

# EUROPEAN PARLIAMENT

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*Committee on the Internal Market and Consumer Protection*

**2007/0197(COD)**

21.4.2008

## **OPINION**

of the Committee on the Internal Market and Consumer Protection

for the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council  
establishing an Agency for the Cooperation of Energy Regulators  
(COM(2007/0530 – C6-0318/2007 – 2007/0197(COD))

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## SHORT JUSTIFICATION

The Committee on Internal Market and Consumer Protection supports the European Commissions proposal on the regulation establishing an Agency for the Cooperation of Energy Regulators. This Agency should play an important role in the development and implementation of the 3rd Energy Package.

This Agency must be fully independent and have full administrative and financial autonomy in order to serve as an important player in defending consumer and stakeholder rights. It should be able to consult the market participants at an early stage, needs the power to coordinate and verify investments and to handle market monitoring and be able to inform on market distortions.

The activities of the agency should include the process of initiation, monitoring and approval of the proposals by European Networks of Transmission System Operators (ENTSO), which would allow a more regulated development of the internal market in energy, and take adequate measures ensuring that a high level of consumer protection is met.

The Agency must have a key role in initiation, development, validation, implementation and enforcement of the market and technical codes for TSOs. Furthermore, it should be involved in specifying the scope and content of the European codes. The Agency should be given decision making powers, in order to share the responsibility with the TSOs for setting rules. The Agency should decide together with the Commission on eventual exemptions of new cross-border infrastructure from unbundling requirements.

The European Parliament should be able to scrutinize performance and functioning of the Agency.

The European Parliament should provide its approval for the selection, renewal or dismissal of the Director. The Director of the agency, the Administrative Board and the Board of Regulators should be accountable to the European Parliament. They should be present in the EP, on its request.

The Administrative Board should be solely responsible for management and accounting issues. The number of people sitting in Administrative Board should be reduced, as the quantity of twelve is not justified in comparison to the Board of Regulators and the entire staff of the agency. The Administrative Board should be composed of only people appointed by the Commission.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

***(7a) The Agency should constantly monitor markets for market distortions, and inform the Commission, the European Parliament and national authorities where appropriate.***

*Justification*

*The Agency should not only be able to inform, but also to monitor and give early warnings to the European institutions and national authorities.*

### Amendment 2

#### Proposal for a regulation Recital 10

*Text proposed by the Commission*

*Amendment*

(10) The Agency should also be able to issue non-binding guidelines to assist regulatory authorities and market players in sharing good practices.

(10) The Agency should also be able to issue ***binding and*** non-binding guidelines to assist regulatory authorities and market players in sharing good practices, ***and should assist the Commission in the drafting of mandatory guidelines,***

*Justification*

*The competences of the Agency must be strengthened in order to make it an important player in defending consumer and stakeholder rights.*

### Amendment 3

#### Proposal for a regulation

##### Recital 16

*Text proposed by the Commission*

(16) The Agency should have highly professional staff. ***In particular, it should benefit from the competence and experience of*** staff seconded by the national regulatory authorities, ***the Commission and the Member States***. The Staff Regulations of Officials of the European Communities, the regulations applicable to other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these regulations should apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, should adopt the necessary implementing measures.

*Amendment*

(16) The Agency should have highly professional staff, ***exceptionally recruiting*** staff seconded by the national regulatory authorities. The Staff Regulations of Officials of the European Communities, the regulations applicable to other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these regulations should apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, should adopt the necessary implementing measures.

*Justification*

*Excessive recruitment of staff seconded by national authorities and regulators would diminish the Agency's independence and should be resorted to only exceptionally.*

### Amendment 4

#### Proposal for a regulation

##### Recital 18

*Text proposed by the Commission*

(18) ***Participation of*** third countries ***in the work of the Agency*** should be possible in accordance with appropriate agreements to be concluded by the Community.

*Amendment*

(18) ***Cooperation with*** third country ***energy regulators*** should be possible in accordance with appropriate agreements to be concluded by the Community.

