
Agency for the Cooperation of Energy Regulators

The Rules of Procedure of the
Board of Regulators of the Agency

- Part I -

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04 May 2010

Board of Regulators of the Agency for the Cooperation for Energy Regulators

- Rules of Procedure -

The Board of Regulators of the Agency for the Cooperation of Energy Regulators (ACER),

Having regard to:

- (1) Regulation (EC) No 713/2009 of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators
- (2) Directive 2009/73/EC concerning common rules for the internal market in gas and repealing Directive 2003/55/EC
- (3) Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC
- (4) Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005
- (5) Regulation (EC) No 714/2009 on conditions for access to the networks for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003

Considering that the purpose of the Agency shall be to assist the regulatory authorities referred to in Article 35 of Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity (hereafter “Electricity Directive”) and Article 39 of Directive 2009/73/EC of the European Parliament and of the Council of concerning common rules for the internal market in natural gas (hereafter “Gas Directive”) in exercising at Community level the regulatory tasks performed in the Member States and, where necessary, to coordinate their action.

Considering that the independence of sectoral regulatory authorities is not only a key principle of good governance but also a fundamental condition to ensure market confidence.

Considering that, reflecting the situation on a national level, the Board of Regulators shall according to article 14 (5) of the Regulation (EC) No 713/2009 of the European Parliament and of the Council establishing an Agency for the Cooperation of Energy Regulators (hereafter “ACER Regulation”) act independently of market interests and shall not seek or take instructions from any government or other public or private entity or from the Commission.

Considering the importance of guaranteeing the independence of the Agency, its technical and regulatory capacities and its transparency and efficiency, national regulatory authorities within the Agency must act independently in fulfilling their role.

Considering that the structure of the Agency should be adapted to meet the specific needs of energy regulation and that the specific role of the national regulatory authorities needs to be taken fully into account within the Board of Regulators (hereafter “BoR”) established through the ACER Regulation.

Considering the Better Regulation Strategy endorsed by the European Commission, together with its three action lines including promoting the design and application of better regulation tools at the EU level (notably simplification, reduction of administrative burdens and impact assessment); working more closely with Member States to ensure that better regulation principles are applied consistently throughout the EU by all regulators; and reinforcing the constructive dialogue between stakeholders and all sectoral regulators at EU and national level.

Adopts the following Rules of Procedure:

Part 1

Scope and objective

Article 1 - Scope and objective

- 1.1 Pursuant to Article 14.4 of the ACER Regulation the BoR must set out in greater detail its working arrangements in its Rules of Procedure together with the arrangements governing voting, especially the rules applicable to one member acting on behalf of another and also, where appropriate, the rules governing quorum. The Rules of Procedure may also provide for specific working methods to consider issues arising in the context of regional cooperation initiatives.

- 1.2 These Rules of Procedure will govern primarily how regulators cooperate and work together but also how they work with the other organs of the Agency. In that respect, the Rules of Procedure shall reflect the specificities and tasks of the BoR within the Agency. Those tasks are set out in Article 15 of the ACER Regulation.

Part 2

Structure and Organisation of the Board of Regulators

Section One

Internal organisation of the Board of Regulators

Article 2 - Membership of the Board of Regulators

- 2.1 Pursuant to Article 14.1 of the ACER Regulation, the Board of Regulators (“BoR”) will comprise senior representatives (“Members”) of their National Regulatory Authorities, in accordance with Article 35.1 of Directive 2009/72 EC and Article 39.1 of Directive 2009/73 EC, (hereafter “NRAs”), and one non-voting representative of the Commission. Only one representative for the NRA from each Member State may be admitted to the Board of Regulators.
- 2.2 Each NRA shall be responsible for nominating its Member and an alternate from its current senior staff.
- 2.3 A NRA may be represented at the meetings of the BoR by its Member, its alternate or a duly mandated proxy. The proxy should provide a power of attorney (see Annex 1) which should be sent in advance of the meeting to the Secretariat of the BoR. The proxy shall be a senior staff member of the NRA or another Member of the Board of Regulators. A member shall not have more than one proxy vote in addition to his/her own vote.
- 2.4 The Commission may participate in the meetings of the BoR but without the right to vote.
- 2.5 Each NRA will appoint a senior staff representative who will act as a Communications Officer. His/her task will facilitate the relevant information exchange between his/her organisation and that of other Members.

- 2.6 In respect of any third country which has concluded agreements with the Community (whereby it has adopted and is applying Community law in the field of energy and, if relevant, in the fields of environment and competitiveness), a senior representative of the NRA may be invited to participate in the BoR's meetings. The modalities of this participation will depend on the relevant provisions of said agreements. For certain agenda items, the BoR may decide to restrict participation to members only.
- 2.7 Members shall keep regulatory authorities at regional level¹ and regulatory authorities for small systems² of their Member State informed about the BoR discussions and decisions, where necessary. Each Member shall make all appropriate arrangements to ensure that he/she may speak for the national competent energy regulators as a whole in the event that regulatory authorities at regional level and/or regulatory authorities for small systems have an interest in the matter discussed.

