

BOARD OF REGULATORS OPINION no 01/2012

ON THE PRELIMINARY DRAFT BUDGET FOR 2013 FINANCIAL YEAR

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

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

HAVING REGARD to the Director's preliminary draft budget for 2013 financial year submitted for opinion to the Board of Regulators and providing the basis for the estimate of revenue and expenditure of the Agency for the 2013 financial year to be prepared by the Administrative Board;

HAVING REGARD to the draft Multi-annual Staff Policy Plan 2013-2015 prepared by the Director accompanying the preliminary budget.

WHEREAS

- The Agency's tasks under Regulation (EC) No 713/2009 complement and coordinate the work of National Regulatory Authorities; The Agency participates in the creation of European network rules; takes binding individual decisions on terms and conditions for access and operational security for cross border infrastructure and on exemptions, subject to certain conditions; gives advice to the European Institutions on various energy issues; monitors and reports developments of the energy markets.
- The National Regulatory Authorities through CEER provided a significant contribution to the Agency in 2011 (including administrative support for and servicing of the Agency Working Groups and hosting the Agency's liaison office in Brussels). They anticipate this contribution will continue in 2012. The National Regulatory Authorities participate in and provide significant expertise to the work of the Agency in the Working Groups which are composed of National Regulatory Authorities' representatives and Agency's staff. The European Council, on 4 February 2011, confirmed that "safe, secure, sustainable and affordable energy contributing to European competitiveness remains a priority for Europe" and that "the EU needs a fully-functioning, interconnected and integrated internal energy market". In this context, the Council set targets for the completion of the internal energy market by 2014 and the removal of energy islands by 2015.

- Some of the Agency's tasks under Regulation (EC) No 713/2009, notably with regard to the creation of European network rules, must be intensified during 2013 in order to help in achieving the objective of the completion of the internal energy market; moreover, the Agency's efforts should also be targeted at the early implementation of projects and further market integration notably through the Regional Initiatives.

Since its establishment, the Agency has been assigned additional tasks and responsibilities, notably by Commission Regulation (EU) 838/2010 on the inter-TSO Compensation Mechanism and Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (hereafter referred to as the "REMIT"). Further, new tasks and responsibilities are proposed for the Agency in the European Commission's Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC. These additional regulatory duties and responsibilities have important resource implications.

- REMIT provides for the monitoring of wholesale energy markets by the Agency in close collaboration with National Regulatory Authorities. The Agency must monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation. It will collect the data for assessing and monitoring wholesale energy markets and undertake an initial assessment and analysis for breaches of REMIT. National Regulatory Authorities are required to cooperate at regional level and with the Agency in carrying out this monitoring and may also monitor trading activity in wholesale energy products at national level.
- In accordance with REMIT, market participants shall register and provide the Agency with a record of wholesale energy market transactions, including orders to trade. The Agency is responsible for establishing a European register of market participants, based on national registers.
- These tasks, notably the establishment of the European register of market participants and the acquisition, processing and preliminary analysis of the records of transactions to be provided by market participants, or by other persons or authorities acting on their behalf, require the development of dedicated IT platforms, data exchange protocols and large IT investments. At the same time, every possible effort should be made to identify synergies with the monitoring activities performed by National Regulatory Authorities.
- Following the Board of Regulators discussion of the practical implications of the implementation of REMIT for the Agency and National Regulatory Authorities, including a survey to assess the resource implications for the National Regulatory Authorities, a preliminary assessment indicates that most National Regulatory Authorities currently have little or no experience with monitoring market abuse and with wholesale data collection on a continuous basis, as provided under REMIT. A number of National Regulatory Authorities are concerned that competent staff will be difficult to recruit.

