



Publishing date: 03/08/2012

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Annual Activity Report 2011





Annual Activity Report 2011

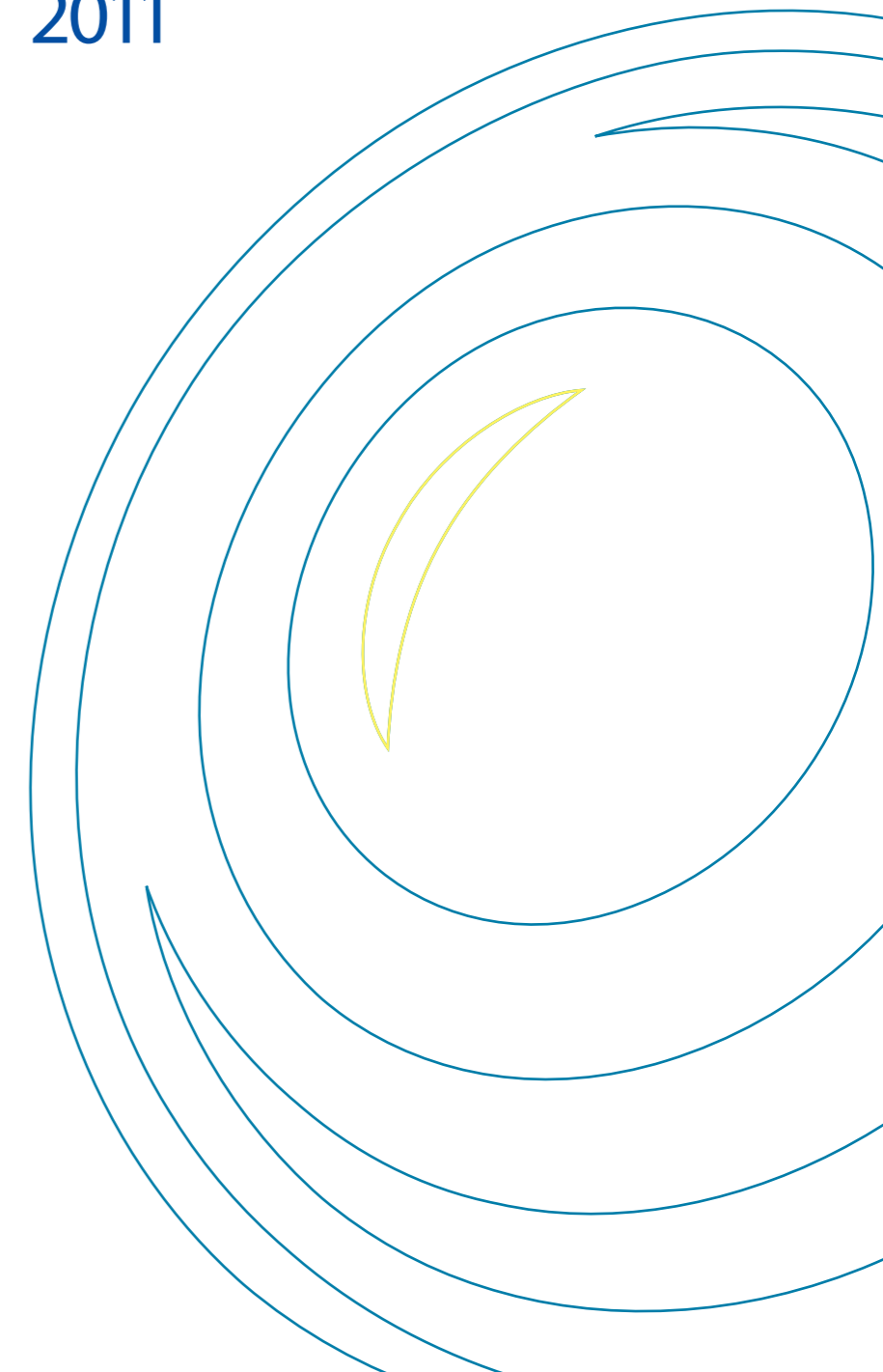


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Foreword by the Director of the Agency for the Cooperation of Energy Regulators



The year 2011 was important, challenging and exciting for the Agency. It began with a handful of staff operating out of temporary premises made available by the European Commission in Brussels, and with the Agency still being administratively and financially part of its parent Directorate-General for Energy.

In March, the Agency formally opened in its Seat in Ljubljana and achieved financial autonomy. By the end of the year it had recruited almost its entire staff as set out in its Founding Regulation and had finalised its institutional set-up by establishing the Board of Appeal and appointing its members.

In the meanwhile, the Agency in 2011 published five Framework Guidelines setting out the key objectives and principles for the development of Network Codes in the priority areas identified by the Commission as the most relevant for achieving the policy objective of completing the Internal Energy Market by 2014.

The Agency also formulated opinions on the Articles of Association and Rules of Procedure of ENTSO-E and ENTSO-G, as well as on the ten-year network development plan for gas prepared by ENTSO-G.

Other than the formal rule-making process, the Agency also promoted the voluntary early implementation of the capacity allocation and congestion management procedures, and, by the end of the year, had made significant progress in defining cross-regional roadmaps in the electricity sector.

In December, the new Regulation on wholesale energy market integrity and transparency (REMIT) entered into force, assigning important additional responsibilities to the Agency, particularly with regard to the monitoring of wholesale energy markets, so as to detect and deter market abuse. From very early on, the Agency has provided support to the National Regulatory Authorities (NRAs) and market participants in fulfilling their roles and obligations under the new Regulation.

This first Annual Activity Report presents the Agency's achievements during its first year of operations.

These achievements would not have been possible without the continuous support of the NRAs and the preparatory work they undertook since well before the Agency was established. NRAs are not only the main 'clients' of the Agency, the overall mission of which is to support and coordinate NRAs actions at EU level, but also the Agency's 'constituencies', through the Board of Regulators and the Agency's Working Groups. The year 2011 was particularly successful in implementing arrangements for the smooth cooperation between the Agency and the NRAs at all levels.

My thanks go to the European Commission's Directorate-General for Energy for its support, especially during the Agency's start-up period, and to the European Parliament for its continuous confidence in the Agency.

I would like to extend my gratitude to those stakeholders who have assisted us by participating actively in the public consultations and workshops, as well as by contributing to a number of expert groups set up by the Agency.

I also wish to commend my colleagues at the Agency: their skills, enthusiasm and dedication have been instrumental in achieving last year's remarkable success.

Last but not least, the Slovenian Authorities must be thanked for making us feel so at home during our first year.

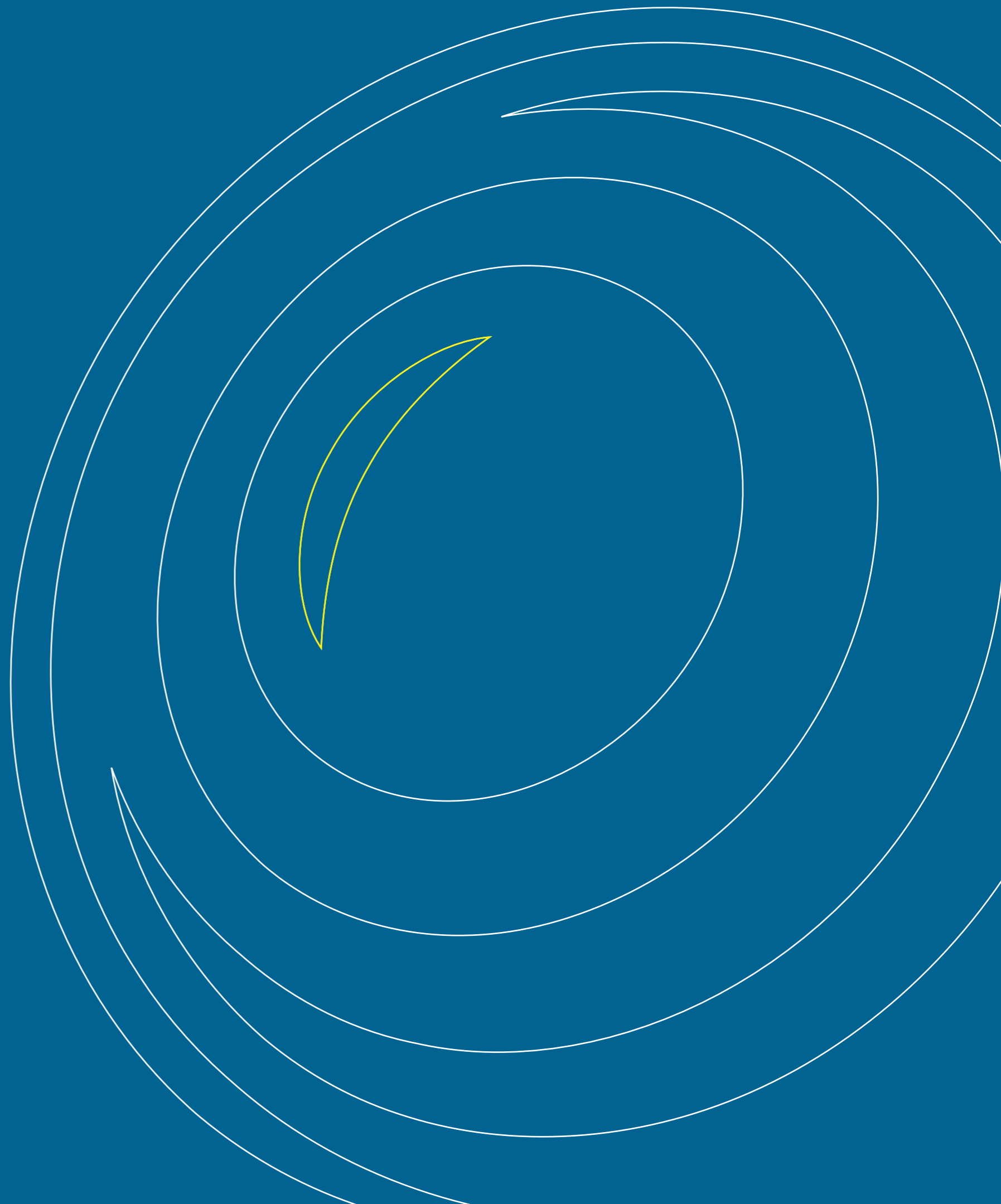
As to the future, new challenges lie ahead. The completion of the Internal Energy Market still requires a number of Framework Guidelines to be developed, and Network Codes to be evaluated and adopted. Greater efforts are also needed to develop energy networks and to support competition, environmental sustainability, including through a greater share of renewable energy sources, and security of supply. The Regulation on Guidelines for trans-European energy infrastructure, expected to be adopted in early 2013, should speed up the network development process from a European perspective. It assigns NRAs and the Agency, inter alia, a key role in promoting efficiency and consistency in the project selection and prioritisation processes.

Finally, the work on implementing REMIT continues, with the development of the ICT system to support the collection of transactional and fundamental data, and with the drafting and implementation of market monitoring methodologies.

We look forward to continuing to meet our objectives and to preparing for the delivery of new tasks and responsibilities in 2012 for the benefit of EU energy consumers.

Alberto Pototschnig
Director of the Agency for the Cooperation of Energy Regulators

**INTRODUCTION
TO THE AGENCY**



Mission

Regulation (EC) No 713/2009¹ established the European Agency for the Cooperation of Energy Regulators, assigning it a key role in the process for completing the Internal Energy Market (IEM) for electricity and natural gas. The Agency became officially operational on 3 March 2011, at the same time as the Third Package of Legislative Measures on Energy² (hereafter referred to as the 'Third Package') entered into force. The Agency has its seat in Ljubljana, Slovenia.

The mission of the Agency, as defined in Regulation (EC) No 713/2009, is to assist the National Regulatory Authorities for energy (NRAs) in exercising, at European Union (EU) level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their actions. In this respect the Agency:

- Complements and coordinates the work of NRAs.
- Participates in the establishment of the cross-border market and network rules, and in the planning for the development of the European networks.
- Takes, under certain conditions, binding individual decisions on terms and conditions for access to and operational security of cross border infrastructure and on exemption requests.
- Gives advice on electricity- and natural gas-related issues to other European institutions, upon their demand or on its own initiative.
- Monitors the internal markets in electricity and natural gas and reports on its findings.

As such, the Agency was established in order to fill the regulatory gap at EU level to perform effective regulatory oversight (beyond and across national borders) and to contribute towards the effective functioning of the IEM in electricity and natural gas.

The range and nature of tasks assigned to the Agency have been extended further with the adoption of Regulation (EU) No 1227/2011³ on wholesale energy market integrity and transparency (REMIT). REMIT introduces a sector-specific framework for the monitoring of wholesale energy markets, so as to detect and deter market abuse.

In this framework, the Agency will be responsible for collecting and analysing data on wholesale energy market transactions and other relevant data to identify possible instances of market manipulation, attempted market manipulation or insider trading. Following its initial assessment, the Agency should notify the concerned NRA(s) when there is ground to believe that abusive behaviour has actually occurred.

The new activities to be performed by the Agency under REMIT are important, as market integrity and transparency are essential for well-functioning energy markets and for promoting the confidence of market participants and final consumers. They are also complex because they deal with complex traded products and markets, and delicate because monitoring should be conducted in a vigilant manner without unduly interfering with the operation of energy markets.

¹ 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 (OJ L 211, 14.8.2009, p. 1).

² Apart from Regulation (EC) No 713/2009, the Third Package of Legislative Measures on Energy includes 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 (OJ L 211, 14.8.2009, p. 55), 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 (OJ L 211, 14.8.2009, p. 94), 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 (OJ L 211, 14.8.2009, p. 15) and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

³ REMIT is Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326/1, 8.12.2011).

Organisation

The Agency comprises four bodies:

- The Administrative Board
- The Board of Regulators
- The Director
- The Board of Appeal

The Administrative Board (AB) is composed of nine members appointed by the Council of the EU, the European Commission and the European Parliament, and is charged with the administrative governance of the Agency. Its main responsibilities include the formal appointment of the other bodies of the Agency, and the adoption of the budget and of the Implementing Rules required for the functioning of the Agency.

The AB also adopts the Agency's work programme for the following year, and its multi-annual programme. The establishment of the work programme, however, requires not only the consultation of the Commission, but also the approval of the Board of Regulators (BoR). The AB is responsible for ensuring that the Agency carries out its mission and performs the tasks assigned to it. The AB typically meets on a quarterly basis. Messrs Piotr Woźniak and Razvan Nicolescu are the AB Chair and Vice-Chair, respectively.

The Board of Regulators (BoR) consists of senior representatives of the NRAs, one for each Member State, and one non-voting representative of the European Commission. Each NRA also nominates an alternate. The BoR plays an important role with regard to the regulatory tasks of the Agency, such as approving the Work Programme proposed by the Director.

Similarly, the Agency's acts under the Third Package are subject to the favourable opinion of the Board of Regulators before their adoption and publication by the Director. In addition, the BoR, within its field of competence, can provide guidance to the Director.

The BoR also provides an opinion to the Administrative Board on the candidate to be appointed as Director, and is consulted by the European Commission on the proposal of the members of the Board of Appeal. The BoR usually meets on a monthly basis. Lord Mogg and Mr Walter Boltz are the BoR Chair and Vice-Chair, respectively.

The Director is responsible for representing the Agency and is in charge of its management. Mr Alberto Pototschnig was appointed as the first Director of the Agency and took office on 16 September 2010. His term of office is five years. The Director is responsible for:

- Preparing the work of the AB.
- Adopting and publishing the opinions, recommendations and decisions that have received the favourable opinion of the BoR.
- Implementing the Agency's annual work programme, under the guidance of the BoR and under the administrative control of the AB.
- Taking the necessary measures, notably as regards adopting internal administrative instructions and publishing notices, to ensure the functioning of the Agency.
- Preparing, every year, a draft work programme of the Agency for the following year, for submission to the BoR, the European Parliament and the European Commission, by 30 June of that year.
- Drawing up the Agency's preliminary draft budget and implementing the Agency's budget.
- Preparing, each year, a draft annual report with an independent section on the regulatory activities of the Agency and a section on financial and administrative matters.

The Board of Appeal (BoA) is part of the Agency but is independent of its administrative and regulatory structure. The six members and six alternates of the BoA were appointed by the AB on 22 September 2011 for a term of office of five years, renewable. Members and alternates of the BoA were selected from among current and former senior staff of NRAs or other national or EU institutions with relevant experience in the energy sector, upon a proposal from the European Commission following the publication of a call for interest.

The first meeting of the BoA took place on 1 December 2011, at which it appointed its Chair and Vice-Chair - Prof. Pippo Ranci Ortigosa and Prof. Herbert Ungerer, respectively - and adopted its rules of procedure.

Any natural or legal person, including national regulatory authorities, can lodge an appeal in front of the BoA against a decision taken by the Agency in those cases in which it 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.

The Agency's staff is organised in four departments: the Director's Office, the Electricity Department, the Gas Department, and the Administration Department. A new Market Monitoring Department is to be established in order to carry out the tasks the Agency has been entrusted with under REMIT.

Key Agency Milestones in 2011

- The Agency moved from Brussels to its seat in Ljubljana, Slovenia on 1 February 2011.
- The Agency started its activities officially on 3 March 2011, at the same time the Third Package entered into force. For the occasion, the Agency co-organised, with the Government of the Republic of Slovenia, the Opening ceremony and a conference entitled 'The New Governance for the Internal Energy Market and ACER'. The event was attended by nearly 200 participants, including the Slovenian Prime Minister, Mr Borut Pahor, as well as the Commissioner for Energy, Mr Oettinger, and the Commissioner for the Environment, Mr Potočnik.
- The Agency achieved financial autonomy on 8 March 2011.
- The Director participated in conferences organised by the EU Hungarian and Polish Presidencies, and more specifically in the conference on the 'Future of European Energy Infrastructures', organised under the Hungarian Presidency in Budapest on 16-17 May 2011, and in the High-Level Energy Conference organised by the Polish Presidency in Cracow on 10 - 11 October 2011. The latter event was also attended by the AB Chair and the BoR Chair.
- The Director, the Chair and the Vice-Chair of the BoR gave a presentation in front of the ITRE Committee of the European Parliament on 11 July 2011.
- The Director, the Chair and the Vice-Chair of the BoR and staff members participated in the Florence Forum meetings on 23-24 May and on 5-6 December 2011.
- The Director, the Chair and the Vice-Chair of the BoR and staff members participated in the Madrid Forum meetings on 21-22 March and 26-27 September 2011.
- The Agency was also represented at the London Forum on 26-27 October 2011.

PART A

POLICY ACHIEVEMENTS

This section provides a description of the Agency's regulatory activities in 2011 in fulfilling its mission under Regulation (EC) No 713/2009. It also reports on some initial activities for the implementation of REMIT (which entered into force on 28 December 2011).

This is the independent section referred to in Article 15(4) of Regulation (EC) No 713/2009 and has been approved by the BoR. It is structured as follows:

- Statement of the Chair of the BoR.
- Chapter 1 illustrates the Agency's regulatory activities in 2011 which are directly related to the electricity sector.
- Chapter 2 illustrates the Agency's regulatory activities in 2011 which are directly related to the gas sector.
- Chapter 3 illustrates the Agency's regulatory activities in 2011 of a cross-sectoral nature.
- Chapter 4 illustrates the involvement of stakeholders and the engagement of NRAs in the Agency's activities.
- Chapter 5 provides an assessment of the results obtained by the Agency in 2011 with respect to its Work Programme for the same year.

Statement of the Chair of the Board of Regulators



In this first year of ACER's formal existence, there has been no diminution in the efforts to deliver the Framework Guidelines that should form the basis of an effective energy internal market by the 2014 deadline set by the Heads of Government. ACER benefitted greatly from the 18-month period prior to the Agency's official opening on 3 March 2011, during which the National Regulatory Authorities worked just as if the Agency had already been established.

The Agency therefore started with a rich portfolio of preparatory work that left it well placed to make an immediate impact in the early months as the Director recruited staff and established its offices. In fact, the Agency currently comprises not only those staff members in Ljubljana, but also has the full and continuing support of NRAs throughout the Union. The latter, together with the Agency's staff, work in close collaboration in the Working Groups on whose preparations the Director bases his proposals to be put to the Board of Regulators for a reasoned opinion. This encapsulates exactly what the Agency's title intends to convey, i.e. it is the Agency for the Co-operation of Energy Regulators.

