

BOARD OF REGULATORS OPINION no 01/2013

ON THE PRELIMINARY DRAFT BUDGET FOR 2014 FINANCIAL YEAR

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

HAVING REGARD to Decision 01/2010 of the Board of Regulators adopting its Rules of Procedure (hereafter referred to as the "Rules of Procedure") as modified by Decision 03/2012 and, in particular, Article 6 thereof;

HAVING REGARD to the Director's preliminary draft budget for 2014 financial year submitted for the Board of Regulators, pursuant to Article 23(1), and providing the basis for the estimate of revenue and expenditure of the Agency for the 2014 financial year to be prepared by the Administrative Board;

HAVING REGARD to the draft Multi-annual Staff Policy Plan 2014-2016 prepared by the Director accompanying the preliminary budget.

WHEREAS

- (1) 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.
- (2) The European Council, on 4 February 2011, confirmed that "safe, secure, sustainable and affordable energy contributing to European competitiveness remains a priority for Europe" and that "the EU needs a fully-functioning, interconnected and integrated internal energy

market”. In this context, the Council set targets for the completion of the internal energy market (IEM) by 2014 and the removal of energy islands by 2015.

- (3) Some of the Agency’s tasks under Regulation (EC) No 713/2009, notably with regard to the creation of European network rules, must not only continue vigorously but also be intensified in 2014 in the light of the IEM completion target. Moreover, the Agency’s efforts should also be targeted at the early implementation of projects and further market integration notably through the Regional Initiatives. This has been reflected in the Commission’s Communication¹ on the IEM which recognises that there are challenges that need to be tackled urgently in order to complete the internal energy market by 2014 and that the Commission will, as a matter of priority, ensure the further development of well-functioning, cross-border, wholesale markets in all timeframes by developing network codes. During 2014 the Agency will be called to provide *inter alia* Reasoned Opinions and/or Recommendations on 3 Network Codes in electricity and 1 Network Code in gas, as well as to provide advice and support on Network Codes during the comitology process, as appropriate and prepare for and monitoring of the implementation of those Network Codes adopted.
- (4) ACER is also expected to continue to promote regional initiatives to play a prominent role in early implementation of the Network Codes. Regional Initiatives should help, *inter alia*, to put in place coordinated auctions of a common set of bundled capacity products in gas and to progress on the pan-European market coupling in electricity.
- (5) REMIT acknowledges that efficient market monitoring at Union level is vital for detecting and deterring market abuse on wholesale energy markets and that the Agency is best placed to carry out such monitoring as it has both a Union-wide view of electricity and gas markets, and the necessary expertise in the operation of electricity and gas markets and systems in the Union. A well-functioning and transparent wholesale energy market is a precondition to give consumers confidence that prices fairly reflect the interplay of demand and supply and are not distorted by abusive behaviour.

¹ 15.11.2012, COM (2012) 663 final, Communication from the Commission to the European Parliament, the Council and the European economic and Social Committee and the Committee of the Regions “Making the internal energy market work”.

- (6) To perform its monitoring activities, the Agency will have to collect trading and fundamental data from wholesale energy markets and undertake an initial assessment and analysis to identify cases where there is ground to believe that breaches of the prohibitions in REMIT have occurred. Such cases will then be notified to the National Regulatory Authorities (NRAs), which have a comprehensive understanding of developments on energy markets in their Member State, and which are responsible for the formal investigation and enforcement. Close cooperation and coordination between the Agency and national authorities is, therefore, essential to ensure proper monitoring and transparency of energy markets and effective enforcement of the prohibitions under REMIT. However, most NRAs currently have little experience or no experience of monitoring market abuse and of collecting wholesale data on a continuous basis, as required under REMIT. The cooperation and coordination between the Agency and NRAs can deliver the expected synergies and benefits only if the Agency is able to perform the monitoring activities assigned to it in a highly effective manner as possible. Therefore, the Agency will need to secure the appropriate human resources and IT tools to fulfil its monitoring mission.
- (7) The Agency is also called to establish and manage the European register of market participants, as well as to arrange access to monitoring data by NRAs and other authorities, ensuring operational reliability and professional secrecy. This requires the development of dedicated IT platforms and data exchange protocols.
- (8) The draft estimate of expenditure and revenue is based on the assumption that funds will indeed be available to the Agency during 2013 to progress substantially in the development of the REMIT-related IT infrastructure. The 2014 budget includes provisions for the completion and maintenance of the REMIT-related IT infrastructure and to cover the additional staff required for the market monitoring.
- (9) Since its establishment, the Agency has been assigned additional tasks and responsibilities, notably by the Regulation of the European Parliament and of the Council on Guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC (hereinafter referred to as “TEN-E Regulation”). These new tasks including in the process of development of the CBA methodology, the selection of projects of common interest and their implementation, have important resource implications.

