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COMMISSION OPINION

of 10.9.2013

**on the draft 2014 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 Regulators¹ (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 27 June 2013, the Director of the Agency submitted the draft Work Programme for 2014 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 27 June 2013) is subject to the following opinion of the European Commission.

2. OPINION

The draft Work Programme of ACER for 2014 is rightly focused on the tasks related to the completion of the Internal Energy Market by 2014 in line with the European Council conclusions of 4 February 2011 and 22 May 2013. Therefore the main focus is on the implementation of the Third Energy Package² through the development of relevant Framework guidelines and Network codes and monitoring activities. Due focus is also given to new tasks such as the implementation of Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (hereafter "REMIT")³ and Regulation on

¹ OJ L 211, 14.8.2009, p. 1.

² 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).

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

guidelines for trans-European energy infrastructure (hereafter "TEN-E")⁴. ACER plays a very important role in implementation of the above related tasks.

2.1. Legislative measures and tasks related to the Third Energy Package

The Agency's priorities in the fourth year of its activity will be mostly focused on providing reasoned opinions on draft network codes developed by the European Networks for Transmission System Operators (hereafter "ENTSOs") on the basis of already adopted Framework Guidelines. The Agency expects that a number of network codes will be submitted by the ENTSOs in 2014 on which the Agency will have to provide opinions. The Agency also intends to provide advice and support on the network codes during the comitology procedures and will start monitoring the implementation of the adopted network codes and, when necessary, propose amendments of the network codes. The Agency will also continue its work on remaining Framework Guidelines.

The tasks related to the Framework Guidelines and Network Codes in both electricity and gas are in line with the Commission decision on the establishment of the annual priority list for the development of network codes and guidelines for 2014, which is adopted in accordance with Regulations 714/2009 and 715/2009⁵. The Commission welcomes that the draft Work Programme correctly reflects the priority list that will be adopted by the Commission in September 2013.

On electricity, the Agency will start the process of development of Framework Guidelines on rules regarding harmonized electricity transmission tariff structures. The Agency envisages as well providing opinions on the remaining network codes regarding network connection rules, system operation rules, balancing rules and on forward capacity allocation. ACER will also provide advice and support to the Commission during the comitology procedure on the recommended Network Codes on grid connection and capacity allocation and congestion management.

On gas, ACER will start the process of development of Framework Guidelines on rules for trading related to technical and operational provisions of network access services and system balancing. The Agency will provide opinions on the network code on rules regarding harmonized gas transmission tariff structure, and will offer advice and support to the Commission during the comitology procedure on Interoperability and data exchange rules Network code. The Agency also envisages drafting amendments to the network code on capacity allocation mechanisms to reflect the work on incremental capacity. The Agency will start to monitor the implementation of the adopted network code on capacity allocation. In this respect the Commission suggests to include in the work programme the monitoring of the guidelines on congestion management procedures as well.

ACER also plans to continue its monitoring activities – both on regional developments and on the internal market. As regards the first type of monitoring, the Agency will monitor progress on the early implementation of network codes through the Regional Initiatives – a very important step on the way to the full implementation of the Network Codes across the EU. On

⁴ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

⁵ 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 in particular Articles 6(1) thereof

the second focus of the monitoring, the Agency will issue its third Market Monitoring Report with main focus on the identification of obstacles for the IEM. The report will cover retail prices in electricity and natural gas, wholesale market integration, access to networks and compliance with consumer rights. The Commission considers that the focus of the report is of particular importance for 2014. The Commission also welcomes that the monitoring will not overlap with the EC activities, but will support the EC work on the IEM.

The Commission also notes that in 2014 the Agency may be called to deliver decisions on terms and conditions and operational security of cross-border interconnectors, on investment requests including on cross-border cost allocation decisions and notifications to the Commission, as well as, on its own initiative or on request, opinions or decisions on exemptions and upon request opinions on preliminary decisions by NRAs on TSO certification. So far this type of activities has not been the main field of the Agency's activities, but the Commission notes that with time, these tasks could become more prominent. Therefore, the Commission encourages the Agency to start building expertise in these fields already in 2014.

2.2. Legislative measures and tasks related to REMIT

The ACER WP rightly points out that 2014 will be an important year for the start of the operational phase of REMIT. The Agency will establish and administer a European register of market participants and will develop an IT system for market participants' registration, data collection, and market surveillance. The Commission notes that these are crucial elements to start the effective monitoring of the wholesale energy markets.

As far as concerns staffing levels mentioned in the draft WP, the Commission considers, as already explained in the opinion to the Agency's Multi-annual staff policy plan 2014-2020 and in the context of the Draft Budget 2014 assessment, the increase of 15 personnel already granted to ACER as sufficient to meet all additional obligations arising from the REMIT Regulation.

2.3. Legislative measures and tasks related to TEN-E

The TEN-E Regulation will be fully implemented in 2014 and new tasks will be assigned to the Agency, mostly related to the process of identification of Projects of Common Interest (PCIs), the development of the cost-benefit methodology, the best practice development on incentives as well as the handling of cross border cost allocation requests as a last resort.

2.4. Other tasks

The Commission welcomes the Agency's own initiative to develop a vision on how the wholesale markets in energy will develop in the future and, based on this vision, assess the electricity and gas target models and develop them further. This is of particular importance for the 2020 strategy⁶.

As regards ACER's international activities, the Commission also would like to encourage ACER to further develop institutional cooperation between ACER and the ECRB (Energy Community Regulatory Board). ACER already officially participates in the work of the ECRB. Such cooperation could be extended beyond the tasks regarding the implementation of the Network Codes in the contracting parties.

⁶ COM(2013) 519 final

2.5. Organization, administration and functioning of the Agency

The Commission also welcomes that the Agency continues to reinforce its dialogue with stakeholders and institutions. In particular, the focus on customers through citizens' summaries, should be encouraged and continued. The Commission notes that, in this regard, further work could be done on the improvement of the ACER website and its accessibility for non-energy experts.

The Commission considers crucial that the Agency has sufficient funding to carry out the additional tasks entrusted to it through Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT) and Regulation (EU) N° 347/2013 on guidelines for trans-European energy infrastructure (TEN-E Regulation). However, the original proposal for recruiting additional Establishment Plan staff has to be adjusted to reflect the authorised budget for 2014⁷ and to take account of the Communication of the Commission of 10 July 2013 to the European Parliament and the Council – Programming of human and financial resources for decentralised agencies 2014-2020.

The Agency is invited to align the Work Programme to the levels of human and financial resources proposed by the Commission in the Draft Budget 2014 (54 establishment posts and EUR 10.880.000 including assigned revenues) subject to the adoption of the Draft Budget 2014 by the Budgetary Authority.

As for the performance indicators related to the budget implementation in 2014, the Commission is of the view that the envisaged thresholds of 95% execution rate for commitments and 75% execution rate for payments are not ambitious enough and invites the Agency to take the necessary arrangements so that a full implementation level of the budget authorised is reached. This would allow avoiding penalties which entail reduction of the Agency's EU contribution.

Done at Brussels, 10.9.2013

For the Commission
Günther OETTINGER
Member of the Commission



⁷ Subject to the adoption of the Draft Budget 2014 by the budgetary authority.