

## **MINUTES**

### **16<sup>th</sup> ACER Administrative Board meeting** **Thursday, 19 March 2013, 9.00 – 12.45**

#### **Present:**

Mr Piotr Woźniak, Chair

Mr Razvan Nicolescu, Vice Chair

Mr Guido Bortoni, Member

Mr Jochen Penker, Member

Mr Luis Martin Oar, Member

Mr Rene Tammist, Member

Mr Alfonso González Finat, Alternate of Mr Guido Bortoni, following the decision on the Annex to the AB Decision n° 01/2010 ( point 3 below)

Mr Pál Kovács, Alternate to Mr Guy Lentz, following the decision on the Annex to the AB Decision n° 01/2010 ( point 3 below)

Mr Romas Švedas, Alternate to Mr Jochen Penker, following the decision on the Annex to the AB Decision n° 01/2010 ( point 3 below)

Ms Paloma ABA GARROTE, Alternate, with proxy from Mr Ristori

Lord John Mogg, Chair of the Board of Regulators, Observer

Mr Alberto Pototschnig, Director of ACER, Observer

Ms Marie-Christine Jalabert, Adviser

Mr Konrad Purchala, Adviser

Ms Andrea Hanzséros, Adviser

#### **Main conclusions of the meeting**

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| <p>1.) The Board approved the updated Annex to the AB Decision n° 01/2010 adopting the Rules for the participation of alternates in the meetings of the Administrative Board of the Agency for the Cooperation of Energy Regulators (ANNEX 1).</p> |
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2.)	The Board confirmed that the Agency will produce its Programming Document in 2017.
3.)	The Board elected the new Chair and the new Vice-Chair.
4.)	The Board decided to discuss the security of supply issue in its September meeting.
5.)	The Board adopted the 2014 WP Review.
6.)	The Board discussed the 2015 ACER WP outline.
7.)	The Board approved the MSPP 2015-2017 (ANNEX 2).
8.)	The Board adopted the Agency estimate of revenue and expenditure for 2015 (ANNEX 3).
9.)	The Board approved the ICT Strategy.

## 1. Approval of the Agenda

The following agenda of the 15<sup>th</sup> ACER Administrative Board meeting was approved:

## DRAFT AGENDA V2

Agenda Topics	Accompanying documents	Rapporteur
<b>Opening</b>		
1. Approval of the agenda	Doc 1 for approval	AB Chair
2. Minutes of the 15 <sup>th</sup> Administrative Board meeting	Doc 2 for approval Doc 3 for information Doc 4 for information	AB Chair
3. Update of the AB membership	Doc 5, 6, 7,8 for information and 9 for approval	AB Chair
4. Commission Evaluation of ACER under article 34 of Regulation (EC) 713/2009	Docs 10 and 11 for information	AB Chair Commission BoR Chair
5. Appointment of the Chair and the Vice – Chair		
<b>Reporting on developments</b>		
6. Report on the written procedure	Oral update	ACER Director
7. Report on ACER developments and on the activities of the Board of Regulators	Oral update	ACER Director BoR Chair
8. Meeting with the Chairman of the Board of Appeal, prof. Ranci	Exchange of views	AB Chair
<b>General ACER work</b>		
9. Review of 2014 Work programme	Doc 12 for adoption	ACER Director
10. Work Programme 2015 – priorities	Doc 13 for information	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
<b>Administrative work</b>		
11. MSPP 2015-2017	Doc 14 for information Doc 15 for approval	Commission ACER Director
12. Estimate of Revenue and expenditure for 2015	Doc 16 for adoption	ACER Director
13. Annual Internal Audit Report for 2013	Docs 17 and 18 for information	AB Chair ACER Director
14. Declarations of Interest for 2014	Oral Update	AB Chair
15. ICT Strategy	Doc 19 for information Doc 20 for approval	ACER Director
16. Information on changes in education allowance scheme	Oral update	ACER Director
17. Authorisation of publication of an article	Doc 21 for approval	ACER Director
18. 18. 2014 AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010	Docs 22 and 23 for information (decisions since last AB meeting only)	AB Chair
AOB  Annual Conference		ACER Director
<b>The meeting will be followed by the joint lunch with the ITRE Committee Delegation (Mr Turmes, Ms Jordan and Mr Chichester), together with the Chairman of the BoR, BoR members, and the Chair of the BoA</b>	14 <sup>th</sup> floor	

## **2. Minutes of the 15th Administrative Board meeting**

Lord Mogg clarified one of his earlier amendments to the draft minutes inviting the AB to hold its mid- 2015 meeting at the Regulators' new premises in Brussels. The Minutes of the 15<sup>th</sup> Administrative Board meeting were amended accordingly and approved.

## **3. Update of the AB membership**

The Chairman explained that following his letter to the Council and the European Parliament on the need to update their appointments of the Administrative Board members and alternates, the Council has appointed new members and alternates without providing any matching indication. Therefore, a proposal was made by the Director to amend the Annex to the AB Decision n° 01/2010 adopting the Rules for the participation of alternates in the meetings of the Administrative Board of the Agency for the Cooperation of Energy Regulators by listing the new alternate members appointed by the Council in alphabetical order.

Action: The Board approved the updated Annex to the AB Decision n° 01/2010 adopting the Rules for the participation of alternates in the meetings of the Administrative Board of the Agency for the Cooperation of Energy Regulators (ANNEX 1).