*Justification*

*It needs to be clear that third country participation is limited to cooperation projects with other energy regulators (not just any other foreign subject) and in any case not directly affecting the work of the Agency.*

## Amendment 5

### Proposal for a regulation Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) The Agency will be fully accountable to the European Parliament.***

*Justification*

*The European Parliament should be able to scrutinize the performance and functioning of the Agency.*

## Amendment 6

### Proposal for a regulation Article 4

*Text proposed by the Commission*

*Amendment*

The Agency ***may***:

- (a) issue opinions addressed to transmission system operators;
- (b) issue opinions addressed to regulatory authorities;
- (c) issue opinions and recommendations addressed to the Commission;

(d) take individual decisions in specific cases referred to in ***Articles 7 and 8***.

The Agency ***shall***:

- (a) issue opinions ***and recommendations*** addressed to transmission system operators;
- (b) issue opinions ***and recommendations*** addressed to regulatory authorities;
- (c) issue opinions and recommendations addressed to the Commission;

d) take individual decisions in *the* specific cases referred to in ***Articles 6, 7 and 8***.

*Justification*

*The Agency should be able to take binding decisions also in its tasks as regards the cooperation of Transmission System Operators, for the purpose of avoiding self-regulation.*

## Amendment 7

### Proposal for a regulation

#### Article 5

##### *Text proposed by the Commission*

The Agency may, upon a request from the Commission or on its own initiative, provide an opinion to the Commission on all issues related to the purpose for which it has been established.

##### *Amendment*

The Agency may, upon a request from the Commission or on its own initiative, provide an opinion ***or a recommendation*** to the Commission on all issues related to the purpose for which it has been established.

##### *Justification*

*Follows from AM5 and AM6.*

## Amendment 8

### Proposal for a regulation

#### Article 6 - paragraph 3

##### *Text proposed by the Commission*

3. The Agency ***may provide an opinion to the European Network of Transmission System Operators for Electricity as provided for in Article 2d(2) of Regulation (EC) No 1228/2003 and to the European Network of Transmission System Operators for Gas as provided for in Article 2d(2) of Regulation (EC) No 1775/2005 on the technical or market codes, on the draft annual work programme and the draft 10-year investment plan.***

##### *Amendment*

3. The Agency ***shall approve codes and rules, including the 10-year investment plan, to ensure non-discrimination, effective competition and the efficient and secure functioning of the market.***

##### *Justification*

*The Agency needs to have full powers of coordination and approval of the proposals of the ENTSO.*

## Amendment 9

### Proposal for a regulation

#### Article 6 - paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. The Agency shall, on its own initiative or at the request of the Commission, advise the Commission in preparing strategic guidelines for ENTSOs for the preparation of codes and rules (including technical codes, common network operation tools and research plans, a biennial 10-year investment plan, including a generation adequacy outlook, and an annual work programme), as provided for in Article 2c(1)(a) and (c) of Regulation (EC) No 1228/2003 and Article 2c(1)(a) and (c) of Regulation (EC) No 1775/2005, including, where appropriate, for the adoption of mandatory guidelines. The Agency shall, on its own initiative or at the request of the Commission, advise the Commission in preparing market codes, including the adoption of mandatory guidelines.***

#### *Justification*

*The scope and depth of the proposed codes and rules –whether they apply to all transmission infrastructures or to interactions between existing national transmission networks- should be defined ex ante. Firstly, the Agency should provide advice to the Commission, upon request or on its own initiative, on the exact scope and depth of a code or rule within the areas specified in Article 2c (3) of the electricity and gas Regulation. Similarly, the high level objectives and the scope for the 10 year investment plan needs to be defined ex ante.*

## Amendment 10

### Proposal for a regulation

#### Article 6 - paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. The Agency shall consult extensively and at an early stage with market participants, consumers and end-users in an open and transparent manner, in***