- National Regulatory Authorities are also responsible for ensuring that REMIT is enforced in the Member States and will need to have the necessary investigatory powers. Given the limited experience and resources and the new tasks of the National Regulatory Authorities such as enforcement, significant input to the monitoring of wholesale energy markets through the Agency's monitoring activities can be anticipated.
- **Pursuant to Article 6 of the Rules of Procedure, the Board of Regulators HAS ADOPTED, on the basis of the above-mentioned considerations, the following REASONED OPINION on the preliminary draft budget of the Agency for the financial year 2013, prepared by the Director pursuant to Article 23(1) of the Agency Regulation:**
 - On the basis of the forecast of the activities which the Agency will be called to perform in 2013 pursuant to Regulation (EC) No 713/2009, against the 2014 targets of the completion of the internal energy market, and the implementation of REMIT, the Board of Regulators welcomes the preliminary draft budget for the 2013 Financial Year, amounting to 12,028,851 €(euro).
 - The Board of Regulators considers that the preliminary draft budget is both well balanced and reflects the greater IT investment required to implement REMIT amounting to over 3 million €(euro) in 2013.
 - The Board of Regulators stresses that the MSPP 2013-2015 is defined on the basis of the main tasks and responsibilities assigned to the Agency by the Third Legislative Package and the 15 additional staff envisaged in the financial statement for REMIT and notes that the draft preliminary budget for 2013 reflects these considerations. However, the Board of Regulators is of the clear and substantiated opinion that a larger staff will be required for properly implementing REMIT.
 - Both the Agency and the National Regulatory Authorities will mutually explore possible synergies of their cooperation and coordination that will ensure proper monitoring and transparency of energy markets; however, the survey undertaken by the Board of Regulators demonstrates that National Regulatory Authorities, which will themselves face additional responsibilities under REMIT, are also subject to resource limitations. Significant help both in monitoring of wholesale energy markets through the Agency's monitoring activities is thus expected.
 - While National Regulatory Authorities have a comprehensive understanding of developments on energy markets in their Member State, a strong cross- border market monitoring is essential to achieve a fully functioning, interconnected and integrated internal energy market. The Agency needs to be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it notably and most immediately under REMIT. The highest standards of efficiency should be achieved by recruiting the necessary expertise in the operation of electricity and gas markets and systems in the Union. In similar terms, National Regulatory Authorities need to be provided with the appropriate human resources to undertake their new tasks under REMIT.

- The Board of Regulators also notes that the proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and the proposed Regulation for Connecting Europe Facility (CEF), envisages additional tasks for the Agency, including in the process for the selection of Projects of Common Interest and the monitoring of the development of such projects. Although the proposed Regulation will not enter into force before 2013, the Commission has already started the preparatory work to identify projects of common interest for the 12 energy priority corridors and to this end initial meetings of the regional working groups have started, without prejudice to the inter institutional negotiations of the Regulation. The Agency is expected to undertake preparatory work including the provision of an opinion on the Cost Benefit Analysis prepared by ENTSOs, its participation at the regional groups proposing PCI and in providing an opinion on the proposed lists and monitoring their implementation etc. In addition, Commission Regulation (EU) 838/2010 on the inter-TSO Compensation Mechanism contains additional tasks and responsibilities for the Agency, which requires involving an adequate amount of human resources.
- The Board of Regulators, therefore, welcomes the appreciation of DG Energy that the additional tasks that the Agency will be called to perform in the infrastructure area will require extra staff, 12 FTE AD level and a minimum of 2 FTE at AST level. However, the Board of Regulators notes that the legislative acts proposed by the Commission are currently under inter-institutional negotiations with their entry into force expected for 1 January of 2013 (for TEN-E guidelines) and in 2014 for the CEF. The Board of Regulators also understands that additional staffing for the Agency will be provided through the financial statement for the CEF. Resources should, wherever possible, be made available to the Agency ahead of the entry into effect of the CEF if the Agency is to perform its additional tasks already in 2013.
- The Board of Regulators also notes that in addition to the National Regulatory Authorities providing a significant contribution to the Agency (through CEER), a number of National Regulatory Authorities contribute to financing Agency's studies related to Impact Assessments of the Framework Guidelines. Given the severe budget limitations faced by the National Regulatory Authorities themselves, the Board of Regulators stresses that the Agency's budget should, as much as possible, reflect a full financing of these studies in the following years.
- Given the above considerations, the commitment expressed by the Commission to reduce the number of posts in its establishment plan by 1% in 2013 and following years should not require the Agency to reduce its staff.

Done at London, 26 March 2012

For the Board of Regulators:



Lord Mogg
Chair of the Board of Regulators