

REGULATION (EU) 2019/942 of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators

Incorporated and adapted by the Ministerial Council Decision 2022/03/MC-EnC of 15 December 2022 on the incorporation of Regulation (EU) 2019/942, Regulation (EU) 2019/943, Regulation (EU) 2015/1222, Regulation (EU) 2016/1719, Regulation (EU) 2017/2195, Regulation (EU) 2017/2196, Regulation (EU) 2017/1485 in the Energy Community acquis, amending Annex I of the Energy Community Treaty, and on the amendments of the Ministerial Council Decisions 2021/13/MC-EnC and 2011/02/MC-EnC.

The adaptations made by Ministerial Council Decision 2022/03/MC-EnC are highlighted in bold and blue.

Chapter I Objectives and tasks

Article 1

Establishment and objectives

1. This Regulation **stipulates the tasks of the European Union Agency for the Cooperation of Energy Regulators (ACER) in the Energy Community in situations affecting at least one Contracting Party and one Member State of the European Union, limited to the application of the provisions of Directive (EU) 2019/944, Regulation (EU) 2019/943, Regulation (EU) 2015/1222, Regulation (EU) 2016/1719, Regulation (EU) 2017/2195, Regulation (EU) 2017/2196 and Regulation (EU) 2017/1485, covering the territories referred to in Article 27 of the Treaty, and in particular the energy sector stakeholders of those Contracting Parties and Member States as defined by Article 1(1) of Procedural Act 2022/01/MC-EnC.**
2. <...>
3. <...>

Article 2

Type of acts of ACER

ACER shall:

- (a) issue opinions and recommendations addressed to transmission system operators, <...> regional coordination centres and nominated electricity market operators;
- (b) issue opinions and recommendations addressed to regulatory authorities;

- <...>;
- (c) issue individual decisions on the provision of information in accordance with Article (d) 3(2) **and** point (b) of Article 7(2); on approving the methodologies, terms and conditions in accordance with Article 4(4), Article 5 <...> (3) and (4); <...> on technical issues as referred to in Article 6(1); on arbitration between regulators in accordance with Article 6(10); related to regional coordination centres as referred to in point (a) of Article 7(2); <...>; on exemptions as referred to in Article 10; <...>.
- (e) <...>

Article 3

General tasks

1. <...>
2. At ACER's request, the regulatory authorities, the ENTSO for Electricity, the ENTSO for Gas, the regional coordination centres, **the Coordination Group of the Energy Community Distribution System Operators established by Procedural Act No 2018/01/MC-EnC**, the transmission system operators and the nominated electricity market operators shall provide to ACER the information necessary for the purpose of carrying out ACER's tasks under this Regulation, unless ACER has already requested and received such information.

For the purpose of information requests as referred to in the first subparagraph, ACER shall have the power to issue decisions. In its decisions, ACER shall specify the purpose of its request, shall make a reference to the legal basis under which the information is requested, and shall state a time limit within which the information is to be provided. That time limit shall be proportionate to the request.

ACER shall use confidential information received pursuant to this Regulation only for the purpose of carrying out the tasks assigned to it in this Regulation. ACER shall ensure the appropriate data protection of the information pursuant to Article 41 of **Regulation (EU) 2019/942**.

Article 4

Tasks of ACER as regards the cooperation of transmission system operators and distribution system operators

1. <...>
2. <...>
3. <...>
4. ACER, where appropriate, after requesting updates to the drafts submitted by transmission system operators, shall approve the methodology regarding the use of revenues from congestion income pursuant to Article 19(4) of Regulation (EU)

2019/943, as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC.

5. <...>

6. The relevant regulatory authorities shall coordinate in order to jointly identify whether there is non-compliance of <...> regional coordination centres with their obligations under **Energy Community** law and shall take appropriate action in accordance with point (c) of Article 59(1) and point (f) of Article 62(1) of Directive (EU) 2019/944, as adapted and adopted by Ministerial Council Decision 2021/13/MC-EnC.