ACER faced a huge challenge in 2011 and managed to deliver five Framework Guidelines (Electricity Grid Connection, Electricity CACM, Electricity System Operation and Gas CAM and balancing) and other opinions on ENTSOs' statutes, on the TYNDP for gas and on the ENTSO-E Work Programme.

Next year will be even more challenging, with intense work continuing on the Framework Guidelines for electricity and gas, the review by ACER of the first Network Codes prepared by ENTSOs and the introduction of the recent new responsibilities under European Regulation No 1227/2011 on wholesale energy market integrity and transparency (REMIT) and the upcoming Energy Infrastructure Package.

This will require major efforts from both the Agency and NRA staff - particularly onerous given the harsh austerity measures that stalk the Union, and which are demanding at both national and EU levels.

Indeed, such challenges involve all of us: the Commission, Member States and Parliament, who are involved in the comitology process

through which the Network Codes are made binding so as to form the essential cross-border regulatory framework; the NRAs and Agency staff, who develop the Framework Guidelines and review the Network Codes; and the ENTSOs, who have the huge responsibility to deliver within tight deadlines the Codes based on the Framework Guidelines; and the stakeholders, who are faced with the major burden of managing the increasing number of consultations.

The challenges ahead, in anticipation of an agreement for the Energy infrastructure Package proposal and after the entry into force of the REMIT Regulation, point to strengthening regulatory cooperation within ACER at Community and regional level in order to meet the challenges that require collective responses.

Regulators are committed to maintaining our collaboration in order to deliver the Agency's acts and to monitor the transparency of energy markets. We also undertake to develop further our working arrangements in line with the Agency's work and its increasing responsibilities, with a view to promoting regulatory

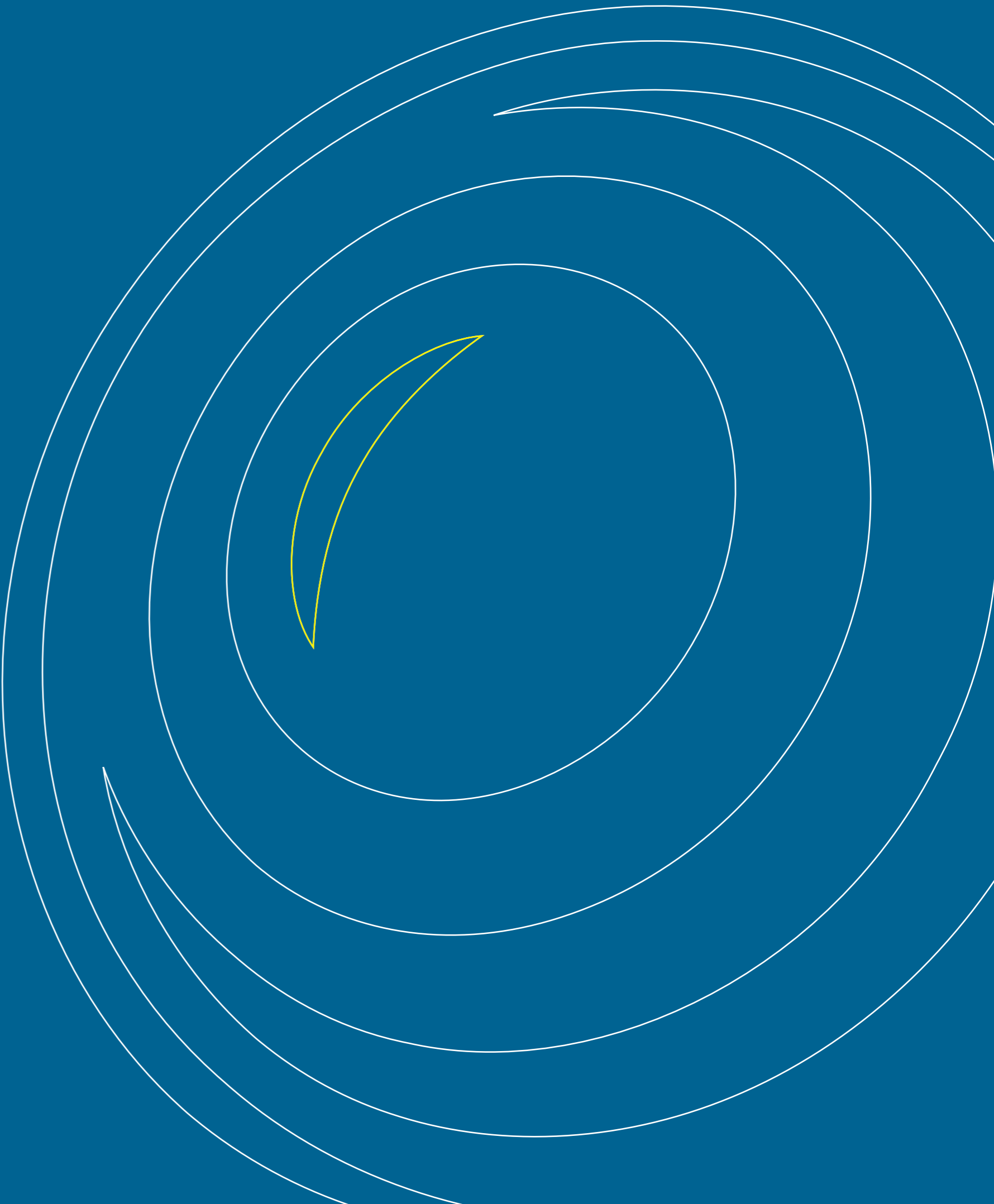
collaboration. Lastly, we will contribute to developing further regional cooperation and to fostering the sharing of best practices between NRAs and ACER on issues of common interest.

I must extend my most sincere thanks to the significant number of NRA staff who have collaborated with ACER staff to make ACER's first year such a success.

I should also like to pay tribute to the Agency's Director, Alberto Pototschnig, who successfully established the Agency and has delivered the Agency's work programme despite resource constraints and the major distraction of establishing his office. If the year 2011 was both a major challenge and a major success, it looks like the year to come will be even more so.

Lord Mogg
Chair of the Board of Regulators

ELECTRICITY



1. WORK RELATED TO THE ACTIVITIES OF ENTSO-E

1.1 ENTSO-E Articles of Association, List of Members and Rules of Procedure

On 5 May 2011 the Agency, pursuant to Article 5(2) of Regulation (EC) No 713/2009, provided the Commission with an opinion (ACER Opinion No 01/2011) on the draft Articles of Association (AoA), list of members and draft Rules of Procedure (comprising Internal Regulations, Consultation Process and Network Code Development Process) of the ENTSO for Electricity (ENTSO-E).

In its opinion the Agency identified five main concerns:

- The discretionary powers granted in the AoA to the General Assembly when deciding on the admission of new members, even though electricity transmission system operators are bound by Regulation (EC) No 714/2009 to cooperate through ENTSO-E.
- The General Assembly's obligation, set out in the AoA, to suspend the participation/voting rights of a member or to exclude a member operating in a country which is under no legal obligation to apply, or is materially delayed in the implementation of Regulation

(EC) No 714/2009 and/or Directive 2009/72/EC, as this condition might have the unintended effect of even excluding founding members of ENTSO-E.

- The absence of any requirement in the AoA for the relevant body of ENTSO-E to verify whether proposed regional network codes are also in line with Network Codes adopted under Regulation (EC) No 714/2009 and with the Community-wide Ten Year Network Development Plan.
- The unclear timeframe for public consultations.
- The failure of the Network Codes Development Process to foresee a specific role for distribution system operators, other than as regular stakeholders, even though the Network Codes might affect distribution network operation, and consequently distribution system operators.

For each area of concern, the Agency proposed a solution.

1.2 ENTSO-E Annual Work Programme

According to Article 6(3) of Regulation (EC) No 713/2009 and the first subparagraph of Article 9(2) of Regulation (EC) No 714/2009, the Agency shall provide, within two months from the date of receipt, a duly reasoned opinion on the draft Annual Work Programme of ENTSO-E. It shall also provide recommendations to ENTSO-E, and to the European Commission, where it considers that the draft Annual Work Programme does not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access.

On 2 December 2011 the Agency issued its opinion (ACER Opinion No 03/2011) to ENTSO-E on their draft 2012 Annual Work Programme.

The Agency concluded that the draft ENTSO-E 2012 annual Work Programme is consistent with the specific tasks of ENTSO-E under Regulation (EC) No 714/2009, the 2012 work programme of the Agency, and the joint three-year plan (agreed by the European Commission, the Agency, ENTSO-E and ENTSG), and that the draft annual Work Programme's priorities were in line with the targets for the

IEM. The Agency also highlighted four aspects:

- It emphasised that the four cross-regional roadmaps aiming to implement the target model of capacity allocation and congestion management would be an important tool in the market integration process, complementing the corresponding Network Codes, and that, for this process, coordination work by ENTSO-E would be essential.
- It acknowledged the value of improving the involvement of stakeholders in the drafting of Network Codes and in developing the Community-wide Ten Year Network Development Plan.
- In terms of impact assessment and cost benefit analysis, it supported the development of a relevant knowledge base by ENTSO-E in order to create a transparent and common reference base for stakeholders.
- It highlighted the key role of ENTSO-E in relation to the Energy Infrastructure Package and the need for ENTSO-E to be prepared for the challenges.

2. FRAMEWORK GUIDELINES AND NETWORK CODES

2.1 Background

The Third Package envisages the development of energy network and market rules, directly applicable and binding across the EU. These rules are included in Network Codes and may be made legally binding via the 'Comitology' process⁴. Network Codes are drafted by ENTSO-E and ENTSG on the basis of the principles and criteria defined by the Agency in the Framework Guidelines.

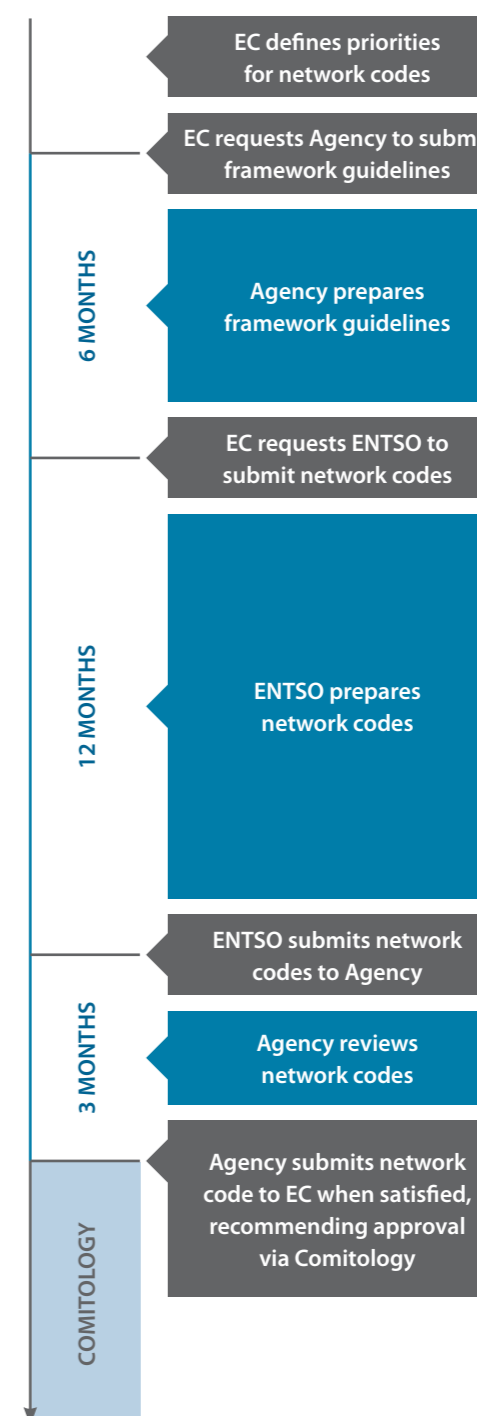
The areas in which Framework Guidelines and Network Codes for electricity and gas are to be adopted are listed in Article 8(6) of Regulation (EC) No 714/2009 and in Article 8(6) of Regulation (EC) No 715/2009, respectively. Those areas include: (i) network security and reliability (ii) network connection, (iii) third-party access, (iv) data exchange and settlement, (v) interoperability, (vi) operational procedures in an emergency, (vii) capacity-allocation and congestion-management, (viii) trading with regard to technical and operational provision of network access services and system balancing, (ix) transparency, (x) balancing, including network-related reserve power (electricity), (xi) harmonised transmission tariff structures, and (xii) energy efficiency regarding electricity and gas networks.

- The annual identification by the European Commission of the priority areas for the development of Network Codes. This activity is supported by a Planning Group (which brings together the European Commission, the Agency and the ENTSOs for Electricity and for Gas), which prepares a three-year activity plan relating to Framework Guidelines and Network Codes (hereafter referred to as the 'three-year plan'), and involves a public consultation of stakeholders.
- On the basis of the annual priority list, the development by the Agency of the (non-binding) Framework Guidelines following invitations issued by the European Commission. In developing the Framework Guidelines the Agency widely consults stakeholders through public consultations and workshops. Once adopted, the Framework Guidelines are submitted to the European Commission, which may request the Agency to review the Framework Guidelines. The Framework Guidelines are finalised and published on the Agency's website.

- The development of the Network Codes by ENTSO-E or ENTSG, on the basis of invitations issued by the European Commission, and according to the principles, criteria and objectives defined in the corresponding Framework Guidelines. In developing the Network Codes, the ENTSOs consult stakeholders through public consultations and workshops.
- The evaluation of the Network Codes by the Agency to assess their compliance with the principles, criteria and objectives defined in the corresponding Framework Guidelines. The results of this evaluation are presented in a reasoned opinion prepared by the Agency and directed at ENTSO-E and ENTSG. On the basis of the Agency's reasoned opinion, the ENTSOs may decide to amend the Network Codes.

- The submission of the Network Codes by the Agency to the European Commission once the Agency is satisfied that they comply with the principles, criteria and objectives defined in the corresponding Framework Guidelines.
- The adoption of the Network Codes by the European Commission through the so-called 'comitology' process.

This procedure, and its timeline, can be summarised as follows:



The process for the development and adoption of Network Codes includes:

⁴ Articles 6,7,8,9,10 of Regulation (EC) No 715/2009 and of Regulation (EC) No 714/2009.

2.2 Objectives for 2011

Pursuant to the Agency's Work Programme for 2011, the following Framework Guidelines were envisaged for completion by the Agency in 2011 with regard to electricity:

- Grid Connections
- Capacity Allocation and Congestion Management
- System Operation
- Balancing

However, as indicated in the three-year plan concerning the Framework Guidelines and Network Codes for electricity, the completion of the Framework Guidelines on Balancing was subsequently rescheduled to 2012: (http://ec.europa.eu/energy/gas_electricity/codes/codes_en.htm).

Title	Public Consult.	Issued
Grid Connections	Mar-May 2011	20 Jul 2011
Capacity Allocat. and Cong. Manag.	Apr-Jun 2011	29 Jul 2011
System Operations	Jul-Sep 2011	2 Dec 2011
Balancing	Q2 2012	Q2/Q3 2012

2.3 Grid Connections

Framework Guidelines

The objective of the Framework Guidelines on Electricity Grid Connections is to develop a harmonised electricity grid connection regime that will support optimal system operation, which is essential to the completion of the IEM in electricity. In the past, each national electric power system developed different standards and had specific technical requirements for generators applying for connection, as well as its own approach to system operation. In the light of increased penetration of intermittent generation, and interconnection of Member States' control areas through market integration, this lack of harmonisation between national systems is leading to unsafe and uncontrolled system operation, evidenced by synchronous system-wide disturbances. The Network Codes which are developed in line with these Framework Guidelines are expected to address those issues, especially in order to facilitate the penetration of renewable generation.

Grid connection covers all issues relating to the establishment and maintenance of a physical connection between the transmission and/or distribution grid and the grid users. Grid connection is used as a synonym for network connection, which is an area covered by Network Codes pursuant to Article 8(6)(b) of Regulation (EC) No 714/2009.

The Agency's activities in the area of grid connections in 2011 benefited from the previous work undertaken by the European Regulators' Group for Electricity and Gas (EREG)⁵, which was invited by the European Commission to develop pilot Framework Guidelines on Grid Connection Rules on 26 March 2010.

On 3 March 2011, the Agency launched a public consultation on the draft Framework Guidelines on Electricity Grid Connections. In light of the stakeholders' responses, some changes were introduced in the final document, e.g. in the areas of applicability of the network code, definition of significant grid user, extent of minimum standards and requirements, cost-benefit analysis, retroactive application, roles and responsibilities.

⁵ European Regulators Group for Electricity and Gas, established by Commission Decision of 11 November 2003 on establishing the European Regulators Group for Electricity and Gas (2003/796/EC).

The final Framework Guidelines on Electricity Grid Connections were adopted by the Agency on 20 July 2011 and subsequently published on the Agency's website. They define the requirements for the respective Network Codes in the following areas:

- minimum standards and requirements for connection;
- derogations;
- adaptation of existing arrangements to the network code(s);
- compliance testing, compliance monitoring and enforcement;
- promotion of (real-time and other) exchange of information between parties and improved coordination.

Network Codes

According to the three-year plan in electricity, the Network Codes on Electricity Grid Connections will be developed in three subsets, namely:

- Network Code on Requirements for Grid Connection Applicable to All Generators.
- Network Code on Demand Connection.
- Network Code on High-Voltage Direct Current Transmission System Connection.

No invitation has been issued with respect to the Network Code on High-Voltage Direct Current Transmission System Connection.

On 29 July 2011, the European Commission invited ENTSO-E to draft the Network Code on Requirements for Grid Connection applicable to all Generators, and on 5 January 2012, the Network Code on Demand Connection.

The task of drafting the Network Codes is the responsibility of ENTSO-E and reference is made to ENTSO-E's annual report for the details of activities in this regard.

Published documents

- Framework Guidelines on Electricity Grid Connections, Draft for Consultation, DFGC-2011-E-001, 3 March 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-01_FG_EI_Grid_Connection/Consultation_document
- Responses of Stakeholders to the Public Consultation Draft Framework Guidelines on Electricity Grid Connections, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-01_FG_EI_Grid_Connection/Responses
- ACER Public Consultation on Draft Framework Guidelines on Electricity Grid Connections, Evaluation of responses, EP-2011-E-001, 19 July 2011, [http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-01_FG_EI_Grid_Connection/Evaluation_of_responses/EP-2011-E-001%20\(2\).pdf](http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-01_FG_EI_Grid_Connection/Evaluation_of_responses/EP-2011-E-001%20(2).pdf)
- Framework Guidelines on Electricity Grid Connections, FG-2011-E-001, 20 July 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework%20Guidelines%20on%20Electricity%20Grid%20Connections/110720_FGC_2011E001_FG_Elec_GrConn_FINAL.pdf
- ACER Decision No 01/2011, Framework Guidelines on Electricity Grid Connections, 20 July 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework%20Guidelines%20on%20Electricity%20Grid%20Connections/ACER%20Decision%2001-2011.pdf

2.4 Capacity Allocation and Congestion Management

Framework Guidelines

In line with the conclusions of the European Council of 4 February 2011, the internal market for electricity should be completed by 2014. The integration of national electricity markets into one single European market is based on two processes. The formal process is laid down in the Framework Guidelines on Capacity Allocation and Congestion Management for Electricity, and in the respective Network Codes. The formal process will provide the legal framework and requirements for Transmission System Operators (TSOs) and Power Exchanges to operate the integrated electricity market in the long-term, day-ahead and intraday timeframes.

As the Network Codes on Capacity Allocation and Congestion Management for Electricity are expected to enter into force in 2014, the integration of national markets is making further headway on a voluntary basis via the Electricity Regional Initiative. In this Initiative, TSOs and Power Exchanges are developing solutions to integrate the markets at both regional and, subsequently, cross-regional level. For this purpose, the Agency prepared cross-regional roadmaps to ensure the convergence of regional developments into one single European electricity market.

The Agency's activities related to the Framework Guidelines on Capacity Allocation and Congestion Management for electricity are based on Article 8(6)(g) of Regulation (EC) No 714/2009. The Agency benefited from the previous work undertaken by ERGEG, which published the Final Draft Framework Guidelines on Capacity Allocation and Conges-

tion Management for Electricity in February 2011. The Agency was officially invited by the European Commission to develop the Framework Guidelines on Capacity Allocation and Congestion Management for Electricity on 1 April 2011.

On 11 April 2011, the Agency launched a public consultation on the draft Framework Guidelines on Capacity Allocation and Congestion Management for Electricity.

