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**ACER OPINION n° 01-2012**

**ON ENTSOG's 2012 ANNUAL WORK PROGRAMME**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009, establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as "Regulation (EC) No 713/2009" and "Agency"), and, in particular, Articles 6(3)(b), 6(4), 15(1) and 17(3) thereof;

HAVING REGARD to 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 (hereafter referred to as "Regulation (EC) No 715/2009"), and, in particular, Articles 8(3)(d), 8(5), 9(2), 10(1) and 10(3) thereof;

WHEREAS the European Network of Transmission System Operators for Gas (hereafter referred to as "ENTSOG") submitted by e-mail on 22 November 2011 the draft 2012 Annual Work Programme, including the information regarding the consultation process, to the Agency for its opinion;

WHEREAS, pursuant to Articles 6(3)(b) and 6(4) of Regulation (EC) No 713/2009 and Article 9(2) of Regulation (EC) No 715/2009, the draft annual work programme has to be evaluated by the Agency taking into account the objectives of non-discrimination, effective competition and the efficient functioning of the market;

WHEREAS the draft 2012 Annual Work Programme is consistent with ENTSOG tasks, as described in Article 8 of Regulation (EC) No 715/2009, the 2012 Work Programme of the Agency and the joint Commission/ACER/ENTSOs three-year work plan;

WHEREAS the draft 2012 Annual Work Programme is ambitious and its priorities are in line with the targets for the Internal Energy Market;

WHEREAS the consultation provided is not entirely consistent with the provisions of Article 10(1) and 10(3) of Regulation (EC) No 715/2009;

WHEREAS the Board of Regulators gave its favourable opinion on 24 January 2012;

HAS ADOPTED a Reasoned Opinion on ENTSOG's 2012 Annual Work Programme, with the following recommendations, comments and guidance.

- 1 ACER welcomes the draft 2012 Annual Work Programme and recognises that this is the first submission of an Annual Work Programme by ENTSOG. The present Reasoned Opinion is formulated taking this into account.

2 In terms of process, the Agency formulates the following:

- a) Regarding the stakeholder consultation, and pursuant to Article 10 of Regulation (EC) No 715/2009, ENTSOG is required to “conduct an extensive consultation process, at an early stage and in an open and transparent manner, involving all relevant market participants, and, in particular, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 5(1)”. This obligation has been transposed into ENTSOG’s Rules of Procedure, whose Articles 26(2) and 27(3) require the Association, in a formal consultation process, to “publish the respective documents at least on its website and [to] notify all registered stakeholders and interested parties of the consultation to be conducted asking for feedback on the documents”. The Agency believes that the consultation on the draft 2012 Annual Work Programme has not been carried out to the extent envisaged in Regulation (EC) No 715/2009 and in ENTSOG’s Rules of Procedure. The information provided to the Agency shows that ENTSOG only consulted a limited number of the most important stakeholders (directly addressed by e-mail). The draft 2012 Annual Work Programme was not released for comments on ENTSOG’s website, and did thus not reach all relevant market participants as required by Article 10 of Regulation (EC) No 715/2009.
- b) Also, ENTSOG’s submission did not show how the observations that ENTSOG received during the consultation have been taken into account. However, such evaluation and, where relevant, the indication of how the observations received during the consultation have been taken into account is required pursuant to Article 10(3) of Regulation (EC) No 715/2009.
- c) The Agency recommends ENTSOG to fully comply with the provisions of Article 10 of Regulation (EC) No 715/2009 for its next Annual Work Programmes, thus ensuring the participation of all interested stakeholders and providing transparency on how the observations received during the consultation have been taken into consideration.

3 In terms of the content of the 2012 Annual Work Programme, the Agency formulates the following:


- a) In general, the 2012 Annual Work Programme is comprehensive in content and contains information on the main aspects of work. The Agency supports ENTSOG’s transition to a fully operational and capable organisation fulfilling all requirements of the Third Energy Package, recognising the challenges with respect to resourcing and planning the work that this will entail.
- b) The Agency welcomes, supports and encourages ENTSOG’s plans to strongly involve stakeholders in the processes of developing network codes, the Ten Year Network Development Plan, Gas Regional Initiatives, Transparency, and all other activities necessary for the implementation of the Internal Gas Market.
- c) The Agency encourages ENTSOG to involve Distribution System Operators (DSOs) in the process of developing network codes to the extent necessary, particularly with respect to their role as system operators.
- d) Regarding the involvement of ENTSOG in the development of the Gas Target Model, the Agency encourages ENTSOG to take an active role in the process of implementing the results

into the development of network codes without prejudice to the provisions of the framework guidelines.

- e) The Agency also specifically encourages ENTSOG and its members to take a leading role in the development of pilot projects which can be undertaken on a regional basis as part of the Regional Initiatives, and their interactions and the possibility of extending these across and between regions. Likewise, the Agency would welcome any indications on cost and benefit associated with implementing these projects, which should reflect market arrangements being introduced to support the development of the Internal Market.
- f) The Agency will continue to support the publication of information by ENTSOG and the TSOs which help with the planning of the system(s) and with special regards to Safety and Security of Supply.
- g) The Agency emphasises the role of ENTSOG and the TSOs in the provision of information required by ACER for monitoring and reporting purposes
- h) The Agency encourages cooperation at regional level in preparation for the implementation of the provisions contained in the proposed Regulation on guidelines for trans-European energy infrastructure.
- i) The Agency recommends ENTSOG to assess the possibility of a more distinct separation of the work related to the development of common network operation tools and that relating to technical cooperation with third party TSOs, whilst retaining the high-level coordination of activities in these two areas.

Done at Ljubljana on 24 January 2011

For the Agency:

  
Alberto Pototschnig  
Director



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