## **4. Commission Evaluation of ACER under article 34 of Regulation (EC) 713/2009**

The Chair explained that this item has been included in the agenda mainly because the Commission, in its evaluation of the Agency, noted that the AB has so far not adopted the multi-annual work programme.

However, the Chairman recalled that in one of its earlier meetings the AB decided to delay the drafting of the multi-annual work programme. One of the AB Members confirmed that this was because the Agency does not yet have a stable mandate, also the problem of the resources for its core activities is not yet resolved.

The Director reported that this issue was also raised by the internal Audit Service (IAS) and the Agency has agreed with the IAS that it will draft the multi-annual programme for its activities from 2017 onwards.

Lord Mogg, explained that the BoR could, legally, provide recommendations to the Commission's evaluation and it depends on the Commission whether it forwards those recommendations, together with its own opinion as well as any appropriate proposal, to the European Parliament and the Council.

Furthermore, in its preparations the BoR had carefully taken account of comments made by the Commission, notably the need to improve the transparency of the Agency's decision taking; the importance of upgrading the Agency's website; and the benefit of more strategic thinking. The imminent publication of *2the Bridge to 2025* was an early response to the last suggestion.

The BoR recommendation also underlines the importance for the Agency to receive the required resources.

The current evaluation is considered a light evaluation, the next evaluation however, will be more significant and may lead to legislative changes.

The AB alternate appointed by the Commission informed that they have already launched the next evaluation conducted in line with Article 16 (3) of the (EC) Regulation 713/2009. PriceWaterhouse Coopers has won the tender to help carrying it out and some of the Board members were already asked to be interviewed. The draft evaluation report will be ready in July. The Administrative Board can discuss it in its September meeting. She noted that the Commission expected to propose changes that could require legal amendments which in turn could expose ACER to a wider review following the Common Approach to Agencies.

Action: The Board confirmed that the Agency will produce its first multi-annual Programming Document in 2017, in application of the new FFR ( framework financial Regulation) and on the basis of templates which will be provided by the European Commission in due time.

## **5. Appointment of the Chair and the Vice - Chair**

The Board unanimously elected the new Chair - Mr Nicolescu - and the new Vice-Chair - Mr Woźniak. Mr Nicolescu has also informed the present members that he has become the new Romanian Minister for Energy. He reaffirmed his commitment to continue working for ACER. A press release on the election was issued on the Agency webpage.

One AB member also suggested that when an alternate member is present at the meeting together with its matching member, he/she should align its position with the member before making any proposals.

The new AB Chair proposed working together and consulting each other with the BoR chair, including when giving public statements on the Agency.

Action: The Board has decided that in case there is a disagreement between the Board member and his/her matching alternate member, any comment of the alternate member can be removed from the minutes.

## **6. Report on the written procedures**

The Director reported on the written procedure that had taken place since December 2013. As no objections were raised by the set deadline, the AB Decision amending Decision AB N° 01/2011 of 11 February 2011 on the support granted to ACER staff members in respect to kindergarten and school fees was adopted on 13 February 2014.

## **7. Report on ACER developments (including REMIT, monitoring pursuant to Art. 11 Regulation (EC) No 713/2009, and on the activities of the Board of Regulators)**

The Director reported on Agency's progress. He gave a presentation on staffing according to the establishment plan. In total, in 2014 there will be 77 staff and 68 are already in office. On the staff composition, he noted that 47 staff members are in the operational departments, 14 staff members are dedicated to administrative support, 4 are in technical support, 7 in legal and communication support and 7 in the Director's office.

He also reported on the current vacancies. There are currently 24 nationalities in ACER. The total number of SNEs is 14 most of them in the Agency operational departments. For 2015, the Agency is requesting additional staff – for operating market monitoring under REMIT and for fully implementing the TEN-E Regulation - which will bring the total to 118. He presented a yearly overview of working, teleworking, leave and sick leave by total staff and by function group.



The Director presented a state of play for Framework Guidelines (FGs) and Network Codes (NC), as well as for the voluntary early implementation NC through the Electricity and Gas Regional initiatives.

On 4 February 2014 the Agency published its Regional Status Review Report, presenting developments in 2013. He also presented progress on other regulatory activities and on REMIT. On REMIT, he invited the AB members to a demonstration of the pilot of the ARIS system's market surveillance solution (SMARTS), the platform that the Agency will use to monitor the wholesale energy markets under REMIT. Using one-month worth of data from only one trading platform, the system is raising approximately 20 alerts per day.

The staffing requirements for REMIT are a key element for ACER to be able to monitor the markets. At the moment there are 15 colleagues working on REMIT (only 3 on market surveillance). The Agency will be put under pressure and the kind of expertise needed for REMIT is different than the one currently available in the Agency, so there is very limited scope for staff redeployment. The Director presented a benchmark with the Federal Energy regulatory Commission (FERC) in the US. For data management FERC employs 6 FTEs, 35 FTEs are devoted to monitoring and 20-25 FTEs to surveillance, for a total of 60-65 FTEs. The Financial Conduct Authority in the UK has 55 staff for market monitoring. He continued by reporting progress on the implementation of the TEN-E Regulation. On 30 January 2014 the Agency adopted its Opinion on ENTSO-E Guideline for Cost-Benefit Analysis of Grid Development Projects and on 13 February 2014 it adopted its Opinion on ENTSOG Cost-Benefit Analysis Methodology. The Director reported on possible CBCA decisions which may be received by ACER in May in case NRAs do not agree. There will only be 3 months for ACER to deliver its decisions and this will involve intense work on those cases. The Director plans to ask NRAs to be ready, in case ACER receives such requests, to second experts to work with the Electricity and Gas Departments (subject to them not being from the NRAs involved in the cost allocation decision) for 2-3 months.

