

Extension of Territorial Competences of ACER's in the Field of Electricity

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Abstract - The European Union Agency for the Cooperation of Energy Regulators (ACER) is an EU institution established under Regulation (EC) No. 713/2009 to support national regulatory authorities in the energy sector across EU Member States. Regulation (EC) No. 713/2009 was subsequently repealed and replaced by Regulation (EU) 2019/942, which broadened ACER's mandate by strengthening its regulatory role in energy market coupling and in the harmonisation of market functioning. This reform granted ACER jurisdiction over the national regulatory authorities of EU Member States. Following Decision No. 2022/03/MC-EnC of the Energy Community Ministerial Council, Regulation (EU) 2019/942 was adapted for implementation within the Energy Community. As a result, ACER was given jurisdiction over the Regulatory Board of the Energy Community and the regulatory authorities of its Contracting Parties. The adapted regulation also granted natural and legal persons within the Contracting Parties the right to initiate second-instance proceedings against ACER's decisions, as well as to challenge ACER's second-instance decisions before the Court of Justice of the European Union. This paper examines ACER's competences, as an EU institution, within the Contracting Parties of the Energy Community in the field of electricity. It also analyses the mechanisms available for protecting the rights of natural and legal persons in the Contracting Parties affected by those decisions.

Index Terms - ACER, electricity market coupling, ACER competences, Energy Community, Court of Justice of the European Union

I INTRODUCTION

The European Union Agency for the Cooperation of Energy Regulators (ACER) was established in 2011. It is formed on the European Union Regulation (EC) No. Regulation (EC) No 713/2009 establishing the Agency for the Cooperation of Energy Regulators¹. Today, ACER plays a key role in driving growing energy market integration across Europe to bring the benefits of affordable, secure and decarbonised energy to European businesses and citizens. ACER is engaged in the electricity and gas sector, including hydrogen. ACER members are national energy regulatory authorities of the Member States of the

European Union. ACER's headquarters are located in Ljubljana.²

As part of the Fourth Energy Package of European Union, the Regulation founding ACER was amended in 2019 by the new Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (hereinafter referred to as Regulation 2019/942).³

In December 2022, the Energy Community Ministerial Council^{4,5} adopted Decision of the Ministerial Council of the Energy Community, D/2922/03/MC-EnC: Decision 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.⁶

² https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/agency-cooperation-energy-regulators-acer_en#further-information, 01.03.2025

³ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast)

⁴ Law on the ratification of the Energy Community Treaty between the European Community and the Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia and the United Nations Interim Mission in Kosovo in accordance with United Nations Security Council Resolution 1244 ("Official Gazette of the Republic of Serbia", No 62/2006).

⁵ The Ministerial Council of the Energy Community, pursuant to Article 47 of the The Energy Community Treaty, is the highest institution of the Energy Community whose competence is to ensure the achievement of the objectives of the Energy Community Treaty, providing general political guidance; take action in accordance with this Agreement; adopt procedural acts by which, inter alia, it may entrust other bodies of this Community, under precisely defined conditions, with certain tasks, powers or obligations with regard to the implementation of the Energy Community policy. Ministerial Council, pursuant to Article 100 of the Energy Community Treaty may decide on the implementation of other parts of the *acquis communautaire* relating to Network Energy; extend the scope of this Treaty to other energy products and energy products or other relevant network infrastructure; agree to the accession of a new Party to the Energy Community.

⁶ Decision of the Ministerial Council of the Energy Community, D/2922/03/MC-EnC: Decision 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

¹ 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.

This Decision also established ACER's competence over the Energy Community electricity market, and its decisions became binding on the Energy Community Contracting Parties. Due to the complexity of the transposition of Regulation (EU) 2019/942 and the regulation of ACER's competences, as an institution of the European Union, in the domestic, legal frameworks of the Contracting Parties, the Ministerial Council of the Energy Community adopted a Procedural Act.⁷ That Procedural Act specifically prescribes the competences of ACER, taking into account the entire package of regulations on electricity market integration (EU/EnC *Electricity Integration Package*).

II COMPETENCES AND FUNCTIONING OF ACER UNDER REGULATIONS OF THE EUROPEAN UNION

On the day of its establishment, ACER also received new obligations through various later adopted regulations of the European Union. It was also concluded that ACER's activities have significantly improved coordination between the regulatory bodies of the European Union when it comes to cross-border relations.