*particular with regard to its tasks vis-à-vis TSOs.*

*Justification*

*Public consultations at EU level are currently undertaken by the ERGEG. Therefore, the ACER should inherit this task as it has already well established rules and experience in carrying out public consultations. Moreover, the Agency, unlike the ENTSOs, is the body created to act in the interest of all market participants.*

**Amendment 11**

**Proposal for a regulation**

**Article 6 - paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. The Agency shall monitor the cross-border capacity calculations of TSOs and the actual (aggregate) use of the interconnection capacity between grids, and shall resolve problems of unfair, discriminatory or inefficient access across national borders.***

*Justification*

*Article 6 needs to be strengthened to ensure that The Agency has real powers to oversee cross-border trade and take action to remove any barriers to trade. Whether or not ENTSO is created, ACER should have direct powers to force individual TSOs to comply with its decisions. If ENTSO is created it would be essential that the powers and duties of ACER would need to further extended to match the activities of ENTSO*

**Amendment 12**

**Proposal for a regulation**

**Article 6 - paragraph 6 b (new)**

*Text proposed by the Commission*

*Amendment*

***6b. The Agency shall be able to impose effective sanctions if barriers to cross-border trade are not removed.***

*Justification*

*Article 6 needs to be strengthened to ensure that The Agency has real powers to oversee*

*cross-border trade and take action to remove any barriers to trade. Whether or not ENTSO is created, ACER should have direct powers to force individual TSOs to comply with its decisions. If ENTSO is created it would be essential that the powers and duties of ACER would need to further extended to match the activities of ENTSO*

### **Amendment 13**

#### **Proposal for a regulation**

#### **Article 6 - paragraph 6 c (new)**

*Text proposed by the Commission*

*Amendment*

***6c. The Agency shall be able to take binding decisions on all issues affecting access and use of connected transmission systems involving more than one Member State if joint agreement has not been reached by the relevant national regulatory authorities within six months of notification of an issue by a supplier or a TSO.***

*Justification*

*Article 6 needs to be strengthened to ensure that The Agency has real powers to oversee cross-border trade and take action to remove any barriers to trade. Whether or not ENTSO is created, ACER should have direct powers to force individual TSOs to comply with its decisions. If ENTSO is created it would be essential that the powers and duties of ACER would need to further extended to match the activities of ENTSO*

### **Amendment 14**

#### **Proposal for a regulation**

#### **Article 9 - paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The Administrative Board shall be composed of ***twelve*** members. ***Six shall be*** appointed by the Commission, ***and six by the Council***. The term of office shall be five years, renewable once.

1. The Administrative Board shall be composed of ***six*** members appointed by the Commission. The term of office shall be five years, renewable once. ***The appointment of the Administrative Board shall be subject to a vote of approval by the European Parliament.***

### *Justification*

*The European Parliament should be able to scrutinize the performance and functioning of the Agency. Therefore the Agency must be fully accountable to the Parliament.*

## **Amendment 15**

### **Proposal for a regulation**

#### **Article 9 - paragraph 3**

##### *Text proposed by the Commission*

3. Meetings of the Administrative Board shall be convened by its Chairperson. The Director of the Agency shall participate in the deliberations unless the Administrative Board decides otherwise. The Administrative Board shall meet at least **twice** a year in ordinary session. It shall also meet at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The Administrative Board may invite any person with potentially relevant opinions to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to the rules of procedure, be assisted by advisers or by experts. The Administrative Board's secretarial services shall be provided by the Agency.

##### *Amendment*

3. Meetings of the Administrative Board shall be convened by its Chairperson. The Director of the Agency shall participate in the deliberations unless the Administrative Board decides otherwise. The Administrative Board shall meet at least **four times** a year in ordinary session. It shall also meet at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The Administrative Board may invite any person with potentially relevant opinions to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to the rules of procedure, be assisted by advisers or by experts. The Administrative Board's secretarial services shall be provided by the Agency.

