electricity and Directive 2009/73/EC of the European Parliament and of the Council on common rules for the internal market in natural gas to exercise, at Union level, the regulatory tasks performed in the Member States, and, if necessary, to coordinate their action and to mediate and settle disagreements between them as to whether or not there has been a breach of obligations.

ACER should also contribute to the adoption of high quality common regulatory and supervisory practices, and thus to a coherent, effective and efficient application of Union law in order to achieve the Union's climate and energy objectives.

In carrying out its tasks, ACER would act independently and objectively and in the interest of the Union. It would make its decisions autonomously, independent of private or corporate interests.

ACER's headquarters would be located in Ljubljana, Slovenia.

### Agency opinions, recommendations and decisions

The Agency would issue opinions and recommendations to (i) transmission system operators, the ENTSO for Electricity, the ENTSO for Gas, the Union DSO entity, regional coordination centres and designated operators in the electricity market; (ii) regulatory authorities; (iii) the European Parliament, the Council or the Commission.

At the request of ACER, the regulatory authorities, the ENTSO for Electricity, the ENTSO for Gas, the regional coordination centres, the Union's DSO entity, transmission system operators and designated electricity market operators should provide it with the information it needs to fulfil its tasks.

For the purposes of information requests, ACER would be empowered to adopt decisions and should ensure an adequate level of data protection for all information.

### Governance of the company

The new regulation would also define the division of tasks between the Board of Regulators and the Director of ACER.

In preparing the Agency's opinions, recommendations and decisions, the Director should take into account any observations or amendments made by the Board of Regulators, or provide justification where they are not taken into account. Where the Board of Regulators does not approve the revised text, the Director may revise it again or withdraw it and submit a new text.

ACER should be accountable to the European Parliament, the Council and the Commission, where appropriate.

## European Union Agency for the Cooperation of Energy Regulators. Recast

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**PURPOSE:** to update the legislative framework for the Agency for the Cooperation of Energy Regulators (ACER) in order to adapt regulatory supervision to the new realities of an increasingly interconnected European energy market.

**LEGISLATIVE ACT:** Regulation (EU) 2019/942 of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators.

**CONTENT:** the Regulation updates the provisions concerning the role and functioning of the European Agency for the Cooperation of Energy Regulators (ACER), including the tasks of its Director and the Board of Regulators.

The recast of the Regulation establishing ACER, the [Regulation](#) on the electricity market and the [Directive](#) on common rules for the internal market in electricity as well as the [Regulation](#) on risk preparedness are part of the Commission's broader set of initiatives entitled Clean Energy for All Europeans. This package includes the Commission's main proposals for implementing the Energy Union.

### Enhanced missions and powers

The Agency shall assist the regulatory authorities referred to in the recast Directive on electricity and Directive 2009/73/EC of the European Parliament and of the Council on common rules for the internal market in natural gas to exercise, at Union level, the regulatory tasks performed in the Member States, and, if necessary, to coordinate their action and to mediate and settle disagreements between them as to whether or not there has been a breach of obligations.

ACER shall also contribute to the adoption of high quality common regulatory and supervisory practices, and thus to a coherent, effective and efficient application of Union law in order to achieve the Union's climate and energy objectives.

In carrying out its tasks, ACER shall act independently and objectively and in the interest of the Union. It would make its decisions autonomously, independent of private or corporate interests.

#### General tasks

ACER shall, at the request of the European Parliament, the Council or the Commission, or on its own initiative, issue an opinion or recommendation to the European Parliament, the Council and the Commission on all matters relating to the purpose for which it has been established.

At the request of ACER, the regulatory authorities, the European Network of Transmission System Operators for Electricity (ENTSO-E), the ENTSO for Gas, the Regional Coordination Centres, the EU Entity for Distribution System Operators (EU DSOs), transmission system operators and designated electricity market operators shall provide it with the information it needs to fulfil its tasks.

ACER shall be empowered to adopt decisions for the purpose of requests for information.

#### Monitoring and reporting

ACER, in close cooperation with the Commission, Member States and relevant national authorities, including regulatory authorities, shall monitor the wholesale and retail markets for electricity and natural gas, including (i) retail prices for electricity and natural gas, (ii) respect for consumer rights, (iii) the impact of market developments on residential customers, (iv) access to networks, including access to electricity from renewable energy sources, (v) progress made with regard to interconnectors, (vi) potential barriers to cross-border trade, (vii) regulatory barriers faced by new market entrants and smaller players, (viii) state interventions preventing prices from reflecting actual scarcity.

ACER shall publish an annual report on the results of its monitoring activities.

#### Governance

ACER consists of an Administrative Board, a Board of Regulators, a Director and a Board of Appeal. ACER's headquarters are located in Ljubljana, Slovenia.

The new regulation defines the division of tasks between the Board of Regulators and the Director of ACER.

In preparing the Agency's opinions, recommendations and decisions, the Director shall take into account any observations or amendments made by the Board of Regulators, or provide justification where they are not taken into account. Where the Board of Regulators does not approve the revised text, the Director may revise it again or withdraw it and submit a new text.

ACER shall be accountable to the European Parliament, the Council and the Commission, where appropriate.

ENTRY INTO FORCE: 4.7.2019.