The final Framework Guidelines on Capacity Allocation and Congestion Management for Electricity were adopted by the Agency on 29 July 2011 and published on the Agency's website. The core elements of market design laid down in these Framework Guidelines are:

- Capacity calculation should be efficient, transparent, and strongly coordinated among TSOs. They should adopt a flow-based method for highly meshed networks, whereas the Net Transfer Capacity method is allowed for less meshed networks.
- The appropriateness of the definition of bidding zones should be monitored regularly, and a possible redesign of the bidding zone configuration may be implemented in order to increase overall market efficiency.
- The capacity allocation method for the day-ahead market will be market coupling, and for the intraday time frame it will be continuous trading. For the long-term timeframe, Physical or Financial Transmission Rights will be introduced.

The design for the day-ahead and intraday timeframe requires that capacities are physically firm, whereas for the long-term capacity financial firmness is required.

Network Codes

According to the three-year plan in electricity, two Network Codes will be developed for the issues dealt within the Framework Guidelines on Capacity Allocation and Congestion Management for Electricity, namely:

- Capacity Allocation and Congestion Management for the day-ahead and intraday time frame.
- Capacity Allocation and Congestion Management for the long-term time frame.

The European Commission invited ENTSO-E, on 16 September 2011, to start drafting the network code for Capacity Allocation and Congestion Management for the day-ahead and intraday timeframe.

Since the development of the Network Code falls under the responsibility of ENTSO-E, reference is made to ENTSO-E's annual report for details of the activities in this regard.

Published documents

- Reports and minutes of the ACER Electricity Stakeholder Advisory Group (AESAG), http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/AESAG
- Framework Guidelines on Capacity Allocation and Congestion Management for Electricity, Draft for Consultation, DFGC-2011-E-003, 11 April 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-03_FG_Electricity_CAM_and_CM/Consultation_document/DFGC_2011E002%20FG%20Elec%20CACM%20Final.pdf
- Responses of Stakeholders to the Public Consultation Draft Framework Guidelines on Capacity Allocation and Congestion Management for Electricity, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-03_FG_Electricity_CAM_and_CM/Responses
- ACER Public Consultation on Draft Framework Guidelines on Capacity Allocation and Congestion Management, Evaluation of Responses, EP-2011-E-002, 28 July 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-03_FG_Electricity_CAM_and_CM/Evaluation_of_responses/FG%20CACM%20Evaluation%20of%20responses-vf.pdf
- Framework Guidelines on Capacity Allocation and Congestion Management for Electricity, FG-2011-E-002, 29 July 2011, [http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework_Guidelines_on_Capacity_Allocation_and_Congestion_M/FG-2011-E-002%20\(Final\).pdf](http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework_Guidelines_on_Capacity_Allocation_and_Congestion_M/FG-2011-E-002%20(Final).pdf)
- ACER Decision No 02/2011, Framework Guidelines on Capacity Allocation and Congestion Management for Electricity, 29 July 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework_Guidelines_on_Capacity_Allocation_and_Congestion_M/ACER%20Decision%2002-2011.pdf

2.5 System Operation

Framework Guidelines

The objective of the Framework Guidelines on Electricity System Operation is to develop a harmonised system operation regime on the basis of past experiences (e.g. coordination issues) whilst considering future challenges (penetration of renewable energy sources) and enabling at the same time the proper functioning and technical evolution of the European electricity market and transmission network through coordinated action from TSOs, Distribution System Operators (DSOs) and grid users.

System Operation covers the complete area of activities for operating an electrical network, including security, control and quality in terms of fixed technical standards, principles and procedures, and also the synchronous operation of interconnected power systems. System Operation is used to describe the following areas for a network code according to Article 8(6)(a), (d), (e) and (f) of Regulation (EC) No 714/2009:

'(a) network security and reliability rules including rules for technical transmission reserve capacity for operational network security; (d) data exchange and settlement rules; (e) interoperability rules; (f) operational procedures in an emergency.'

The Agency, continuing the work that was initiated by ERGEG (as agreed in the 19th Florence Forum in December 2010), launched a public consultation on the draft Framework Guidelines on Electricity System Operation and the accompanying Initial Impact Assessment on 15 July 2011.

A chronological structure outlining different priority levels for the various topics was introduced, taking into account whether rules already existed in the different areas and, therefore, their relative importance and urgency. From highest to lowest priority, the following sequence of topics was defined:

- operational security;
- operational planning and scheduling;
- load-frequency-control;
- staff training and certification;
- emergency and restoration;
- new applications.

A public workshop for stakeholders was organised in Ljubljana on 24 August 2011. Considering the responses from stakeholders, some changes were introduced in the final Framework Guidelines in the following areas: roles and responsibilities, performance indicators and cost-benefit analysis.

The Framework Guidelines on Electricity System Operation were adopted by the Agency on 2 December 2011 and published on the Agency's website.

Network Codes

According to the three-year plan in electricity, five Network Codes will be developed on the basis of the Framework Guidelines on Electricity System Operation, namely:

- Network Code on operational security.
- Network Code on operational planning and scheduling.
- Network Code on load-frequency control and reserves.
- Network Code on operational training.
- Network Code on requirements and operational procedures in emergency.

The drafting of the first three Network Codes has already been scheduled in the three-year plan in electricity for 2012 and 2013.

The development of the network code is an ENTSO-E task, and thus reference is made to ENTSO-E's annual report for details of the activities in this regard.

Published documents

- Framework Guidelines on System Operation Draft for consultation, DFGC-2011-E-003, 15 July 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-05%20-%20FG%20on%20System%20Operation/Consultation_document/DFGSO_2011-E005.pdf
- Framework Guidelines on System Operation - Initial Impact Assessment, 15 July 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-05%20-%20FG%20on%20System%20Operation/Consultation_document/SO_IIA_15072011.pdf
- Framework Guidelines on System Operation – Consultation Questionnaire, 15 July 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-05%20-%20FG%20on%20System%20Operation/Consultation_document
- Responses of Stakeholders to the Public Consultation on Draft Framework Guidelines on System Operation, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-05%20-%20FG%20on%20System%20Operation/Responses
- ACER Public Consultation on Draft Framework Guidelines on System Operation, Evaluation of responses, EP-2011-E-005, 2 December 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-05%20-%20FG%20on%20System%20Operation/Evaluation%20of%20Responses/FG_SO_Evaluation_Of_Responses.pdf
- Framework Guidelines on Electricity System Operation, FG-2011-E-003, 2 December 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework%20Guidelines%20on%20Electricity%20System%20Operation/FG-2011-E-003_02122011_Electricity%20System%20Operation.pdf
- ACER Decision n° 06/2011, Framework Guidelines on Electricity System Operation, 2 December 2011, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Public_Docs/Acts%20of%20the%20Agency/Framework%20Guideline/Framework%20Guidelines%20on%20Electricity%20System%20Operation/ACER%20Decision%2006-2011.pdf

Workshops, meetings and events

- Presentation of the Draft Framework Guidelines on System Operation – Electricity, 24 August 2011, ACER, Ljubljana, Slovenia, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Events/Presentation_of_the_FG_on_SO

2.6 Balancing

Framework Guidelines

The integration of balancing markets at European level is very challenging, not least given the significant differences in existing national arrangements. While most of these arrangements can be harmonised to a certain degree, some differences are due to very different balancing resources being available locally, which influence the standardisation of balancing products and the way in which these resources are used to balance the system. The integration of balancing markets is challenging also owing to the fact that balancing has a strong impact on the security of supply and network operation.

The Framework Guidelines on Electricity Balancing will aim to integrate the national balancing markets by fostering cross-border competition and more efficient balancing, while safeguarding the security of supply. Particular attention will be given to demand response and renewable energy sources, with the aim of increasing their participation in balancing markets.

The Framework Guidelines on Electricity Balancing will define the requirements for Network Codes in order to promote harmonisation in the following areas:

- Definitions, roles and responsibilities, including for intermittent generation and demand.
- Balancing reserves, including automatic and manual reserves, procurement, timeframes and exchanges.
- Balancing energy, including automatically- and manually-activated balancing energy, procurement and exchanges.
- Imbalance settlement, including potential incentives given to balancing responsible parties.
- Access to interconnection capacities for the purpose of balancing.

The Agency's activities on the subject of electricity balancing were initiated following the European Commission's inclusion of electricity balancing into the priority list for 2011 and 2012.

In summer 2011, the Agency began the scoping phase and established a balancing expert group, which aimed at providing professional expertise on the challenges related to the integration of balancing markets. On 24 October 2011, the Agency organised a first workshop for stakeholders in order to collate their views before finalising the scope of the Framework Guidelines. A letter providing information on the results of the scoping phase was sent to the European Commission on 22 December 2011.

Further to this letter, the European Commission invited the Agency, on 18 January 2012, to submit the final Framework Guidelines on Electricity Balancing by 18 July 2012.

Published documents

- Reports and minutes of the ad hoc expert group on Framework Guidelines on Electricity Balancing, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Expert%20Groups/Expert%20Group%20on%20Electricity%20Balancing

Workshops, meetings and events

- ACER Workshop on Electricity Balancing Framework Guidelines, 24 October 2011, ACER, Ljubljana, Slovenia, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Events/ACER_Workshop_on_Electricity_Balancing_Framework_Guidelines

3. ITC COMPENSATION

The current Inter-Transmission System Operator Compensation (ITC) mechanism, defined by Commission Regulation (EU) No 838/2010⁶, has been applied since 3 March 2011. Under this Regulation, the ITC fund is established by ENTSO-E for the purpose of compensating the TSOs for the costs incurred for hosting cross-border flows of electricity on their transmission systems. The ITC fund consists of two parts, aimed at covering the costs of making infrastructure available and the costs of incurred transmission losses, respectively.

Commission Regulation (EU) No 838/2010 envisaged that the Agency shall:

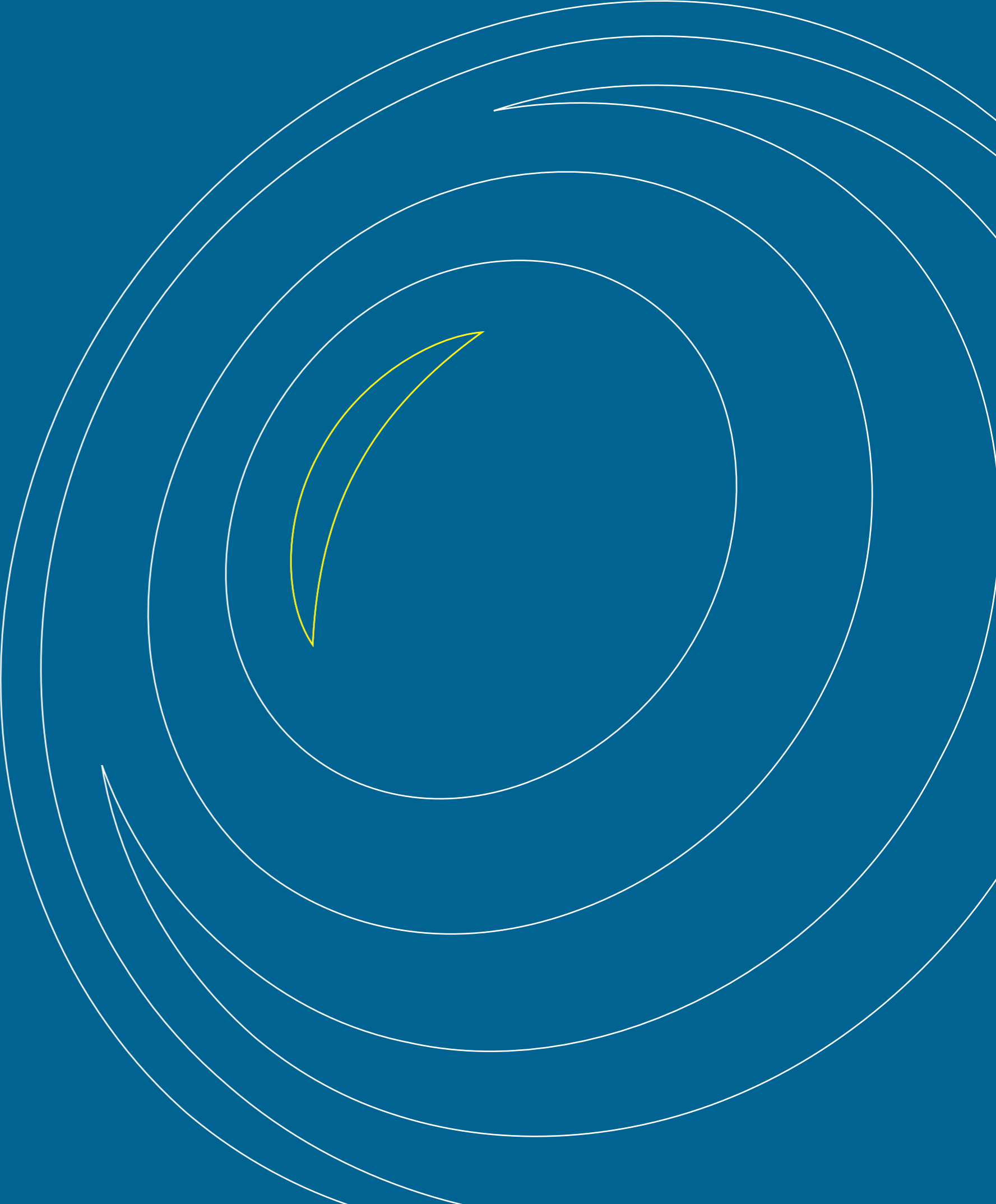
- oversee the implementation of the ITC mechanism and report to the European Commission each year on the implementation of the ITC mechanism and the management of the ITC fund; and
- undertake its best endeavours to assess, within two years of the application of the Regulation, the annual cross-border infrastructure compensation fund and recommend an amount to the European Commission. Along with that recommendation, the Agency is also required to provide an opinion on the suitability of the current methodology of using long-run average incremental costs as a basis for determining the size of the fund.

The Agency started its activities in these areas in October 2011 and by the end of 2011 had made progress on the following aspects:

- Monitoring of the implementation of the ITC mechanism. The ITC settlement is carried out on a monthly basis and the full settlement lags real time by about six months. Therefore, the final settlement for the last month of an ITC year, i.e. December, will be completed around the end of the following June. For the implementation of the ITC mechanism in 2011, ENTSO-E will be in a position to provide the Agency with the full set of data soon after June 2012. The Agency now expects to submit to the European Commission the report on the ITC implementation in 2011 within two months of receipt of all relevant data from ENTSO-E. This reflects two months of delay from the expected date defined in the Agency's 2012 work plan.
- Review of the ITC infrastructure fund. The Agency has appointed consultants to assist with the review. The preparatory work for their selection was completed in 2011. This allows the Agency to conduct the assessment and stakeholders' engagement before submitting the report to the European Commission by March 2013.

⁶ 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

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4. WORK RELATED TO THE ACTIVITIES OF ENTSOG

4.1 ENTSOG Articles of Association, List of Members and Rules of Procedure

On 5 May 2011 the Agency, pursuant to Article 5(2) of Regulation (EC) No 714/2009, provided an opinion (ACER Opinion No 02/2011) to the European Commission on the draft Articles of Association (AoA), List of Members and draft Rules of Procedure of the ENTSOG.

In its opinion the Agency identified the following main concerns:

- the possible inconsistency of the AoA with the definitions provided in Directive 2009/73/EC;
- the possible arbitrary action by ENTSOG's General Assembly on the admission of TSOs as members;
- some uncertainty on the implementation of the conditions for the entry into force of the AoA, along with the potential discrimination in the application of transitional provisions to existing and new ENTSOG members;
- potential lack of compliance of the AoA with the procedure for the adoption of the Annual Work Programme and the Community-wide Network Development Plans, particularly regarding the procedures for monitoring and for the submission of the documents to the Agency for review and an opinion.

For each of the above-mentioned concerns the Agency made a proposal on how to remedy it. In particular, with regard to the procedures for the adoption of the Annual Work Programme and the Community-wide Network Development Plans, in line with the general principle of seeking input from stakeholders and consulting the public, the Agency recommended that ENTSOG foresees a consultation period of at least two months in its Rules of Procedure, and explain how it would deal with the comments received.

4.2 ENTSOG Ten-Year Network Development Plan 2011-2020

Every two years, ENTSOG is required to draw up a public, non-binding Community-wide Network Development Plan which looks forward over a ten-year horizon and includes a European supply adequacy outlook⁷. The periodically updated Network Development Plans are essential for facilitating the implementation of key infrastructure projects required for the completion and operation of an integrated, competitive and transparent Community-wide gas market, and for enhancing the security of gas supply. Ten-year network development plans are also prepared at the national and regional levels.

The Agency is required to provide an opinion on the Ten-Year network development plans within two months from the date of its receipt, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal markets in natural gas. On 18 July 2011, ENTSOG submitted the draft ten-year Network Development Plan for 2011-2020 to the Agency for its formal opinion.

On 16 September 2011 the Agency adopted its Opinion on the 2011-2020 Community-wide Ten-Year Network Development Plan. At that time, Directive 2009/73/EC had not yet been transposed into national legislation, and, therefore, there were still few national or regional network development plans available. Consequently, an assessment of the consistency between national, regional and Community-wide Ten-Year Network development plans could not be carried out. Therefore, ENTSOG's Community-wide ten-year network Development Plan was assessed mainly against the criteria specified in the Third Package.

The Agency's opinion addressed the following aspects in particular:

- The Agency acknowledged ENTSOG's effort to improve the Ten-Year Network Development Plan as compared to the previous pilot plan in 2009. The Agency welcomed the early work presented by ENTSOG, in particular the selected priorities and the first attempts to build and analyse market integration scenarios. The 2011-2020 plan was found to be a valuable and informative basis for all stakeholders for strategic planning, prognostic and regulatory purposes. The Agency, therefore, assessed that the plan contributes (though still in a limited way) to non-discrimination, efficient functioning of the market and (indirectly) to a sufficient level of interconnection capacity open to third parties, as required by the Third Package. However, the Agency considered that the applied model itself, as well as the modelling methodology, should be enhanced by including an economic dimension (e.g. market price dynamics) and a physical dimension which bears a closer resemblance to the physical network and gas flows.
- The Agency encouraged ENTSOG to focus on the improvement of the modelling and the development of robust demand projections (especially harmonising demand scenario assumptions), the incorporation of EU environmental targets and the expected effects of the nuclear phase-out in Germany and, possibly, other countries. The Agency believes that the impact of these factors on the European gas infrastructure could be traced by including the respective scenarios in the next Ten-Year Network Development Plan. In building up scenarios, the Agency recommended greater interaction, cooperation and coordination with ENTSO-E, even in those cases where differences between electricity and gas markets are apparent.
- Given the central role of the Ten-Year Network Development Plan, the selected scenarios need to reflect Europe's energy and environmental goals. The Agency stressed that it is essential to ensure full transparency

and open consultation on the process of scenario development and approval.

Stakeholder involvement should be improved through standardised transparent consultation processes (including workshops and bilateral meetings), building upon the positive experiences already gained during the pilot plan development process in 2010.

- At regional level, an important instrument for assessing the EU's gas infrastructure investment needs are the Gas Regional Investment Plans (GRIPs), of which several were under development in 2011. The Agency recommended that ENTSOG plays a significant role in the drafting of GRIPs by, inter alia, providing Transmission System Operators with the necessary framework and guidance and - most importantly - by ensuring the consistency of the GRIPs and the national plans with the Community-wide plan. In 2011, no GRIPs were yet available and very few national ten-year plans were ready. For this reason, the analysis and evaluation of consistency between those plans and the Community-wide plan was not possible.
- In the Agency's view, the Ten-Year Network Development Plan must remain at the centre of the process leading to the integration of the European gas network, even in the context of the future framework to be introduced by the proposed Regulation on Guidelines for trans-European energy infrastructure⁸. In the Agency's opinion, the Ten-Year Network Development Plan should serve as a basis for the identification of infrastructure gaps and for decisions on project selection and prioritisation. The Agency pointed out that the plan must, first and foremost, include a comprehensive list of all projects capable of filling potential supply-demand gaps. The Agency was keen to see a stronger project-based dimension in the plan and benefit from the TSOs' knowledge of the parameters and constraints of the networks for performing cost-benefit analyses when selecting projects of common interest (PCI)⁹.

⁷ Article 9(2) of Regulation (EC) No 715/2009. Similar provisions in article 9(2) of Regulation (EC) No 714/2009 apply to ENTSO-E. However, the first submission of the Ten-Year Network Development Plan for Electricity is expected in 2012.