Finally, the Agency has been facilitating the sharing of good practices and is preparing recommendations on incentives and common methodology to evaluate the incurred higher risks of investments in electricity and gas infrastructures. To this end it has received reports of best practices by NRAs during 2013 and it is expecting to produce an Agency's Report on Best Practices by Q2 2014.

One AB member asked whether the Agency Opinion on ENTSOG's Winter Supply Outlook (WSO) for the next winter takes into consideration the events in Ukraine. The Director replied that ENTSOG has submitted its WSO in November 2013, and the Agency adopted its opinion within the 3-month deadline, therefore before the events in Ukraine developed. However, it has included comments on the resilience status of the system into its Opinion. Moreover, the Agency is involved in the recently established Gas Coordination Committee, and is monitoring the situation. The reverse flow capacity was introduced following the previous crisis in the region. As part of the longer term vision, the Agency will look into the increase of resilience.

The EC appointed AB alternate reported on recent developments as regards situation in Ukraine. In this respect, the Commission was asked by the Council to provide a report on Security of Supply. She said the Commission will cooperate with the Agency on this report. She suggested that the Agency prepares an early report on the Winter Supply Outlook for 2014-2015. The Director however clarified that the Outlook is prepared by ENTSOG through their members, the Agency provides an Opinion, which is then followed up by ENTSOG. He said that security of supply is not really within the remit of the Agency.

Lord Mogg, as the BoR representative, underlined the considerable workload the Agency has carried out. On international aspects, he announced that next month Montenegro will formally join CEER as observer. He also reported that at their recent meeting the Energy Community ministers expressed desire to establish closer links with the Agency's BoR. He also informed about the recent suspension of the FTS meeting.

Lord Mogg presented the latest timeline for the Green paper. The paper should be launched on 29 April for the formal public consultation of 6 weeks by 16 June 2014. A roundtable with key stakeholders will be held on 5 June. The final adoption of the paper "Bridge to 2025" is planned for September 2014 with a workshop on 23 September to launch its publication. He offered to explain the initiative to the Administrative Board in its June meeting.

Finally, he informed the Board that a training initiative was launched by CEER (training courses for senior commissioners, for beginners, on REMIT; further courses are also planned on monitoring and benchmarking).

Action: The Board decided to discuss again the security of supply issue in its September meeting.

## **8. Meeting with the Chairman of the Board of Appeal, prof. Ranci**

Prof. Ranci, Chairman of the Board of Appeal (BoA), was invited for an exchange of views with the Board. He summarised the work of the BoA. The law firm Frattini-Vergano was contracted to act as a registrar for the BoA. The contract expires in March 2014. Moreover, a mock trial testing out the procedures, the Rules of Procedure (RoPs), the functioning of the BoA, its relationship with the registrar, and checking out the feasibility of the internal deadlines took place from 9 October to 9 December 2013. Based on the lessons learnt from the mock trial, the RoPs were amended.

Prof. Ranci underlined that there has so far not been any appeals filed. Any natural or legal person, including NRAs, can lodge an appeal against a decision taken by ACER where the Agency has actual decision-making powers (individual decisions). The decisions of the BoA may themselves be subject to appeal before the Court of Justice of the European Union.

One of the main challenges of the BoA has been the set-up of the registry and the registrar. If no cases are filed, it is questionable whether the solution to set up a robust structure is valid from an efficiency point of view. However, when an appeal is launched the deadlines are very tight as the BoA will have to decide upon the appeal within two months.

Prof. Ranci expressed further concerns regarding the possibility that the BoA receives two cases at the same time. He underlined that if the basic decision not to use Agency's own staff is maintained, then the external structure would need to be heavier, ready to act on very tight deadlines.

Moreover, he underlined that the BoA had 2 meetings so far. In case an appeal would be launched, meetings would multiply, which may have budgetary consequences for the Agency. Alternates also need to be invited to meetings if they are to step in in case of need. This may have further budgetary consequences. Finally, it will be difficult to respect the 60 days limit in case of a complex case. Translations take time as well.

The AB Chair was interested in the duration of the contract with Frattini Vergano. The Director replied that the Agency is in the process of renewing the contract for an additional year. The contract envisages a contingency up to the limit of €65000. He explained how the Agency currently deals with the budget allocation for the BoA taking uncertainties into account and said that the Agency will consider raising the ceiling for this purpose.

One AB member suggested that these issues are raised with the Commission in a formal way and to the two branches of the budgetary authority later on. The issue could also be raised with PriceWaterhouse Cooper, external consultant, assisting the Commission on the evaluation of the Agency.

## **9. Review of 2014 Work programme**

The Director presented the revised ACER 2014 WP. The Agency's budget in 2014 amounts to € 10,880,000. This is approximately € 4.6 million lower than the draft Agency Budget adopted by the Administrative Board on 20 March 2013. As a result he proposed a review of the Work Programme in which some activities, mainly concerning the REMIT and TEN-E areas, are removed or postponed. Furthermore, the development of the Framework Guidelines on Rules on Harmonised Electricity Transmission Tariff Structure is postponed to 2015.

