

BOARD OF REGULATORS OPINION no 1 /2014

ON THE PRELIMINARY DRAFT BUDGET OF THE AGENCY 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 2015 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) The Agency 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 European 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 the NRAs 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 Agency's 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 European Commission.ⁱ

- 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 members 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 of Regulators 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 BoR 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 the Agency may also be able to avail itself of the support for the TEN-T EA Trans

European Transport Network Executive Agency as the European 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

¹ 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)