The Fourth Package of Energy Regulations of the European Union, "Clean Energy for All Europeans," has brought novelties in the functioning of the electricity market, including the requirements of the participation of new market participants (aggregators, active customers, prosumers, energy communities) and new trends in the need for flexibility of electricity networks and markets in order to integrate intermittent electricity producers using renewable energy sources. That was conditioned the need for tighter connectivity and development cross-border relationships are achieved through the cooperation of national regulatory authorities, transmission system operators, nominated electricity market operators (NEMOs) and Regional Coordination Centres.

Ensuring the smooth functioning of the single electricity market of the European Union in the new relations has influenced the need to strengthen ACER's competencies in terms of cooperation with ENTSO-E, development of network codes and guidelines that regulate a number of details of the functioning of the electricity market of the European Union and participants in this market, but also in resolving situations arising from transitional relations, changes in market relations in the conditions of electricity market coupling of the European Union.

Regulation (EU) 2019/942 regulates the establishment, objectives, types of acts of ACER and the tasks of ACER, the internal organisation of ACER and the competences of ACER's bodies, as well as the financial functioning and annual accounts and reports.

The purpose of ACER is to assist, at the level of the European Union, the energy regulatory authorities of the Member States of the European Union in carrying out their regulatory tasks they carry out in the Member States and, where necessary,

coordinating their activities, mediating their disputes and resolving individual disputes in accordance with its powers. An important objective of ACER is to contribute to the establishment of high-quality common regulatory and supervisory practices, thereby contributing to the consistent, efficient and effective application of EU law in order to achieve its climate and energy objectives. An important feature of ACER is that it carries out its activities independently and objectively in the interest of the European Union and that it takes autonomous decisions, independent of private and corporate interests.⁸

The ACER acts are prescribed by Article 2 of the Regulation (EU) 2019/942. In accordance with this Article, ACER shall adopt the following acts in the field of electricity: (a) issue opinions and recommendations addressed to transmission system operators, ENTSO-E, the EU authority responsible for distribution system operators, regional coordination centres and NEMOs; (b) issue opinions and recommendations to regulatory bodies; (c) issue opinions and recommendations addressed to the European Parliament, the Council of the European Union (hereinafter: the Council) or the European Commission (hereinafter: the Commission); (d) take individual decisions on the provision of information, the approval of methodologies and rules, the review of bidding zones, technical matters, arbitration between regulators, issues relating to regional coordination centres and the integrity and transparency of the wholesale market; (e) Submits non-binding framework guidelines to the European Commission.⁹

ACER has various tasks with regard to the following thematically structured activities: (a) cooperation between transmission system operators and distribution system operators, (b) development and implementation of network codes and guidelines; (c) monitoring and making recommendations to regulatory bodies; Regional Coordination Centres and NEMOs; (d) the adequacy of electricity generation and risk preparedness; (e) the exemptions provided in Regulation (EU) 2019/943;¹⁰ (f) monitoring the implementation of network development plans and the implementation of projects for the construction of new interconnector capacity; (d) activities regarding the integrity and transparency of the wholesale market; (h) taking action on existing new rules and guidelines, as well as the terms and conditions or methodologies (OUM) to be adopted by the Commission; (i) advising and ensuring transparency of market activities relevant to all participants; j) monitoring of the electricity sector and reporting to the Commission.

In addition to ACER's competences set out in Regulation (EU) 2019/942, are also regulated by other related European Union regulations relating to electricity market coupling, such as:

- Directive (EU) 2019/944¹¹ on common rules for the internal market for electricity;

⁸ Article 1 of the Regulation (EU) 2019/942.

⁹ Article 2 of the Regulation (EU) 2019/942.

¹⁰ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast).

¹¹ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast).

acquis, amending Annex I of the Energy Community Treaty, and on the amendments of the Ministerial Council Decisions 2021/13/MC-EnC and No.. 2011/02/MC-EnC.

⁷ Procedural Act of the Ministerial Council of the Energy Community 2022/PA/MC.EnC: on Regional Market Integration.