Regarding REMIT, the Budgetary Authority did not allocate any additional staff to the Agency for the operation of the market monitoring system. At the same time the adoption of the Implementing Acts by the European Commission is now planned for June 2014. This means that the reporting obligations for market participants and other stakeholders will not come into effect until the end of 2014.

Therefore, the timing of some of the activities has been reviewed. With regard to the TEN-E Regulation, the Budget Authority allocated only 5 additional staff to the Agency. Therefore, some deliverables/activities have been deprioritised and will be considered in the framework of the 2015 Work Programme (e.g. annual Report on progress of PCI, the Guidance on CBCA methodology). The BoR approved the 2014 WP Review on 18 March. No comments were made.

Action: The AB adopted the 2014 Review WP.

## **10. Work Programme 2015 – priorities**

The Director presented the outline of the ACER 2015 WP listing the main ACER activities. This was already presented at a virtual meeting with the AWG chairs for an initial discussion on 4 March. A public workshop launching a short public consultation on the 2015 WP outline is scheduled on 4 June in Ljubljana.

The draft will be presented by the Director on 30 June. He said that as a consequence of the discussions at the BoR the previous day some items will be moved from the 2015 WP.

Lord Mogg underlined that the objectives listed for 2015 are emanating from the legislation. Therefore, it is particularly unfortunate if the Agency were not given sufficient resources to fulfil its mission, and the NRAs do not have unlimited resources to support the Agency.

Action: The Board discussed the 2015 ACER WP outline ahead of the Director's draft proposal of the 2015 WP, which will be submitted for adoption to the September AB meeting.

## **11. MSPP 2015-2017**

The Director presented the MSPP 2015-2017. The staff envisaged in the final EU Budget 2014 is 77 and the draft 2015 budget submitted by the Director foresees an increase to 118 in 2015. For REMIT, ACER estimates that 30 additional staff will be required for effectively monitoring the wholesale energy market. With the new tasks to be covered and the additional staff devoted to them, it is expected that the Market Monitoring Department will have to be restructured into two Departments: Department of Market Oversight (DMO), and Department of Analysis

and Surveillance (DAS), responsible for developing and implementing surveillance tools to detect potential instances of market abuse.

The Director noted that a regional approach is necessary to ensure that regional market specificities are taken into account and that market monitoring is performed effectively, as NRAs cannot substitute the Agency in this given that their ambit of responsibilities is limited to national markets. Therefore, the Agency envisages establishing “regional desks” with 1 monitoring officer for each of the 5 regional areas for electricity and 5 regional areas for natural gas.

For TEN-E tasks the draft budget submitted by the Director estimates a requirement for 6 additional FTEs. Furthermore, 5 FTEs are required to cover central and support functions of the Agency.

The MSPP 2015-2017 was submitted to the Commission at the beginning of February. While the Commission’s official opinion on the Agency’s MSPP 2015-2017 was not yet adopted, the AB alternate appointed by the Commission said that the draft establishment plan is considered not to be in line with its July 2013 Communication “programming of human and financial resources for decentralised agencies 2014-2020”. She informed the members that high level meetings are expected to take place in April.

Action: The Board approved the MSPP 2015-2017 (ANNEX 2). The two AB members/alternates appointed by the Commission abstained.

## **12. Estimate of Revenue and expenditure for 2015**

In parallel with the MSPP 2015-2017, the Director presented the draft decision on estimates of revenues and expenditure. The draft ACER 2015 budget is 16.558.587€. The 2015 preliminary budget covers the new staffing for the implementation of the new tasks assigned under the TEN-E Regulation and REMIT. The BoR Chair presented the BoR opinion of 18 March on the 2015 Budget, which supports the above proposal.

The opinion underlines that the preliminary draft budget for 2015 of 16 558 587€ is justified notably in respect to the overall tasks of the Agency on the basis of the draft 2015 Work Programme outline, including the effective execution of its tasks under the TEN-E Regulation and REMIT.

In particular, the opinion noted that in terms of human resources, as in 2014 the Agency was only allocated 5 additional FTEs for the implementation of the TEN-E Regulation and no additional resources for REMIT, some activities envisaged in the 2014 Work Programme have been reprioritised and postponed to 2015.

He added that DG ENER should be complimented for its efforts for trying to find additional resources for the Agency in the difficult context.

One AB member suggested that the current estimate of expenditure and revenue is based "on the condition", and not "on the assumption", that funds will be available to the Agency already during 2014 to substantially complete the development of its dedicated IT platforms and data exchange protocols. This change in the text of the decision was agreed by the Board.

Action: The Board adopted the Agency estimate of revenue and expenditure for 2015 (ANNEX 3). The two AB members/alternates appointed by the Commission abstained.



### **13. Annual Internal Audit Report for 2013**

The Director briefly presented the Annual Internal Audit Report for 2013, which was received from the IAS in March. On the basis of the IAS recommendations of its 2013 audit, the Agency established an Action Plan. During the week of 10-15 March 2014 the IAS, as planned, carried out its audit regarding the Monitoring of the implementation of network codes. Once available, the results will be communicated to the Administrative Board. The Board noted the presentation.

### **14. Declarations of Interest for 2014**

The Chair reported that all AB members and alternates have submitted their declarations of interest for 2014. For the examination of the declarations of the Chair and the Vice-Chair the AB appointed Mr Onidi.

