



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market
The Director

Brussels,
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ACER
The Director
Mr Alberto Pototschnig
Ljubljana

Lord Mogg
Chairman of the Board of Regulators
Ljubljana
Delivered by e-mail

Subject: Nomination of ACER Board of Regulators Member

I am writing to you as follow up to the issue concerning the lack of clarity in Regulation 713/2009 establishing ACER as to who (the Government or the National Regulatory Authority (NRA)), has the responsibility for nominating the ACER Board of Regulators member ahead of his/her formal appointment by the Administrative Board.

As agreed at the meeting of the Board of Regulators in December 2013, I have consulted the Legal Service of the Commission which has agreed on the following approach for the future:

- Member States are responsible under Directives 2009/72/EC and 2009/73/EC for designating the regulatory body which fulfils the functions of NRA. A letter notifying the Commission of such a designation (or change therein) is not required where a national legislative act unequivocally indicates the regulatory body which fulfils the function of NRA according to the Third Package (as is now the case for CNMC in Spain).
- The body designated by the Member State as the NRA nominates its Member and Alternate to the Board of Regulators, and informs the Agency thereof with a view to proceed to the formal appointment by the Administrative Board.

Such an interpretation is in accordance with the principle of independence of the NRAs which underpins the Third Package and is specifically underlined in Regulation (EC) No 713/2009.

I trust this clarifies the issue.

Klaus-Dieter Borchardt
(signed electronically)