- Regulation (EU) 2019/941¹² on risk-preparedness in the electricity sector,
- Regulation (EU) 2019/943 on the internal market for electricity
- as well as the rules and guidelines for the electricity market as defined by the following Commission Regulations:
 - Commission Regulation (EU) 2015/1222 on guidelines for capacity allocation and congestion management (CACM)¹³
 - Commission Regulation (EU) 2016/1719 on guidelines for the allocation of capacity in long-term markets (FCA)¹⁴
 - Commission Regulation (EU) 2017/2195 on guidelines for electricity balancing (GLEB)¹⁵
 - Commission Regulation (EU) 2017/2196 on the network code for emergency and restoration of electricity systems (NCER)¹⁶
 - Commission Regulation (EU) 2017/1485 on guidelines for the operation of interconnected transmission systems for electricity (SOGL)¹⁷.

III ORGANIZATION OF ACER

In each Member State of the European Union, the ACER has legal personality in accordance with national law. ACER is represented by its Director, and ACER's headquarters are in Ljubljana, Slovenia. ACER's bodies are: the Administrative Board, the Board of Regulators, the Director and the Board of Appeals.¹⁸

ACER's Administrative Board shall manage ACER, appointing its bodies, adopting ACER's rules and rules of procedure proposed by the Director, adopting a programming document containing annual and multiannual planning of ACER's activities and other tasks.

The Board of Regulators is composed of representatives of the national energy regulators of the Member States of the European Union and one non-voting member of the Commission. It should be noted that the Board of Regulators does not have a role similar to the assembly of companies or associations in the law of the Republic of Serbia. The Board of Regulators shall be appointed by ACER's Administrative Board. It shall issue opinions and, if necessary, submit comments and amendments to the text of the draft opinions, recommendations and decisions of the Director of ACER. Provide instructions to the Director of ACER, in the

performance of his or her tasks in accordance with Regulation (EU) 2019/942, provide an opinion to the Administrative Board on the candidate to be appointed as Director of ACER and other duties in accordance with Regulation (EU) 2019/942.

The Director is the executive body of ACER and has powers very similar to those of directors of business entities in the law of the Republic of Serbia.

The Board of Appeal is a body whose members are appointed by ACER's Administrative Board on a proposal from the Commission. The Board of Appeals is competent to deal with appeals against ACER's decisions.

ACER and its staff are subject to the rules on the privileges and immunities of the European Union, and specific rules regarding the accommodation of such persons are laid down in the host Member State.

III - 1 Board of Appeal Composition, Competence and Mode of Operation

The Board of Appeal is composed of six members and six alternates selected from among current and former members of regulators, competition authorities or other European Union or national institutions with relevant experience in the energy sector. The activities of the Board of Appeal are financed from a special budget line of ACER. The term of appointment of the members of the Board of Appeal is five years and may be renewed once. The Board of Appeal appoints its chairman and makes business decisions on its work. Decisions are taken by a majority of all members.¹⁹

Particular attention in Regulation (EU) 2019/942 is paid to the independence of the work of the Board of Appeal. Members of the Board of Appeal may not take part in appeal proceedings if they have any personal interest in them, if they have previously been involved in the proceedings as representatives of one of the parties to the proceedings or if they have participated in the decision against which the appeal has been brought. Everyone has the right to apply for the recusal²⁰ of a member of the Board of Appeal, if there is a suspicion of the stated reasons or if there is a suspicion of bias. The Board of Appeal shall decide on the recusal and the excluded member shall be replaced by his deputy, and if there is a reason for the recusal of the deputy, the Chairperson of the Board of Appeal shall appoint a deputy from among the available deputies.²¹

Article 28 of the Regulation n 2019/942 regulates the right to appeal against ACER's decisions. Any natural or legal person, including the regulatory authorities of the Member States of the European Union, who is the subject of a specific decision of ACER has the right to appeal against ACER's decisions. These persons have the right to appeal against ACER's decisions even if

¹² Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC.

¹³ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

¹⁴ Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation

¹⁵ Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing

¹⁶ Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration

¹⁷ Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation.

¹⁸ Articles 16 and 17 of the Regulation (EU) 2019/942.

¹⁹ Articles 25 and 26 Regulation (EU) 2019/942.

²⁰ It is interesting that Regulation use the term „exclusion“ instead „recusal“. Usually the term “exclusion” is consequences of negative behaviour of excluded person or negative fact related to excluded person. The term “recusal” is used for regular procedures when judge has a reason to ask recusal for himself of herself because of he or she is related to one of the parties.