### **15. ICT Strategy**

The Director briefly presented the ICT Strategy of the Agency. He said that the IAS requested the ICT strategy to be approved by the AB. He recognised that the website is still the Agency's weakest part and this aspect is included in the strategy. However the ICT strategy is much wider than the website. No comments were received.

Action: The Board approved the ICT Strategy.

## **16. Information on changes in education allowance scheme**

On request of the Board, the Director reported that in 2013, the European Court of Auditors (ECA) deemed the way in which the Agency was paying top up allowance for school fees irregular. By contributing towards the higher cost of schooling in Ljubljana the Agency applied a social measure to reduce inequality of schooling conditions for the Agency staff's children in comparison with the children of the staff of other EU institutions located where European Schools are available.

Based on the ECA's findings, the new policy of the Agency continues to be based on same principles, but the contributions will be paid directly to the schools, on the basis of tuition agreements. This is the practice used by many other agencies and has never been questioned by ECA.

For the school year 2013/2014, the maximum level of the Agency contribution is set at 55% of the average reference price, adjusted for the current coefficient for Slovenia (85,4%). Maximum level of contribution for the school year 2013/2014 is 4.697,76 EUR.

## **17. Authorisation to publish an article**

The Director sought authorisation from the Board to publish an article on ACER Opinion on Capacity Markets in a publication, together with another member of the Agency staff.

The AB alternate appointed by the EC said that they agree to grant access provided there is a disclaimer included. The Director accepted.

Action: The Board granted authorisation to the Director to publish an article on ACER Opinion on Capacity Markets in a publication.

## **18. 2014 AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010**

The Chair reported on the 2 appointment decisions that he had taken, since the last meeting, on the nominations of the new BoR members and alternates. The decisions were taken on the basis of the delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010.

### **AOB**

#### **Annual Conference**

It was agreed that the next meeting of the AB will take place on 10 June at 17h. This change accommodates the schedules of AB Members participating in the Annual Conference on the same day. On invitation by one AB member, the Board decided that an extraordinary meeting of the AB will take place in Rome in September.

## **ANNEX 1**

**Annex to the AB Decision n° 01/2010  
adopting the Rules for the participation of alternates in the meetings of the  
Administrative Board of the Agency for the Cooperation of Energy Regulators**

<b>Members appointed by the Council</b>	
<b>Member</b>	<b>Alternate</b>
Guido Bortoni	Alfonso Gonzalez Finat
Razvan Eugen Nicolescu	Kristian Moller
Piotr Grzegorz Woźniak	Detlef Dauke
Guy Lentz	Pál Kovács
Jochen Penker	Romas Švedas
<b>Members appointed by the EP</b>	
Luis-Martin Oar	Uwe Leprich
Rene Tammist	António Jorge Viegas de Vasconcelos
<b>Members appointed by the EC</b>	
Dominique Ristori	Klaus-Dieter Borchardt
Olivier Onidi	Aba-Garrote Paloma

## **ANNEX 2**

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## **ANNEX 3**

**DECISION AB 04/2014  
OF THE ADMINISTRATIVE BOARD  
OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS  
of 19 MARCH 2014**

ON THE ESTIMATE OF REVENUE AND EXPENDITURE OF THE AGENCY FOR  
THE FINANCIAL YEAR 2015

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF  
ENERGY REGULATORS,

Having regard to 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<sup>1</sup> (hereinafter referred to as the “Agency”), and, in particular, Article 23(1) thereof,

Having regard to the preliminary Agency draft budget for the financial year 2015 drawn up by the Director of the Agency pursuant to Regulation (EC) No 713/2009, and, in particular, Article 23(1) thereof,

Having regard to the reasoned Opinion of the Board of Regulators of 18 March 2014 on the preliminary Agency draft budget for the financial year 2015, attached to this decision,

Whereas:

- (1) The European Council, on 4 February 2011, confirmed that “*safe, secure, sustainable and affordable energy contributing to European competitiveness remains a priority for Europe*” and that “*the EU needs a fully-functioning, interconnected and integrated internal energy market*”. In this context, the Council set targets for the completion of the internal energy market by 2014 and the removal of energy islands by 2015.
- (2) Since its establishment, the Agency has been assigned with additional tasks and responsibilities, notably by Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging<sup>2</sup> and Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency<sup>3</sup> (hereinafter referred to as “REMIT”).
- (3) REMIT provides for the monitoring of wholesale energy markets by the Agency in close collaboration with National Regulatory Authorities.
- (4) In this context, the establishment of the European register of market participants and the acquisition and processing, for monitoring purposes, of the records of transactions to be provided by market participants, or by other persons or authorities acting in their behalf, require the development by the Agency of dedicated IT platforms and data exchange protocols.
- (5) The monitoring system under REMIT should become operational six months after the adoption by the Commission of the Implementing Acts on the records of transactions. Such adoption is expected early in 2014 at the latest.
- (6) The current estimate of expenditure and revenue is based on the condition that funds will be available to the Agency already during 2014 to substantially complete the development of its dedicated IT platforms and data exchange protocols. On this basis, the Agency budget for the financial year 2015 includes provisions for the maintenance of the REMIT-related IT system and the provision of the additional staff required for operating the monitoring of wholesale energy markets in 2015.

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

<sup>2</sup> OJ L 250, 24.9.2010, p.5.

<sup>3</sup> OJ L 326, 8.12.2011, p.1.

