

BOARD OF REGULATORS OPINION no 01/2015

ON THE PRELIMINARY DRAFT BUDGET FOR 2016 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 amended by Decision 03/2012 and Decision 01/2014 and, in particular, Article 6 thereof;

HAVING REGARD to the Director's preliminary draft budget for the 2016 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 2016 financial year to be made by the Administrative Board;

HAVING REGARD to the draft Multi-annual Staff Policy Plan 2016-2018 prepared by the Director accompanying the preliminary budget.

WHEREAS

- (1) The European Council of May 2013 reaffirmed the objectives of completing the internal energy market (IEM) by 2014 and of developing interconnections so as to put an end to any isolation of Member States from European gas and electricity networks by 2015. The European Council called for particular priority to be given, *inter alia*, "to the effective and consistent implementation of the third "energy package", as well as speeding up the adoption and implementation of remaining network codes".
- (2) In its Communication of 25 February 2015¹, the European Commission proposed an Energy Union strategy which has five mutually-reinforcing and closely interrelated dimensions designed to bring greater energy security, sustainability and competitiveness, including, *inter alia*, energy security based on solidarity and trust, and a fully integrated European energy market. The Agency's tasks and responsibilities are at the heart of the European Energy Union strategy and serve in a coherent and consistent way four broader objectives strongly linked to the Communication: the Post-2014 internal energy market completion; the wholesale energy market integrity and transparency; the infrastructure challenge and other challenges including the facilitation of the development of flexible response and a more consistent approach to system adequacy and design of interventions. Nevertheless, the human and financial resources currently assigned to the Agency are not sufficient to fulfil its mission.
- (3) The European Council of 19, 20 March noted that the European Union is committed to building an Energy Union with a forward-looking climate policy on the basis of the Commission's framework strategy whose five dimensions are equally important and mutually reinforcing. It

¹ Energy Union Package: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank. A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy. COM(2015) 80 final, 25.2.15.

placed particular emphasis *inter alia* on accelerating infrastructure interconnections to secure energy security and on a well-functioning internal energy market.

- (4) We must ensure that the Agency is assigned the full staffing requirement.
- (5) In addition to the tasks entrusted by the Agency's founding Regulation regarding the Internal Energy Market, the TEN-E Regulation² entrusts the Agency with important additional tasks related to a well-interconnected Internal Energy Market by assigning it a role in the process for the selection and monitoring of the implementation of projects of common interest (PCIs), including formulating recommendations where appropriate, and in the regulatory treatment of PCIs. The Agency is also entrusted with tasks related to enabling investments with cross-border impact, including taking decisions on investment requests for cross-border cost allocation decisions when National Regulatory Authorities (NRAs) are unable to reach an agreement; these are essential for the realisation of PCIs and for a well-interconnected Internal Energy Market which lies at the core of the Energy Union strategy and the European Council conclusions in order to secure uninterrupted supply of energy. These tasks will indeed need the provision of additional human resources.
- (6) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency³ (hereinafter referred to as "REMIT") entrusts the Agency with the responsibility of monitoring trading in wholesale energy products in the EU and to ensure that NRAs carry out their monitoring, investigation and enforcement tasks in a coordinated and consistent way.
- (7) Integrity and transparency of wholesale energy markets is a pre-requisite for the achievement of fundamental parts of the Energy Union strategy, the completion of a well-functioning and efficient Internal Energy Market and security of energy supply. Furthermore, the Energy Union strategy has placed strong emphasis on greater transparency in the composition of energy costs and prices, by requiring regular and detailed monitoring and reporting, including on impacts of energy costs and prices on competitiveness.
- (8) In this context, the Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014⁴ has defined the dates by which the new sector-specific monitoring framework for wholesale energy markets will have to become fully operational and the Agency will have to start monitoring the EU wholesale energy markets using data reported by market participants and the purposely-developed IT system.
- (9) Wholesale energy trading data reporting and market monitoring by the Agency under REMIT will start on 7 October 2015. However, the Agency has not yet been assigned all the necessary human resources - estimated at 30 additional full-time staff members - to operate the new monitoring framework. Adequate staffing cannot be achieved through redeployment of ACER staff or through support from NRAs. REMIT itself acknowledges that, as energy markets in

² 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.

³ REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on wholesale energy market integrity and transparency.

⁴ COMMISSION IMPLEMENTING REGULATION (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency

Europe become increasingly interlinked, their effective monitoring requires a pan-European approach.

- (10) Close cooperation and coordination between the Agency and NRAs is essential to ensure proper monitoring and transparency of energy markets and effective enforcement of the prohibitions under REMIT. Cooperation and coordination between the Agency and NRAs can deliver the expected synergies and benefits only if the Agency can perform the monitoring activities assigned to it in a highly effective manner. Therefore, the Agency will need to secure the appropriate human resources and IT tools to fulfil its tasks under REMIT.
- (11) A lack of resources will lead to severe limitations in the capability of the Agency to fulfil its statutory mandate effectively: to monitor wholesale energy markets across the EU to detect and prevent market manipulation, attempted market manipulation and insider trading.
- (12) There is also a real risk that the whole EU framework to ensure the integrity and transparency of energy markets could suffer severe reputational criticism and that EU energy consumers will not be able to reap the full benefits of the single Internal Energy Market.
- (13) The Agency preliminary budget for the financial year 2016 includes the additional staffing required for the implementation of the above mentioned tasks and, more specifically nine (9) additional staff members to support the implementation of the tasks attributed to the Agency by the TEN-E Regulation, thirty (30) additional staff members to support the implementation of the tasks attributed to the Agency by REMIT and five (5) additional staff members to provide horizontal support for the daily functioning of the Agency with significantly more staff in the operational departments.
- (14) 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, as well as in the newly established Coordination Group. NRAs also provide, through the Council of European Energy Regulators (CEER), 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) which is particularly valued by the BoR. The provisions in both REMIT and the TEN-E Regulation, as well as the Agency's core tasks under the third package, are instrumental for the achievement of the targets set by the European Council and by the European Union strategy. Therefore, in addition to the support from NRAs, the Agency will need to secure the appropriate human resources to fulfil its tasks