²¹ Article 27 Regulation (EU) 2019/942.

that decision is not addressed to the complainant, but has effect on the complainant. An appeal against ACER's decisions shall be lodged within two months of notification of the decision to the applicant, and in the absence thereof, then within two months of the date on which ACER published its decision. The complaint must be submitted in writing and must be substantiated.

The Board of Appeal shall decide on the appeal within four months of the lodging of the complaint. As a general rule, an appeal does not delay the enforcement of ACER's decision, but the Board of Appeal may postpone the enforcement of ACER's decision. The Board of Appeal first assesses whether the appeal is admissible, and then whether it is well founded. The Board of Appeal may invite the parties to the appeal proceedings to submit additional comments on the statements it has issued or on the submissions of other parties. The parties to the appeal proceedings also have the right to be presented orally

The decision of the Board of Appeal may be a confirmation of the Decision against which an appeal has been lodged or may refer the case back for reconsideration to the competent body of ACER, which is bound by the decision of the Board of Appeal. ACER publishes the decisions of the Board of Appeal. ACER's decisions can be appealed to the Court of Justice of the European Union. These lawsuits may be for annulment or due to ACER's untimely action. Complaints can be filed if the possibilities of the appeal procedure have been exhausted. ACER is obliged to comply with the judgments of the Court of Justice of the European Union.

IV BASIS FOR THE ESTABLISHMENT OF ACER'S COMPETENCES IN THE WESTERN BALKANS

ACER is an institution of the European Union with strictly defined competences within this international organization.

On the basis of the Energy Community Treaty, the Energy Community Ministerial Council adopted a Decision in 2022 to apply Regulation (EU) 2019/942, in its adapted form, together with related adapted regulations governing electricity market coupling, in the territory of the Energy Community. The main purpose of Regulation 2019/942 is to establish and define the manner and subject of ACER's work as an institution of the European Union, with competences related to the activities of other institutions of the European Union and economic entities of the European Union with regard to the regulation of the electricity market of the European Union.

The Energy Community Treaty stipulates that one of the tasks of the Energy Community is to create a single regulatory space for network energy trading²², which is necessary to harmonise the geographical spread of the product on the concerned markets. The activities of the Energy Community²³ include the establishment of a specific regulatory framework that will enable

the efficient functioning of the electricity market throughout the territory of the Energy Community Contracting Parties and part of the territory of the European Union, including the creation of a single mechanism for the cross-border transmission of electricity and the monitoring of unilateral safeguards, as well as the creation of an electricity market without internal borders for all Parties (the European Union and the Contracting Parties), including the coordination of mutual assistance in the event of serious disturbances in energy networks or external disturbances, which may include the implementation of a common foreign commercial policy in the energy sector.²⁴

In Article 100. The Council of Ministers may, by unanimous decision of its members, decide on the implementation of other parts of the *acquis communautaire* related to grid energy. The Ministerial Council, using its rights, adopted Decision 2022/03/MC-EnC, by which it decided on the implementation of other parts of the *acquis communautaire*, including Regulation (EU) 2019/942, thereby establishing ACER's competence in the related markets of the Contracting Parties in relation to the part of the territory of the European Union.

Until the adoption of the decision of the Ministerial Council of the Energy Community, No. 2022/03/MC-EnC, the institutions of the European Union had no direct competence over the electricity markets of the Contracting Parties. With the adoption of this decision, ACER has primarily gained jurisdiction over the electricity market participants of the Contracting Parties in cross-border relations with the Member States of the European Union.

It is necessary to point out that the mechanism referred to in Article 100 of the Energy Community Treaty, defines extensive powers to the Energy Community Ministerial Council, to create the obligation of harmonization a certain elements of legal framework of the Energy Community Contracting Parties with the legal framework of the European Union.

The harmonization of the legal framework and the assumption of the obligation to adopt regulations by which the institutions of national law will receive competencies of the same type and content as the institutions in the EU Member States is one type of obligation, and the other type of obligation is the establishment of direct jurisdiction of the institutions of the European Union, such as ACER, over the institutions and participants in the electricity market of the Contracting Parties in the Western Balkans.