Article 3 - Election and competences of the Chair and Vice-Chair of the Board of Regulators

- 3.1 Pursuant to Article 14.2 of the ACER Regulation, the BoR shall elect a Chair and a Vice-Chair from among its voting members. The election should take place by secret ballot.
- 3.2 The term of office of the Chair and the Vice-Chair shall be two-and-a-half years and renewable. The term of office of the Chair and that of the Vice-Chair shall expire when they cease to be members of the BoR. Members of the BoR whose remaining term of office on the national level will not cover the Chair/Vice-Chair mandate should inform the BoR when applying for the position of Chair/Vice-Chair.
- 3.3 The first election of the Chair and of the Vice-Chair shall take place during the first meeting of the BoR after approval of its Rules of Procedure.

¹ A regulatory authority at regional level within a Member State as foreseen in article 35.2 of the Electricity Directive (Directive 2009/72/EC) and in article 39.2 of the Gas Directive ((Directive 2009/73/EC).

² A regulatory authority for a small system as foreseen in articles 35.3 of the Electricity Directive (Directive 2009/72/EC) and in article 39.3 of the Gas Directive ((Directive 2009/73/EC) means a regulatory authority for a small system on a geographically separate region whose consumption, in 2008, accounted for less than 3% of the Member State of which it is part, where such a body has been designated by a Member State, by way of derogation from paragraph 1 of Articles 35 and 39.

- 3.4 The BoR may elect a Chair and a Vice-Chair only if at least two-third of the members are present or represented. If the majority of the members are not present or represented at the first meeting, a second meeting shall be convened, at least 15 days after the first meeting, which may validly deliberate irrespective of the number of members present or represented.
- 3.5 If the office of Chair or Vice-Chair falls vacant before the end of the term of office, the Vice-Chair or Chair as appropriate shall arrange within three months for the election of a successor. The Member then elected shall serve as Chair or Vice-Chair for a full term of office or until the end of his membership of the Board of Regulators whichever is earlier.
- 3.6 In case both the Chair and the Vice-Chair are absent or impeded, the Member of the BoR who has been serving as a national regulator for the longest time should chair the BoR for as long as the Chair and the Vice-Chair are absent or impeded and arrange within three months for the election of a new Chair and a Vice-Chair pursuant to Article 3.4.
- 3.7 The Chair will convene and chair the meetings of the BoR.
- 3.8 According to Article 12 (3) of the ACER Regulation the Chair may attend the meetings of the Administrative Board (hereafter "AB") without the right to vote. In case of absence, the Chair may appoint a nominee (normally the Vice-Chair) to attend such meetings.
- 3.9 The Chair is responsible for representing the views and the policies of the BoR externally and may make a statement before the competent committees of the European Parliament and/or answer questions put by members of such committees if so invited.
- 3.10 The Vice-Chair shall automatically take the place of the Chair if she or he is prevented from attending his duties and as such convene the BoR meetings.

Article 4 - Meetings of the Board of Regulators

- 4.1 Meetings of the BoR will be convened as often as needed but in principle once per month, at the invitation of the Chair or the Vice-Chair in the case foreseen in Article 3.10.
- 4.2 The secretarial services of the BoR shall be provided by the Agency staff when appointed ("Secretariat"). The BoR may decide that for certain items on the agenda, the Secretariat and/or representatives from third countries shall not be present.
- 4.3 The Chair may, on a case-by-case basis, invite external experts to attend a meeting as observers or speakers or following a proposal of a member of the BoR. The invitation shall be issued with the assent of the members of the BoR.
- 4.4 Members of the BoR may be accompanied in the BoR by some of the staff of their NRA as observers.
- 4.5 Subject to proposal by the relevant national member and agreement by the BoR, members of the BoR may also be accompanied by staff from regulatory authorities at regional level and/or regulatory authorities for small systems for topics of particular interest, without the right to vote.

Article 5 - Agenda, minutes, documentation of the Board of Regulators

- 5.1 The Chair shall establish the agenda for the meeting and ensure that it contains all items to be discussed and or approved and take into account proposals submitted by the members. Each agenda item should indicate whether it is accompanied by a document, including whether that document is for discussion, approval or information. The Chair shall clearly indicate what items of the Agenda are submitted for approval. The draft agenda for approval at the meeting shall be circulated to the members at least two weeks before the meeting.

- 5.2 The Chair may decide that items for approval may be removed from the agenda if the relevant documents have not been circulated two weeks before the meeting. Exceptionally, it may be necessary to submit documents closer to the meeting date. Such late submission will be subject to justification and prior approval of the Chair.
- 5.3 The Secretariat shall prepare and maintain the minutes of the meetings, assist the BoR in their functions and execute other secretarial functions assigned to it by the BoR.
- 5.4 Having received the approval of the Chair, the Secretariat shall submit a first draft of the minutes to members within one week after the meeting. The final draft minutes shall be forwarded to members for approval at the next meeting.

