

Board of Regulators (BoR) Opinion no 02/2015

On the European Commission's Assessment under Article 16 of Regulation (EC) No 713/2009

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 16 (4) 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 amended by Decision 03/2012, Decision 01/2014 and Decision 01/2015, in particular, Article 6 thereof;

HAVING REGARD to the European Commission's assessment under Article 16(3) (hereafter referred to as the European Commission's assessment) and its Decision of 18 June for the extension of the term of the Director, pursuant to Article 16(4) of Regulation (EC) No 713/2009¹;

- Pursuant to Article 6 of its Rules of Procedure, the Board of Regulators HAS ADOPTED, on the basis of the above-mentioned considerations and in line with Article 16(4) of the Regulation (EC) No 713/2009, the following REASONED OPINION on the European Commission's assessment:

The Board takes note that the European Commission's assessment is focused on the period from March 2011 to December 2014 given the Agency's tasks were formally assumed as of 3 March 2011².

The Board also welcomes that the European Commission's assessment draws from its evaluation under Article 34 of the Regulation (EC) No 713/2009³ of the activities of the Agency in relation to the objectives and tasks defined in the relevant Regulations and the Agency's annual work programmes.

The Board reiterates the main findings of its Recommendations (of 19 February 2014) following the European Commission's evaluation of the activities of the Agency (22.1.2014 C (2014) 242 final) hereafter referred to as "BoR Recommendations"⁴.

ASSESSMENT OF THE DIRECTOR'S PERFORMANCE

The BoR welcomes the European Commission's assessment which reflects its evaluation under Article 34 of Regulation No 713/2009 and the related BoR Recommendations. The Director has undertaken his tasks effectively, efficiently and in line with the EU regulatory framework. Thus **the Board reiterates its high appreciation of the hard work of the Director over these years which has been instrumental to the Agency's establishment and achievements.**

The BoR welcomes and confirms the European Commission's findings that the Agency has successfully fulfilled its tasks of fostering National Regulatory Authorities' (NRAs) coordination and has set up working methods and procedures that ensure that NRAs participate in the cooperation for the achievement of the objectives specified in its work programmes.

¹ Article 16(3) of the Regulation (EC) No 713/2009: "3. The Director's term of office shall be five years. In the course of the nine months preceding the end of that period, the Commission shall undertake an assessment. In the assessment, the Commission shall examine in particular: (a) the performance of the Director; (b) the Agency's duties and requirements in the coming years. The assessment concerning point (b) shall be carried out with the assistance of an independent external expert."

Article 16(4): "The Administrative Board, acting on a proposal from the Commission, after having consulted and given the utmost consideration to the assessment and the opinion of the Board of Regulators on that assessment and only in those cases where it can be justified by the duties and requirements of the Agency, may extend once the term of office of the Director by no more than three years."

² Under Article 34 of the Regulation (EC) No 713/2009, Articles 5-11 shall apply from 3 March 2011.

³ European Commission's evaluation of 22.1.2014 of the activities of the Agency for the Cooperation of Energy Regulators (ACER) under article 34 of Regulation (EC) 713/2009, C(2014)242.

⁴ http://www.acer.europa.eu/The_agency/Organisation/Board_of_Regulators/BoR%20Recommendations/Recommendation%20BoR%2001-2014.pdf

The Board notes that NRAs' cooperation has clearly been in evidence, both in the role of the BoR itself and in the Agency's Working Groups, which have been an effective platform for the NRAs involvement in the Agency's work and for enhancing the collaboration and cooperation of NRAs within the Agency. The Board notes that in fulfilling their statutory roles both NRAs and the Director have contributed to the Agency's effectiveness in undertaking its duties as well as in developing the Agency's broader thinking and action on strategic issues including on the "Bridge to 2025"⁵. The Board also notes that the Director has responded well to the contributions and suggestions in the BoR to improve the process of collaboration for these arrangements.

The European Commission acknowledges that since its inauguration the Agency has assumed a wider role and responsibilities under the TEN-E Regulation⁶ (Regulation (EU) 347/2013) and REMIT⁷ that represent an increase to the workload of the Agency. The Board fully supports the view that the Agency has become a credible and respected Institution playing a prominent role in the EU regulatory framework.

The Board reiterates the key conclusions of its Recommendations underlining *inter alia* that the Agency has correctly focused – and continues to do so – on the right priorities and that its tasks have been carried out efficiently, effectively and in a timely manner. These achievements are notable against the tight deadlines, increasing tasks and challenging policy context, particularly given the limited resources the Agency has had at its disposal.