At the request of one or more regulatory authorities or at its own initiative, ACER shall issue a reasoned opinion as well as a recommendation to <...> regional coordination centres with regard to compliance with their obligations.

7. Where a reasoned opinion of ACER identifies a case of potential non-compliance of <...> a regional coordination centre with their respective obligations, the regulatory authorities concerned shall unanimously take coordinated decisions establishing whether there is non-compliance with the relevant obligations and, where applicable, determining the measures to be taken by the <...> regional coordination centre to remedy that non-compliance. Where the regulatory authorities fail to take such coordinated decisions unanimously within four months of the date of receipt of ACER's reasoned opinion, the matter shall be referred to ACER for a decision pursuant to Article 6(10).

8. <...>

Article 5

Tasks of ACER as regards the development and implementation of network codes and guidelines

1.<...>2. <...>

3. Where a **Decision adopted by the Ministerial Council under both Title II and Title III of the Treaty** provides for the development of proposals for terms and conditions or methodologies for the implementation of network codes and guidelines which require the approval of all the regulatory authorities of the region concerned, those regulatory authorities shall agree unanimously on the common terms and conditions or methodologies to be approved by each of those regulatory authorities: <...>.

The proposals referred to in the first subparagraph shall be notified to ACER within one week of their submission to those regulatory authorities. The regulatory authorities may refer the proposals to ACER for approval pursuant to point (b) of the second subparagraph of Article 6(10) and shall do so pursuant to point (a) of the second subparagraph of Article 6(10) where there is no unanimous agreement as referred to in the first subparagraph.

The Director or the Board of Regulators, acting on its own initiative or on a proposal from one or more of its members, may require the regulatory authorities of the region concerned to refer the proposal to ACER for approval. Such a request shall be limited to cases in which the regionally agreed proposal would have a tangible impact on the internal energy market or on security of supply beyond the region.

4. Without prejudice to paragraph <...> 3, ACER shall be competent to take a decision pursuant to Article 6(10) where the competent regulatory authorities fail to agree on terms and conditions or methodologies for the implementation of new network codes and guidelines adopted after **the expiry of the deadline for transposition of Ministerial Council Decision**, where those terms and conditions or methodologies require the approval of <...> all the regulatory authorities of the region concerned.

5. <...>

6. Before approving the terms and conditions or methodologies referred to in paragraph <...> 3, the regulatory authorities, or, where competent, ACER, shall revise them where necessary, after consulting **the Energy Community Regulatory Board**, the ENTSO for Electricity, the ENTSO for Gas, **the Coordination Group of the Energy Community Distribution System Operators established by Procedural Act No 2018/01/MC-EnC** or the EU DSO entity, 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, effective competition and the proper functioning of the market. ACER shall take a decision on the approval within the period specified in the relevant network codes and guidelines. That period shall begin on the day following that on which the proposal was referred to ACER.

7. <...>

8. ACER shall monitor the regional cooperation of transmission system operators referred to in Article 34 of Regulation (EU) 2019/943, **as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC** and Article 12 of Regulation (EC) No 715/2009, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC** and shall take into account the outcome of that cooperation when formulating its opinions, recommendations and decisions.

Article 6

Tasks of ACER as regards the regulatory authorities

1. ACER shall adopt individual decisions on technical issues where those decisions are provided for in Regulation (EU) 2019/943, **as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC**, Regulation (EC) No 715/2009, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**, Directive (EU) 2019/944, **as adapted and adopted by Ministerial Council Decision 2021/13/MC-EnC** or Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**.

2. ACER may, in accordance with its work programme, at the request of the **Energy Community Secretariat**, the **European Commission** or on its own initiative, make

recommendations to assist regulatory authorities and market participants in sharing good practices.