Article 6 - Voting rules within the Board of Regulators

- 6.1 Each member of the BoR or his/her alternate or proxy has one vote. The Chair may decide that the vote for her or his NRA shall be exercised by the alternate or by the proxy.
- 6.2 Members should strive to reach consensus in taking decisions. In case consensus is not achieved, the decision shall be put to a vote. The proposal submitted for approval is accepted if it obtains a two-thirds majority of Members present or represented.
- 6.3 The necessary quorum for a valid BoR decision generally is met if the majority of its voting Members are present or represented. If the majority of the Members are not present or represented at the first meeting, a second meeting shall be convened, at least 15 days after the first meeting, which may validly deliberate irrespective of the number of members present or represented.
- 6.4 If a decision was taken in a voting procedure, the Chair will ensure that the members who voted against the proposal may express in writing their dissenting opinions to the decision taken by the BoR. For the purpose of transparency, any dissenting opinions will be attached to the BoR decision to be forwarded to the Director.

- 6.5 The Chair may decide that a matter is urgent and may use the electronic procedure to seek agreement to a proposal. If the proposal has already been discussed in a meeting of the BoR and if the BoR agrees that it should be finalised through an electronic procedure, Article 6.7 shall apply.
- 6.6 If the matter has not been discussed in a meeting of the BoR, the Chair shall inform all Members of the nature and implications of the matter and that she or he intends to launch an electronic procedure. If within 2 working days, one-third of the BoR members formally notify their disagreement with the use of the electronic procedure, it shall not be possible to launch it.
- 6.7 If agreement has been reached on the use of an electronic procedure, the Chair shall set out the deadline for comments (at least 3 working days) and the consequences of failure to respond within that deadline. The Chair shall ensure that comments received are, as far as possible, taken into account and circulate a consolidated version for final approval within 2 working days without the possibility to submit comments. In accordance with Article 6.2, Members should strive to reach consensus in taking decisions. In case consensus is not achieved, the decision shall be put to a vote (deadline: at least 3 working days). If the matter has previously been discussed in a meeting of the BoR, the proposal submitted for approval is accepted if it obtains a two-thirds majority of Members voting, subject to a majority of Members participating in the electronic procedure. If the matter has not previously been discussed in a meeting of the BoR, the proposal submitted for approval is accepted if it obtains a two-third majority of all Members.

Part Three

**Opinion on the director candidate(s)
Annual Work Programme and Budget of the Agency**

Article 7 - Opinion of the BoR on the Director candidate(s)

- 7.1 The BoR shall make a proposal on the profile of the Director of the Agency and submit it to the Administrative Board and to the Commission. The profile should be agreed by consensus; if consensus cannot be reached the general voting rules/quorums of the BoR as set out in Article 6.2 shall apply.
- 7.2 The BoR shall deliver its opinion to the Administrative Board on the candidate(s) to be appointed as Director from a list of at least three candidates proposed by the Commission. According to Article 15(2) of the ACER Regulation, the BoR shall reach that decision on the basis of a three-quarters majority of its Members.

Article 8 - Adoption of the Work Programme

- 8.1 The Agency shall adopt an annual work programme and publish it after its final approval by the Administrative Board.
- 8.2 According to Article 17 (6) of the ACER Regulation the Director shall submit the draft work programme for the following year to the BoR by 30 June of each year at the latest. The BoR will provide its input to the draft work programme on the regulatory issues of the Agency.
- 8.3 The BoR shall approve the work programme of the Agency for the coming year, if it is in line with the input provided to the Director. If the draft annual work programme does not comply with its input, the BoR may amend the draft work programme for a further vote. The general voting rules/quorums of the BoR as set out in Article 6.2 shall also apply for the approval of the work programme. The Chair shall present the agreed work programme before 1 September for adoption by the Administrative Board.

<p style="text-align: center;">Part Four Amendments of the Rules of procedure</p>

Article 9 - Amendments of the Rules of procedure

- 9.1 Amendments to these Rules of Procedure can be proposed by the Chair or a Member of the BoR. In the latter case, the proposed amendment must be forwarded to the Chair who is responsible to submit it to all the members of the BoR. An amendment of the Rules of Procedure must be approved following the rules set out in Article 6.2 of these Rules of Procedure.
- 9.2 Amendments to the Rules of Procedure may be adopted only if at least two-thirds of the members are present or represented.

**Annex 1
Power of Attorney**

The Member: [name]

Hereby appoints as his/her attorney-in-fact: [name]

To represent him/her at the meeting of the Board of Regulators of the Agency for the Cooperation of Energy Regulators, to be held:
on [date]
at [address]

With the following Powers

The attorney-in-fact may, on behalf of the Member:

1. Attend the meeting of the Board of Regulators
2. Participate to the discussion on the Agenda items with the following power:

- Participate to the vote (Vote for or against) on all the items of the Agenda
- Vote against on the following item(s): _____
- Vote for on the following item(s): _____

Further comments: _____

Signed in _____ on _____

Signature and name of the Signatory: