

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Cooperation of Energy Regulators (Text with EEA relevance) (repealed)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 III

ORGANISATION

Article 12

Administrative Board

1 The Administrative Board shall comprise nine members. Each member shall have an alternate. Two members and their alternates shall be appointed by the Commission, two members and their alternates shall be appointed by the European Parliament and five members and their alternates shall be appointed by the Council. No Member of the European Parliament shall be a member of the Administrative Board. The term of office of the members of the Administrative Board and their alternates shall be four years, renewable once. For the first mandate, the term of office of half of the members of the Administrative Board and their alternates shall be six years.

2 The Administrative Board shall appoint its Chairman and its Vice-Chairman from among its members. The Vice-Chairman shall automatically replace the Chairman if the latter is not in a position to perform his duties. The term of office of the Chairman and of the Vice-Chairman shall be two years, renewable once. The term of office of the Chairman and that of the Vice-Chairman shall expire when they cease to be members of the Administrative Board.

3 The meetings of the Administrative Board shall be convened by its Chairman. The Chairman of the Board of Regulators, or the nominee of the Board of Regulators, and the Director shall participate, without the right to vote, in the deliberations unless the Administrative Board decides otherwise as regards the Director. The Administrative Board shall meet at least twice a year in ordinary session. It shall also meet at the initiative of its Chairman, 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 who may have a relevant opinion to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to its rules of procedure, be assisted by advisers or experts. The Administrative Board's secretarial services shall be provided by the Agency.

4 Decisions of the Administrative Board shall be adopted on the basis of a two-thirds majority of the members present, unless provided otherwise in this Regulation. Each member of the Administrative Board or alternate shall have one vote.

5 The rules of procedure shall set out in greater detail:

- a the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums; and
- b the arrangements governing the rotation applicable to the renewal of the members of the Administrative Board who are appointed by the Council so as to ensure a balanced participation of Member States over time.

Status: Point in time view as at 13/07/2009.

Changes to legislation: There are currently no known outstanding effects for the Regulation (EC) No 713/2009 of the European Parliament and of the Council (repealed), CHAPTER III. (See end of Document for details)

6 A member of the Administrative Board shall not be a member of the Board of Regulators.

7 The members of the Administrative Board shall undertake to act independently and objectively in the public interest, without seeking or following any political instructions. For that purpose, each member shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to his independence or any direct or indirect interest which might be considered prejudicial to his independence. Those declarations shall be made public annually.

Article 13

Tasks of the Administrative Board

1 The Administrative Board shall, after having consulted the Board of Regulators and obtained its favourable opinion in accordance with Article 15(2), appoint the Director in accordance with Article 16(2).

2 The Administrative Board shall formally appoint the members of the Board of Regulators in accordance with Article 14(1).

3 The Administrative Board shall formally appoint the members of the Board of Appeal in accordance with Article 18(1) and (2).

4 The Administrative Board shall ensure that the Agency carries out its mission and performs the tasks assigned to it in accordance with this Regulation.

5 The Administrative Board shall adopt, before 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators in accordance with Article 15(3), the work programme of the Agency for the coming year and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

6 The Administrative Board shall adopt and, if necessary, revise a multi-annual programme. That revision shall be based on an evaluation report, made by an independent external expert at the request of the Administrative Board. Those documents shall be made public.

7 The Administrative Board shall exercise its budgetary powers in accordance with Articles 21 to 24.

8 The Administrative Board shall decide, after having obtained the agreement of the Commission, whether to accept any legacies, donations or grants from other Community sources or any voluntary contribution from the Member States or from the regulatory authorities. The opinion that the Administrative Board shall deliver pursuant to Article 24(5) shall explicitly address the sources of funding set out in this paragraph.

9 The Administrative Board, in consultation with the Board of Regulators, shall exercise disciplinary authority over the Director.

10 The Administrative Board shall, where necessary, draw up the Agency's implementing rules for giving effect to the Staff Regulations pursuant to Article 28(2).

11 The Administrative Board shall adopt practical measures regarding the right of access to the documents of the Agency, in accordance with Article 30.

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12 The Administrative Board shall adopt and publish the annual report on the activities of the Agency, on the basis of the draft annual report referred to in Article 17(8), and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 15 June of each year. The annual report on the activities of the Agency shall contain an independent section, approved by the Board of Regulators, concerning the regulatory activities of the Agency during the year considered.

