



## EUROPEAN COMMISSION

*Brussels, 19.06.2017*

*C(2017) 4103 final*

*Dear President,*

*The Commission would like to thank the Sénat for its Reasoned Opinion 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) {COM (2016) 863 final}.*

*The proposal is part of a package of ambitious measures, the "Clean Energy for All Europeans" package, adopted by the Commission in order to establish a stable and forward-looking regulatory framework for the upcoming energy challenges. The measures included in the package focus on the following three main objectives: energy efficiency first, achievement of a global leadership in renewable energies and a fair deal for consumers.*

*The further integration of European energy markets is a central prerequisite for achieving the objectives of the package. This also requires adapting the competences and functioning of the Agency for the Cooperation of Energy Regulatory Authorities (ACER).*

*The Commission welcomes the Sénat's broad support for the Agency and its current field of competence. The Commission takes seriously the concerns expressed by the Sénat as regards the proposal's compliance with the principle of subsidiarity, and notes its doubts regarding the changes proposed concerning the competences of the Agency and the voting rules within its Board of Regulators.*

*In the Commission's view, the proposal fully complies with the principle of subsidiarity. The initiative aims at amending existing European Union legislation and at creating a new framework for cross-border cooperation, which can legally and practically only be achieved at European level. Furthermore, national policy interventions in the electricity sector have a direct impact on neighboring Member States, in fact even more than in the past as the increasing cross-border trade, the spread of decentralized generation and more enhanced consumer participation increases spill-over effects. No Member State can effectively act alone and the externalities of unilateral action have become more important. This naturally calls for some adaptations to the Regulation governing the Agency for the Cooperation of Energy Regulators.*

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*As regards the proposal's extension of the competences of the Agency the reference to regulatory issues of “cross-border relevance” in Article 6 of the proposal was not intended to give it an unlimited competence but rather to reflect its arbitration role played already today in cases where national regulatory authorities cannot agree on a matter, in particular pursuant to network codes. The current role of the Agency frequently goes beyond infrastructure matters.*

*With regard to the Sénat's concerns on the Agency's competences on regional matters, the Commission wishes to stress that the procedure laid down in Article 7 of the proposal only applies to decisions on terms, conditions or methodologies foreseen in network codes and guidelines to be adopted pursuant to Article 5(2) of the proposal. Currently, these network codes and guidelines provide for individual decisions to be taken by each national regulatory authority and a subsequent decision to be taken by the Agency when the national authorities cannot agree. The proposal simplifies the procedure, conferring the power to decide directly to the Board of Regulators where the national regulators are represented. When matters are considered to be of regional relevance, a regional subgroup would be able to submit a recommendation on the matter to the Board of Regulators.*

*Finally, as regards the decision-making process in the Board of Regulators, the current rules require a two-thirds majority with one country one vote (no weighing of votes). The Commission suggests replacing it by a simple majority rule in order to facilitate decision-making and align the voting rules with the ones applying in other European Union Agencies. In addition, the two-thirds threshold has created blockages in the past and prevented the Agency from taking important decisions in the interest of the internal energy market.*

*The Commission hopes that these clarifications address the issues raised by the Sénat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Miguel Arias Cañete  
Member of the Commission*