3. <...>

4. <...>

5. <...>

6. <...>

7. <...>

8. <...>

9. ACER shall submit opinions to the relevant regulatory authority and to the **Energy Community Secretariat and the European Commission** pursuant to Article 16(3) of Regulation (EU) 2019/943 **as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC**.

10. ACER shall be competent to adopt individual decisions on regulatory issues having effects on cross-border trade or cross-border system security which require a joint decision by at least two regulatory authorities, where such competences have been conferred on the regulatory authorities under **a Decision adopted by the Ministerial Council under both Title II and Title III of the Treaty: <...>**

ACER shall be competent to adopt individual decisions as specified in the first subparagraph in the following situations:

- (a) where the competent regulatory authorities have not been able to reach an agreement within six months of referral of the case to the last of those regulatory authorities, or within four months in cases under Article 4(7) of this Regulation or under point (c) of Article (59)(1) or point (f) of Article 62(1) of Directive (EU) 2019/944, **as adapted and adopted by Ministerial Council Decision 2021/13/MC-EnC**; or
- (b) on the basis of a joint request from the competent regulatory authorities.

The competent regulatory authorities may jointly request that the period referred to in point (a) of the second subparagraph of this paragraph be extended by a period of up to six months, except in cases under Article 4(7) of this Regulation or under point (c) of Article 59(1) or point (f) of Article 62(1) of Directive (EU) 2019/944, **as adapted and adopted by Ministerial Council Decision 2021/13/MC-EnC**.

Where the competences to decide on cross-border issues referred to in the first subparagraph have been conferred on the regulatory authorities in new network codes or guidelines adopted <...> after **15 December 2022**, ACER shall only be competent on a voluntary basis pursuant to point (b) of the second subparagraph of this paragraph, upon a request from at least 60 % of the competent regulatory authorities. Where only two regulatory authorities are involved, either one may refer the case to ACER.

<...>

11. When preparing its decision pursuant to paragraph 10, ACER shall consult the regulatory authorities and transmission system operators concerned and shall be informed of the proposals and observations of all the transmission system operators concerned.

12. Where a case has been referred to ACER under paragraph 10, ACER:

- (a) shall issue a decision within six months of the date of referral, or within four months thereof in cases pursuant to Article 4(7) of this Regulation or point (c) of Article (59)(1) or point (f) of Article 62(1) of Directive (EU) 2019/944, **as adapted and adopted by Ministerial Council Decision 2021/13/MC-EnC**; and
- (b) may, if necessary, provide an interim decision to ensure that security of supply or operational security is protected.

13. Where the regulatory issues referred to in paragraph 10 include exemptions within the meaning of Article 63 of Regulation (EU) 2019/943, **as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC**, or Article 36 of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC** the deadlines provided for in this Regulation shall not be cumulative with the deadlines provided for in those provisions.

Article 7

Tasks of ACER as regards regional coordination centres

1. ACER, in close cooperation with the regulatory authorities and the ENTSO for Electricity, shall monitor and analyse the performance of regional coordination centres, taking into account the reports provided for in Article 46(3) of Regulation (EU) 2019/943, **as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC**.

2. To carry out the tasks referred to in paragraph 1 in an efficient and expeditious manner, ACER shall in particular:

- (a) decide on the configuration of system operation regions pursuant to **Annex V of Regulation (EU) 2019/943 as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC**;
- (b) request information from regional coordination centres where appropriate pursuant to Article 46 of Regulation (EU) 2019/943, **as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC**;
- (c) issue opinions and recommendations to the **Ministerial Council, the Permanent High Level Group, the Energy Community Regulatory Board, the Energy Community Secretariat** and the European Commission;

- (d) issue opinions and recommendations to regional coordination centres.

Article 8

Tasks of ACER as regards nominated electricity market operators

<...>

Article 9

Tasks of ACER as regards generation adequacy and risk preparedness

<...>

Article 10

Tasks of ACER as regards exemptions

ACER shall decide on exemptions, as provided for in Article 63(5) of Regulation (EU) 2019/943, **as adapted and adopted by Ministerial Council Decision 2022/03/MC-EnC**. ACER shall also decide on exemptions as provided for in Article 36(4) of Directive 2009/73/EC, **as adapted and adopted by Ministerial Council Decision 2011/02/MC-EnC**, where the infrastructure concerned is located in the territory of **at least one Contracting Party and** a Member State.