13 The Administrative Board shall adopt and publish its own rules of procedure.

Article 14

Board of Regulators

1 The Board of Regulators shall comprise:

- a senior representatives of the regulatory authorities, in accordance with Article 35(1) of Directive 2009/72/EC and Article 39(1) of Directive 2009/73/EC, and one alternate per Member State from the current senior staff of those authorities;
- b one non-voting representative of the Commission.

Only one representative per Member State from the national regulatory authority may be admitted to the Board of Regulators.

Each national regulatory authority shall be responsible for nominating the alternate from current staff of the national regulatory authority.

2 The Board of Regulators shall elect a Chairman and a Vice-Chairman from among its members. The Vice-Chairman shall replace the Chairman if the latter is not in a position to perform his duties. The term of office of the Chairman and of the Vice-Chairman shall be two-and-a-half years and shall be renewable. In any event, however, the term of office of the Chairman and that of the Vice-Chairman shall expire when they cease to be members of the Board of Regulators.

3 The Board of Regulators shall act by a two-thirds majority of its members present. Each member or alternate shall have one vote.

4 The Board of Regulators shall adopt and publish its Rules of procedure, which shall set out in greater detail the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums. The rules of procedure may provide for specific working methods for the consideration of issues arising in the context of regional cooperation initiatives.

5 When carrying out the tasks conferred upon it by this Regulation and without prejudice to its members acting on behalf of their respective regulatory authority, the Board of Regulators shall act independently and shall not seek or follow instructions from any government of a Member State, from the Commission, or from another public or private entity.

6 The secretarial services of the Board of Regulators shall be provided by the Agency.

Article 15

Tasks of the Board of Regulators

1 The Board of Regulators shall provide opinions to the Director on the opinions, recommendations and decisions referred to in Articles 5, 6, 7, 8 and 9 that are considered for

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adoption. In addition, the Board of Regulators, within its field of competence, shall provide guidance to the Director in the execution of his tasks.

2 The Board of Regulators shall deliver an opinion to the Administrative Board on the candidate to be appointed as Director in accordance with Article 13(1) and Article 16(2). The Board of Regulators shall reach that decision on the basis of a three-quarters majority of its members.

3 The Board of Regulators shall, in accordance with Article 13(5) and Article 17(6) and in line with the preliminary draft budget established in accordance with Article 23(1), approve the work programme of the Agency for the coming year and present it by 1 September of each year for adoption by the Administrative Board.

4 The Board of Regulators shall approve the independent section on regulatory activities of the annual report, in accordance with Article 13(12) and Article 17(8).

5 The European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by the members of that committee.

Article 16

Director

1 The Agency shall be managed by its Director, who shall act in accordance with the guidance referred to in the second sentence of Article 15(1) and, where provided for in this Regulation, the opinions of the Board of Regulators. Without prejudice to the respective roles of the Administrative Board and the Board of Regulators in relation to the tasks of the Director, the Director shall neither seek nor follow any instruction from any government, from the Commission, or from any other public or private entity.

2 The Director shall be appointed by the Administrative Board following a favourable opinion of the Board of Regulators, on the basis of merit as well as skills and experience relevant to the energy sector, from a list of at least three candidates proposed by the Commission, following a public 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 to answer questions put by its members.

3 The Director's term of office shall be five years. In the course of the nine months preceding the end of that period, the Commission shall undertake an assessment. In the assessment, the Commission shall examine in particular:

- a the performance of the Director;
- b the Agency's duties and requirements in the coming years.

The assessment concerning point (b) shall be carried out with the assistance of an independent external expert.

4 The Administrative Board, acting on a proposal from the Commission, after having consulted and given the utmost consideration to the assessment and the opinion of the Board of Regulators on that assessment and only in those cases where it can be justified by the duties and requirements of the Agency, may extend once the term of office of the Director by no more than three years.

5 The Administrative Board shall inform the European Parliament of its intention to extend the Director's term of office. Within one month before the extension of his term of

office, the Director may be invited to make a statement before the competent committee of the Parliament and to answer questions put by the members of that committee.