Without prejudice to this assessment, the Board has repeatedly voiced its concern that if inadequate resources are allocated by the budgetary authorities to these tasks, the Agency may not be able to fulfil its new legal responsibilities under REMIT (particularly given the start of the real market monitoring as of October 2015) and this could seriously hamper the monitoring of the wholesale energy markets.

AGENCY WORKING METHODS

The European Commission's assessment is that the Agency's structure is overall well perceived and very effective and notes "the establishment of internal working groups, composed of experts from NRAs and the Agency's staff, has also contributed to the involvement of as many NRAs as possible in the Agency's work ensuring that regulatory decisions taken are as informed and coordinated as possible and reflect best practices and the interests of stakeholders across the EU".

The Board welcomes this assessment and notes that the NRAs' contribution, including in the preparation of the Agency's acts, the secondments of their staff to the Agency despite their own resources constraints, and their in kind support to the Agency, has been significant and their cooperation within the Agency has worked well over the first years of the Agency's establishment.

The Board welcomes the European Commission's assessment that the Agency has undertaken important efforts to improve communication and transparency, notably with public consultations, the improvement of the Agency's website and the introduction of "citizen summaries" and other actions to reach out to consumers.

The Board agrees with that assessment and notes that a set of actions have been taken to improve transparency, including the high-quality reports on the monitoring of the internal electricity and gas markets and the Regional Initiatives progress; the REMIT annual reports; the regular reports by the Agency to the European Parliament and to stakeholders on progress on the Agency's overall work and Work Programmes. The Board notes that additional actions have been taken to increase transparency through the quarterly debriefings provided by the Director and the BoR Chair.

⁵ Energy Regulation: A Bridge to 2025, Conclusions Paper attached to the Recommendation of the Agency for the Cooperation of Energy Regulators No 05/2014 of 19 September 2014 on the regulatory response to the future challenges emerging from developments in the internal energy market, of 19 September 2014

http://www.acer.europa.eu/official_documents/acts_of_the_agency/sd052005/supporting%20document%20to%20acer%20recommendation%2005-2014%20-%20energy%20regulation%20a%20bridge%20to%202025%20conclusions%20paper.pdf

⁶ Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on Guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009

⁷ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency

The Board underlines that the Director's experience, professional expertise and competence, all of a high standard, have been instrumental to establishing and smoothly running the Agency.

AGENCY'S DUTIES AND REQUIREMENTS IN THE COMING YEARS

The Board agrees with the European Commission's assessment that the Agency will evolve with the implementation of European market rules and dealing with the new requirements of a changing market structure. As energy market integration in Europe progresses, the Agency's focus will shift towards monitoring the implementation and the appropriate modifications of the adopted codes. The Board also agrees that to ensure a coordinated implementation of market rules, NRAs' cooperation would need to be strengthened and allow for the exchange of experience and best practices. Similarly, the Agency's responsibilities under REMIT are changing with the start of the real market monitoring in October 2015.

The Board notes that the landscape in which the Agency operates is also set to change in the context of the Energy Union and the Agency's role is likely to grow. A greater role for the Agency in a more Europeanised energy sector to match the pace of integration is envisaged in the "Bridge to 2025" notably to provide effective regulatory oversight of the European regulatory framework. The Agency in cooperation with NRAs will ensure that the activities of EU bodies comply with their legal obligations to avoid any "regulatory gap"; and will support the cooperation of NRAs. Any future role of the Agency should strengthen the cooperation of NRAs and facilitate their action at European level to enable them to meet the challenges of market integration to 2025. Such cooperation and collaboration between NRAs is necessary in order to ensure a consistent approach to regulation. The Board underlines that, in fulfilling its current and future mandate, the Agency should strive to maintain the complementarity of regulatory action at European and national level which will become even more vital in a more integrated market.

The Board takes note that the European Commission shall further consider and elaborate those aspects in the framework of the electricity market design initiative which will also address governance issues. We shall fully consider the European Commission's proposals in the electricity market design consultation paper and, in particular, the aspects addressing governance issues and provide our detailed feedback.

CONCLUSION

The Board concludes that the Director's abilities, skills, competences and experience in setting up the Agency are highly suitable and appropriate for the challenges faced by the Agency now and in the next years. The Board fully endorses the European Commission's Recommendation that the work of the Agency and its upcoming duties and requirements fully justify an extension of the mandate of the current Director for a further three years.

30 June 2015,

**BoR Chair,
Lord Mogg**