- (7) Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulation (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (hereinafter referred to as “TEN-E”),<sup>4</sup> attributes additional tasks to the Agency in the selection of projects of common interest and in the monitoring of the development of such projects.
- (8) The Agency budget for the financial year 2015 covers the new staffing for the implementation of the new tasks assigned under TEN-E.
- (9) The provisions in both REMIT and TEN-E are instrumental for the achievement of the targets set by the European Council in February 2011.
- (10) The Agency already benefits from the support of the National Regulatory Authorities in terms of personnel in the form of experts provided for the working groups established by the Agency and seconded national experts, as well as in terms of logistics, through the provision, free of charge, of an office in Brussels.
- (11) On the basis of the above, the Director of the Agency has drawn up a preliminary draft budget for the financial year 2015.
- (12) On the basis of the preliminary draft budget, and taking into account the reasoned Opinion of the Board of Regulators, the Administrative Board shall make an estimate of revenue and expenditure of the Agency for the following financial year, pursuant to Article 23(1) of Regulation (EC) No 713/2009.

HAS ADOPTED THIS DECISION:

*Article 1*

The estimate of revenue and expenditure of the Agency for the financial year 2015, as detailed in Annex I, amounts to Euro 16 558 587.

*Article 2*

This decision shall enter into force on the day following that of its adoption and is transmitted to the Commission in the fulfilment of the obligations established in Article 23(1) of Regulation (EC) No 713/2009.

Done at Ljubljana, 18 March 2014.

For the Administrative Board:

*For the Administrative Board*

*The Chairman*

Piotr WOŹNIAK

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<sup>4</sup> OJ L 115, 25.4.2013, p. 39.

## Annex I: Agency Draft Budget 2015

Title Chapter	Heading	EU contribution	Assigned revenue 2013 surplus	Total budget 2015
		€s	€s	€s
<b>TITLE 1</b>	<b>EXPENDITURE RELATING TO STAFF AND RESOURCES</b>			
CHAPTER 11	STAFF IN ACTIVE EMPLOYMENT	10,535,786	326,715	10,862,501
CHAPTER 12	MISSIONS AND DUTY TRAVEL	159,586	4,949	164,535
CHAPTER 13	SOCIOMEDICAL INFRASTRUCTURE	29,098	902	30,000
CHAPTER 14	SOCIAL SERVICES	38,020	1,179	39,200
	<b>TOTAL TITLE 1</b>	<b>10,762,490</b>	<b>333,745</b>	<b>11,096,236</b>
<b>TITLE 2</b>	<b>AGENCY'S BUILDING AND ASSOCIATED COSTS</b>			
CHAPTER 20	AGENCY'S PREMISES COSTS	875,452	27,148	902,600
CHAPTER 21	DATA PROCESSING	333,168	10,332	343,500
CHAPTER 22	MOVABLE PROPERTY AND ASSOCIATED COSTS	289,813	8,987	298,800
CHAPTER 23	CURRENT ADMINISTRATIVE EXPENDITURE	996,936	30,915	1,027,851
CHAPTER 24	COMPUTER INFRASTRUCTURE TELECOMMUNICATION AND POSTAGE	154,703	4,797	159,500
	<b>TOTAL TITLE 2</b>	<b>2,650,072</b>	<b>82,179</b>	<b>2,732,251</b>
<b>TITLE 3</b>				
CHAPTER 30	REPRESENTATION EXPENSES	25,600	0	25,600
CHAPTER 31	OPERATIONAL MISSIONS	370,000	0	370,000
CHAPTER 32	STAKEHOLDER INVOLVEMENT, PUBLIC RELATIONS AND WEB	256,000	0	256,000
CHAPTER 33	TRANSLATIONS	70,500	0	70,500
CHAPTER 34	PROFESSIONAL INDEMNITY	8,000	0	8,000
CHAPTER 35	REMIT OPERATIONS	2,000,000	0	2,000,000
	<b>TOTAL TITLE 3</b>	<b>2,730,100</b>	<b>0</b>	<b>2,730,100</b>
	<b>TOTAL BUDGET 2015</b>	<b>16,142,663</b>	<b>415,924</b>	<b>16,558,587</b>

### BOARD OF REGULATORS OPINION no 1 /2014

#### ON THE PRELIMINARY DRAFT BUDGET FOR 2015 FINANCIAL YEAR

**HAVING REGARD** to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009, establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as "Regulation (EC) No 713/2009" and the "Agency", respectively), and, in particular, Article 23(1) thereof;

**HAVING REGARD** to Decision 01/2010 of the Board of Regulators adopting its Rules of Procedure (hereafter referred to as the "Rules of Procedure") as modified by Decision 03/2012 and Decision 01/2014 and, in particular, Article 6 thereof;

**HAVING REGARD** to the Director's preliminary draft budget for 2015 financial year submitted for the Board of Regulators, pursuant to Article 23(1), and providing the basis for the estimate of revenue and expenditure of the Agency for the 2014 financial year to be prepared by the Administrative Board;

**HAVING REGARD** to the draft Multi-annual Staff Policy Plan 2015-2017 prepared by the Director accompanying the preliminary budget.