⁸ Proposal for a Regulation of the EP and of the Council on Guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC, 19.10.2011, COM (2011) 658 final.

⁹ As defined in the proposed Regulation on Guidelines for trans-European energy infrastructure. See footnote 7.

4.3 ENTSOG 2012 Annual Work Programme

According to Article 6(3) of Regulation (EC) No 713/2009 and the first subparagraph of Article 9(2) of Regulation (EC) No 715/2009, the Agency shall provide, within two months from the date of receipt, a duly reasoned opinion on the ENTSOG's draft Annual Work Programme. It shall also provide recommendations to ENTSOG, and to the European Commission if it considers that the draft Annual Work Programme does not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access.

It was only on 22 November 2011 that ENTSOG submitted the draft Annual Work Programme for 2012 to the Agency for its opinion, together with the supporting documentation for the consultation process. As a result, the Agency did not formulate its opinion (ACER Opinion No 01/2012) on the draft ENTSOG 2012 Annual Work Programme until 24 January 2012¹⁰.

In general, the ENTSOG 2012 Annual Work Programme was found to be comprehensive and inclusive of the main aspects of work. The Agency expressed its support of ENTSOG's transition to a fully operational organisation, recognising the challenges with respect to resourcing and planning the work that this will entail. The Agency provided the following main policy recommendations, comments and guidance in particular:

- Regarding stakeholder involvement, the Agency found that consultation on the draft 2012 Annual Work Programme had not been carried out fully in accordance with Article 10 of Regulation (EC) No 715/2009 and in ENTSOG's Rules of Procedure, as ENTSOG consulted only a limited number of the most important stakeholders. Furthermore, the draft Work Programme was not released for

comments on ENTSOG's website, and thus did not reach all relevant market participants. Furthermore, from the proposal submitted to the Agency by ENTSOG, it was not immediately evident how the input ENTSOG received from stakeholders during the consultation had been taken into account¹¹. For the above reasons, the Agency recommended that, for future annual Work Programmes, ENTSOG comply fully with the requirements for the participation of all interested stakeholders, providing publicity and transparency, and taking into consideration all observations received during the consultation period.

- The Agency also supported and encouraged ENTSOG's plans to have significant stakeholder involvement in the processes of developing Network Codes, the Ten-Year Network Development Plans, the Gas Regional Initiative, Transparency, and all other activities necessary for the implementation of the Internal Gas Market. The Agency specifically encouraged ENTSOG to consider pilot projects for the allocation, through market mechanisms, of cross-border capacity, which can be undertaken on a regional basis as part of the Gas Regional Initiative, and the possibility of extending them across and between Regions. Likewise, the Agency indicated that it would welcome any assessment of cost and benefit associated with these projects. The Agency also encouraged ENTSOG to involve DSOs in the process as much as necessary, particularly with respect to their role as system operators.
- With regard to ENTSOG's involvement in the development of the Gas Target Model, the Agency encouraged it to take an active role in the process of using the results to develop Network Codes, without prejudice to the provisions of the Framework Guidelines.

¹⁰ This opinion is reported in this Annual Activity Report as it should have logically been adopted in 2011, but it was delayed by the late submission of the draft Annual Work Programme by ENTSOG.

¹¹ Pursuant to Article 10(3) of Regulation (EC) No 715/2009.

4.4 Winter Supply Outlook and Other Work Continuing From 2011 Into 2012

According to Article 6(3) of Regulation (EC) No 713/2009, the Agency shall provide opinions on ENTSOG's draft Annual Work Programme, the draft Community-wide development plan and other relevant documents referred to in Article 8(3) of Regulation (EC) No 715/2009, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal markets in electricity and natural gas. One such document developed by ENTSOG under Article 8(3) of Regulation (EC) No 715/2009 is the annual Winter Supply Outlook 2011-2012, which was published on 14 December 2011.

When assessing the supply adequacy at European level, ENTSOG aims to enlarge the geographical scope of the assessments with regard to the Ten-Year Network Development Plan. The Winter Supply Outlook 2011/2012 covers the EU-27 (less Cyprus and Malta) plus Croatia, Serbia, FYROM and exports to Turkey and the Kaliningrad region of the Russian Federation. One of the main findings of the Outlook is that the European gas network is robust throughout Europe and offers significant flexibility even under very demanding conditions. The Agency began developing its Opinion on the Outlook in late 2011 and the Opinion was adopted on 4 June 2012.

At the 20th Madrid Forum meeting, which took place on 26-27 September 2011, the Agency announced its intention to monitor the implementation of transparency rules pursuant to Annex I, Chapter 3, of Regulation (EC) No 715/2009. The preliminary results of the monitoring and analysis were presented to the 21st Madrid Forum meeting in March 2012. In 2011 the Agency provided an assessment of the transparency issue, covering 41 TSOs of 23 Member States, and provided some guidance on the development of the transparency platform maintained by ENTSOG.

5. FRAMEWORK GUIDELINES AND NETWORK CODES

5.1 Background

For information on the Framework Guidelines and Network Codes process please refer to Section 1.2. Provisions related to the Framework Guidelines and Network Codes for the gas sector are contained in Article 6(3)(a) and (4) of Regulation (EC) No 713/2009, as well as Articles 6 and 8(1), (2) and (7) of Regulation (EC) No 715/2009.

5.2 Objectives for 2011

Pursuant to the Agency's Work Programme for 2011, the following Framework Guidelines were to be completed by the Agency in 2011:

- Capacity allocation mechanisms
- Gas balancing rules
- Interoperability
- Transmission tariff structures

However, the latest version of the three-year plan concerning the Framework Guidelines and Network Codes for the gas sector shows that the completion of the Framework Guidelines on Interoperability and Transmission Tariff Structure has been rescheduled to 2012: (http://ec.europa.eu/energy/gas_electricity/codes/codes_en.htm).

Title	Public Consult.	Issued
Capacity Allocation Mechanisms	Mar-May 2011	3 Aug 2011
Balancing	Apr-Jun 2011	18 Oct 2011
Interoperability Rules	Mar-May 2012	31 Jul 2012
Harmonised Transmission Tariffs Rules	Q2 2012	Q3 2012

5.3 Capacity Allocation Mechanisms

Framework Guidelines

The main objective of the Framework Guidelines on Capacity Allocation Mechanisms - and of the associated Network Codes - is to promote harmonised capacity allocation mechanisms and capacity products in order to facilitate gas transport and gas trading across the EU and thus support the development of competition and market integration. The main focus is on the design of standardised capacity auction procedures for systems interconnection points within Europe and the definition of a small set of standard bundled capacity products. In addition, the Framework Guidelines on Capacity Allocation Mechanisms set out the principles according to which adjacent transmission system operators shall cooperate to facilitate bundled capacity sales and take account of further general commercial and technical rules related to the capacity allocation.

The Agency's work on Capacity Allocation Mechanisms in 2011 benefited from the previous work of almost three years undertaken by ERGEG¹².

On 27 January 2011, the European Commission invited the Agency to begin preparing the Framework Guidelines on capacity allocation in gas transmission networks. On 3 March 2011, the Agency launched a public consultation on the draft Framework Guidelines on Gas Capacity Allocation Mechanisms. A public workshop for stakeholders was organised in Ljubljana on 7 March 2011. In light of the stakeholders' responses, the final Framework Guidelines on Capacity Allocation Mechanisms for the European Gas Transmission Network were adopted by the Agency on 3 August 2011 and published on the Agency's website the same day.

Network Codes

Based on the preparatory work conducted by ERGEG, ENTSOG had been working on the Network Code on Capacity Allocation Mechanisms before the Framework Guidelines were adopted formally by the Agency. ENTSOG submitted a Network Code to the Agency on 6 March 2012.

The Agency is required to provide its Reasoned Opinion on the Network Code by 5 June 2012. To support the assessment of the Network Code and the drafting of the opinion, the Agency, at the end of 2011, commissioned a consultancy study to assess the proposed auction design.

Published documents

- Public consultation on Gas Capacity Allocation Mechanisms : http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-02_FG_Gas_CAM
- Framework Guidelines on Capacity Allocation Mechanisms for the European Gas Transmission Network, published 3 August 2011 [http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/FG_code_development/Gas/FG-2011-G-001%20\(final\).pdf](http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/FG_code_development/Gas/FG-2011-G-001%20(final).pdf)

¹² ERGEG formally started working on pilot Framework Guidelines following an invitation sent by the European Commission in September 2009, and, subsequently, stakeholders were extensively involved. ERGEG developed and publicly consulted from 18 December 2009 to 26 February 2010 the Draft Pilot Framework Guidelines on Capacity Allocation on European Gas Transmission Networks.

5.4 Balancing

Framework Guidelines

The term 'balancing' refers to a specific service offered by TSOs, namely that of allowing users of the transmission network to take out less or more gas than they have injected into the system over a given period of time. Balancing is also a kind of auxiliary service which a TSO may buy in order for the system to remain within safe operational limits, for example the ability to inject or withdraw gas into/from storage. Improved access to precise information on balancing allows stakeholders to better assess and understand the overall demand and supply situation and movements in the wholesale prices. Non-discriminatory and transparent balancing systems are of particularly great importance for new market entrants. The Gas Regulation thus requires that Framework Guidelines and Network Codes on Gas Balancing in Transmission Systems be developed, including network-related rules on nomination procedures, rules for imbalance charges and rules for operational balancing between TSOs' systems.

The Agency's activities on balancing in 2011 benefited from the preparatory work carried out by ERGEG in the second quarter of 2010¹³.

On 13 April 2011, the European Commission invited the Agency to begin drafting Framework Guidelines on Gas Balancing. On 12 April 2011 the Agency launched a public consultation on the draft Framework Guidelines on Gas Balancing Rules. A public workshop for stakeholders was organised in Ljubljana on 18 May 2011. The final Framework Guidelines on Balancing Rules for the European Gas Transmission Network were adopted by the Agency on 18 October 2011 and published on the Agency's website on the same day.

Network Codes

ENTSOG is currently working on a Network Code following the Framework Guidelines. ENTSOG has to deliver the Network Code on Gas Balancing in Transmission Systems in November 2012 (reference is made to ENTSOG's annual report for details of the activities in this regard).

Published documents

- Public consultation on Gas Balancing in Transmission Systems:
http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/Public_consultations/Closed_Public_Consultations/PC-04%20FG%20Gas%20Balancing%20in%20Transmission%20Systems
- Framework Guidelines on Gas Balancing in Transmission Systems Published on 18 October 2011:
http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/FG_code_development/Gas/FG%20Gas%20Balancing_final_public.pdf

¹³ At the European Commissions' request of 6 August 2010, ERGEG developed and publicly consulted from 18 August 2010 to 28 October 2010 on Draft Framework Guidelines on gas balancing.

5.5 Interoperability Rules

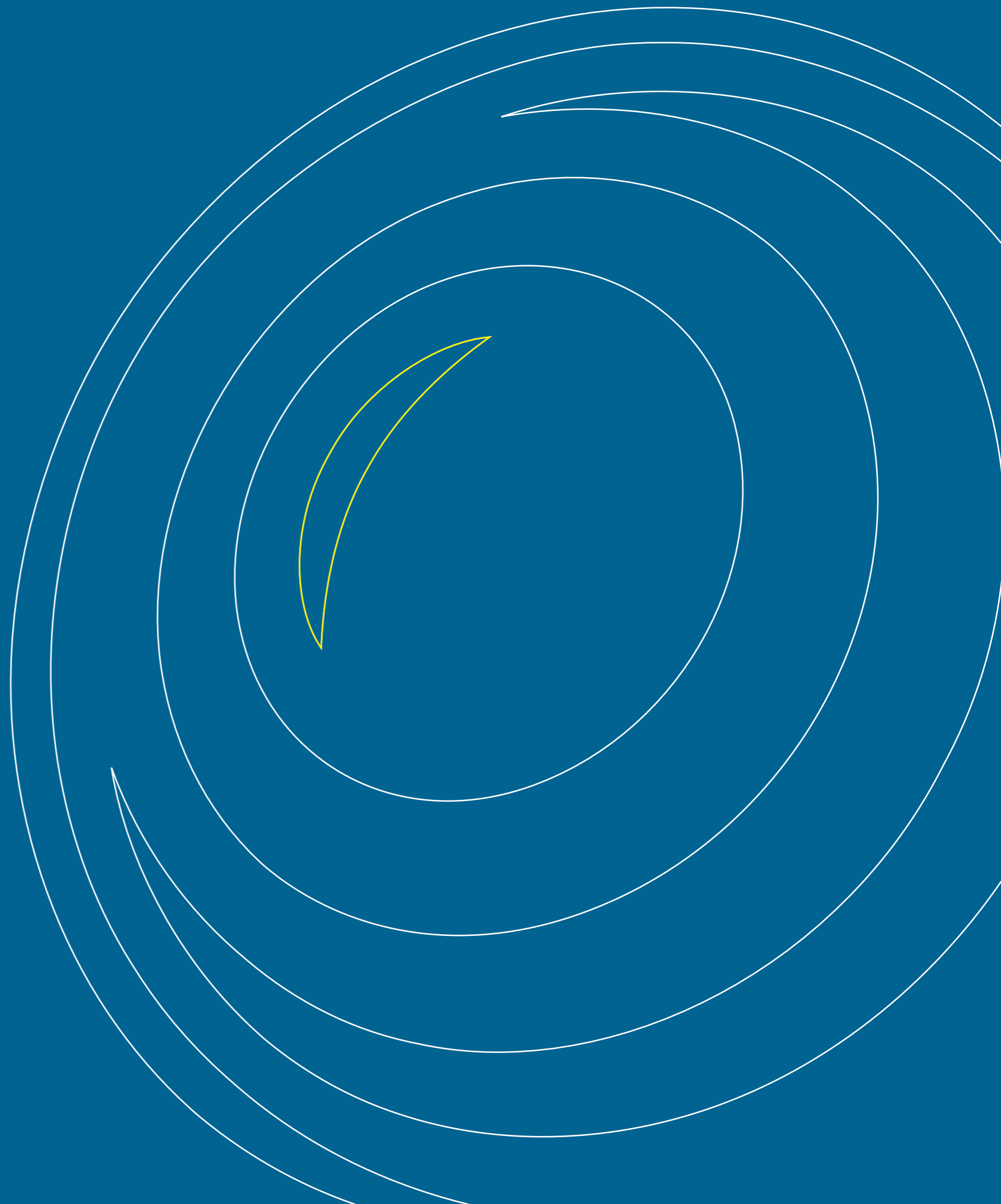
Framework Guidelines

In the 2011 Work Programme, the deadline set for completion of the Framework Guidelines on Interoperability rules was December 2011. Due to a longer problem identification phase, additional time was required and the delivery date for the Framework Guidelines was postponed to 2012.

5.6 Harmonised Transmission Tariffs Rules

In the 2011 Work Programme, the deadline set for completion of the Framework Guidelines on harmonised transmission tariff structures rules was July 2011. However, additional time was required to decide on the most appropriate legal vehicle, whether Framework Guidelines or a 'direct Comitology Guideline' (without developing Framework Guidelines beforehand), and the related work was postponed to 2012.

**CROSS-SECTORAL
ACTIVITIES**



6. MONITORING

The Agency is responsible for monitoring the electricity and gas sectors in several areas, including:

- the internal energy market and, in particular, the retail prices of electricity and natural gas, access to the network, including access of electricity produced from renewable energy sources, and compliance with the consumer rights laid down in the Third Package (Article 11 of Regulation (EC) No 713/2009);
- the implementation of Network Codes and of the Guidelines adopted by the European Commission (Article 6(6) of Regulation (EC) No 713/2009);
- the implementation of the EU-wide Network Development Plans and of progress as regards the implementation of projects to create new interconnector capacity (Article 6(7) and (8) of Regulation (EC) No 713/2009);
- the execution of the tasks of ENTSO-E and of ENTSG (Article 6(2) of Regulation (EC) No 713/2009);

- the regional cooperation of TSOs (Article 6(2) of Regulation (EC) No 713/2009);
- the development of NRA cooperation at regional level, through the Regional Initiatives, in continuity with the ERGEG Regional Initiatives Progress Report;
- wholesale markets in energy products to detect and deter market abuse (REMIT).

Over 2011, the Agency's monitoring activities focused on the preparatory work for the monitoring of the internal energy markets and, towards the end of the year, for the implementation of REMIT. It also adopted a pro-active approach to promoting and monitoring developments at regional level as intermediate steps towards the completion of the IEM. The Agency's activities in these areas are presented in the following sections.

6.1 Monitoring of the Internal Energy Market

Pursuant to Article 11 of Regulation (EC) No 713/2009, the Agency is tasked with monitoring the internal markets in electricity and natural gas, and, in particular, the retail prices of electricity and natural gas, access to the network including access of electricity produced from renewable energy sources, and compliance with the consumer rights laid down in the Third Package. This activity has to be carried out in close cooperation with the European Commission, NRAs, and other relevant organisations, and without prejudice to the competences of competition authorities.

The objective of the Agency's market monitoring activities is to assess how energy markets work and how they can perform more efficiently, thus making energy more affordable to the benefit of European energy consumers. The results of the Agency's monitoring activities should be presented in an annual monitoring report.

Main Activities in 2011

During 2011 the Agency worked on the definition of key monitoring indicators and on the approach to data collection. In particular, the Agency and the Council of European Energy Regulators (CEER)¹⁴ agreed that the market monitoring activities will be performed in close cooperation and will lead to a joint market monitoring report, the first edition of which is expected to be published in November 2012.

To this end, it was also agreed that, in carrying out its energy market monitoring activities, the Agency will make use of the CEER Database. A number of new indicators, covering the monitoring areas of specific interest to the Agency, including cross-border (wholesale market) access, were defined by the Agency in December 2011 and added to the CEER database. Data on these indicators will be collected, through the NRAs, for the first time in 2012.

In late 2011 the Agency launched a public tender on a common data interface (database platform) in conjunction with the European Commission, to be implemented in mid-2012.

¹⁴ CEER has been publishing Benchmarking Reports and the ERGEG Status Reviews since 2005, focusing mainly on gas and electricity wholesale markets, gas and electricity retail markets, consumer protection, security of supply and infrastructure, regulation and unbundling.

6.2 Regional Initiatives Status Review Report

In line with the ERGEG Regional Initiatives Progress Report, the Agency, which is now responsible for the coordination of the Regional Initiatives, published the first edition of the Regional Initiatives Status Review Report in March 2012¹⁵. This report and its future editions are intended to be transparency tools for all stakeholders and energy consumers in primis, allowing them to follow developments in the integration of energy markets at regional level as a step towards the completion of the IEM.

The first edition of the Regional Initiatives Status Review Report shows that, during its first year of coordinating the Regional Initiatives, the Agency invested a lot of effort, not only in supporting the Regional Initiatives but also in promoting a more project-oriented and pan-European approach, in particular with the development of cross-regional roadmaps as a way of guaranteeing that Regional Initiatives deliver progress on the IEM.

In the electricity sector, this new approach to the Regional Initiatives, and, in particular, the sustained efforts of NRAs and other stakeholders, has resulted in an agreement on ambitious but realistic roadmaps in four critical areas related to cross-border capacity allocation and congestion management.

With the continuous commitment and engagement of all stakeholders, including Member States when necessary, in the implementation of these cross-regional roadmaps, the 2014 objective for the IEM should be attainable. These roadmaps were endorsed by the 21st Florence Forum meeting in December 2011. The Regional Initiatives Status Review Report includes in detail all developments in this area in 2011.

Regarding the gas sector, the Regional Initiatives Status Review Report 2011 includes recommendations for the future work in the Regions and provides guidance for the permanent update of the Regional Work Plans. It also encourages higher participation and involvement of stakeholders and the adoption of a cross-regional and pan-European vision in regional work in order to advance towards the IEM.

Although the Agency Work Programme for 2011 had foreseen the completion of the first edition of the Regional Initiatives Status Review Report by December 2011, its publication was delayed until March 2012 so that the report could include the very significant results, including the endorsement of the electricity cross-regional roadmaps, which only occurred towards the end of the year.

