

Regulation (EC) No 713/2009 of the European Parliament and
of the Council of 13 July 2009 establishing an Agency for the
Cooperation of Energy Regulators (Text with EEA relevance) (repealed)

CHAPTER II

TASKS

Article 5

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.

Article 6

Tasks as regards the cooperation of transmission system operators

1 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 in accordance with Article 5(2) of Regulation (EC) No 714/2009 and on those of the ENTSO for Gas in accordance with Article 5(2) of Regulation (EC) No 715/2009.

2 The Agency shall monitor the execution of the tasks of the ENTSO for Electricity in accordance with Article 9 of Regulation (EC) No 714/2009 and of the ENTSO for Gas in accordance with Article 9 of Regulation (EC) No 715/2009.

3 The Agency shall provide an opinion:

- a to the ENTSO for Electricity in accordance with Article 8(2) of Regulation (EC) No 714/2009 and to the ENTSO for Gas in accordance with Article 8(2) of Regulation (EC) No 715/2009 on the network codes; and
- b to the ENTSO for Electricity in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No 714/2009, and to the ENTSO for Gas in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No 715/2009 on the draft annual work programme, the draft Community-wide network development plan and other relevant documents referred to in Article 8(3) of Regulation (EC) No 714/2009 and Article 8(3) of Regulation (EC) No 715/2009, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal markets in electricity and natural gas.

4 The Agency shall, based on matters of fact, provide a duly reasoned opinion as well as recommendations to the ENTSO for Electricity, the ENTSO for Gas, the European Parliament, the Council and the Commission, where it considers that the draft annual work programme or the draft Community-wide network development plan submitted to it in accordance with the second subparagraph of Article 9(2) of Regulation (EC) No 714/2009 and the second subparagraph of Article 9(2) of Regulation (EC) No 715/2009 do not contribute to non-discrimination, effective competition and the efficient functioning of the market or a sufficient level of cross-border

interconnection open to third-party access, or do not comply with the relevant provisions of Directive 2009/72/EC and Regulation (EC) No 714/2009 or Directive 2009/73/EC and Regulation (EC) No 715/2009.

The Agency shall participate in the development of network codes in accordance with Article 6 of Regulation (EC) No 714/2009 and Article 6 of Regulation (EC) No 715/2009.

The Agency shall submit a non-binding framework guideline to the Commission where requested to do so under Article 6(2) of Regulation (EC) No 714/2009 or Article 6(2) of Regulation (EC) No 715/2009. The Agency shall review the non-binding framework guideline and re-submit it to the Commission where requested to do so under Article 6(4) of Regulation (EC) No 714/2009 or Article 6(4) of Regulation (EC) No 715/2009.

The Agency shall provide a reasoned opinion to the ENTSO for Electricity or the ENTSO for Gas on the network code in accordance with Article 6(7) of Regulation (EC) No 714/2009 or Article 6(7) of Regulation (EC) No 715/2009.

The Agency shall submit the network code to the Commission and may recommend that it be adopted in accordance with Article 6(9) of Regulation (EC) No 714/2009 or Article 6(9) of Regulation (EC) No 715/2009. The Agency shall prepare and submit a draft network code to the Commission where requested to do so under Article 6(10) of Regulation (EC) No 714/2009 or Article 6(10) of Regulation (EC) No 715/2009.

5 The Agency shall provide a duly reasoned opinion to the Commission, in accordance with Article 9(1) of Regulation (EC) No 714/2009 or Article 9(1) of Regulation (EC) No 715/2009, where the ENTSO for Electricity or the ENTSO for Gas has failed to implement a network code elaborated under Article 8(2) of Regulation (EC) No 714/2009 or Article 8(2) of Regulation (EC) No 715/2009 or a network code which has been established in accordance with Article 6(1) to (10) of those Regulations but which has not been adopted by the Commission under Article 6(11) of those Regulations.

6 The Agency shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission in accordance with Article 6(11) of Regulation (EC) No 714/2009 and in Article 6(11) of Regulation (EC) No 715/2009, and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.

7 The Agency shall monitor progress as regards the implementation of projects to create new interconnector capacity.

8 The Agency shall monitor the implementation of the Community-wide 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.

9 The Agency shall monitor the regional cooperation of transmission system operators referred to in Article 12 of Regulation (EC) No 714/2009 and Article 12 of Regulation (EC) No 715/2009, and take due account of the outcome of that cooperation when formulating its opinions, recommendations and decisions.

Article 7

Tasks as regards the national regulatory authorities

1 The Agency shall adopt individual decisions on technical issues where those decisions are provided for in Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 or Regulation (EC) No 715/2009.

2 The Agency may, in accordance with its work programme or at the request of the Commission, make recommendations to assist regulatory authorities and market players in sharing good practices.

3 The Agency 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, and shall take due account of the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where the Agency considers that binding rules on such cooperation are required, it shall make the appropriate recommendations to the Commission.