With this decision of the Energy Community Ministerial Council, ACER not only acquired the right over the institutions and participants in the electricity market of the Contracting Parties, but also acquired competence over the institutions of the Energy Community itself, specifically over the Energy Community Regulatory Board. The Regulatory Board is an institution of the Energy Community composed of one representative of the energy regulatory authority of each of the Contracting Parties (hereinafter referred to as the Regulator), a representative of the Commission and a representative of ACER. The Regulatory Board shall, inter alia, issue Recommendations in respect of cross-border disputes involving two or more

²² "Grid Energy" includes the electricity and gas sectors covered by the amendment of the European Community Directives 2003/54/EC and 2003/55/EC as defined by the Energy Community Treaty itself. It should be noted that these directives have been amended in the European Union itself and in the Energy Community, so that in the field of electricity, instead of Directive 2003/54/EC, Directive (EU) 2019/944 now applies.

²³ Article 2 (1) (b) of the Energy Community Treaty.

²⁴ Article 3 (b) and (c) of the Energy Community Treaty.

Regulators, take Measures at the request of any of them (if entrusted to it by the Council of Ministers) and adopt Procedural Acts.²⁵

Also, with this decision of the Ministerial Council of the Energy Community, institutions, electricity market participants and citizens of the Contracting Parties, may file legal remedies against ACER's decisions (appeals against ACER's decision and ACER's Board of Appeal), in condition that they have legitimation.

It should be noted that the Decision of the Ministerial Council of the Energy Community No. 2022/03/MC-EnC provides a legal basis for the establishment of all these rights, which will only be able to be exercised after all adapted regulations from this Electricity Market Integration Decision have been transposed and implemented into the legal frameworks of the Energy Community Contracting Parties and the application of these regulations in the related electricity markets will start.

As mentioned earlier, in addition to the decision of the Ministerial Council of the Energy Community No. 2022/03/MC-EnC establishing the obligation to transpose the package of regulations on the integration of the electricity market, the Ministerial Council of the Energy Community adopted Procedural Act No. 2022/PA/01/MC-EnC of 15 December 2022.

IV-1 Procedural Act of the Ministerial Council of the Energy Community n. Directive 2022/PA/01/MC-EnC as the legal basis for the work of the institutions of the European Union and the Energy Community

Energy Community Procedural Acts are a special type of acts of the Energy Community Ministerial Council that regulate the organisational, budgetary and transparency issues of the Energy Community, including the delegation of powers by the Ministerial Council to the Permanent High Level Group, the Regulatory Board or the Secretariat, and are binding for the Energy Community institutions as well as for the Energy Community Treaty Parties, if provided for in the Procedural Act itself.²⁶

By Procedural Act n. 2022/PA/01/MC-EnC The Ministerial Council recognizes Regulators, Transmission System Operators, NEMOs and Regional Coordination Centres of the Energy Community Parties as key actors of activities in the integrated electricity market of the Energy Community. At the same time, this act obliges the key holders of electricity market activities in the Contracting Parties to apply OUMs in accordance with the law of the European Union, and the key participants in the electricity market of the European Union are obliged to treat the key participants of the Contracting Parties in the same way as they treat the key participants in the electricity market of the European Union. In this way, the rule of reciprocity between key market participants of the Energy Community Party has been introduced.

ACER's obligations under the amended Regulation (EU) 2019/942 shall operate within the Energy Community in accordance with its original competences, as well as

competences established with new actors within the integrated market of the European Union and the Energy Community. In addition to ACER's obligations, this act also sets out the obligations of ENTSO-E to give different information to the system operators of the Contracting Parties, as well as the obligations of the Regulatory Board, the Energy Community Secretariat and the Commission to cooperate with ENTSO-E.

A new body within the Energy Community is also established. It is titled the Joint Cooperation Committee and it is established between the Commission, the Energy Community Secretariat and the National State Aid and Competition Authorities of the Energy Community Contracting Parties.

V COMPETENCES OF ACER IN THE WESTERN BALKANS

ACER's competences in the Western Balkans are set out in the adapted Regulation (EU) 2019/942, Procedural Act of the Energy Community Ministerial Council No. 2022/PA/01/MC-EnC, as well as each individual adapted regulation referred to in the title of Decision of the Ministerial Council of the Energy Community No. 2022/03/MC-EnC.