Published documents

Regional Initiatives Status Review Report 2011

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Communication/Publications/RISSRFinal2.pdf Cross-regional Roadmap for Market Coupling

Cross-Regional Roadmap for Day-Ahead Market Coupling

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/Regional_Initiativ/ERI/Project%201/Work_plan_20112014/Final%20version%20Cross-regional%20road%20map%20Market%20Coupling.ppt

Cross-Regional Roadmap for Intraday Trading

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/Regional_Initiativ/ERI/Project%202/Work_plan_20112014/Final%20Cross-Regional%20roadmap%20for%20Intraday%20Trading.pptx

Cross-Regional Roadmap for Long-term Transmission Rights

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/Regional_Initiativ/ERI/Project%203/Work_plan_20112014/Final%20Version%20Cross-Regional%20roadmap%20LT%20Transmission%20Rights.ppt

Cross-Regional Roadmap Capacity Calculation

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/Regional_Initiativ/ERI/Project%204/Work_plan_20112014/Final%20version%20Cross-Regional%20roadmap%20Capacity%20Calculation.ppt

Meetings AESAG meetings

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Stakeholder_involvement/AESAG

Electricity RI Coordination Group meetings

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/Regional_Initiativ/Electricity_Regional_Initiativ/Conferences (non public)

¹⁵ The RI's Status Review Report is mentioned in this Annual Activity Report since it covers RI's development in 2011 and because the future editions are likely to be published at the end of the year which they cover.

6.3 Wholesale Energy Market Monitoring (REMIT)

REMIT entered into force on 28 December 2011. From that date, a number of provisions has taken effect, in particular:

- for market participants:
 - the prohibition to engage in market manipulation, attempted market manipulation and insider trading (Articles 3 and 5 of REMIT);
 - the obligation to publish inside information (Article 4 of REMIT);
 - the obligation to notify the Agency and the competent national authorities in the event of the delayed publication of inside information (Articles 3(4)(b) and 4(2) of REMIT);
- for persons professionally arranging transactions:
 - the obligation to establish effective arrangements to identify breaches of the prohibitions to engage in market manipulation, attempted market manipulation and insider trading (Article 15(2) of REMIT);
 - the obligation to notify the national competent authorities – and for them to notify the Agency if needed – in the event of reasonable suspicion that breaches of the prohibitions have occurred (Article 15(1) of REMIT).

The Agency's activities related to REMIT in 2011 were aimed at supporting NRAs in their role, and at market participants and persons professionally arranging transactions.

Guidance on REMIT Definitions

According to Article 16(1) of REMIT, the Agency shall aim to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. In this context, the Agency shall publish non-binding Guidance on the application of the definitions set out in Article 2 of REMIT.

Consequently, on 20 December 2011, a few days before the entry into force of REMIT, the Agency published the first edition of such Guidance. The Guidance was directed at NRAs to ensure the required coordination and consistency in their future monitoring activities under REMIT.

The first edition of the Guidance focused on the three issues which the Agency considered as priorities following the entry into force of REMIT:

- the definition of inside information;
- the definition of market manipulation; and
- what the Agency considers to be possible signals of suspected insider dealing and market manipulation that should be notified to NRAs by persons professionally arranging transactions within the meaning of Article 15 of REMIT.

The Guidance will be updated in later editions on the basis of the experience gained by the Agency and NRAs in the implementation of REMIT, including through feedback from energy market participants and other stakeholders.

Questions and Answers Document

At the same time the Agency made available on its website a Questions and Answers (Q&A) document which clarified a number of relevant issues related to the implementation of REMIT. It is planned to update the Q&A document as soon as other clarifications become available.

The Agency also provided a form on its website through which market participants and other stakeholders can submit requests for clarification on issues related to the implementation of REMIT. The relevant clarifications are provided in the Q&A document.

Web-forms for Notification

As of 28 December 2011, the Agency made available on its website, two forms in order to assist market participants and persons professionally arranging transactions to fulfill their obligation under REMIT:

- a form which market participants can use to notify the Agency and the competent national authorities of any delay in the publication of inside information;
- a form which persons professionally arranging transactions can use to notify the national competent authorities in the event of reasonable suspicion of a breach of the prohibitions of market manipulation or insider trading. While the obligation for persons professionally arranging transactions is to notify the relevant NRA(s), and for the latter to inform the Agency, it was agreed by all but one NRA to simplify the process and allow market participants to use the same form to notify both the relevant NRAs and the Agency at the same time.

Published documents

ACER Guidance on the application of REMIT definitions

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/REMIT/ACER%20Guidance%20and%20Questions%20%20Answers%20on%20REMIT/1st%20edition%20ACER%20guidance%2011218%20ap%20vz%20clean%20ap%20clean%20sonia.pdf

Q&A Document

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/REMIT/ACER%20Guidance%20and%20Questions%20%20Answers%20on%20REMIT/QuestionsAndAnswers3%20ap_final%20vzu_cca.pdf

Web forms

http://www.acer.europa.eu/portal/page/portal/ACER_HOME/Activities/REMIT/Important%20information%20for%20market%20participants

7. COOPERATION AND COMMUNICATION WITH STAKEHOLDERS

In carrying out its tasks, and in particular in the process of developing Framework Guidelines, the Agency is required to consult extensively, in an open and transparent manner and at an early stage, with market participants, TSOs, consumers, end-users and, where relevant, competition authorities¹⁶.

In 2011, the Agency used different formats for consulting and engaging stakeholders, including:

- public consultations;
- workshops and seminars;
- establishment of expert groups.

7.1 Public Consultations

While preparing the Framework Guidelines, the Agency is required formally to consult ENTSO-E or ENTSO-G and the other relevant stakeholders, during a period of no less than two months, in an open and transparent manner. Public consultations, therefore, were carried out on all draft Framework Guidelines adopted in 2011.

The Agency's website is the main channel of communication with stakeholders. Public consultations are carried out online. When the public consultation is launched stakeholders receive an email alert via the ACER Newsletter. All supporting documents and questionnaires are published together with the invitation to participate in the consultation. The Agency created a dedicated email address to facilitate stakeholders' participation in the consultation. The responses to the consultation are also published on the Agency website.

Public consultations run by the Agency in 2011

TITLE	START DATE	END DATE
Framework Guidelines for Electricity Grid	3 March 2011	2 May 2011
Framework Guidelines for Gas Capacity	3 March 2011	2 May 2011
Framework Guidelines for Capacity	11 April 2011	10 June 2011
Framework Guidelines for Balancing in Gas	12 April 2011	12 June 2011
Framework Guidelines on Electricity System Operation	15 July 2011	15 September 2011

7.2 Workshops

The Agency also promotes the involvement of stakeholders in its activities through workshops. Workshops are organised typically in conjunction with public consultations or as important initial steps in the development of Framework Guidelines. In this latter role, they are organised during the scoping phase and they represent an occasion for the Agency to present its views on the main policy options under consideration, as well as for the Agency to collect, at an early stage, opinions from stakeholders on essential topics. The Agency aims at organising most of its workshops in its headquarters in Ljubljana, and, whenever possible, at streaming workshops so as to increase their audience.

Workshops organised by the Agency in 2011

Workshop	No of registrations	Web streaming	Date
Gas Capacity Allocation Mechanisms	48	No	7 March 2011
Gas Balancing	33	No	18 May 2011
Electricity System Operation	36	No	24 August 2011
Gas Interoperability	18	Yes	13 September 2011
Electricity Balancing	84	Yes	24 October 2011

7.3 Seminars

Seminars on specific issues bring together speakers from the Agency, the European institutions and NRAs, experts from non-EU countries, and academics, in order to share their views on energy regulatory issues with stakeholders. These seminars focus on the activities outside the formal Framework Guidelines process. On 28 November 2011, the Agency organised a seminar on the Regulation for Energy Markets Integrity and Transparency (REMIT), before the Regulation was adopted. It was attended by 125 participants.

7.4 Expert Groups

The Agency benefits greatly from the expertise of stakeholders by setting up ad-hoc expert groups, which the Agency consults on specific and technical issues. They are composed of experts from a variety of stakeholders, from energy companies to energy consumers and academics. The mandate, composition and activities of the expert groups are published on the Agency's website. Each expert group is established following a call for applications, which is published on the Agency's website. The Agency selects the experts to be included in the group, on the basis of the applications received and with the aim of having a wide range of competences and expertise.

7.5 Website and Newsletter

The website and the Agency newsletter are used to inform all parties of the Agency's activities and to publish all its official documents.

The Agency website was created in March 2011 and is hosted by the Austrian regulator (E-Control). It receives around 10 000 hits a month. Some 1 200 people have subscribed to ACER's newsletter and they are mainly representatives of the Agency's stakeholders.

7.6 Press Releases

Press releases are used to alert stakeholders of the Agency's on-going activities. The Agency issued one press release in 2011 on the opening of its offices in Ljubljana.

Ad-hoc expert groups which were established by the Agency in 2011

Expert Group	Mandate	Date of creation	No of meetings in 2011
ACER Electricity Stakeholder Advisory Group (AESAG)	Support the implementation of concrete projects to pave the way for the Internal Energy Market (IEM)	15 March 2011	6
Ad hoc expert group on Framework Guidelines on Electricity Balancing	The goal of this group is to provide expert support to the Agency during the development of the Framework Guidelines on Electricity Balancing.	29 August 2011	3
Ad hoc expert group on Framework Guidelines on Interoperability Rules for European Gas Transmission Networks	The goal of this group is to provide expert support to the Agency during the development of the Framework Guidelines on Gas Interoperability.	7 November 2011	1

8 COOPERATION AND COMMUNICATION WITH NRAS

8.1 Background and Legal Context

Cooperation among NRAs dates back more than ten years. CEER was established as a voluntary association for cooperation in 2000. The European Commission set up ERGEG in 2003. The Third Package has envisaged stronger cooperation among NRAs and the establishment of a new EU body, the Agency, to promote and support such cooperation. Following the establishment of the Agency, ERGEG was dissolved as of 1 July 2011, while NRAs will continue to collaborate on a voluntary basis, through the Council of European Energy Regulators (CEER).

The purpose of the Agency is to enable NRAs to enhance their cooperation at EU level and participate, on a mutual basis, in the exercise of EU-related functions. The Agency does not substitute the regulatory functions at national level, but rather ensures that these are coordinated and, where necessary, completed, at EU level.

This complements fully the European mandate of the national regulatory authorities (after the Third Package) and their duty to promote, in close cooperation with each other and the Agency, a competitive, secure and environmentally sustainable internal market in electricity and gas within the EU, as well as effective market opening for all customers and suppliers in the EU, and ensuring appropriate conditions for the effective and reliable operation of electricity and networks, taking into account long-term objectives. The national regulatory authorities have the duty to collaborate on cross-border issues with each other and with the Agency¹⁷.

8.2 Regulatory Cooperation Within ACER

Both the Agency's structure and its working arrangements in the first year of the Agency's formal operation underline that cooperation with NRAs is, indeed, the mainstay of the Agency's role and activities, as its name rightly indicates. The Third Package has given NRAs, with enhanced national competences and stronger independence at national level, not only a clear mandate to promote a competitive single European natural gas and electricity market, but also some 'European duties' to the Board of Regulators, which participates in the Agency's tasks, as set out in the Regulation. In this way, the coherence of regulation at national and European level is ensured, which seems a key prerequisite to addressing the challenges ahead.

NRAs participate in the life of the Agency in several ways:

- In the Board of Regulators.
- In the Agency's Working Groups, which bring together the Agency's staff and experts from NRAs and, from the European Commission (as observers).

8.3 ACER Working Groups

The Agency Working Groups provide support to the Agency in carrying out its regulatory duties under the relevant EU Regulations and Directives. Their objective is:

- to provide input to the Director for the preparation of opinions, recommendations and decisions to be submitted to the consideration of the BoR prior to adoption, and of other relevant documents;
- to support the Director and the Agency staff on other tasks, such as reviewing and analysing stakeholders' submissions during a consultation process;
- to provide the BoR with information on the issues relevant to the Director's proposal, in order to facilitate the required BoR decisions on the favourable opinion before the opinions, recommendations and decisions can be adopted by the Director.

From an early stage, the Agency Working Groups (AWGs) allow Agency staff and representatives of NRAs to work together on Agency deliverables. Each AWG is composed of Agency staff and of senior representatives of the NRAs represented in the BoR.

The European Commission is also invited to participate. Their objectives, deliverables and milestones are defined by the Director in consultation with the Chairs and taking into account the Agency's Work Programme. The Working Groups benefit from the expertise of the Agency's staff, and of the national regulatory authorities, who have a comprehensive understanding of developments in their own energy markets.

Participants in the Agency's Working Groups and Task Forces are bound by certain rules for their functioning, including measures to legally align the provisions governing the functioning of the Working Groups and Task Forces with those governing the functioning of the Agency, especially in the areas of confidentiality and intellectual property rights.

Two Agency Working Groups were established in 2011:

- the Electricity Working Group, co-chaired by Peter Plug from NMA (NL) and Martin Crouch, from Ofgem (UK);
- the Gas Working Group, chaired by Walter Boltz from E-Control (AT).

The Agency Working Groups meet on a monthly basis. Each Working Group has established a number of Task Forces and involves a significant number of staff from the NRAs (including members and observers). The allocated resources reflect a genuine interest and commitment from NRAs to cooperate with the Agency and with each other.

¹⁷ Article 36(a) of Directive 2009/72/EC and Article 40(a) of Directive 2009/73/EC.

8.4 Regional Initiatives

Regulatory cooperation continues to develop in the context of the Regional Initiatives to boost market integration.

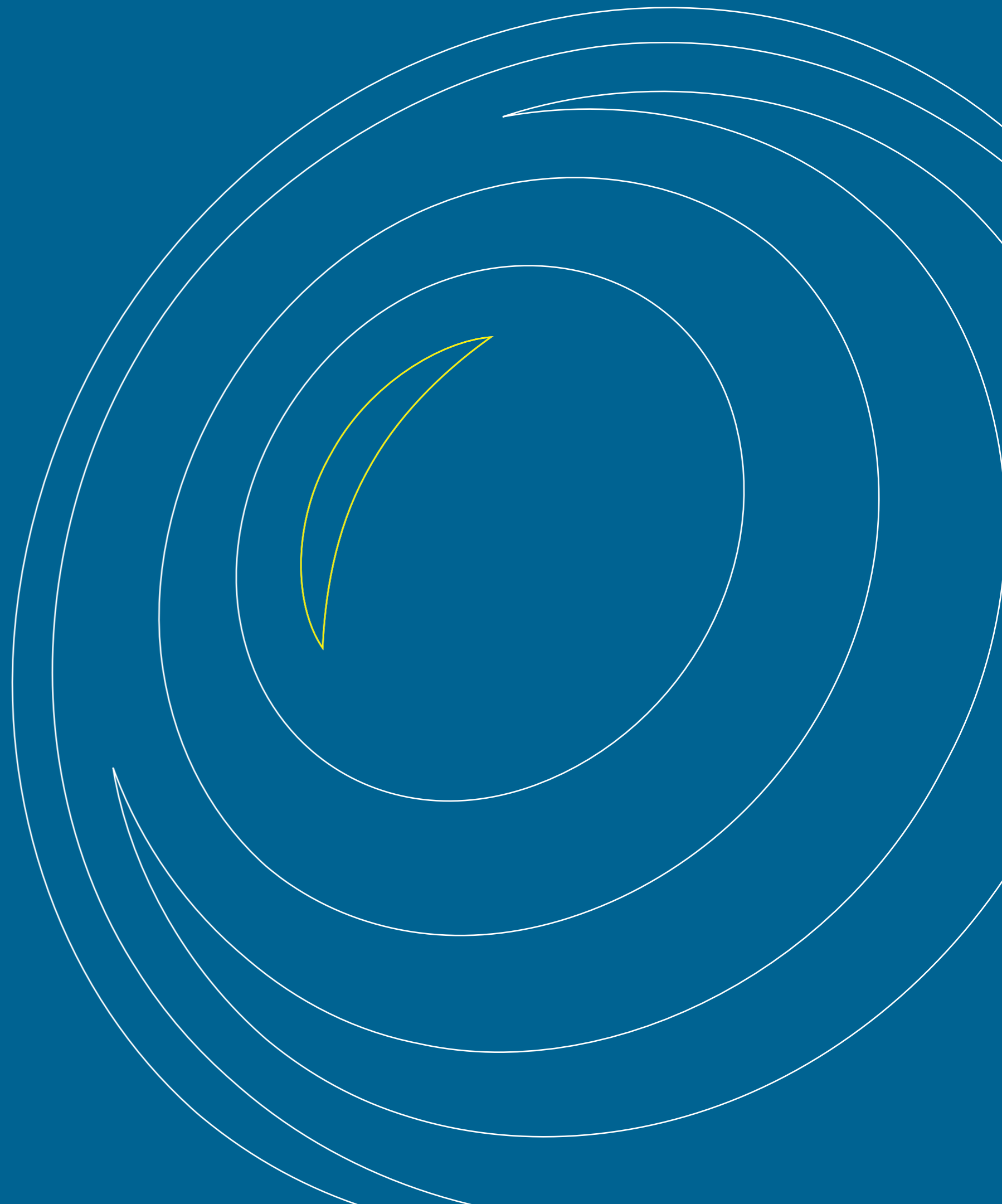
The Agency cooperates with NRAs and Transmission System Operators to ensure the compatibility of regulatory frameworks between the Regions in order to create a competitive Internal Energy Market. The Agency has created two dedicated Coordination Groups:

- the Electricity Regional Initiative (ERI) Coordination Group; and
- the Gas Regional Initiative (GRI) Coordination Group.

Each Coordination Group is composed of representatives from NRAs and the European Commission. The Coordination Groups aim to ensure that actions taken by NRAs are consistent, and that feedback from the Regions is collected for the regular progress reports.

In 2011, the ERI NRAs also designated specific leaders for the four cross-regional roadmaps for the implementation of the Target Models for CACM. These groups usually meet on a monthly basis and report regularly to the Director and the BoR. In 2011 the GRI Regions prepared regional roadmaps for boosting market integration.