**WHEREAS**

- (1) The European Council, on 4 February 2011, confirmed that “safe, secure, sustainable and affordable energy contributing to European competitiveness remains a priority for Europe” and that “the EU needs a fully-functioning, interconnected and integrated internal energy market”. In this context, the Council set targets for the completion of the internal energy market (IEM) by 2014 and the removal of energy islands by 2015.
- (2) The European Council of May 2013 reaffirmed the objectives of completing the internal energy market (IEM) by 2014 and of developing interconnections so as to put an end to any isolation of Member States from European gas and electricity networks by 2015. The European Council called for particular priority to be given *inter alia*, “to the effective and consistent implementation of the third "energy package", as well as speeding up the adoption and implementation of remaining network codes”.
- (3) Many of the Agency’s tasks under Regulation (EC) No 713/2009, notably with regard to the development of European network rules and their monitoring and implementation, must not only vigorously continue but also be intensified in 2015. During 2015 the Agency will be called to provide, *inter alia*, Reasoned Opinions and/or Recommendations on one Network Code in electricity and one Network Code in gas, as well as to provide advice and support, as appropriate, on Network Codes during the comitology process and to undertake monitoring of the implementation of those Network Codes adopted.
- (4) ACER is also expected to continue to promote regional initiatives which play a prominent role in early implementation of the Network Codes through the cross regional roadmaps.
- (5) A well-functioning and transparent wholesale energy market is a precondition given consumers’ confidence that prices fairly reflect the interplay of demand and supply and are not distorted by abusive behaviour. REMIT acknowledges that efficient market monitoring at Union level is vital for detecting and deterring market abuse on wholesale energy markets and that the Agency is best placed to carry out such monitoring as it has both a Union-wide view of the electricity and gas markets as well the necessary expertise in the operation of electricity and gas markets and systems in the Union.
- (6) The monitoring system under REMIT (including the data collection) must become operational six months after the adoption - by June 2014 the latest - by the Commission of the Implementing Acts on the records of transactions. To perform its monitoring activities, the Agency will have to collect trading and fundamental data from wholesale energy markets and undertake an initial assessment and analysis to identify cases where there is ground to believe that breaches of the prohibitions in REMIT have occurred. Such cases will then be notified to the National Regulatory Authorities (NRAs), which have a comprehensive understanding of developments on energy markets in their Member State, and which are responsible for the formal investigation and enforcement. Close cooperation and coordination between the Agency and national authorities is, therefore, essential to ensure proper monitoring and transparency of energy markets and effective enforcement



of the prohibitions under REMIT. Most NRAs currently have little or no experience of monitoring wholesale energy markets and of collecting wholesale data on a continuous basis, as required under REMIT. The cooperation and coordination between the Agency and NRAs can therefore deliver the expected synergies and benefits but only if the Agency can perform the monitoring activities assigned to it in as a highly effective manner as possible. Therefore, the Agency will need to secure the appropriate human resources and IT tools to fulfil its tasks under REMIT.

- (7) The Agency is also called upon to establish and manage the European register of market participants, to collect trade and fundamental data as well as to arrange access to these data by NRAs and other authorities, ensuring operational reliability and professional secrecy. This requires the development of dedicated IT platforms and data exchange protocols.
- (8) The deployment of the required dedicated IT platforms and the definition of the data exchange protocols will be substantially completed in 2014. On this basis, the Agency budget for the financial year 2015 includes provisions for the maintenance of the REMIT-related IT system and the provision of the additional staff required for operating the monitoring of wholesale energy markets.
- (9) The Agency budget for the financial year 2015 covers the new staffing for the implementation of the new tasks assigned under TEN-E. These new tasks include the involvement of the Agency in the process for development of the CBA methodology, the selection of projects of common interest and their implementation, all of which have significant resource implications.
- (10) The NRAs participate in and provide significant expertise to the work of the Agency in the Working Groups which comprise NRAs' representatives and Agency's staff. NRAs also provide, through the Council of European Energy Regulators, significant support to the Agency (including administrative support for and servicing of the Agency Working Groups and hosting the Agency's liaison office in Brussels). CEER particularly values the coordination of their activities with those of ACER and the service to the members of the Board of Regulators by the Agency's liaison office in Brussels and, therefore, commits to continue its support for the coming year. The provisions in both REMIT and TEN-E as well as the Agency's core tasks under the third package are instrumental for the achievement of the targets set by the European Council in February 2011 and reaffirmed in May 2013. Therefore, in addition to the support from NRAs, the Agency will need to secure the appropriate human resources to fulfil its tasks and this important conclusion was also drawn in the ACER Board of Regulators Recommendations to the first evaluation of ACER by the Commission.<sup>i</sup>

**- Pursuant to Article 6 of the Rules of Procedure, the Board of Regulators HAS ADOPTED, on the basis of the above-mentioned considerations, the following REASONED OPINION on the preliminary draft budget of the Agency for the financial year 2015, prepared by the Director pursuant to Article 23(1) of the Agency Regulation:**

The Board considers that the preliminary draft budget is well balanced and proportionate to the wide and important range of activities that the Agency will be called to perform in 2015.

More specifically, the Board agrees that the preliminary draft budget for the 2015 Financial Year, of **16 558 587 € (euro)** is in line with the requirements of the Agency for that year.