Regulation (EU) 2019/942 adapted by Decision of the Energy Community Council of Ministers 2022/03/MC-EnC, defines that ACER- has a slightly narrower and different scope of work than in the original text of Regulation (EU) 2019/942. Tasks of ACER with regard to cooperation between transmission system operators and distribution system operators shall, where appropriate, approve the methodology regarding the use of congestion revenues, issue a reasoned opinion at the request of one or more Regulators, as well as recommendations to the Regional Coordination Centres regarding compliance of their work with their obligations.²⁷

With regard to the development and implementation of network codes and guidelines, ACER shall approve these acts, if they are submitted for approval. In that case, ACER shall be able to amend them after consulting the Regulatory Board, ENTSO-E and other relevant bodies in accordance with the adapted Regulation (EU) 2019/942. ACER shall monitor the regional cooperation of transmission system operators and take into account the outcome of that cooperation when formulating its opinions, recommendations and decisions.²⁸

In order to carry out its tasks, ACER may provide recommendations and opinions to regulators and other participants in the electricity markets of the Contracting Parties and monitor their activities. ACER shall be responsible for making individual decisions on regulatory issues affecting cross-border trade or the security of systems and requiring a joint decision by at least two regulators, in accordance with the implementation of the Energy Community measures established by a decision of the Energy Community Ministerial Council. In addition to taking decisions at the joint request of the Regulators of the Contracting Parties and/or the Member States of the European Union, ACER shall also have the power to take decisions in the case that the Regulators have not been able to agree on their decision. ACER shall also have the right to take

²⁵ Article 58 and amended Article 59 of the Energy Community Treaty.

²⁶ Article 86 of the Energy Community Treaty.

²⁷ Article 4 of the adapted Regulation (EU) 2019/942.

²⁸ Article 5 of the adapted Regulation (EU) 2019/942.

temporarily decisions to ensure the security of electricity supply or the operational security of energy networks.²⁹

ACER's tasks with regard to regional coordination centres shall relate to monitoring and analysing the work of these centres in cooperation with the Regulators and ENTSO-E. Within the context of its tasks, ACER decides on the configuration of the region for the operation of the system, requests information from the Regional Coordination Centres and provides opinions and recommendations to the Energy Community institutions, the Commission and the Regional Coordination Centres themselves.³⁰

ACER shall have the right to decide on exemptions from the application of the basic rules in the electricity market for new interconnectors where the infrastructure in question is located in the territory of at least one Contracting Party and at least a Member State of the European Union.³¹ ACER's tasks with regard to advising and achieving transparency of market activities relevant to all participants should be carried out in detail and at an early stage advising cooperation with the Regulatory Board, as well as with all other electricity market participants. This task includes transparency of ACER's work and regular reporting with the publication of all acts on the website.³²

Contrary to the original text of Regulation (EU) 2019/942, which is binding on key participants in the electricity market of the European Union, adapted Regulation (EU) 2019/942 does not, in the Energy Community, define following ACER's obligations related to: a) NEMO, b) adequacy of electricity generation and risks preparedness, c) monitoring the implementation of network development plans and the implementation of projects for the construction of new interconnector capacity, (d) the integrity and transparency of the wholesale market, (e) taking action on existing new rules and guidelines, as well as the terms and conditions or methodologies (OUM) to be adopted by the Commission, and (f) monitoring the electricity sector and reporting to the Commission.

Regulation (EU) 2019/942 provides for the protection of the rights of natural and legal persons against decisions of ACER. It was defined by establishing the right to appeal or the right to bring an action in front the Court of Justice of the European Union, in the same way as it is established for natural and legal persons in the European Union.

In addition to Regulation (EU) 2019/942, all adapted EU/Energy Community legislation sets out various obligations of ACER, mainly aiming to specify the obligations under this Regulation. In particular, the rules and guidelines of the CACM, FCA, SOGL, EBGL and NCER regulate in detail the procedures of ACER in relation to the adoption and implementation of the OUM and other activities and situations regulated by these rules and guidelines.

VI CONCLUSION

The Energy Community Ministerial Council decision No. 2022/03/MC-EnC implements greater integration between the European Union and the Western Balkan countries, between others the Republic of Serbia, more than any other international treaty ratified by the legislative bodies (parliaments) of the Western Balkan countries.

