

Agency for the Cooperation of Energy Regulators. Third energy package

2007/0197(COD) - 13/07/2009 - Final act

PURPOSE: to establish an Agency for the Cooperation of Energy Regulators (third package of legislative measures concerning the internal energy market).

LEGISLATIVE ACT: Regulation (EC) No 713/2009 of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators.

CONTENT: the Council unanimously adopted the package of legislative measures concerning the internal energy market, approving all of the European Parliament's second-reading amendments. The legislative package also includes: (i) a [Directive](#) concerning common rules for the internal market in electricity; (ii) a [Regulation](#) on conditions for access to the network for cross-border exchanges in electricity; (iii) a [Directive](#) concerning common rules for the internal market in natural gas; and (iv) a [Regulation](#) on conditions for access to the natural gas transmission networks.

The third package of legislative measures on the internal energy market aims to:

- supplement the existing rules so as to ensure that the internal market operates smoothly for all consumers and to enable the EU to achieve a more secure, competitive and sustainable energy supply;
- give energy consumers more protection and the benefit of the lowest possible energy prices;
- promote sustainability by stimulating energy efficiency and guaranteeing that small companies, too, in particular those investing in renewable energy, will have access to the energy market;
- ensure fair competition between EU companies and third country companies.

This Regulation establishes an Agency for the Cooperation of Energy Regulators. The new Agency will assist national regulatory authorities in exercising at Community level the regulatory tasks performed in the Member States and, where necessary, will coordinate their action. It shall issue opinions and recommendations addressed to transmission system operators, regulatory authorities, the European Parliament, the Council or the Commission. It shall take individual decisions in specific cases and shall submit to the Commission non-binding framework guidelines (framework guidelines).

The Agency's **mandate** shall include the following tasks:

- **General tasks:** the Agency may, upon a request of the European Parliament, the Council or the Commission, or on its own initiative, provide an opinion or a recommendation to the European Parliament, the Council and the Commission on any of the issues relating to the purpose for which it has been established;
- **Tasks as regards the cooperation of transmission system operators:** the Agency shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure of the ENTSO for Electricity. It shall participate in the development of network codes. The Agency shall monitor progress as regards the implementation of projects to create new interconnector capacity. It shall monitor the implementation of the Community-wide ten-year network-development plans. If it identifies inconsistencies between such a plan and its implementation, it shall investigate the reasons for those inconsistencies and make recommendations to the transmission system operators,

national regulatory authorities or other competent bodies concerned with a view to implementing the investments in accordance with the Community-wide network-development plans. The Agency shall also monitor the regional cooperation of transmission system operators;

- **Tasks as regards the national regulatory authorities:** the Agency shall also formulate recommendations in order to help the regulatory authorities and economic actors to exchange best practice. It shall provide a framework within which national regulatory authorities can cooperate. It shall promote cooperation between the national regulatory authorities and between regulatory authorities at regional and Community level;
- **Tasks as regards terms and conditions for access to and operational security of cross-border infrastructure:** the Agency shall decide upon those regulatory issues that fall within the competence of national regulatory authorities, which may include the terms and conditions for access and operational security, in certain cases;
- **Monitoring and reporting on the electricity and natural gas sectors:** the Agency, in close cooperation with the Commission, the Member States and the relevant national authorities including the national regulatory authorities, shall monitor the internal markets in electricity and natural gas, in particular the retail prices of electricity and natural gas, access to the network including access of electricity produced from renewable energy sources, and compliance with the consumer rights laid down in the Directive concerning common rules for the internal market in electricity and the Directive concerning common rules for the internal market in natural gas.

The Agency shall be a **Community body** with legal personality, and shall comprise:

- an **Administrative Board:** this shall be composed of nine members. Two members and their alternates shall be appointed by the Commission, two members and their alternates by the European Parliament and five members and their alternates by the Council. No member of the Administrative Board shall also be a Member of the European Parliament. The Administrative Board should act independently and objectively in the public interest and should not seek or take political instructions;
- a **Board of Regulators:** this shall comprise senior representatives of the regulatory authorities and one non-voting representative of the Commission. Only one representative per Member State from the national regulatory authority may be admitted to the Board of Regulators.

The Board of Regulators should act independently from any market interest, should avoid conflicts of interests and should not seek or take instructions and not accept recommendations from any government of a Member State, the Commission or from any other public or private entity. The decisions of the Board of Regulators should, at the same time, be in compliance with Community legislation concerning energy, the environment, the internal energy market and competition. The Board of Regulators should report to the Community institutions as regards its opinions, recommendations and decisions.

The European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by members of that committee;

- a **Director:** the Director shall be appointed by the Administrative Board following a favourable opinion of the Board of Regulators, on the basis of merit as well as skills and experience relevant to the energy sector, from a list of at least three candidates proposed by the Commission, following a public call for expression of interest. The Director's term of office shall be five years.

The European Parliament and the Council may call upon the Director to submit a report on the performance of his duties. The European Parliament may also invite the Director to make a statement before its competent committee and answer questions put by the members of that committee. The Director shall submit the draft work programme of the Agency to the European Parliament.

Consultations and transparency: the Agency shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall make public, on its own website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board, of the Board of Regulators and of the Board of Appeal.

The Agency shall make public an annual report on the results of the monitoring. When making public its annual report, the Agency may submit to the European Parliament and to the Commission an opinion on the measures that could be taken to remove any barriers.

Evaluation: the Commission, with the assistance of an independent external expert, shall carry out an evaluation of the activities of the Agency. The Commission should submit to the European Parliament and to the Council by three years after the first director has taken up his duties, and every four years thereafter, a report on the Agency's specific tasks and the results achieved, accompanied by any appropriate proposals. In that report, the Commission should make suggestions on additional tasks for the Agency.

ENTRY INTO FORCE: 03/09/2009. Articles 5 to 11 (the Agency's tasks) shall apply from 03/03/ 2011.