### *Justification*

*Four meetings a year would insure a better overview of the policies managed by the Agency and a more regular update of its work.*

## **Amendment 16**

### **Proposal for a regulation**

#### **Article 9 - paragraph 4**

##### *Text proposed by the Commission*

4. Decisions of the Administrative Board shall be adopted on the basis of **a** majority **two-thirds majority** of the members present.

##### *Amendment*

4. Decisions of the Administrative Board shall be adopted on the basis of **an absolute** majority of the members present.

*Justification*

*As the number of members of the Administrative Board should be reduced to 6 (AM14), the rules on voting must be clarified.*

**Amendment 17**

**Proposal for a regulation**

**Article 9 - paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. The Administrative Board may be removed from office upon the proposal of the Commission and by a decision taken by the European Parliament. The European Parliament shall take its decision by absolute majority vote.***

*Justification*

*Follows from AM12*

**Amendment 18**

**Proposal for a regulation**

**Article 9 - paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. The members of the Administrative Board shall be independent of national governments.***

*Justification*

*The Agency should be as independent as possible. As the members of the Administrative Board are appointed by the Council and the Commission respectively, they can receive instructions from these institutions, but not from any particular Member State.*

## Amendment 19

### Proposal for a regulation

#### Article 10 - paragraph -1 a (new)

*Text proposed by the Commission*

*Amendment*

**-1a. The Administrative Board shall be responsible for management and accounting issues only.**

*Justification*

*The division of tasks between the two boards should be clearer and the Administrative Board should have only managerial tasks in order to really give the Agency the necessary powers to perform the regulatory functions in an efficient and independent manner.*

## Amendment 20

### Proposal for a regulation

#### Article 10 - paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

**7a. The European Parliament may invite any member or members of the Administrative Board to make a statement before its competent committee and answer questions put by members of that committee.**

*Justification*

*The European Parliament should be able to scrutinize the performance and functioning of the Agency.*

## Amendment 21

### Proposal for a regulation

#### Article 11 - paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Board of Regulators shall be composed of one representative per Member State from the regulatory authorities, as mentioned in Article 22a of Directive 2003/54/EC and Article 24a of

1. The Board of Regulators shall be composed of one representative per Member State from the regulatory authorities, as mentioned in Article 22a of Directive 2003/54/EC and Article 24a of

Directive 2003/55/EC, and **one** non-voting **representative** of the Commission. The national regulatory authorities shall nominate one alternate per Member State.

Directive 2003/55/EC, and **two** non-voting **representatives** of the Commission **in an advisory capacity**. The national regulatory authorities shall nominate one alternate per Member State.

*Justification*

*Follows from AM17*

**Amendment 22**

**Proposal for a regulation**  
**Article 12 - paragraph 4a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. The European Parliament may invite any member or members of the Board of Regulators to make a statement before its competent committee and answer questions put by members of that committee.**

*Justification*

*Follows from AM16*

**Amendment 23**

**Proposal for a regulation**  
**Article 13 - paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The Director shall be appointed by the Administrative Board, on the basis of merit as well as skills and experience, from a list of at least two candidates proposed by the Commission, following a call for expression of interest. Before appointment, the candidate selected by the Administrative Board **may** be **invited** to make a statement before the competent committee of the European Parliament and answer questions put by *its* members.

2. The Director shall be appointed by the Administrative Board, on the basis of merit as well as skills and experience, from a list of at least two candidates proposed by the Commission, following a call for expression of interest. Before appointment, the candidate selected by the Administrative Board **shall** be **requested** to make a statement before the competent committee of the European Parliament and answer questions put by members *of that committee*. **The appointment of the**

***Director shall be subject to a vote of approval by the European Parliament.***

*Justification*

*Follows from AM17*

#### **Amendment 24**

##### **Proposal for a regulation Article 13 - paragraph 5**

*Text proposed by the Commission*

5. The Administrative Board shall inform the European Parliament about its intention to extend the Director's term of office. *Within* a month before the extension of his/her term of office, the *director may be invited to* make a statement before the competent committee of the Parliament and answer questions put *before its* members