The mechanism set out in the Energy Community Treaty, on the change of the legal framework and the establishment of new international obligations for the Contracting Parties of the Energy Community, in a very effective way obliges the Contracting Parties to transpose the regulations of the European Union. However, despite the fact that this mechanism has been applied within the Energy Community since 2006, when the Treaty entered into force, no EU institution—including the European Commission or the European Parliament—has acquired competences granting it the authority to directly regulate relations within the markets of the Contracting Parties.

With the introduction of Regulation 2019/942 in this mechanism for establishing international obligations of the Contracting Parties, on the one hand ACER has obtained direct jurisdiction over certain legal relations between the Contracting Parties, and on the other hand citizens and legal entities in the Contracting Parties have obtained the right to appeal against ACER's decisions and ultimately file lawsuits directly with the Court of Justice of the European Union.

REFERENCES

- [1] 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 - Regulation (EC) No. 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, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF> [pristupljeno 02.02.2025]
- [2] Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast), <https://eur-lex.europa.eu/eli/reg/2019/942/oj> [pristupljeno 02.02.2025]
- [3] Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast), <https://eur-lex.europa.eu/eli/reg/2019/943/oj/eng> [pristupljeno 02.02.2025]
- [4] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) - Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0944> [pristupljeno 02.02.2025]
- [5] Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0941> [pristupljeno 02.02.2025]
- [6] Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R1222> [pristupljeno 03.02.2025]
- [7] Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation, <https://eur-lex.europa.eu/eli/reg/2016/1719/oj/eng> [pristupljeno 03.02.2025]
- [8] Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing, <https://eur-lex.europa.eu/eli/reg/2017/2195/oj/eng> [pristupljeno 03.02.2025]

²⁹ Article 6 of the adapted Regulation (EU) 2019/942.

³⁰ Article 7 of the adapted Regulation (EU) 2019/942.

³¹ Article 8 of the adapted Regulation (EU) 2019/942.

³² Article 14 of the adapted Regulation (EU) 2019/942.

- [9] Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R2196> [pristupljeno 03.02.2025]
- [10] Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation *Wind Farms*, Academic Thought, Belgrade, 2019, <https://eur-lex.europa.eu/eli/reg/2017/1485/oj/eng> [pristupljeno 03.02.2025]
- [11] Decision of the Ministerial Council of the Energy Community, D/2922/03/MC-EnC: Decision on the incorporation of Regulation (EU) 2019/1942, 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 No. 2011/02/MC-EnC, https://www.energy-community.org/dam/jcr:d5a1a894-88db-4326-818b-f2c648bd237e/Decision03-2022-MC_newELacquis_15-12-2022.pdf [pristupljeno 03.02.2025]
- [12] Procedural Act of the Ministerial Council of the Energy Community 2022/PA/MC-EnC: on Regional Market Integration, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0714> [pristupljeno 03.02.2025]
- [13] Law on the ratification of the Energy Community Treaty between the European Community and the Republic of Albania, the Republic of Bulgaria, Bosnia and Herzegovina, the Republic of Croatia, the former Yugoslav Republic of Macedonia, the Republic of Montenegro, Romania, the Republic of Serbia and the United Nations Interim Mission in Kosovo in accordance with United Nations Security Council Resolution 1244 ("Official Gazette of the Republic of Serbia", No 62/2006) <https://mfin.gov.rs/en/decrees-2/law-on-free-zones-the-official-gazette-of-the-rs-no-622006-unofficial-translation-by-free-zone-administration-2> [pristupljeno 03.02.2025]
- [14] Law on the Ratification of the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part ("Official Gazette of the Republic of Serbia – International Agreements", No. 83/2008) <https://pravno-informacioni-sistem.rs/eli/rep/mu/skupstina/zakon/2008/83/3/reg> [pristupljeno 03.02.2025]
- [15] Doleski, O., Freunek, M. Handbook of Electrical Power Systems, Energy Technology and Management in Dialogue, De Gryter, 2024.
- [16] Stigler, G. The Theory of Economic Regulation, The Bell Journal of Economics and Management Science, Vol. 2, No. 1, pp. 3-21, 1971. <https://doi.org/10.2307/3003160>
- [17] Peltzman, S. How George Stigler Changed the Analysis of Regulation, Chicago Booth Review, Finance, 1993. <https://www.chicagobooth.edu/review/how-george-stigler-changed-analysis-regulation> [pristupljeno 05.02.2025]
- [18] Angwin, M. *Shorting the Grid: The Hidden Fragility of Our Electric Grid*, Carnot Communications, 2020.
- [19] Newbery, D. Electricity regulation in UK and Europe, SAFIR Core Training Programme for Infrastructure Regulators, Bangalore, 2010. www.jbs.cam.ac.uk/wp-content/uploads/2024/02/eprg-electricity-regulation-in-uk-and-europe.pdf [pristupljeno 05.02.2025]
- [20] Hjalmarsson, L. Comment on David Newbery: Regulatory challenges to European electricity liberalisation, Swedish Economic Policy Review, Vol. 9, pp. 45-49, 2002. <https://www.government.se/contentassets/e5b8dabba9024522bdc551c9c62c0ee8/comment-by-lennart-hjalmarsson> [pristupljeno 05.02.2025]
- [21] Newbery, D. Measuring and Mitigating Market Power in Utility Industries, ACCC Regulation, Industry Structure and Market Power Conference, July 2003, www.accc.gov.au/system/files/David%20Newbery%20%28slides%29%20-%20Measuring%20%26%20Mitigating%20Market%20Power%20in%20Utility%20Industries.pdf [pristupljeno 05.02.2025]
- [22] Kaschny, L., Lavrijssen, S. The Independence of National Regulatory Authorities and the European Union Energy Transition, International and Comparative Law Quarterly, Vol. 72, No. 3, pp. 715-736, 2023. <https://doi.org/10.1017/S0020589323000271>
- [23] Lavrijssen, S. Independence, regulatory competences and the accountability of national regulatory authorities in the EU, Oil, Gas and Energy Law, Vol. 1, No. 1, 2019. <https://research.tilburguniversity.edu/en/publications/independence-regulatory-competences-and-the-accountability-of-nat-2/> [pristupljeno 05.02.2025]
- [24] Jevnaker, T., Eikeland, P., Hancher, L. The role of the Agency for the Cooperation of Energy Regulators: Evolving through energy crisis and energy transition, Fridtjof Nansen Institute, FNI Report, No.4, 2024
- [25] Maher, I., Stefan, O. Delegation of Powers and the Rule of Law: Energy Justice in EU Energy Regulation, Energy Policy, Vol. 128, pp. 84-93, 2019. <https://doi.org/10.1016/j.enpol.2018.12.046>