**OVERVIEW OF
THE RESULTS OF
THE REGULATORY
ACTIVITIES IN 2011**

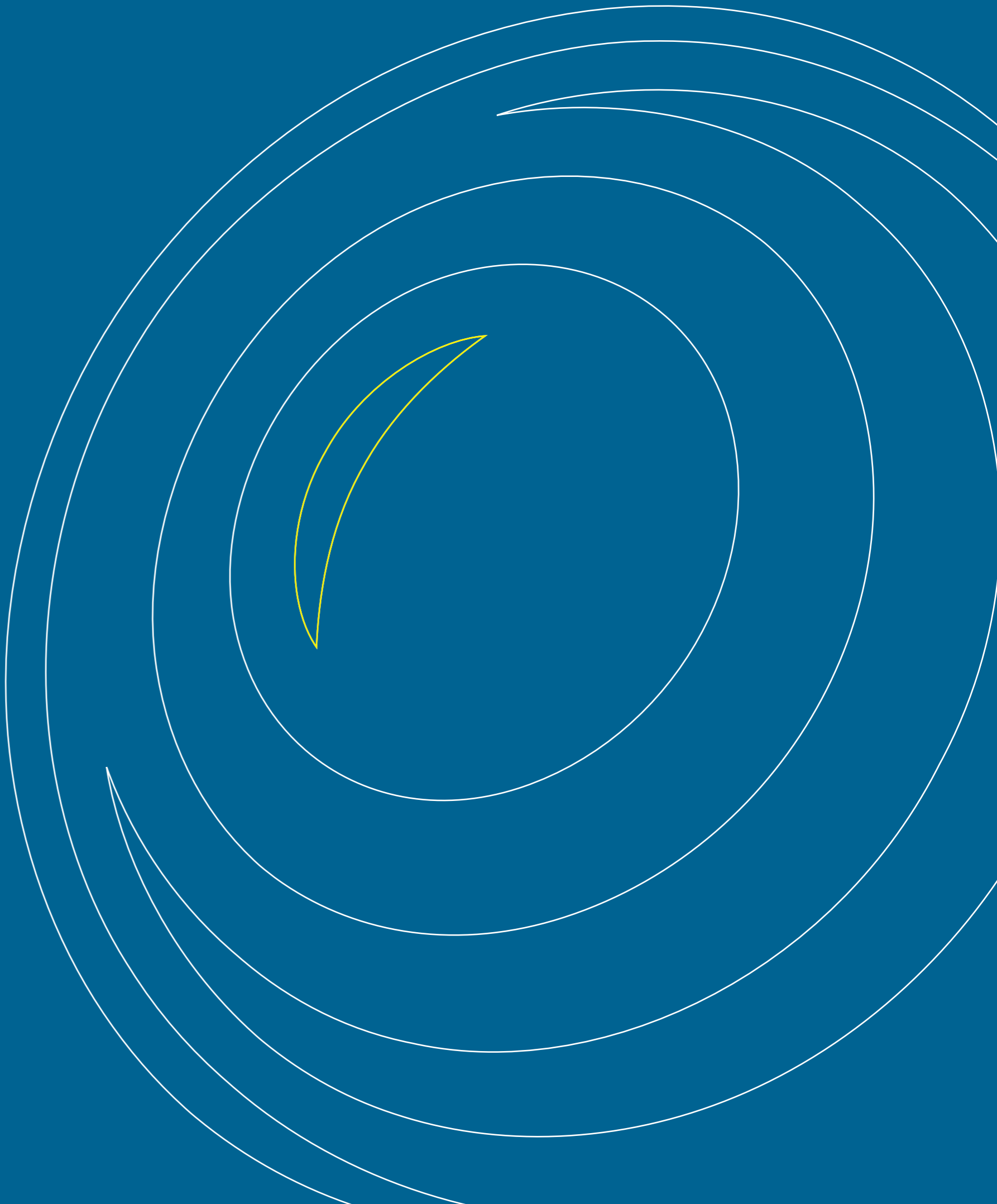


Deliverables	Work programme 2011 Key Performance Indicators	Delivery in 2011
Electricity - Framework Guidelines		
Framework Guidelines on capacity allocation and congestion management finalised	Completion date: July 2011	29 July 2011
Framework Guidelines on Electricity Grid Connection Finalised	Completion date: July 2011	20 July 2011
Framework Guidelines on System Operation finalised	Completion date: July 2011	*2 December 2011
Framework Guidelines on Electricity Balancing finalised	Completion date: December 2011	*In January 2012 the European Commission invited the Agency to submit the final Framework Guidelines on Electricity Balancing by July 2012
Electricity - public consultation on the assessment of the necessary ITC compensation finished	Completion date: December 2011	*EU Regulation No 838/2010 was adopted only after the adoption of the WP2011. It sets a new target date of 2 March 2013
Gas - Framework Guidelines		
Framework Guidelines on Capacity Allocation Mechanisms finalised	Completion date: July 2011	*3 August 2011
Framework Guidelines on Gas Balancing Rule finalised	Completion date: July 2011	*18 October 2011
Framework Guidelines on harmonised Transmission Tariff Structures	Completion date: July 2011	*New completion date established in the three-year plan
Framework Guidelines on Interoperability finalised	Completion date: December 2011	*New completion date established in the three-year plan

Deliverables	Work programme 2011 Key Performance Indicators	Delivery in 2011
Cross-sectoral		
I.) Monitoring of the internal markets in gas and electricity		
a.) Annual report on the results of monitoring of the markets finalised	Completion date: December 2011	*No monitoring was carried out in 2010, as the Agency was not yet operational
b.) Develop data requirements and indicators for retail prices, consumer rights, wholesale markets integration (ACER will report on cross-border issues) and network access (including connection issues to renewable sources where relevant)	Completion date: 31 December 2011	24 December 2011
II.) Regional Initiatives Status Review Report finalised	Completion date: December 2011	*13 March 2012
III.) Work related to the activities of ENTSOs		
a.) Opinion on the draft Statutes, the List of Members and the draft Rules of Procedure of ENTSO-E and ENTSG	Completion date: within two months of submission to ACER. Submission on 22 December 2010 for ENTSO-E and 28 February 2011 for ENTSG. The two-month period started running as of 3 March 2011, date of ACER's official launch. The deadline for both opinions, therefore, was there 3 May 2011	*4 May 2011
b.) Opinion on ENTSO-E and ENTSG Work Programmes	Completion date: within two months of the date of receipt, i.e. by 6 December for ENTSO-E and by 22 January 2012 for ENTSG	4 December 2011 24 January 2012
c.) Opinion on ENTSOE and ENTSG Ten-Year Network Development Plan	Completion date: within two months from the date of receipt, i.e. by 18 September 2011 for ENTSG and not received for ENTSO-E	16 September 2011 (for ENTSG)

*Instances when the Agency was unable to deliver by the set deadlines

PART B
INTERNAL CONTROL SYSTEM



9 THE FUNCTIONING OF THE INTERNAL CONTROL SYSTEM

The Agency's Internal Control System has been established by Administrative Board Decision AB No 08/2011 of 10 April 2011 on the Adoption of Internal Control Standards, which adopted, by analogy, the 16 Internal Control Standards¹⁸ in compliance with Commission Regulation (EC, Euratom) No 2343/2002.¹⁹

The information provided below describes the state of play of the functioning of the Internal Control System at the Agency, an overview of the priorities set for the reporting period, a description of the specific controls put in place, and the overall evaluation of the effectiveness of the implementation of the specific rules and procedures.

¹⁸ These Internal Control Standards are: Mission, Ethical and Organisational Values, Staff Allocation and Mobility, Staff Evaluation and Development, Objectives and Performance Indicators, Risk Management Process, Operational Structure, Processes and Procedures, Management Supervision, Business Continuity, Document Management, Information and Communication, Accounting and Financial Reporting, Evaluation of Activities, Assessment of Internal Control Systems, Internal Audit Capability.

¹⁹ Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, and, in particular, Article 38(4) thereof.

9.1 Compliance With the Requirements of the Control Standards

The Commission Internal Control Standards, which apply to the Agency, are structured around six major 'building blocks':

1. Mission and Values.
2. Human Resources.
3. Planning and Risk Management Process.
4. Operations and Control Activities.
5. Information and Financial Reporting.
6. Evaluation and Audit.

In 2011 the Agency made substantial progress in the set-up of its internal instructions and relevant procedures, based on the requirements of the six building blocks. A detailed action plan has been developed and is constantly being revised and updated in order to assist the timely and proper implementation of the requirements and proposed actions. In particular, in 2011 the Agency managed to achieve significant progress in the implementation in the following major internal control areas:

Building Block 1: Mission and Values

The Agency has put in place the relevant controls in order to ensure compliance with the requirements of the standards related to mission and values. The specific actions include:

- The Agency's mission statement, as defined by Regulation (EC) No 713/2009, has been published and communicated to the public via the Agency's web-page and is included in its Annual Work Programme.
- The mission statement has been communicated to all staff and explained further, through a number of tools: the Agency's web page, the Agency's Intranet, the Annual Work Programme, the Agency's Welcome Pack and the Manual of Procedures. It has been included and explained further in the induction training for newcomers. The Agency's mission statement, role, responsibilities and major tasks ahead are also communicated to all staff at regular staff meetings and lunch seminars, thus ensuring regular updates and discussion on the main milestones.
- The Agency has put in place the procedures to ensure that all staff are aware of relevant ethical and organisational values, in particular ethical conduct, avoidance of conflicts of interest, fraud prevention and reporting irregularities, through the following specific measures:
 - The European Code of Good Administrative Behaviour is used and communicated to all staff upon taking up duties. It has been made part of a number of internal documents (Welcome Pack, Manual of Procedures, etc.), and has been made easily accessible through the Intranet.
 - A conflict of interest declaration is signed by every new employee.
 - A confidentiality declaration is signed by every staff member, including external experts, participants in the Agency Working Groups (AWG) and observers.
 - Training on Ethics and Integrity is considered as an important step towards compliance, and is to be developed and delivered to all staff in 2012.

Building Block 2: Human Resources

Along with the successful recruitment of its core staff and, in line with the establishment plan, the Agency achieved substantial progress in introducing internal rules and procedures, ensuring that staff recruitment is based on the Agency's needs, priorities and objectives, whereas candidates with relevant skills and extensive expertise are attracted and recruited through fair and transparent selection procedures, strictly observing the principles of transparency, equality and wider geographical selection. The following measures were introduced in 2011:

- Staff Regulations (SRs) and Conditions of Employment of Other Servants of the European Communities (CEOS) were applied by the Agency in the recruitment and administration of the Agency staff.
- The relevant implementing rules (IRs), concerning the recruitment, engagement and use of Temporary Agents (TAs), Contract Agents (CAs) and Seconded National Experts (SNEs) were adopted by the Administrative Board and are applied in all selection procedures.
- Significant number of IRs to the SRs have been adopted and introduced (see Annex).
- The Agency developed and adopted its Multi-annual Staff Policy Plan 2012-2014.
- A detailed Job Description for each position has been developed, approved and kept up-to-date.
- Furthermore, the Agency introduced procedures to ensure that staff skills are developed further through relevant training, and that staff performance and achievements are evaluated against individual annual objectives.
- The Agency adopted its internal implementing rules, establishing the policy and procedure for the performance appraisal of staff. The first annual performance appraisal exercise was prepared at the end of 2011 and launched at the beginning of 2012. The Commission standards on both annual appraisal and probationary period reports were respected.
- The necessary support was provided to all staff through the induction training, the welcome pack, the opportunity to attend external training courses, the day-to-day administrative support, and the easy access to all relevant documents on the Intranet.
- The Agency's HR and IT Sections developed important IT tools to support efficient staff administration and development – HR Management tool with a number of modules (leave management, mission management and performance appraisal) was developed and introduced. Training Maps and Passports were prepared and maintained for each staff member.

Building Block 3: Planning and Risk Management Process

The Agency developed a comprehensive set of processes and documents to monitor and report on its Annual Work Programme and on its human and financial resources. Both management and staff in key functions were involved in the planning, risk assessment, monitoring and reporting in order to assure the alignment of activities, as well as the common understanding of the Agency's objectives and the Work Programme.

- The Agency developed and adopted its Annual Work Programme (AWP) with clearly defined objectives, formulated in such a way that their achievement is easily monitored. The AWP outlines clearly the activities that contribute to the set objectives, aligned with the available resources and taking into consideration the Agency's role and its future development.
- Key performance indicators for major activities were identified, thus allowing progress to be monitored and objectives updated, taking account of any significant change during implementation.
- The Agency put in place efficient reporting structures in order to keep management informed and ensure that they closely follow the achievement of objectives. These reporting structures include: regular management meetings, development and update of reporting tools and overviews of achievement of results, and regular reporting on operational and administrative key activities.
- Working Groups were established in order to support planning, implementation and decision-making in key areas of operation. Detailed rules on the establishment and functioning of the Working Groups have been adopted in order to ensure conformity with existing rules and provisions on confidentiality and integrity.

- Risk was considered by the Agency's management in several ways, including regular discussions at the management meetings, as well as through the development and maintenance of the Risk Register, development of action plans and concrete actions to mitigate identified risks and thus support the achievement of objectives. The first risk management exercise was carried out at the end of 2011, where a number of key risks were identified and assessed. An action plan with concrete measures and responsibilities was defined and its implementation will be monitored to ensure that activities run as planned and contribute to the implementation of the AWP objectives (results from the exercise are presented below under point 9.2).

Building Block 4: Operations and Control Activities

The Agency has put in place an effective structure that supports efficient decision-making and clearly defined responsibilities and delegation of authorities. A number of procedures have also been developed and put in place in the areas of management supervision, business continuity and document management, to be further defined and finalised in 2012, including:

- The Delegation manual, recording all financial and signatories' delegations, was put in place to ensure segregation of duties, clear responsibilities and delegation of authority.
- Detailed guidelines on the financial circuits were adopted and are communicated to every financial actor depending on the role.
- The sensitivity of posts was introduced specifically in the corresponding job descriptions and a policy on sensitive functions will be defined in 2012. Mobility due to sensitivity of posts was not yet applicable to the Agency.
- The IT Steering Committee was established in order to align the development of the Agency's IT infrastructure to its business needs.
- The Agency developed a set of IT Policies, IT master plans and procedures in order to ensure all IT systems are covered, approved on the basis of a vision document and in order to ensure the application of European Commission standards. The Agency is still in the process of planning for the acquisition of new IT applications, especially those that perform the tasks related to the implementation

of REMIT. The Agency, therefore, will continue to develop and strengthen further its IT systems, taking into account the relevant provisions on security, in order to ensure that the IT systems are in line with its business needs and clearly support the achievement of its objectives.

- In 2011 the Agency achieved significant progress in adopting and documenting key processes and procedures for the implementation and control of activities. Those include a number of procedures in HR and Accounting (Accountant Manual and Handbooks, checklists, etc.).
- The Agency's Financial Regulation was adopted by the Administrative Board in September 2011. The Accounting Officer was nominated officially by the Board.
- The Agency established the procedure and detailed workflow for registering exceptions in order to ensure that all instances of overriding of controls or deviations from established processes and procedures were documented in exception reports, justified, duly approved before action is taken and logged centrally. The report of registered exceptions in 2011 is presented below under point 9.3;
- The Agency introduced a number of procedures to ensure the continuity of key operational activities. In 2012 the Agency will further develop and introduce its Business Continuity Plan, defining its crisis response and recovery strategy with respect to major disruptions;
- The Agency adopted its internal implementing rules with regard to the processing of personal data in compliance with Regulation (EC) No 45/2001²⁰. The report on the activities implemented in 2011 in the area of processing of personal data is provided below under point 9.4.

Building Block 5: Information and Financial Reporting

In 2011 the Agency introduced a number of communication tools supporting more efficient internal communication: intranet, regular staff meetings and team building activities (first Agency Away Day). In 2012 the Agency will focus on defining and introducing its internal

²⁰ Regulation (EC) No45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8/1, 18.12.2000).

and external communication policies, allowing better transparency of the Agency's decisions and acts, and more efficient communication and interaction with the Agency's stakeholders and the public. The Agency plans to upgrade its webpage, which will be one of the main communication tools.

The development and set-up of the Agency's intranet was an important achievement which served as an essential tool for internal communication. All relevant decisions, procedures, rules and templates are made available through the intranet and regularly updated in order to make it easier for staff to find the relevant information, support them in the implementation of their assignments and guide them through the administrative procedures. Furthermore, the intranet plays a central role in the timely and effective communication of all new developments and newly adopted rules and procedures.

With regard to financial reporting, the Agency managed to introduce and document effectively its accounting procedures and controls. Furthermore, a number of ex-ante and ex-post processes and procedures were introduced in order to provide assurance on the regularity of financial transactions to the Authorising Officer and Authorising Officers by Delegation.

Building Block 6: Evaluation and Audit

With regard to the Agency's Internal Audit Capability (IAC), a decision was taken, based on the size and the scope of the Agency's activities, to use external expertise to perform the duties of the Internal Audit function, thus ensuring an objective evaluation of compliance with the Internal Control Standards and the assessment of the internal control system in place.

A first consultancy visit of an external Internal Auditor was performed in July 2011. As a result, a detailed report on the assessment of the internal control system in place, including recommendations for improvement, was presented. The Agency has followed up on the recommendations made in order to strengthen its system and achieve full compliance on priority standards, as well as to introduce additional specific controls.

9.2 Annual Risk Assessment

Internal instructions have been developed and the first annual risk assessment exercise has been conducted at the end of 2011. The risk assessment covered all of the Agency's operational, legal and administrative areas of activity, aiming to ensure that all possible risks are identified and assessed in relation to their likelihood and impact on the achievement of the Agency's objectives. The exercise also covered the new tasks to be vested in the Agency with the adoption of REMIT.

As a result of the exercise, management considered five main risks which have a high likelihood of occurring and have a significant impact on the Agency's activities, and are mainly related to:

1. Collaboration with the NRAs and their resources contributing to the main deliverables of the Agency.
2. The effectiveness of the mechanism for information collection and sharing with regards to REMIT implementation whereby information has to be collected effectively and must be accurate, comparable and reliable.
3. Possible delays in the delivery of the Opinion on the Network Code on Capacity Allocation Mechanisms in gas, owing to external factors which may affect the timely adoption of the Network Code. This, in turn, may delay the process of the completion of the European internal gas market.
4. Shortage of staff in the HR section resulting in delayed recruitment procedures, and thus in delays in the completion of the establishment plan.
5. The impact of the expected selection of the new Agency's office premises (after the expiry, in January 2013, of the rent-free period on the current premises) and of the removal to the new premises.

The management decided on appropriate actions to be undertaken in order to avoid and/or mitigate the risks identified. Corrective measures will be taken in the event that there is a need for additional control or if changes in the specific environment so require.

The actions will be monitored throughout the year in order to ensure the effective achievement of objectives, as defined in the Agency's AWP.

9.3 Register of Exceptions

The procedure for reporting and recording exceptions was defined by the Director's Decision No 2011-07 on the Register of Exceptions, adopted on 4 May 2011. One exception concerning a procurement procedure was approved and registered in 2011. The submitted exception concerned a corrigendum of the award decision based on a request for exception with regards to the period of delivery of the services. There were no financial implications for the Agency's budget, as the decision did not affect the overall amount contracted. The Agency also defined the procedure to notify and register any procedural incident and ex-post findings on deviations from existing policies and procedures. This shall ensure further that all instances of overriding of controls are well documented and that appropriate measures are taken to prevent and avoid any deviations from existing rules.

9.4 Report on the Work of the Data Protection Officer

As for any other European body, the Agency is subject to specific legal obligations concerning the protection of personal data and the processing thereof. More specifically, all personal data shall be processed by the Agency in accordance with the provisions of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²¹.

General implementing provisions of the Agency were adopted by Director's Decision No 2011-027 of 19 December 2011 on the Implementing Rules concerning the Data Protection Officer pursuant to Article 24(8) of Regulation (EC) No 45/2001. The Agency's Legal Advisor was appointed as the Data Protection Officer (DPO) in accordance with Article 24 of Regulation (EC) No 45/2001, effective as of 20 December 2011 for a period of three years, renewable. In 2011 the Agency filed two notifications for prior checking by the European Data Protection Supervisor (EDPS), pursuant to Article 27 of Regulation (EC) No 45/2001. These notifications concern the Probationary Reports and the Annual Performance Appraisal Reports, respectively.

9.5 Conclusion

Considering the key developments that took place in 2011, the first year of the Agency's formal operation, and the significant progress in its organisation, in the management and supervision processes, as well as the functioning of:

- the planning, monitoring and reporting processes;
- the operational, financial and HR management processes;
- the Agency risk assessment process;
- the key controls introduced and the effectiveness of their functioning,

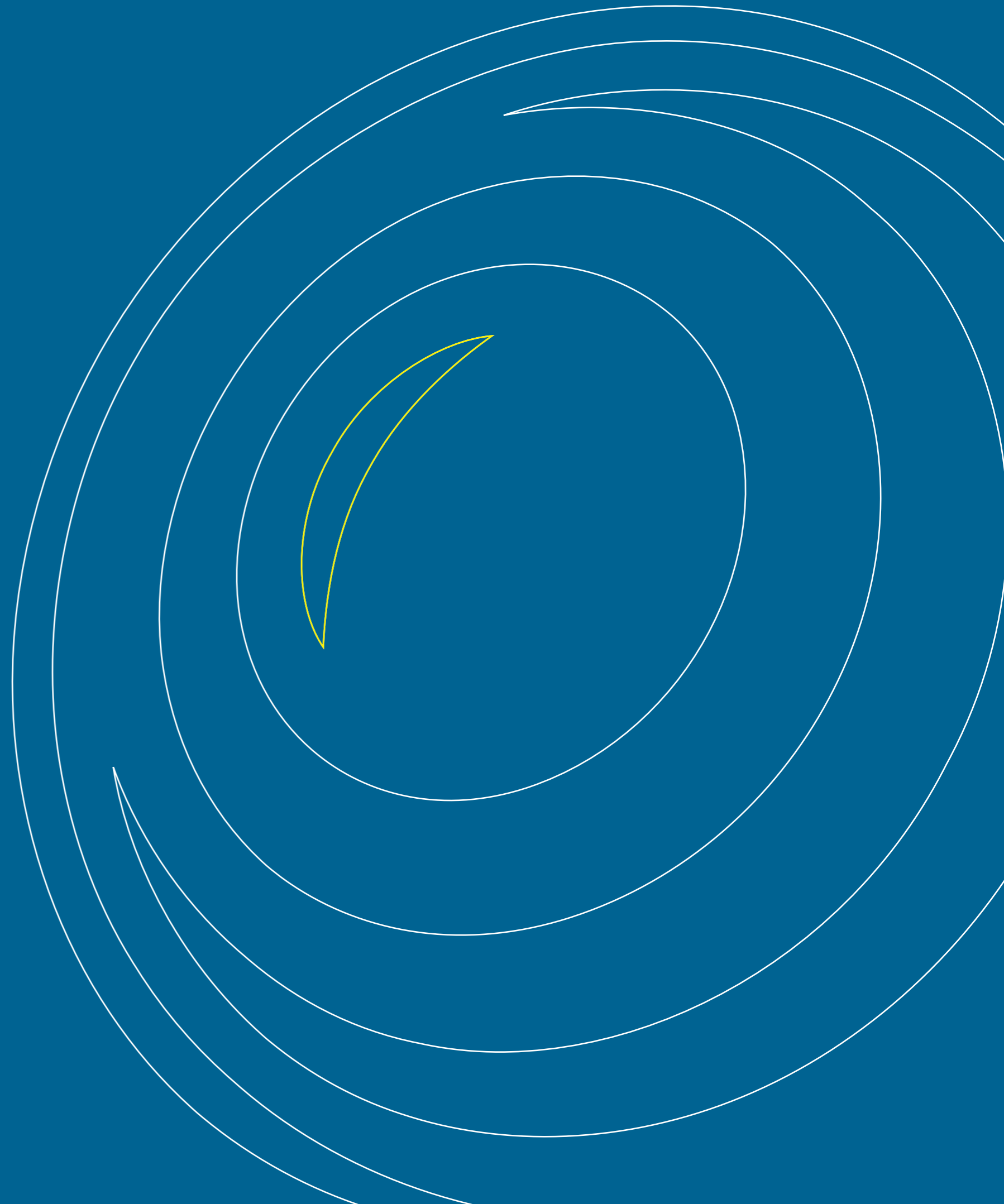
It can thus be concluded that the Agency's internal control system is working as intended and provides reasonable assurance that risks are monitored and controlled adequately.