*Amendment*

5. The Administrative Board shall inform the European Parliament about its intention to extend the Director's term of office. *Up to* a month before the extension of his/her term of office, the *Director shall* make a statement before the competent committee of the *European* Parliament and answer questions put *by members of that committee. The extension of the Director's term of office shall be subject to a vote of approval by the European Parliament.*

*Justification*

*Follows from AM17*

#### **Amendment 25**

##### **Proposal for a regulation Article 13 - paragraph 7**

*Text proposed by the Commission*

7. The Director may be removed from office ***only*** upon a decision by the Administrative Board, after consulting the Board of Regulators. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.

*Amendment*

7. The Director may be removed from office upon a decision by the Administrative Board, after consulting the Board of Regulators. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members. ***The Director may also be removed from office by the European Parliament, after consulting the Board of Regulators. The European Parliament***

*shall take its decision by absolute majority vote.*

*Justification*

*Follows from AM17*

## **Amendment 26**

**Proposal for a regulation**  
**Article 14 - paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The European Parliament may invite the Director to make a statement before its competent committee and answer questions put by members of that committee.***

*Justification*

*Follows from AM17*

## **Amendment 27**

**Proposal for a regulation**  
**Article 15 - paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. The European Parliament may invite any member or members of the Board of Appeal to make a statement before its competent committee and answer questions put by members of that committee.***

*Justification*

*Follows from AM17*



## Amendment 28

### Proposal for a regulation Article 25 - paragraph 4

*Text proposed by the Commission*

4. The Administrative Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency.

*Amendment*

4. The Administrative Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency ***in exceptional cases***.

*Justification*

*Excessive recruitment of staff seconded by national authorities and regulators would diminish the Agency's independence and should be resorted to only exceptionally.*

## Amendment 29

### Proposal for a regulation Article 28

*Text proposed by the Commission*

28. The Agency shall be open to ***the participation*** of countries which are not members of the European Union and which have concluded agreements with the Community to this effect. Under the relevant provisions of these agreements, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of these ***countries in the work of the Agency***, including provisions relating to financial contributions and to staff.

*Amendment*

28. The Agency shall be open to ***cooperation with energy regulators*** of countries which are not members of the European Union and which have concluded agreements with the Community to this effect. Under the relevant provisions of these agreements, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of these ***third country energy regulators***, including provisions relating to financial contributions and to staff.

*Justification*

*Rephrasing. Clarification of the wording of the Article.*

## PROCEDURE

<b>Title</b>	Agency for the Cooperation of Energy Regulators		
<b>References</b>	COM(2007)0530 – C6-0318/2007 – 2007/0197(COD)		
<b>Committee responsible</b>	ITRE		
<b>Opinion by</b> Date announced in plenary	IMCO 11.10.2007		
<b>Drafts(wo)man</b> Date appointed	Gabriela Crețu 21.11.2007		
<b>Discussed in committee</b>	22.1.2008	28.2.2008	2.4.2008
<b>Date adopted</b>	8.4.2008		
<b>Result of final vote</b>	+: 39	–: 0	0: 0
<b>Members present for the final vote</b>	Cristian Silviu Bușoi, Charlotte Cederschiöld, Gabriela Crețu, Mia De Vits, Janelly Fourtou, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Anna Hedh, Edit Herczog, Iliana Malinova Iotova, Pierre Jonckheer, Syed Kamall, Alexander Lambsdorff, Kurt Lechner, Lasse Lehtinen, Toine Manders, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Zita Pleštinská, Giovanni Rivera, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Barbara Weiler, Marian Zlotea		
<b>Substitute(s) present for the final vote</b>	Emmanouil Angelakas, Colm Burke, Giovanna Corda, Bert Doorn, Brigitte Fouré, Joel Hasse Ferreira, Bilyana Ilieva Raeva, Olle Schmidt, Bogusław Sonik, Janusz Wojciechowski		