

Note from the Director of the Agency for the Cooperation of Energy Regulators to the Board of Regulators and the Administrative Board on the revision of ACER's draft 2014 Annual Work Programme

1 Background

Each year the Director prepares a draft Annual Work Programme (AWP) of the Agency for the following year and submits it to the Board of Regulators, to the European Parliament and to the Commission by 30 June of that year, pursuant to Article 17(6) of Regulation (EC) No 713/2009.

The Board of Regulators approves the AWP and presents it by 1 September of each year for adoption by the Administrative Board. The Administrative Board adopts, before 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators, the AWP of the Agency and transmits it to the European Parliament, the Council and the Commission.

ACER's draft 2014 AWP was submitted by the Director on 27 June 2013. On 10 September 2013 the Commission adopted its opinion on ACER's draft 2014 AWP.

2 Commission Opinion on ACER's draft 2014 AWP – Operational and regulatory matters

The Director has carefully considered the Commission's Opinion and related recommendations, reflecting them, whenever possible, in the draft text:

- The Commission notes that in 2014 the Agency may be called to deliver decisions on terms and conditions and operational security of cross-border interconnectors, on investment requests including on cross-border cost allocation decisions and notifications to the Commission, as well as, on its own initiative or on request, opinions or decisions on exemptions and upon request opinions on preliminary decisions by NRAs on TSO certification. So far this type of tasks has not been the main field of the Agency's activity, but the Commission notes that with time, these tasks could become more prominent. Therefore, the Commission encourages the Agency to start building expertise in these fields already in 2014.

The Agency will strive to build expertise in these fields; however given the significant amount of additional tasks that it has been given in the Infrastructure package, it will focus foremost on its legal obligations. It notes that the sharing of good practices and recommendations on incentives on the basis of benchmarking of best practice by NRAs and common methodology to evaluate the incurred higher risks of investments in electricity and gas projects is included in the 2014 AWP. This deliverable was already included in the Agency's 2013 AWP, however

the delivery was postponed in the Mid-term review of the 2013 AWP due to the limited resources of the Agency.

- Institutional cooperation between ACER and the Energy Community will be enhanced, both with the Community's Secretariat and with its Regulatory Board (ECRB), as recommended.
- The Agency will start to monitor the implementation of the adopted Network Code on capacity allocation. In this respect the Commission suggests to include in the AWP the monitoring of the Guidelines on congestion management procedures as well. Concerning the preparation for and monitoring of the implementation of the adopted Network Codes and CMP Guidelines, the text now clarifies that the Agency will monitor the Guidelines on congestion management procedures and also facilitate the work by ENTSOG, TSO's, NRA's and others, as the need may be, relating to capacity platforms.
- As recommended, further efforts will be made to improve the ACER website and its accessibility for non-energy experts, with the introduction, as of autumn 2013 of citizens' summaries, which will be published also in the course of 2014.

3 Commission Opinion on ACER's draft 2014 AWP – Budgetary matters

- The Agency will take the necessary arrangements so that the implementation level of the authorised budget is as high as possible.
- Since the AWP is adopted without prejudice to the annual budgetary procedure (pursuant to article 13(5) of the ACER Regulation), the Agency will, if needed, promptly align its 2014 AWP to the budget effectively adopted by the Budgetary Authority. The Agency notes however that under the current proposal it would receive minimal additional human resources for the implementation of the Regulation on guidelines for trans-European energy infrastructure (hereafter "TEN-E") and no additional human resources for the implementation of Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (hereafter "REMIT").

In the Draft General Budget of the European Commission for the financial year 2014¹ ACER is included among the 'new tasks' Agencies, *inter alia* due to the phasing in of new tasks assigned to it under REMIT. However, the Draft General Budget does not recognise ACER's needs for additional Human Resources and only partly the need for additional financial Resources. ACER's mission, tasks and functions under REMIT are underestimated and partly disregarded, in particular as concerns ACER's crucial market monitoring role at Union level and ACER's data collection and data sharing tasks.

There is therefore a serious risk that ACER will not be provided with the appropriate financial and human resources to adequately fulfil the tasks assigned to it under REMIT. It is questionable whether confidence in the integrity of electricity and gas markets can be ensured

¹ COM(2013)450 – June 2013

so that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand and no profits can be drawn from market abuse.

However, the Director is of the opinion that aligning the 2014 AWP to the levels of human and financial resources proposed by the Commission in the Draft Budget 2014 (54 establishment posts and EUR 10.880.000 including assigned revenues) already at this stage, i.e. prior to the adoption of the budget by the Budgetary Authority, would send the wrong message to markets, since the Agency would be obliged to revise the level and extent of its activities related to the implementation of REMIT.

4 Other minor amendments to the draft AWP 2014

Compared to the AWP presented in June, the Agency has corrected the timing of the expected entry into force of the Network Code on Capacity Allocation Mechanisms from August to October 2013. The code will have to be implemented by November 2015 and not 2017, as stated in the original text.