This conclusion is based on the management's assessment of the efficiency of the current internal controls, as well as on the basis of an independent assessment performed by an external internal auditor, who provided an independent review and assessment of the system in place.

It also takes into consideration the Agency's need to continue to develop its internal control environment, as well as to constantly assess and strengthen the existing controls (considering the cost-effectiveness of the controls implemented and their added value against the additional costs for the Agency) in order to achieve full compliance with the requirements of the 16 Internal Control Standards, and to ensure the achievement of the objectives in its AWP.

This will be considered as one of the priority areas in 2012, when the Agency will already have the opinion and recommendations of the Internal Audit Service and of the European Court of Auditors, and will be able to reflect better on the achievements and the tasks to be completed.

PART C
BUILDING BLOCKS
TOWARDS THE
DECLARATION OF
ASSURANCE
(AND POSSIBLE
RESERVATIONS TO IT)



10 BUILDING BLOCKS TOWARDS REASONABLE ASSURANCE

10.1 Building block 1: Assessment by Management

As presented in Part B, the Agency has developed a comprehensive set of procedures and tools to prepare, manage, control and monitor progress against its Annual Work Programme. Specific ex-ante controls have been put in place in order to ensure the legality and regularity of both the operational and financial activities. These include regular team meetings and discussions at management level on the state-of-play of implementation of the activities in the AWP and the achievement of objectives, on upcoming activities and key milestones, taking into consideration the risks involved and the appropriate corrective measures, where necessary. Detailed check-lists have been developed and introduced for all financial operations in order to assist the Authorising Officer and Authorising Officers by Delegation in approving payment transactions.

Specific planning and monitoring tools have been developed and introduced, as described above, in order to inform and support the management decision processes. Additionally, internal departmental and Agency-wide meetings are organised to inform staff of all relevant issues and new developments. The internal control system is to be developed further in 2012, based on the results from the direct supervision of the Agency's management. Based on the above, and considering the successful results achieved in 2011 with the limited resources available, the current control system provides reasonable assurance to the Authorising Officer and the Authorising Officers by Delegation in their area of responsibility. The declarations of assurance of the Director as Authorising Officer, and the Head of Administration, as Authorising Officer by Delegation, are annexed to the report.

10.2 Building block 2: Results From Audits During the Reporting Year

The Agency became formally operational on 3 March 2011 and was granted financial autonomy on 8 March 2011. As a newly established Agency, the Agency did not undergo any audits (from the Internal Audit Service and the European Court of Auditors) in 2011. As already mentioned earlier, external expertise has been used to provide an assessment and consultancy on the implementation of the Internal Control Standards and the system put in place. An external consultancy visit from another EU Agency, made in July 2011, was geared to assessing and providing recommendations on the level of implementation of the Agency Internal Control Standards and the level of compliance with the requirements of the 16 Internal Control Standards.

A detailed review of all existing controls was made and a final report on the findings and recommendations presented to the Agency management. Based on the fieldwork performed, and considering the relatively short existence of the Agency as an autonomous legal entity, the report provided an overall positive assessment of the level of implementation of the Internal Control Standards and defined the priorities for ensuring overall compliance with the Internal Control Standards requirements.

10.3 Building Block 3: Follow-up

Not applicable.

10.4 Building block 4: Assurance Received From Other Authorising Officers in Cases of Crossed Sub-delegation

Not applicable.

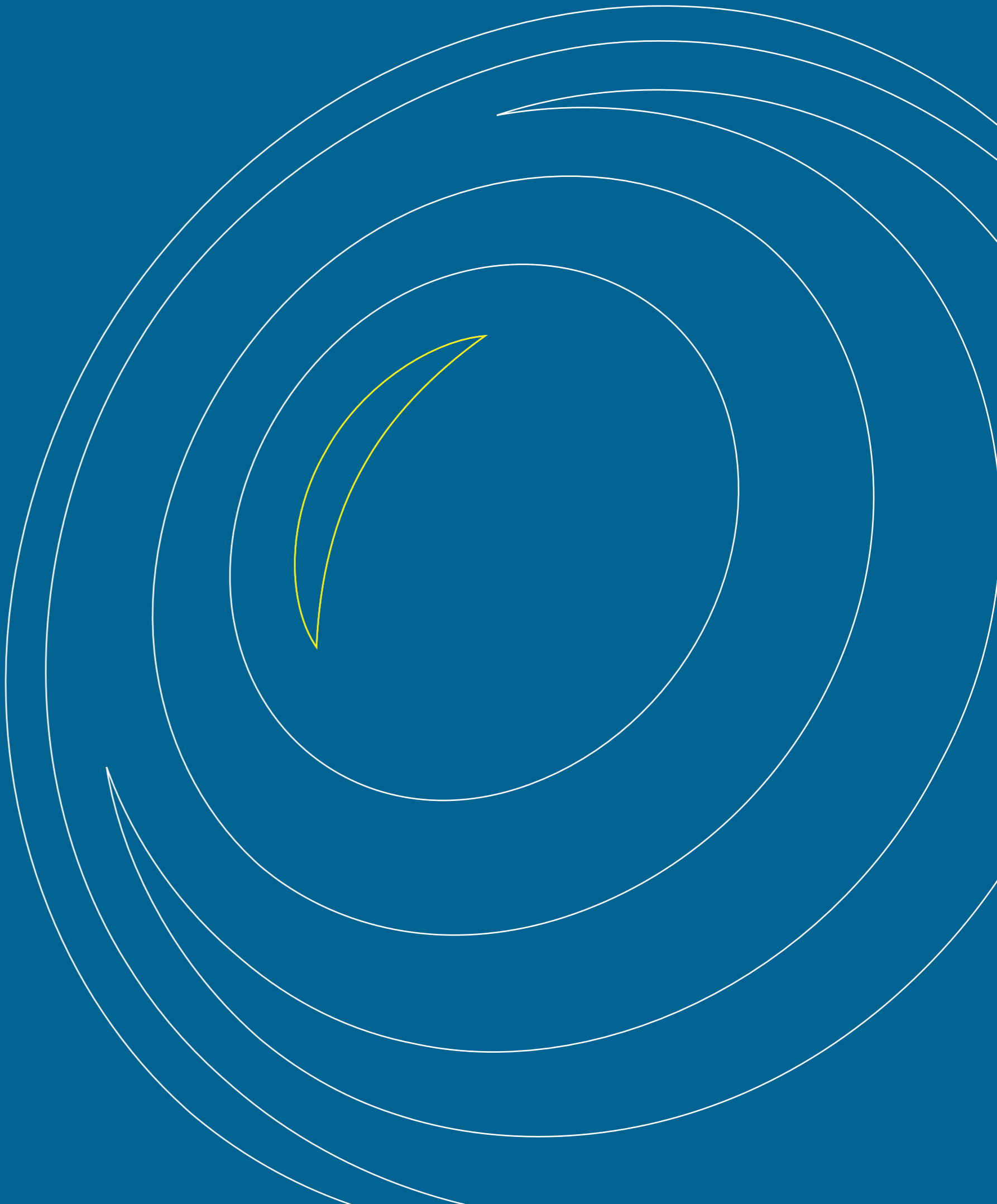
10.5 Reservations

No reservations are to be made in this Annual Activity report.

10.6 Overall Conclusions on the Combined Impact of the Reservations on the Declaration As a Whole

Not applicable.

PART D
DECLARATION OF
ASSURANCE



ANNEX 1: Statement of the Director

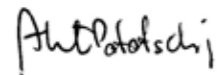
I, the undersigned, Director of the Agency for the Cooperation of Energy Regulators, in my capacity as authorising officer; Declare that the information contained in this report gives a true and fair view.²²

State that I have reasonable assurance that the resources assigned to the activities described in this report have been used for their intended purpose and in accordance with the principles of sound financial management, and that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

This reasonable assurance is based on my own judgement and on the information at my disposal, such as the results of the self-assessment and ex-post controls for the year prior to the year of this declaration.

Confirm that I am not aware of anything not reported here which could harm the interests of the Agency for the Cooperation of Energy Regulators.

Ljubljana, 15 June 2012



Alberto Pototschnig, Director

ANNEX 1: Statement of the Head of Administration and Internal Control Coordinator

I, Olga Borissova, in my capacity as Head of Administration and authorising officer by Delegation and as Internal Control Coordinator, declare that, in accordance with my responsibilities as authorising officer by delegation, as Head of Administration and as Internal Control Coordinator, I have reported my assessment, advice and recommendations to the Director of the Agency for the Cooperation of Energy Regulators on the overall state of internal control in the Agency and on the issues under my responsibility.

I hereby certify that the information provided in Parts B and C of the present Annual Activity Report and in its annexes is, to the best of my knowledge, accurate and exhaustive.

Ljubljana, 15 June 2012



Olga Borissova, Head of Administration

²² True and fair in this context means a reliable, complete and correct view on the state of affairs in the service

ANNEX 2: Report on Human and Financial Resources

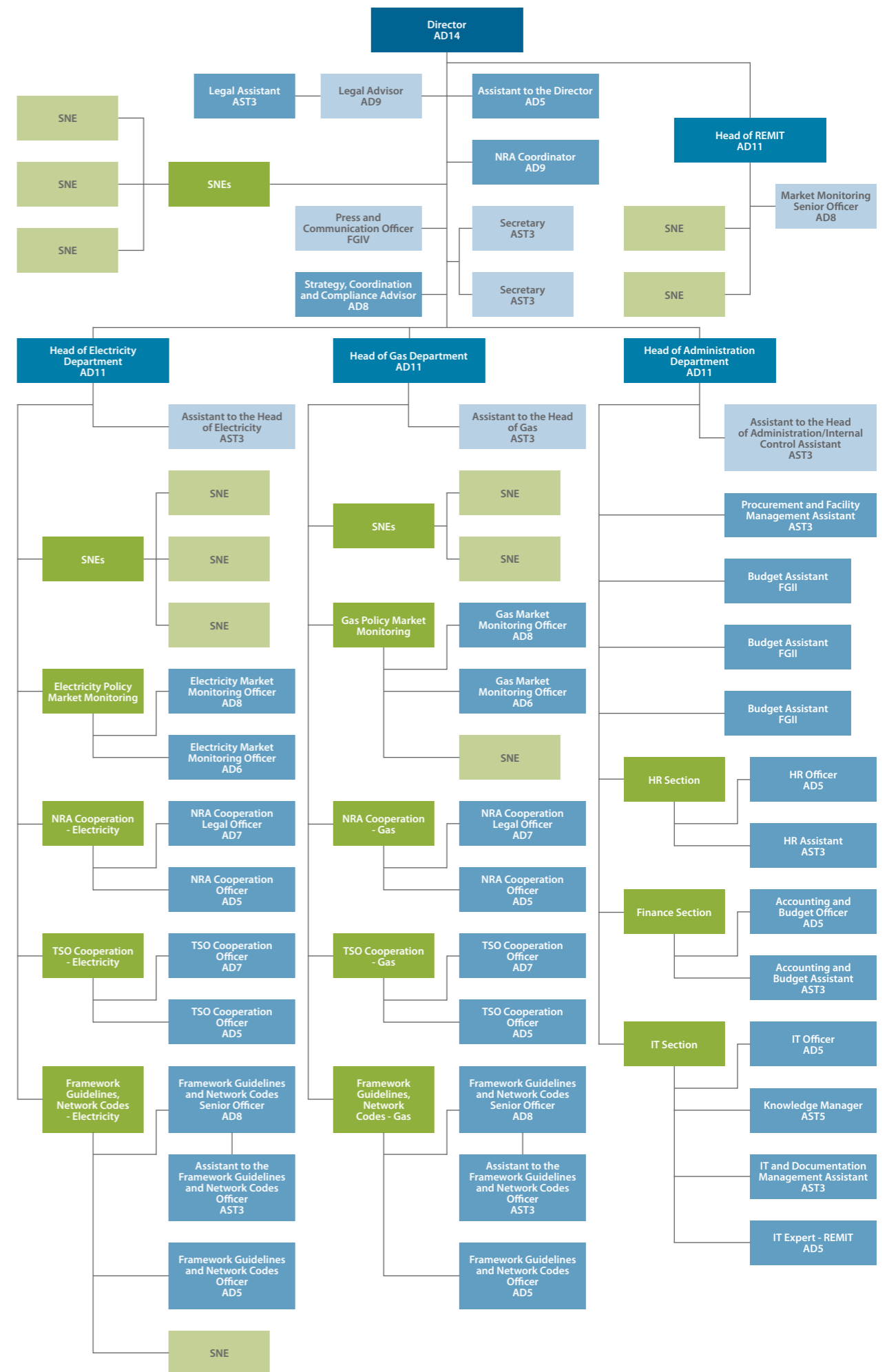
Establishment plan

Function group and grade	2013		2012		2012	
	Authorised under the Union budget		Actually filled as at 31 December 2011		Authorised under the Union budget	
	Permanent	Temporary	Permanent	Temporary	Permanent	Temporary
AD 16						
AD 15						
AD 14		1		1		1
AD 13						
AD 12						
AD 11		4		3		4
AD 10						
AD 9		2		2		2
AD 8		6		4		5
AD 7		6		3		4
AD 6		4		1		4
AD 5		11		8		10
AD total		34		22		30
AST 11						
AST 10						
AST 9						
AST 8						
AST 7						
AST 6						
AST 5		1		1		1
AST 4						
AST 3		14		11		12
AST 2						
AST 1						
AST total		15		12		13
Grand total		49		34		43
Total staff		49		34*		43

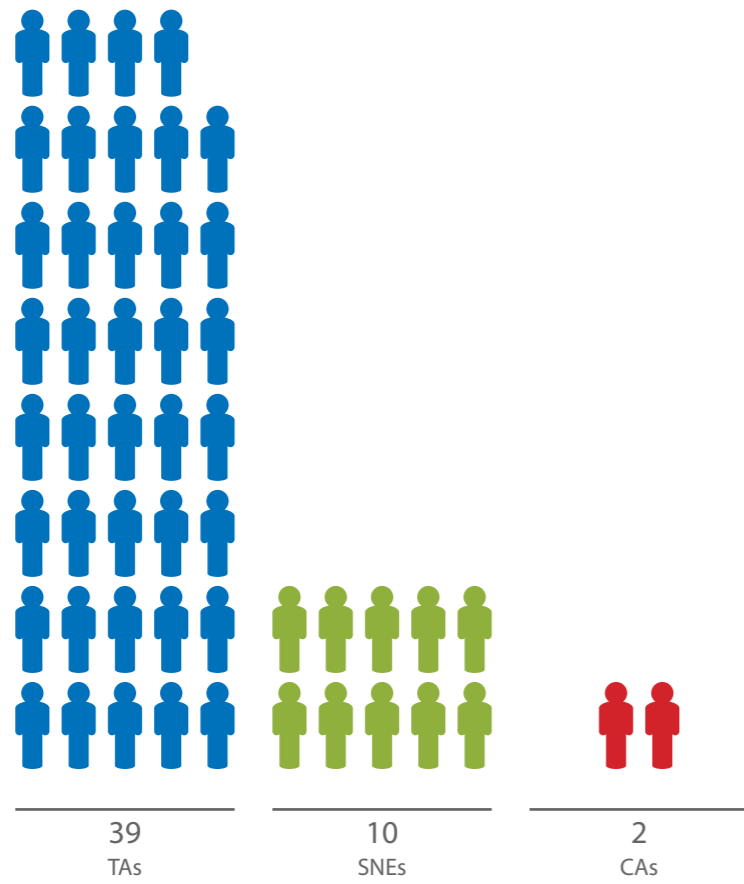
* A further five posts (AD7, AD6, 2 AD5, AST3) were confirmed at the end of 2011, with a starting date of January and February 2012.

In 2011 the Agency worked towards recruiting the remaining administrative and technical staff to support its operations and proper functioning pursuant to Regulation (EC) No 713/2009. The recruitment process encountered some unexpected difficulties relating to the specificities of the positions. Nevertheless, 41 members of staff (39 temporary agents and 2 contract agents) and 10 SNEs were recruited by the end of 2011, out of which 36 members of staff and 9 SNEs joined the Agency in 2011 and 5 temporary agents and 1 SNE were to join the Agency in January and February 2012.

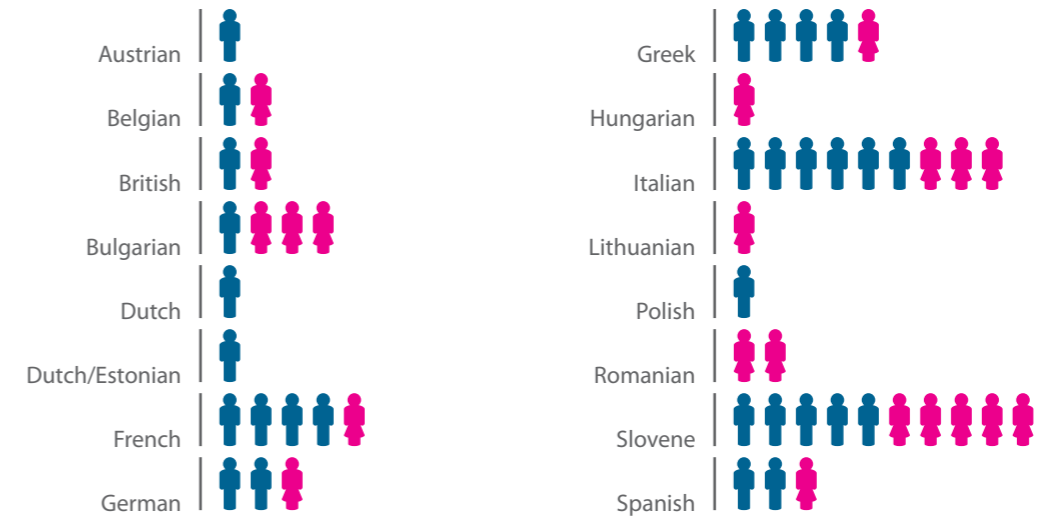
The organisational chart of the Agency as of 31 December 2011 is presented below.