6 If his term of office is not extended, the Director shall remain in office until the appointment of his successor.

7 The Director may be removed from office only upon a decision of the Administrative Board, after having obtained a favourable opinion of the Board of Regulators. The Administrative Board shall reach that decision on the basis of a three-quarters majority of its members.

8 The European Parliament and the Council may call upon the Director to submit a report on the performance of his duties. The European Parliament may also invite the Director to make a statement before its competent committee and answer questions put by the members of that committee.

Article 17

Tasks of the Director

1 The Director shall be responsible for representing the Agency and shall be in charge of its management.

2 The Director shall prepare the work of the Administrative Board. He shall participate, without having the right to vote, in the work of the Administrative Board.

3 The Director shall adopt and publish the opinions, recommendations and decisions referred to in Articles 5, 6, 7, 8 and 9, that have received a favourable opinion of the Board of Regulators.

4 The Director shall be responsible for implementing the annual work programme of the Agency under the guidance of the Board of Regulators and under the administrative control of the Administrative Board.

5 The Director shall take the necessary measures, notably as regards adopting internal administrative instructions and publishing notices, to ensure the functioning of the Agency in accordance with this Regulation.

6 Each year the Director shall prepare a draft work programme of the Agency for the following year, and shall submit it to the Board of Regulators, to the European Parliament and to the Commission by 30 June of that year.

7 The Director shall draw up a preliminary draft budget of the Agency pursuant to Article 23(1) and shall implement the budget of the Agency pursuant to Article 24.

8 Each year the Director shall prepare a draft annual report with an independent section on the regulatory activities of the Agency and a section on financial and administrative matters.

9 With regard to the staff of the Agency, the Director shall exercise the powers provided for in Article 28(3).

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Article 18

Board of Appeal

1 The Board of Appeal shall comprise six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector. The Board of Appeal shall designate its Chairman. The decisions of the Board of Appeal shall be adopted on the basis of a qualified majority of at least four of its six members. The Board of Appeal shall be convened when necessary.

2 The members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators.

3 The term of office of the members of the Board of Appeal shall be five years. That term shall be renewable. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in the Agency, in its Administrative Board or in its Board of Regulators. A member of the Board of Appeal shall not be removed during his term of office, unless he has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to that effect.

4 Members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.

5 A member of the Board of Appeal shall inform the Board in the event that he, for one of the reasons referred to in paragraph 4 or for any other reason, considers that a fellow member should not take part in any appeal proceedings. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraph 4, or if suspected of bias. Such an objection shall be inadmissible if it is based on the nationality of a member or if, while being aware of a reason for objecting, the objecting party to the appeal proceedings has taken a procedural step in the appeal proceedings other than objecting to the composition of the Board of Appeal.

6 The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 4 and 5 without the participation of the member concerned. For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. If the alternate finds himself in a similar situation to that of the member, the Chairman shall designate a replacement from among the available alternates.

7 The members of the Board of Appeal shall undertake to act independently and in the public interest. For that purpose, they shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be made public annually.

Article 19

Appeals

1 Any natural or legal person, including national regulatory authorities, may appeal against a decision referred to in Articles 7, 8 or 9 which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

2 The appeal, together with the statement of grounds, shall be filed in writing at the Agency within two months of the day of notification of the decision to the person concerned, or, in the absence thereof, within two months of the day on which the Agency published its decision. The Board of Appeal shall decide upon the appeal within two months of the lodging of the appeal.

3 An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.

4 If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties as often as necessary to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral presentations.

5 The Board of Appeal may, in accordance with this Article, exercise any power which lies within the competence of the Agency, or it may remit the case to the competent body of the Agency. The latter shall be bound by the decision of the Board of Appeal.

6 The Board of Appeal shall adopt and publish its rules of procedure.

7 The decisions taken by the Board of Appeal shall be published by the Agency.

Article 20

Actions before the Court of First Instance and the Court of Justice

1 An action may be brought before the Court of First Instance or the Court of Justice, in accordance with Article 230 of the Treaty, contesting a decision taken by the Board of Appeal or, in cases where no right lies before the Board of Appeal, by the Agency.

2 In the event that the Agency fails to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.

3 The Agency shall be required to take the necessary measures to comply with the judgment of the Court of First Instance or the Court of Justice.

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