

**DECISION AB No xx/2013
OF THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE
COOPERATION OF ENERGY REGULATORS**

of [date]

**AMENDING DECISION AB NO 08/2010 OF 28 NOVEMBER 2010 ON
PROCEDURES AND PRACTICAL MEASURES FOR APPLYING
REGULATION (EC) NO 1049/2001 ON ACCESS TO DOCUMENTS OF THE
AGENCY**

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
(hereinafter referred to as the “Agency”), and, in particular, to Article 30(2) thereof,

HAVING REGARD to Decision AB No 03/2010 of 6 May 2010 containing the Rules of
Procedure of the Administrative Board, and, in particular, Article 8 thereof,

Whereas:

- (1) Article 9(3) of Decision AB No 08/2010 on procedures and practical measures for
applying Regulation (EC) No 1049/2001 on access to documents of the Agency
(hereinafter referred to as “Decision AB No 08/2010”) stipulates that an applicant may
bring an appeal against a confirmatory decision to the Agency’s Board of Appeal, and,
in case the latter rejects the request for access, to the General Court or the European
Ombudsman.
- (2) The powers of the Board of Appeal are laid down in Article 19(1) of Regulation (EC)
No 713/2009, which only allows appeals against a decision referred to in Articles 7, 8
or 9 of the same Regulation addressed to a person or against a decision which,
although in the form of a decision addressed to another person, is of direct and
individual concern to that person. Confirmatory decisions concerning a request for
access to documents do not fall within this scope, as they are based on Article 30(2) of
Regulation (EC) No 713/2009 *jo.* Article 9(1) of Decision AB No 08/2010.
- (3) Any act or decision of the Agency which is of direct and individual concern to any
natural or legal person may also be challenged directly before the Court of Justice
pursuant to Article 263 of the Treaty on the Functioning of the European Union. This

right cannot be made conditional upon a prior appeal to the Agency's Board of Appeal.

(4) Article 8(3) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents refers to the General Court and the Ombudsman as possible appeal measures against a confirmatory decision.

(5) Article 9(3) of Decision AB No 08/2010 should be amended and rephrased accordingly,

HAS DECIDED:

Sole Article

Article 9(3) of Decision AB No 08/2010 shall be replaced by the following:

“The decision shall also inform the applicant of his/her right to bring an action before the General Court in accordance with article 263 TFUE or, if appropriate, to lodge a complaint with the European Ombudsman”.

This decision shall enter into force on the day following that of its adoption.

Done at Ljubljana, on xx 2013.

For the Administrative Board:

Piotr Woźniak

Chairman of the Administrative Board of the Agency for the Cooperation of Energy Regulators