Article 11

Tasks of ACER as regards infrastructure

<...>

Article 12

Tasks of ACER as regards wholesale market integrity and transparency

<...>

Article 13

Commissioning of new tasks to ACER

<...>

Article 14

Consultations, transparency and procedural safeguards

1. In carrying out its tasks **under Article 1 of this Regulation**, ACER shall, extensively consult at an early stage **the Energy Community Regulatory Board**, 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. ACER 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.

<...>

3. <...>

4. ACER 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.

5. <...>

6. Before taking any individual decision as provided for in this Regulation, ACER shall inform any party concerned of its intention to adopt that decision, and shall set a time limit within which the party concerned may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter.

7. Individual decisions of ACER shall state the reasons on which they are based for the purpose of allowing an appeal on the merits.

8. The parties concerned by individual decisions shall be informed of the legal remedies available under this Regulation.

Article 15

Monitoring and reporting on the electricity and natural gas sectors

<...>

Chapter II Organisation of ACER

Article 16

Legal status

<...>

Article 17

Administrative and Management Structure

<...>

Article 18

Composition of the Administrative Board

<...>

Article 19

Functions of the Administrative Board

<...>

Article 20

Annual and multi-annual programming

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Article 21

Composition of the Board of Regulators

<...>

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Functions of the Board of Regulators

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Article 23

Director

<...>

Article 24

Tasks of the Director

<...>

Article 25

Creation and composition of the Board of Appeal

<...>

Article 26

Members of the Board of Appeal

<...>

Article 27

Exclusion and objection in the Board of Appeal

<...>

Article 28

Decisions subject to appeal

1. Any natural or legal person, including the regulatory authorities, may appeal against a decision referred to in point (d) of Article 2 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 shall include a statement of the grounds for appeal and shall be filed in writing at ACER within two months of the notification of the decision to the person concerned, or, in the absence thereof, within two months of the date on which ACER published its decision. The Board of Appeal shall decide upon the appeal within 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 to the appeal proceedings as often as necessary 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 presentation.
5. The Board of Appeal may confirm the decision, or it may remit the case to the competent body of ACER. The latter shall be bound by the decision of the Board of Appeal.
6. ACER shall publish the decisions taken by the Board of Appeal.

Article 29

Actions before the Court of Justice

Actions for the annulment of a decision issued by ACER pursuant to this Regulation and actions for failure to act within the applicable time limits may be brought before the Court of Justice only after the exhaustion of the appeal procedure referred to in Article 28. ACER shall take the necessary measures to comply with the judgments of the Court of Justice.

Article 30

Working groups

<...>

Chapter III

Establishment and structure of the budget

Article 31

Structure of the budget

<...>

Article 32

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Article 33

Establishment of the budget

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Article 34

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<...>

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<...>

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General and final provisions

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Privileges and immunities and Headquarters Agreement

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Article 39

Staff

<...>

Article 40

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Transparency and communication

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Article 42

Protection of classified and sensitive non-classified information

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Article 45

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Article 46

Repeal

<...>

Article 47

Entry into force

This Decision D/2022/03/MC-EnC enters into force upon its adoption and is addressed to the Parties and institutions of the Energy Community.¹

Article 2 of Decision D/2022/03/MC-EnC

Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) 2019/942 <...> by 31 December 2023.

Each Contracting Party shall notify the Energy Community Secretariat of completed transposition by sending the text of the provisions of national law which they adopt in the field covered by this Decision and of any subsequent changes within two weeks following the adoption of such measures.

¹ The text displayed here corresponds to Article 13 of Decision 2022/03/MC-EnC.