



EUROPEAN COMMISSION

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**COMMISSION OPINION**

**of 30.8.2012**

**on the draft 2013 Work Programme for the Agency for the Cooperation of Energy  
Regulators**

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#### 1. GENERAL

Regulation (EC) No 713/2009 of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>1</sup> (hereafter "ACER") foresees in Article 13 that the Administrative Board of the Agency shall adopt, before 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators in accordance with Article 15(3) of that Regulation, the work programme of the Agency for the coming year and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

On 30 June 2012, the Director of the Agency submitted the draft Work Programme for 2013 to the Board of Regulators, to the European Parliament and the European Commission in accordance with Article 17(6) of Regulation (EC) No 713/2009.

This version of the draft Work Programme (as submitted on 30 June 2012) is subject to the following opinion of the European Commission.

#### 2. OPINION

The draft Work Programme of ACER for 2013 is comprehensive and balanced, with rightly identified main priorities such as the implementation of the Third Energy Package<sup>2</sup> by development of relevant Framework guidelines and Network codes and monitoring activities. Due focus is also given to new tasks such as the implementation of the Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (hereafter "REMIT")<sup>3</sup> and Proposed Regulation on guidelines for trans-European energy infrastructure (hereafter "EIP")<sup>4</sup>. All these priorities are reflecting the main goal of completing the Internal Energy Market by 2014 (in line with the European Council's conclusions of 4 February 2011). Due to the very important role ACER plays in achieving all these objectives, it would be advisable to underline it already in the introductory part of the Work Programme.

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<sup>1</sup> OJ L 211, 14.8.2009, p. 1.

<sup>2</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, Regulation (EC) No. 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, Regulation (EC) No. 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to natural gas transmission networks and repealing Regulation (EC) No 1775/2005 and 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 (ACER Regulation).

<sup>3</sup> Regulation (EU) No 1227/2011 of 25 October 2011 on Wholesale Energy Market Integrity and Transparency.

<sup>4</sup> Proposed Regulation on guidelines for trans-European energy infrastructure.

## 2.1. Legislative Measures

The Agency's priorities in the third year of its activity will be mostly focused on providing the reasoned opinions on draft network codes of the European Networks for Transmission System Operators (hereafter "ENTSOs") developed on the basis of adopted or soon to be adopted Framework Guidelines, and completing the Framework Guidelines already under preparation. This is in line with the Commission decision on the establishment of the annual priority lists for the development of network codes and guidelines for 2013<sup>5</sup>, which is adopted in accordance with the Regulations Nos 714/2009 and 715/2009<sup>6</sup>.

The Commission welcomes that the draft Work Programme in general correctly reflects the priority list adopted by the Commission on 19 July 2012.

On electricity, as regards system operation, the Commission would like to note that ACER will be asked to deliver a reasoned opinion on the network code on operational security by Q2 2013 and not on "a network code on system operation by Q1 2013" as stated in the draft Work Programme.

On gas, although the draft Work Programme is in line with the priorities list, the Commission would encourage the Agency to do preparatory work (i.e. scoping) for future framework guidelines/network codes, such as, for example, rules for trading and rules on incremental capacity.

Furthermore, it is advisable for ACER to get involved in the standardization process related to smart grids under Commission Mandate M/490 issued to European Standardisation Organisations (CEN, CENELEC and ETSO) in February 2011, which will have impact on certain FGs/NCs under preparation.

Moreover, as it is rightly noted in the draft Work Programme, unexpected events in the energy sector may lead to a modification of the priorities. Therefore some flexibility in terms of re-setting the priorities and deliverables is needed. The Commission acknowledges that the draft Work Programme explicitly anticipates such adjustments in a disclaimer on page 31. However, substantial changes to ACER's priorities for the preparation by the Commission of legislative deliverables (Chapter 6 of the draft Work Programme) should be transparent to the public. The Commission welcomes the Agency efforts to make such changes known to the public by issuing "Mid-term Review of the 2012 Work Programme of the Agency for the Cooperation of Energy Regulators"<sup>7</sup>.

## 2.2. Exemptions

The draft Work Programme 2013 foresees 'Guidelines on exemptions for Major New Gas Infrastructure, based on article 36 of directive 2009/73/EC' as a new task under gas sector deliverables. The Commission supports the need to develop Best Practices Guidelines, however would like to extend the scope of the guidelines to cover also exemptions of cross border electricity interconnectors (on the basis of Article 17 Regulation (EC) No 714/2009) and therefore move the deliverable to cross-sectoral issues (point 6.5.). In particular, the rules on how to carry a "market test" as prescribed by Directive 2009/73/EC as well as by Regulation (EC) 714/2009 before a Third Party Access exemption can be granted, could be covered by such guidelines. Consistency with work on incremental capacity needs to be ensured.

