

**Proposal for a Regulation of the European Parliament and of the Council establishing a
European Agency for the Cooperation of Energy Regulators
(COM (2016) 863)**

APPROVED FINAL DOCUMENT

The Committee on Economic Activities, Trade and Tourism of Italy's Chamber of Deputies,

having examined, in accordance with Rule of Procedure no. 127 of the Chamber of Deputies, the proposal for a Regulation of the European Parliament and of the Council establishing a European Union Agency for the Cooperation of Energy Regulators (COM (2016) 863);

taking cognisance of the information and analyses acquired through the hearings that the Committee conducted in the course of considering the document in question;

subject to the considerations regarding all the proposals relating to the energy package as set out in the Final Document on the proposal for a Regulation on the internal market for electricity (COM (2016) 861);

and with the further premise that:

- Under the proposal for a Regulation, the rules concerning the European Agency for the Cooperation of Energy Regulators (ACER) are eventually to be harmonised with the "Common Approach" for decentralised EU agencies, as agreed between the European Parliament, the Council and the European Commission. However, the proposal would also allow limited departures from the Common Approach for the time being;
- The proposed Regulation would assign additional tasks to ACER to reflect the progressive increase in cross-border trades in energy and the emergence of a regional and European rather than a purely national approach to network system operations;
- Article 5 of the proposal gives ACER greater responsibility for the development of electricity network codes, for deciding on the terms, methods and algorithms for the implementation of the codes, and for setting guidelines for the electricity sector. The proposal also increases the role of distribution system operators (DSOs) in the development of network codes;
- The proposal introduces a regional level of decision-making and appoints ACER to the task of monitoring and analysing the performance of regional operational centres (Article 8) and the functions carried out by transmission system operators-TSOs (Article 9). It also puts ACER in charge of approving proposals on the methodologies and calculations to be used in resource-adequacy assessments, as well as proposals for cross-border participation in capacity-control mechanisms (Article 10);
- ACER is to be placed in charge of monitoring market performance and in particular "flexibility barriers" at the Member State level, including price interventions (Article 16);

- The proposal amends ACER's rules of governance by redefining the role of the bodies of which it is composed and by re-orienting its decision-making processes (Articles 18 *et seq.*);
- The energy package as a whole assigns a variety of tasks to ACER, including: establishing and implementing rules for channelling the revenues from congestion charges into network investments; setting rules for the reallocation of congestion charge revenues, and for the settlement of possible disputes between market participants; monitoring intraday markets to remove distortions and create more liquid trading; deciding on disputes between national regulatory authorities through a reinforced board of appeal; establishing an EU entity of distribution system operators (EU DSOs), and ensuring it functions smoothly and in tandem with TSOs; approving methodologies for the identification of electricity crisis scenarios at a regional level, and regularly analysing and amending the methodologies as necessary;

Mindful that this final document needs to be forwarded without delay to the European Commission as part of the political dialogue, as well as to the European Parliament and the Council;

expresses a favourable opinion

with the following remarks:

- a) The tendency to assign greater powers to ACER and to the European Network of Transmission System Operators for Electricity (ENTSO-E) to determine criteria and methodologies needs to be reviewed lest it will excessively restrict the room for manoeuvre of Member States and national regulatory authorities. The need for a review is particularly pressing where ACER has been granted the power to approve and, where necessary, modify the methodology and calculations used to determine capacity mechanisms that ensure the adequacy of the electricity system, also because this matter is currently being addressed by national legislation. We need to consider whether it might not be better after all to stick to the current arrangements under which Member States are responsible for ensuring the continuity and security of the electricity supply, and to allow them to continue carrying out the adequacy assessments that form the basis for national-level capacity mechanisms. Likewise, consideration should be given to the possibility of allowing individual Member States to calculate cross-border participation in capacity mechanisms and to determine, on the basis of the capacity mechanism that they already have in place, the maximum capacity to be made available for foreign-based producers. Similarly, some thought should be given to the appropriateness of the measure that transfers to ACER the power currently enjoyed by national regulatory authorities to review and approve the terms and methodologies that the TSOs set with reference to the network codes;
- b) The proposed changes to ACER's rules of governance seem liable to curtail the autonomy of its Administrative Board and its Director with respect to resource management, and dilute the role of its Board of Regulators. Particular attention needs to be paid to the proposals to amend the voting procedures of the Board of Regulators by reducing the approval threshold from a two-thirds to a simple majority.