- 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 2016, 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 and important range of activities that the Agency will be called to perform in 2016.

More specifically, the Board agrees that the preliminary draft budget for the 2016 Financial Year, of **20.078.441€ (euro)** is in line with the requirements of the Agency for that year.

The increase of the budget for the 2016 Financial Year with respect to the 2015 Budget is fully justified notably in respect of the overall tasks of the Agency on the basis of the draft 2016 Work Programme outline which reflects the effective execution of tasks of the Agency related to the Internal electricity and

gas markets under its founding Regulation, to the TEN-E Regulation and to REMIT.

In particular the increase of the budget for the 2016 Financial Year with respect to the 2015 Budget is fully justified also given that the Agency has so far been authorised to recruit only **15 staff members** for the implementation of REMIT. The Agency has already highlighted on several occasions the inadequacy of such resources and submitted requests for additional staff with the Agency's draft budgets for 2014 and, again, for 2015, both adopted by the Agency's Administrative Board with a supportive reasoned Opinion of the Board of Regulators. However, so far no additional staff have been authorised. With regard to 2015, whilst the draft budget adopted by the Administrative Board (with a supportive Opinion of the BoR) amounted to €16,558,587, the EU budget as adopted by the Budgetary Authority allocated only €11,266,000 to the Agency. As a result, the Agency 2015 Work Programme has been revised and important activities originally foreseen in it have been deprioritised (cancelled or postponed to 2016). Further postponement of the activities related to the implementation of REMIT will no longer be possible, given that wholesale energy trading data reporting and market monitoring by the Agency will start on 7 October 2015.

Hence 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 NRAs have been working and will continue to work together to ensure the most effective monitoring and enforcement of the obligation and prohibitions introduced by REMIT, exploiting all possible synergies in their cooperation and coordination. However, it should be noted that NRAs, which themselves face additional responsibilities under REMIT, are also subject to resource limitations. NRAs cannot commit to bear the responsibilities of the Agency for monitoring the European market given their responsibilities for their national markets.

Although different approaches regarding market monitoring can indeed be envisaged which will require different staffing levels, those will inevitably result in the Agency fulfilling to a different extent the requirements under REMIT, which would be suboptimal and exposed to the risks referred to above.

More specifically, the BoR has carefully reviewed and endorses the Director's estimate (in the preliminary draft budget for 2016) that **30 additional staff** will be required to monitor effectively wholesale energy markets through a two-stage process, with an initial automatic screening performed by surveillance software identifying anomalous events and a second more "sophisticated" analysis of trading in all 28 Member States to identify those anomalous events for which market abuse can be suspected. The BoR agrees that this task requires a wide range of expertise.

The BoR also acknowledges that a regional market monitoring approach by the Agency under REMIT would be needed in order to reflect the variety of market structures across Europe and regional market specificities, so that market monitoring is performed effectively and efficiently.

Against this context, the BoR agrees with the estimation of the preliminary 2016 draft budget and the draft MSPP that to cover the full range of required expertise for the effective implementation of REMIT there is a need of:

- 2 additional policy officers;
- 18 additional monitoring officers;
- one additional legal officer;
- 3 additional IT officers;
- 5 assistants; and

- 1 additional managerial position given the restructuring of the Market Monitoring Department in two departments (Department of Market oversight and Department of Analysis and Surveillance).

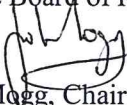
The BoR considers it also essential that the Agency is not only provided with the necessary human resources but resources which have adequate expertise to undertake both the REMIT responsibilities and the additional tasks assigned to it by the new TEN-E Regulation.

The BoR is strongly supportive of the need for substantial reinforcement of the Agency capability in the TSO Cooperation area with nine (9) additional FTE positions for both the Electricity and Gas Departments. Indeed the BoR recognises that the minimum expertise at the Agency required for the performance of its functions and tasks as defined by the TEN-E Regulation require regulatory expertise at European and national level, particularly regarding gas and electricity network regulation; experience in pre-investment project analysis regarding technical, economic, and financial aspects of large-scale projects; and ability to review and execute cost related decisions.

The BoR recognises that these challenges and the increase of staff in both areas also result in the need for an increase of the resources available for the central and support functions by five (5) staff members.

The BoR, therefore, endorses the draft MSPP 2016-2018 which reflects the staffing requirements for the Agency to perform its tasks and responsibilities under the Third Package, as expanded by REMIT and the new TEN-E Regulation.

Ljubljana, 25 March 2015,
For the Board of Regulators



Lord Mogg, Chair of the Board of Regulators