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<sup>5</sup> Commission decision of 19 July 2012 on the establishment of the annual priority lists for the development of network codes and guidelines for 2013, 2012/413/EU.

<sup>6</sup> Regulation (EC) No. 714/2009 and Regulation (EC) No. 715/2009 and in particular Article 6(1)

<sup>7</sup> Mid-term Review of the 2012 Work Programme of the Agency for the Cooperation of Energy Regulators, 12 June 2012, published on ACER website.

### **2.3. EIP**

In view of the on-going discussions in the Council on the principles of the new Regulation on guidelines for trans-European energy infrastructure and significant work undertaken already by the European Parliament, it is expected that the proposed Regulation will be adopted by the end of 2012/beginning of 2013. The Commission therefore welcomes that ACER's draft Work Programme for 2013 (pages: 5, 65, 71) anticipates work by the Agency already in 2013. However, in the deliverables part of the draft work programme relating to infrastructure development (Chapter VI, part E and F), the main focus is put on opinions on ten-year network development plans (hereafter "TYNDP") and regional plans (part E). Although, indeed the tasks described in the part E are based on the Regulations that are already binding (Regulations (EC) Nos 713/2009, 714/2009 and 715/2009), still, the proposed new Regulation on guidelines for trans-European energy infrastructure, is likely to be adopted in the near future and therefore the additional tasks it imposes on ACER, should be reflected in the current Work Programme. The Commission welcomes that this need was recognized by ACER and several tasks relating to identification of Projects of Common Interest (hereafter "PCIs"), development of methodology for energy system-wide cost-benefit analysis, tasks relating to enabling investments in PCIs and specific decisions regarding cross-border cost allocation for PCIs are already included in the draft Work Programme. However, the Commission would welcome deepening and/or addition of the following deliverables for 2013:

- opinion on the draft Union-wide list of projects of common interest (to be added based on current article 3 of the draft Regulation);
- opinion on the cost benefit analysis methodology, prepared by the ENTSOs (to be further developed in line with the current text of article 12);
- cross-border allocation of costs – in cases where NRAs do not reach agreement (to be further developed in line with the current text of article 13);
- best practice and recommendations on incentives (to be further developed in line with the current text of article 14).

### **2.4. Organization, administration and functioning of the Agency**

The Commission welcomes the extensive part of the draft Work Programme (part 4) that deals with the organization, administration and functioning of the Agency. However some corrections are required in this part.

First, the Commission notes that the number of Contractual Agents indicated in different parts of the WP (for example in pages 45, 47 and 48) is not consistent with the total staff allocation as approved by the Budgetary Authority for Budget 2012 and with the allocation foreseen in the Draft Budget for 2013 (hereafter "DB 2013") as adopted by the Commission on 25 April 2012. In particular, the number of contractual agents approved by the Budgetary authority for 2012 is two and DB 2013 foresees an increase by additional two, i.e. the number of contractual agents in 2013 should reach in total four.

Therefore, the total number of staff in 2012 and 2013 should also be corrected accordingly in the text of the draft Work Programme.

Second, the number of AD posts in the establishment table on pages 51 to 53 is not in line with the Financial Statement approved with Budget 2012 and therefore, according to the Commission, needs to be adjusted.

Third, The Commission welcomes the indication of the staff to be engaged in the achievement of each main deliverable in corresponding tables throughout the draft Work programme.

However, the total sum of the staff allocated is not consistent with the numbers approved in the DB 2013. The Commission would like to point out that the allocation of staff should only concern the year 2013 and that it should be coherent with the figures under each category of staff as approved in the DB 2013.

Fourth, the budget tables in pages 54 to 58 for 2013 contain figures not in line with the DB2013 as adopted by the Commission on 25 April 2012 and need to be corrected accordingly. It should be noted that the EU contribution in the 2013 draft budget for ACER is €1 million above the financial programming; the Commission proposes the extra €1 million to cover costs for the REMIT IT systems. A comment stipulating that the Agency revenue and expenditure for the financial year 2013 are subject to the approval of the Budgetary authority should be added.

Fifth, in the table under point 4.5.3 of the Agency's draft Work Programme, ACER has set a target of high budget implementation (key indicators - 95% execution for commitment appropriations and minimum 70% execution of payment appropriations) while in the Commission's view the Agency's target should be one of full budget execution.

Finally, on page 71, the statement that "the Draft Budget for 2013 adopted by the European Commission on 25 April 2012 envisages financial resources for the Agency which will only support investment in IT systems in 2013 in the order of €100,000" is incorrect. As stated above the Draft Budget 2013 includes around €1 million for the REMIT IT systems.

Done at Brussels, 30.8.2012

*For the Commission*  
*Günther OETTINGER*  
*Member of the Commission*