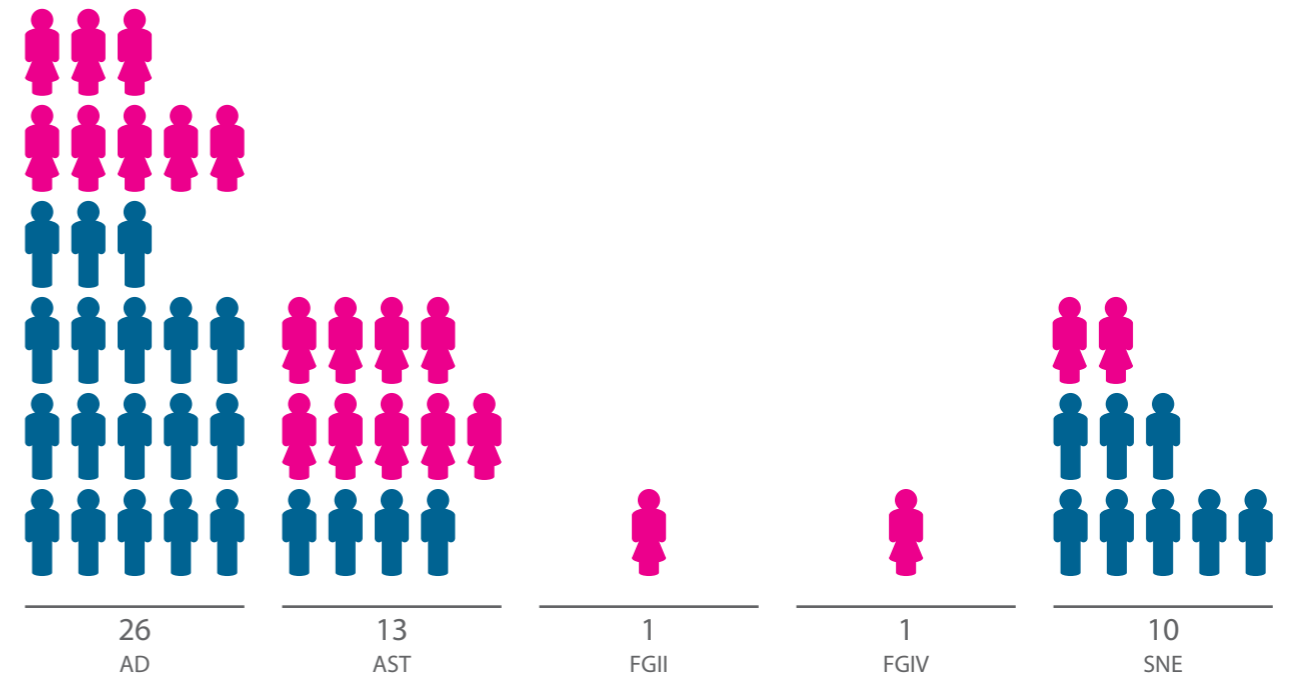
Total staff recruited - December 2011



Employees by nationality and gender as of 31 December 2011



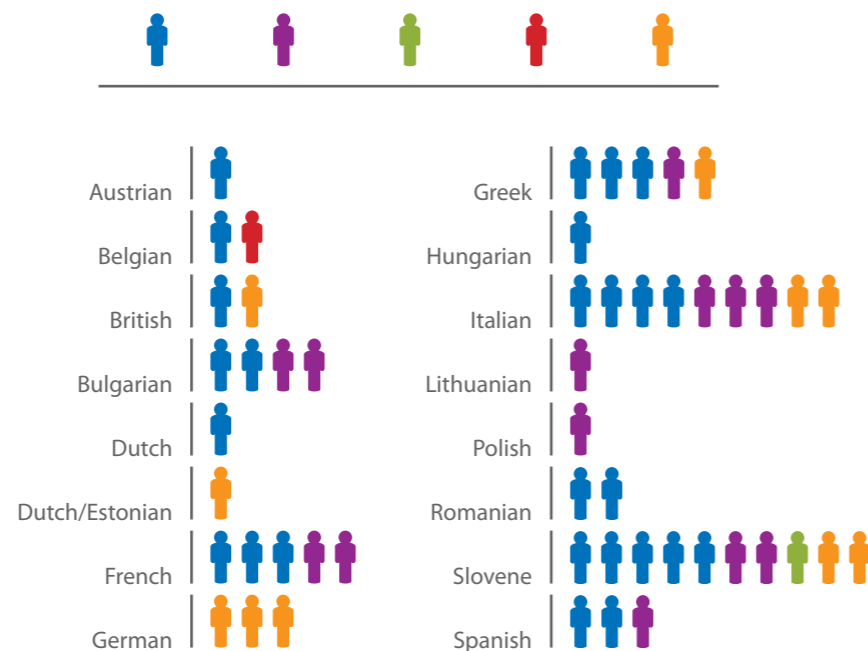
Employees by grade and gender as of 31 December 2011



Employees by grade and country as of 31 December 2011

The Agency currently employs 41 staff members and 10 SNEs of different geographical origin. Staff and SNEs are nationals of 16 different Member States: Slovenia, Italy, Greece, France, Bulgaria, Germany, Spain, Romania, the Netherlands, United Kingdom, Belgium, Austria, Estonia, Hungary, Lithuania and Poland.

	AD	AST	FGII	FGIV	SNE	Grand Total
Austrian	1					1
Belgian	1			1		2
British	1				1	2
Bulgarian	2	2				4
Dutch	1					1
Dutch/Estonian					1	1
French	3	2				5
German					3	3
Greek	3	1			1	5
Hungarian	1					1
Italian	4	3			2	9
Lithuanian		1				1
Polish		1				1
Romanian	2					2
Slovene	5	2	1		2	10
Spanish	2	1				3
Grand Total	26	13	1	1	10	51



ANNEX 3: Final Annual Accounts and Financial Reports

The Agency's approved budget for the financial year 2011 amounted to 5,119,000 € and included 119,000 € of the EFTA contribution.

At the time when the financial autonomy was granted to the Agency (8 March 2011) the total available commitment appropriation amounted to 4,400,898.05 € (4,362,607.98 from the EU subsidy). The Agency implements its budget on a centralised basis with the budget implementation tasks performed

directly by the Agency. The financial workflow complies with the 'four eyes principle'. In 2011 the Agency had one Authorising Officer, the Director; one Authorising Officer by Delegation, the Head of Administration department; and one Authorising Officer by Sub-delegation, the Head of Electricity Department. Delegation and sub-delegation have been assigned in order to ensure continuity of the service, also in the Director's absence.

Economic outturn account

For the year ending 31 December 2011	8 March – 31 December 2011/€
REVENUE	
European Commission subsidy	4,362,607.98
Other operating revenue	38,290.07
TOTAL OPERATING REVENUE	4,400,898.05
ADMINISTRATIVE AND OPERATIONAL EXPENSES	
Staff expenses	1,887,289.29
Fixed asset related expenses	112,674.20
Other administrative expenses	1,029,584.75
Operational expenses	444,356.83
TOTAL ADMINISTRATIVE AND OPERATIONAL EXPENSES	3,473,905.07
SURPLUS/(DEFICIT) FROM OPERATING ACTIVITIES	926,992.98
FINANCIAL OPERATIONS	
Financial operations expenses	62.15
SURPLUS/ (DEFICIT) FROM FINANCIAL ACTIVITIES	(62.15)
SURPLUS/(DEFICIT) FROM ORDINARY ACTIVITIES	926,930.83
ECONOMIC RESULT OF THE YEAR	992,022.29

Balance sheet

ASSETS as of 31 December 2011	8 March – 31 December 2011/ €
NON-CURRENT ASSETS	
Intangible fixed assets	28,191.70
Tangible fixed assets	459,311.32
Plant and equipment	456.56
Computer hardware	416,282.16
Furniture and vehicles	41,182.25
Other fixtures and fittings	1,390.35
TOTAL NON-CURRENT ASSETS	487,503.02
CURRENT ASSETS	
Short-term receivables	41,015.09
Current receivables	207.43
Sundry receivables	23,495.52
Prepaid expenses and accrued income	17,312.14
Cash and cash equivalents	2,387,634.18
TOTAL CURRENT ASSETS	2,428,649.27
TOTAL CURRENT AND NON-CURRENT ASSETS	2,916,152.29
EQUITY AND LIABILITIES	
EQUITY	
Economic result of the year	992,022.29
TOTAL EQUITY	992,022.29
CURRENT LIABILITIES	
Accounts payable	1,989,221.46
Current payables	5,667.92
Accrued expenses and deferred income	401,416.73
Accounts payable with consolidated entities	1,582,136.81
TOTAL CURRENT LIABILITIES	1,989,221.46
TOTAL EQUITY AND LIABILITIES	2,916,152.29

Cash flow statement

For the year ending 31 December 2011	8 March – 31 December 2011/ €
Surplus/(deficit) from operating activities	926,992.98
CASH FLOWS FROM OPERATING ACTIVITIES	
Adjustments	
Amortization (intangible fixed assets)	5,333.55
Depreciation (tangible fixed assets)	107,340.65
Depreciation of assets transferred from the European Commission	3,598.77
(Increase)/decrease in Short term Receivables	(41,015.09)
Increase / (decrease) in Other liabilities	401,416.73
Increase/(decrease) in Current payables	5,667.92
Increase/(decrease) in Liabilities related to consolidated entities	1,582,136.81
Net Cash Flow from Operating Activities	2,991,472.32
CASH FLOWS FROM INVESTING ACTIVITIES	
Purchase of tangible and intangible fixed assets	(603,775.99)
Net Cash Flow from Investing Activities	(603,775.99)
FINANCING ACTIVITIES	
Financial operations revenues/expenses	(62.15)
Net Cash Flow from Financing Activities	(62.15)
Net increase/(decrease) in cash and cash equivalents	2,387,634.18
Cash and cash equivalents at the beginning of the period	0.00
Cash and cash equivalents at the end of the period	2,387,634.18

Statement of changes in net assets

As at 31 December 2011/€		
Net Assets	Economic result of the year	Total Net Assets
Balance as of 8 March 2010	0.00	0.00
Economic result of the year	992,022.29	992,022.29
Balance as of 31 December 2011	992,022.29	992,022.29

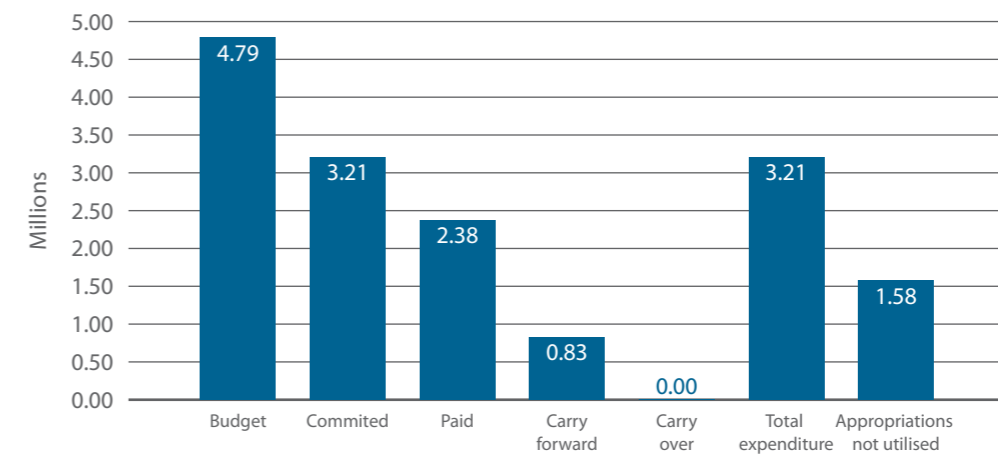
Revenue outturn statement

8 March – 31 December 2011/€	
INCOME	
European Commission subsidy	4,371,199.15
EFTA contribution	119,000.00
Miscellaneous income	0.00
TOTAL INCOME	4,490,199.15
EXPENSES	
Expenditure related to employees of the Agency -Title I	
Payments	1,915,262.83
Carry forwards and carry overs	268,258.32
Agency's building and associated expenses - Title II	
Payments	207,570.77
Carry forwards and carry overs	301,738.77
Operational expenditure - Title III	
Payments	258,730.87
Carry forwards and carry overs	369,840.56
TOTAL EXPENSES	3,212,402.12
Total appropriations not utilised	1,277,797.03
REVENUE OUTTURN BEFORE SPECIAL ITEMS	1,277,797.03
Cancelled carry overs	292,288.63
Correction from data migration	2,146.27
Exchange rate differences	-807.05
REVENUE OUTTURN	1,571,424.88

Budget implementation

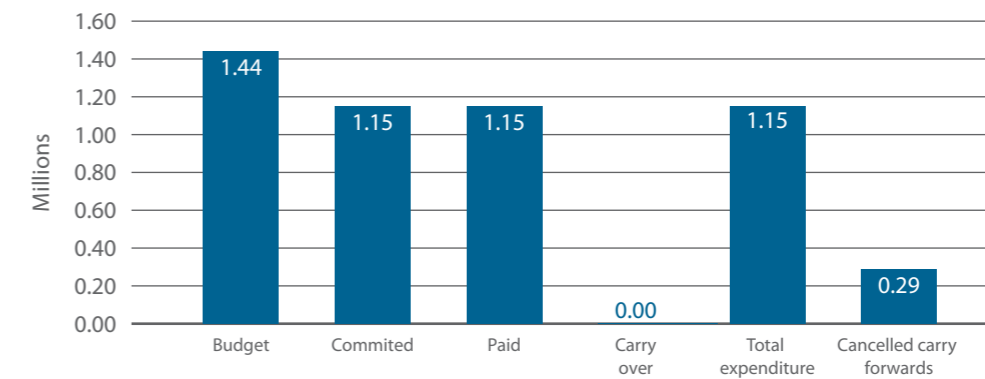
Implementation of current year budget - fund source C1		8 March – 31 December 2011/ €
TITLE 1		
Budget		3,108,457.00
Committed		2,107,521.15
Paid		1,915,262.83
Carry forward		192,258.32
Carry over		0.00
Total expenditure		2,107,521.15
Appropriations not utilised		1,000,935.85
Executed		67.80%
TITLE 2		
Budget		750,888.00
Committed		509,309.54
Paid		207,570.77
Carry forward		301,738.77
Carry over		0.00
Total expenditure		509,309.54
Appropriations not utilised		241,578.46
Executed		67.83%
TITLE 3		
Budget		933,000.00
Committed		595,571.43
Paid		258,730.87
Carry forward		336,840.56
Carry over		0.00
Total expenditure		595,571.43
Appropriations not utilised		337,428.57
Executed		63.83%
TOTAL		
Budget		4,792,345.00
Committed		3,321,402.12
Paid		2,381,564.47
Carry forward		830,837.65
Carry over		0.00
Total expenditure		3,321,402.12
Appropriations not utilised		1,579,942.88
Executed		67.03%

Implementation of 2011 budget - fund source C1



Implementation of previous year carried over budget - fund source C8		2011/€
TITLE 1		
Budget		216,435.43
Committed		39,964.16
Paid		39,964.16
Carry forward		0.00
Carry over		0.00
Total expenditure		39,964.16
Cancelled carry forwards		176,471.27
Executed		18.46%
TITLE 2		
Budget		1,160,828.86
Committed		1,083,864.69
Paid		1,083,864.69
Carry forward		0.00
Carry over		0.00
Total expenditure		1,083,864.69
Cancelled carry forwards		76,964.17
Executed		93.37%
TITLE 3		
Budget		66,569.42
Committed		27,716.23
Paid		27,716.23
Carry forward		0.00
Carry over		0.00
Total expenditure		27,716.23
Cancelled carry forwards		38,853.19
Executed		41.64%
TOTAL		
Budget		1,443,833.71
Committed		1,151,545.08
Paid		1,151,545.08
Carry over		0.00
Total expenditure		1,151,545.08
Cancelled carry forwards		292,288.63
Executed		79.76%

Implementation of 2011 budget - fund source C8



ANNEX 4: State of Play of Implementing Rules Adopted by the Agency Consistent With Its Staff Policy

The adoption of the IRs started at the beginning of 2011 with the aim of adopting:

- at least the Implementing Rules related to recruitment of staff and individual rights by end of 2011;
- all Implementing Rules by the end of 2013.

The table hereunder gives a provisional roadmap for the adoption of the Implementing Rules:

STAFF REGULATIONS	DECISION	YEAR OF ADOPTION
Art. 1 V§4 - Definition of the handicap	C(2004)1318 69-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 42bis – Parental leave	C(2010)7572	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 42ter – Special leave in case of serious illness of a family member	C(2010)7494	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 59, 60 and Art. 16, 59, 60 and 91 du RAA - Vademecum for sick leave	C(2004)1597 92-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 67 and Art.1§2 d) of Annex VII – Household Allowance	C(2004)1364 51-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 2 §4 of the Annex VII – Allowances for persons considered as dependent children	C(2004)1364 50-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 3 of the Annex VII – School Allowance	C(2004)1313 53-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 7§3 of the Annex VII – Place of Origin	C(2004)1364 57-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 8 of the Annex VII – Refund of travel expenses to place of origin	C(2004)1588 56-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Article 4 of Annex VIII concerning the taking into account, for purposes of calculating pension rights, of periods of activity previously completed by staff	C(2004)1364 61-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Articles 11 and 12 of Annex VIII to the Staff Regulations on transferring pension rights	C(2011)1278	Adopted by analogy in 2011: Decision AB n° 09/2011
Article 26 of Annex XIII to the Staff Regulations on transferring pension rights – transitional provisions	C(2004)1588 62-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Article 22 (4) of Annex XIII to the Staff Regulations	C(2004)1588 59-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Articles 67 and 68 of the Staff Regulations and Articles 1, 2 and 3 of Annex VII	C(2004)1364 52-2004	Adopted by analogy in 2011: Decision AB n° 09/2011

STAFF REGULATIONS	DECISION	YEAR OF ADOPTION
Transitional measures required by the revision of the Staff Regulations and CEOS	C(2004)1613 88-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 2§3 of Annex IX (cf. Art. 30 of the same annex) – Disciplinary procedure	C(2004)1588 86-2004	Planned for 2012
Art. 29, 30, 31 and 32 of Staff Regulations and Art. 15 of CEOS – Entry grade and step	C(2004) 1313 55-2004	Adopted in 2011: Decision AB n° 12/2011
Art. 71 and Art. 11 to 13a Annex VII – Missions Guide	C(2008)6125	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 39 of CEOS – Early retirement (temporary agents)	C(2004)1588 63-2004	Planned for 2013
Art. 55bis Annex IVbis – Part Time	C(2010)7573	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 55ter – Job sharing	C(2004)1314 67-2004	Planned for 2012
Art. 15 – Outside Activities	C(2004)1597 85-2004	In the process revision – planned for 2012
Art. 40 – Leave on personal grounds	C(2004)1597 82-2004	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 51 – Underperformance	C(2004)1597 87-2004	Planned for 2012
Art. 57 and 58 – Vademecum of leaves	C(2010)7495	Adopted by analogy in 2011: Decision AB n° 09/2011
Art. 2, 4, 5, 7 and 29 – Middle Management	C(2004)1597 73-2004	Adopted in 2011: Decision AB n° 24/2011
Art. 7§2 – Interim for management posts	C(2004)1597 83-2004	Final version with EC – planned adoption in the beginning of 2012
Art. 9 – Staff Committee	Decision of 23/12/97	Adopted in 2011: Decision AB n° 27/2011
Art. 12 bis – Moral or Sexual Harassment	C(2006) 1624/3	Planned for 2012
Art. 24 bis – Training	IA 839/94 (no decision of the Commission)	Final version with EC – planned adoption in the beginning of 2012
Art. 43 – Evaluation	DGE du 23/12/2004 / C(2008) 3026/ Decision concerning the appraisal for the director	Adopted in 2011: Decision AB n° 25/2011 (staff) Adopted in 2011: Decision AB n° 26/2011 (Director)
Art. 45 – Promotion or reclassification	DGE du 23/12/2004 / C(2008) 3028	Draft decision submitted to EC for ICS – planned adoption in 2012
Art. 45bis – Certification	C(2005)1940 51-2005 / C(2007) 5694	Not applicable since no officials are forecasted to join the Agency

STAFF REGULATIONS	DECISION	YEAR OF ADOPTION
Art. 10§3 of Annex XIII – Attestation	C(2006) 5788	Not applicable since no officials are forecasted to join the Agency.
Art. 8 and Art. 12 of CEOS – New policies in terms of recruitment of temporary agents		Adopted in 2011: Decision AB n° 10/2011
Art. 79§2 and Art. 82 of CEOS – contract agents (Recruitment)	C(2004)1313 49-2004	Adopted in 2011: Decision AB n°11/2011
Art. 87 § 1 of CEOS – Evaluation of contract agents	Decision similar to that for the temporary agents	Adopted in 2011: Decision AB n° 25/2011
Art. 5 of SR and Art.10 of CEOS – Types of employment of temporary agents	Model of decision to be established	Planned for 2013
Art. 80§3 of CEOS – Job Descriptions of contract agents	Model of decision to be established	Planned for 2013
Art. 87§3 of CEOS – Reclassification of contract agents	Model of decision to be established	Draft decision submitted to EC for ICS – planned adoption in 2012
Teleworking	C(2009)10224	Final version with EC – planned adoption in the beginning of 2012

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Catalogue number: 10.2851/12177

ISBN 978-92-95083-05-9



9 789295 083059



Publishing date: 03/08/2012

Document title:

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