4 The Agency shall provide an opinion, based on matters of fact, at the request of a regulatory authority or of the Commission, on whether a decision taken by a regulatory authority complies with the Guidelines referred to in Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 or Regulation (EC) No 715/2009 or with other relevant provisions of those Directives or Regulations.

5 Where a national regulatory authority does not comply with the opinion of the Agency as referred to in paragraph 4 within four months from the day of receipt, the Agency shall inform the Commission and the Member State concerned accordingly.

6 When a national regulatory authority encounters, in a specific case, difficulties with the application of Guidelines referred to in Directive 2009/72/EC, Directive 2009/73/EC Regulation (EC) No 714/2009 or Regulation (EC) No 715/2009, it may request the Agency for an opinion. The Agency shall deliver its opinion, after consulting the Commission, within three months of receiving such request.

7 The Agency shall decide on the terms and conditions for access to and operational security of electricity and gas infrastructure connecting or that might connect at least two Member States (cross-border infrastructure), in accordance with Article 8.

Article 8

Tasks as regards terms and conditions for access to and operational security of cross-border infrastructure

1 For 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, only:

- a where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from when the case was referred to the last of those regulatory authorities; or
- b upon a joint request from the competent national regulatory authorities.

The competent national regulatory authorities may jointly request that the period referred to in point (a) is extended by a period of up to six months.

When preparing its decision, the Agency shall consult the national regulatory authorities and the transmission system operators concerned and shall be informed of the proposals and observations of all the transmission system operators concerned.

- 2 The terms and conditions for access to cross-border infrastructure shall include:
 - a a procedure for capacity allocation;
 - b a time frame for allocation;
 - c shared congestion revenues; and
 - d the levying of charges on the users of the infrastructure referred to in Article 17(1)(d) of Regulation (EC) No 714/2009 or Article 36(1)(d) of Directive 2009/73/EC.
- 3 Where a case has been referred to the Agency under paragraph 1, the Agency:
 - a shall provide its decision within a period of 6 months from the day of referral; and
 - b may, if necessary, provide an interim decision to ensure that security of supply or operational security of the infrastructure in question is protected.
- 4 The Commission may adopt Guidelines on the situations in which the Agency becomes competent to decide upon the terms and conditions for access to and operational security of cross-border infrastructure. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(2) of this Regulation.
- 5 Where the regulatory issues referred to in paragraph 1 include exemptions within the meaning of Article 17 of Regulation (EC) No 714/2009 or Article 36 of Directive 2009/73/EC, the deadlines provided for in this Regulation shall not be cumulated with the deadlines provided for in those provisions.

Article 9

Other tasks

1 The Agency may decide on exemptions, as provided for in Article 17(5) of Regulation (EC) No 714/2009. The Agency may also decide on exemptions as provided for in Article 36(4) of Directive 2009/73/EC where the infrastructure concerned is located in the territory of more than one Member State.

2 The Agency shall provide an opinion, upon request by the Commission in accordance with the second subparagraph of Article 3(1) of Regulation (EC) No 714/2009 or the second subparagraph of Article 3(1) of Regulation (EC) No 715/2009, on decisions of national regulatory authorities on certification.

The Agency may, in circumstances clearly defined by the Commission in Guidelines adopted pursuant to Article 18 of Regulation (EC) No 714/2009 or Article 23 of Regulation (EC) No 715/2009 and on issues related to the purpose for which it has been established, be commissioned with additional tasks which do not involve decision-making powers.

Article 10

Consultations and transparency

1 In carrying out its tasks, in particular in the process of developing framework guidelines in accordance with Article 6 of Regulation (EC) No 714/2009 or Article 6 of Regulation (EC) No 715/2009 and in the process of proposing amendments of network codes under Article 7 of either of those Regulations, the Agency shall consult extensively and at an early stage with market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner, in particular when its tasks concern transmission system operators.

2 The Agency shall ensure that the public and any interested parties are, where appropriate, given objective, reliable and easily accessible information, in particular with regard to the results of its work.

All documents and minutes of consultation meetings conducted during the development of framework guidelines in accordance with Article 6 of Regulation (EC) No 714/2009 or Article 6 of Regulation (EC) No 715/2009, or during the amendment of network codes under Article 7 of either of those Regulations shall be made public.

3 Before adopting framework guidelines in accordance with Article 6 of Regulation (EC) No 714/2009 or Article 6 of Regulation (EC) No 715/2009, or proposing amendments to network codes under Article 7 of either of those Regulations, the Agency shall indicate how the observations received during the consultation have been taken into account and shall provide reasons where those observations have not been followed.

4 The Agency 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.

Article 11

Monitoring and reporting on the electricity and natural gas sectors

1 The Agency, in close cooperation with the Commission, the Member States and the relevant national authorities including the national regulatory authorities and without prejudice to the competences of competition 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 Directive 2009/72/EC and Directive 2009/73/EC.

2 The Agency shall make public an annual report on the results of the monitoring provided for in paragraph 1. In that report, it shall identify any barriers to the completion of the internal markets in electricity and natural gas.

3 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 the barriers referred to in paragraph 2.