(10) The NRAs participate in and provide significant expertise to the work of the Agency in the Working Groups which comprise NRAs' representatives and Agency's staff. NRAs also provide, through the Council of European Energy Regulators, significant support to the Agency (including administrative support for and servicing of the Agency Working Groups and hosting the Agency's liaison office in Brussels). The CEER particularly values the coordination of its activities with those of ACER and the service to the members of the Board of Regulators by the Agency's liaison office in Brussels and, therefore, commits to continue its support for the coming year.

- 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 2014, prepared by the Director pursuant to Article 23(1) of the Agency Regulation:

The Board considers that the preliminary draft budget is well balanced and proportionate to the wide range of activities that the Agency will be called to perform in 2014.

More specifically, the Board agrees that the preliminary draft budget for the 2014 Financial Year, of 15,525,320 € (euro) is in line with the requirements of the Agency for that year. The increase of the budget for the 2014 Financial Year with respect to the adopted 2013 Budget is fully justified notably in respect of the completion of the implementation of REMIT and the starting of the monitoring of wholesale energy markets, and the additional tasks assigned to the Agency by the TEN-E Regulation.

The Board considers it essential that the Agency is provided with the necessary human resources, of adequate expertise, to undertake its monitoring activities under REMIT in the most effective manner. The Agency and the National Regulatory Authorities will mutually explore possible synergies of their cooperation and coordination. However, it should be noted that National Regulatory Authorities, which will themselves face additional responsibilities under REMIT, are also subject to resource limitations. Furthermore, NRAs cannot commit to bear the responsibilities of the Agency for monitoring the European market given their responsibilities mainly for their national market.

More specifically, the Board endorses the Director's estimate that 35 FTE additional staff will be required to operate market monitoring under REMIT, starting in the second half of 2014 (the full

monitoring under REMIT becomes operational six months after the adoption by the Commission of the Implementing Acts on the records of transactions).

The Board considers it essential that the Agency is not only provided with the necessary human resources but resources which have adequate expertise to undertake both the REMIT responsibilities and the additional tasks assigned to it by the new TEN-E Regulation. Thus substantial reinforcement of the Agency capability in the TSO Cooperation area (with an additional 14 FTE positions in total for both Electricity and Gas Departments) is needed.

The Board, therefore, welcomes the increase in the amount in Title 1, and in particular Chapter 11, to cover personnel costs, in view of the need of the Agency to recruit the extra staff required performing the new tasks under REMIT and the TEN-E Regulation.

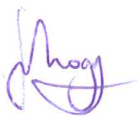
The Board of Regulators also welcomes:

- The sum of 1,500,000€ allocated to REMIT operation, to cover the costs of maintaining the REMIT-related IT tools;
- the increase in the amount allocated to cover the costs of expert consultations (amounting to 525,000€ compared to 400,000€ in 2013), provisioned separately from the cost for consultancy services for REMIT;
- the increase in the amount allocated to cover the costs of workshops and public hearings (compared with the 2013 budget). This corresponds to the intensified activities of the Agency including in new areas which require the appropriate involvement of stakeholders.

The Board of Regulators, therefore, endorses the MASPP 2014-2016 which reflects the staffing requirements for the Agency to perform its tasks and responsibilities under the Third Legislative Package, as expanded by REMIT and the new TEN-E Regulation.

Ljubljana, 20 March 2013,

For the Board of Regulators



Lord Mogg, Chair of the Board of Regulators