The increase of the budget for the 2015 Financial Year with respect to the 2014 Budget is fully justified notably in respect of the overall tasks of the Agency on the basis of the draft 2015 Work Programme outline, including effective execution of tasks of the Agency under the TEN-E Regulation and REMIT. In particular, in terms of human resources, out of the 49 additional staff member requested for 2014, the Agency was only allocated 5 additional full time equivalents (FTEs) for the implementation of the TEN-E Regulation and no additional resources for REMIT. Therefore, some activities envisaged in the 2014 Work Programme have been reprioritised and postponed to 2015. At the same time the adoption of the Implementing Acts on the records of transactions by the European Commission, which at the time when the 2014 Work Programme was first developed was expected for the end of 2013, is now planned for June 2014. This means that the reporting obligations for market participants and other stakeholders will not come into effect until 6 months after, in fact at the end of 2014. Therefore, the timing of some of the activities envisaged in the adopted 2014 Work Programme and related to the operation of market monitoring under REMIT have been reviewed to reflect the new timing and are now reflected in the 2015 Work Programme outline.

The Board considers it essential that the Agency is provided with the necessary human resources, of adequate expertise, to undertake its monitoring activities under REMIT in the most effective manner. The Agency and the National Regulatory Authorities will mutually explore possible synergies of their cooperation and coordination. However, it should be noted that National Regulatory Authorities, which will themselves face additional responsibilities under REMIT, are also subject to resource limitations. Furthermore, NRAs cannot commit to bear the responsibilities of the Agency for monitoring the European market given their responsibilities mainly for their national market.

More specifically, the Board has carefully reviewed and endorses the Director's estimate (in the preliminary draft budget for 2015) that **30 additional staff** will be required to monitor effectively wholesale energy markets. Of these additional staff members, 15 will be required to perform the additional REMIT tasks assigned to the Agency during the REMIT legislative process, while the other 15 will complement the existing staff in the performance of market monitoring given the sheer scale and complexity of this task.

With regard to the latter, the BoR recognises that the most resource intensive activity is expected to be the analysis of the data reported by market participants and other reporting parties and collected by the Agency. The BoR takes note of the draft MSPP that this will be undertaken during a two stage process of an initial automatic screening performed by surveillance software and a second more "sophisticated" analysis which will look into these anomalous events to identify those for which market abuse can be suspected. The BoR agrees that this task requires a wide range of expertise.

Different approaches regarding market monitoring can indeed be envisaged which will require different staffing levels but this will inevitably result in the Agency fulfilling to a different extent the requirement under REMIT. Under the assumption of an alternative approach to REMIT in which only the first stage – the automatic screening – is performed by the Agency, the additional staff for this activity would be reduced. The Agency would notify to NRAs all anomalous events emerging from the automatic screening of trade and fundamental data, without performing any further analysis to identify for which of these events there is ground to suspect that market abuse has occurred. In this situation, and taking into account the limited resources available for investigations at national level, it may well be that this approach may result in resources at national level being wasted on purposeless investigations. It is, therefore, evident that the need for an effective initial and more sophisticated assessment or analysis of trade and fundamental data reported by market participant is the greatest, in order to ensure the highest level of efficiency of the overall market monitoring process.

Against this context, the BoR agrees with the estimation of the preliminary 2015 draft budget and the draft MSPP 2015-2017 that to cover the full range of required expertise there is a need of:

- 12 additional monitoring officers (including the envisaged 10 market monitoring officers for regional areas to perform regional market monitoring which would otherwise fully have to be performed by NRAs and financed at national level),

- 2 assistants and

- One additional managerial position given the restructuring of the Market Monitoring Department in two departments (Department of Market oversight and Department of Analysis and Surveillance).

The Board considers it essential that the Agency is not only provided with the necessary human resources but resources which have adequate expertise to undertake both the REMIT responsibilities and the additional tasks assigned to it by the new TEN-E Regulation.

The BoR is strongly supportive of the need for substantial reinforcement of the Agency capability in the TSO Cooperation area with 6 additional FTE positions for both Electricity and Gas Departments. This will address the current shortage - as in 2014 only 5 posts were authorised for the TEN-E tasks - taking also into account that ACER may also be able to avail itself of the support for the TEN-T EA Trans European Transport Network Executive Agency as the Commission has indicated. Indeed the BoR recognises that the minimum expertise at the Agency required for the performance of its functions and tasks as defined by the TEN-E Regulation require regulatory expertise at European and national level, particularly regarding gas and electricity network regulation; experience in pre-investment project analysis (feasibility studies, investment risk analysis, project assessment and reporting) regarding technical, economic, and financial aspects of large-scale projects; ability to review and execute cost analyses (such as cost-benefit analysis and cross-border cost allocation); as well as IT and technical support.

The BoR recognises that these challenges and the increase of staff in both REMIT and TEN-E areas also result in the need for an increase of the resources available for the central and support functions by 5 staff.

The Board, therefore, welcomes the increase in the amount in Title 1, in view of the need of the Agency to recruit the extra staff required performing the new tasks under REMIT and the TEN-E Regulation and the necessary horizontal support and welcomes the sum of 2.000.000€ allocated to REMIT operations in order to cover the costs of maintaining the REMIT-related IT tools.

**The Board of Regulators, therefore, endorses the draft MSPP 2015-2017 which reflects the staffing requirements for the Agency to perform its tasks and responsibilities under the Third Package, as expanded by REMIT and the new TEN-E Regulation.**

Ljubljana, 18 March 2014,  
For the Board of Regulators

Lord Mogg, Chair of the Board of Regulators

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<sup>i</sup> Recommendations of the Agency's Board of Regulators following the European Commission's evaluation of the activities of the Agency for the Cooperation of Energy Regulation (22.1.2014 C(2014) 242 final)