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Proširenje nadležnosti ACER u oblasti električne energije na prostor Zapadnog Balkana

Rezime - Agencija Evropske unije za saradnju energetskih regulatora (ACER) je institucija Evropske unije osnovana Uredbom (EZ) 713/2009, sa ciljem da pruža podršku regulatornim telima u oblasti energetike osnovanih u članicama Evropske unije. Uredba (EZ) 713/2009 je stavljena van snage novom Uredbom (EU) 2019/942. Novi pravni okvir proširuje nadležnosti ACER-a u pravcu osnaživanja njegove regulatorne funkcije u procesu povezivanja tržišta energije i usklađivanja funkcionisanja ovog tržišta, dajući mu nadležnost nad regulatornim telima država članica Evropske unije. Odlukom Ministarskog saveta Energetske zajednice br. 2022/03/MC-EnC, adaptirana je Uredba (EU) 2019/942 za primenu u Energetskoj zajednici, a ACER je dobio nadležnosti i nad Regulatornim odborom Energetske zajednice i regulatornim telima Ugovornih strana Energetske zajednice. Istom odlukom Ministarskog saveta i adaptiranom Uredbom 2019/942 za primenu u Ugovornim stranama Energetske zajednice, dato je pravo fizičkim i pravnim licima nezadovoljnim odlukama ACER-a da pokrenu drugostepeni postupak protiv odluka ACER-a, kao i da protiv drugostepenih odluka ACER-a pokrenu postupke pred Sudom pravde Evropske unije. U ovom radu razmatrane se nadležnosti ACER-a, kao institucije Evropske unije, u Ugovornim stranama Energetske zajednice, u oblasti električne energije. Takođe, razmatra se mogućnost zaštite prava fizičkih i pravnih lica u Ugovornim stranama Energetske zajednice na koje će se odnositi ove odluke.

Index terms - ACER, Povezivanje tržišta električne energije, nadležnosti ACER, Energetska zajednica, Sud pravde EU